

**Remarks Delivered by the Honorable Debra Ann Livingston, Chief Judge of the United States Court of Appeals for the Second Circuit, at the Western District of New York's 125<sup>th</sup> Anniversary Celebration**

May 7, 2025, Buffalo, NY

Thank you so much, Chief Judge Wolford, for that kind introduction. It's such an honor to be here tonight, to celebrate the founding and first 125 years of the United States District Court for the Western District of New York. I particularly want to thank Chief Judge Wolford, who serves this court with such distinction, as well as Judge McCarthy and recently retired Judge Payson, for their leadership in planning tonight's events. Let me also applaud the work and dedication of Mary Loewenguth, the District's Clerk of Court, and her staff, who pulled everything together so flawlessly.

My congratulations, as well, to the students recognized here this evening. Great job, and I hope you are enjoying this well-deserved honor. Finally, on behalf of all the courts of the Second Circuit, I extend my thanks to Chief Justice Roberts and to Judge Vilardo for tonight's memorable and historic conversation.

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The United States District Court for the Western District of New York came into being in 1900, when the 17 westernmost counties of the Northern District were consolidated into a single new district – a district that reflected the thriving commerce, industry, and culture of Buffalo, Rochester, and their surrounding communities.<sup>1</sup>

Congress made a good call in creating the Western District. Even after Judge John Hazel received his commission on June 5, 1900 as the district's first and at that time only district court judge, both the Western and Northern Districts remained among the largest in the country, in terms of population.<sup>2</sup> And cases arising from the Erie Canal's operations, or more generally from the maritime commerce of Buffalo and its vicinity, which was estimated to rank in volume as

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<sup>1</sup> Act of May 12, 1900, ch. 391, 31 Stat. 175.

<sup>2</sup> H.R. REP. NO. 56-428, at 1 (1900).

sixth in the world at the time, could now be heard here in Buffalo, rather than Utica, nearly 200 miles away.<sup>3</sup>

And so, too, could the region's many patent cases. Judge Hazel became a national figure in the field, presiding over cases involving the validity of the early patents of Eastman Kodak and George Eastman;<sup>4</sup> the Ford Motor Company;<sup>5</sup> and, perhaps most famously, Orville and Wilbur Wright, whose patent war with Glenn Curtiss centering on wing warping, the Wright brothers' system for flight control, began in the Western District and made two trips to my court before its conclusion, in which Judge Hazel's decision was upheld.<sup>6</sup>

The Western District's docket burgeoned during Prohibition and Judge Hazel, like many other federal judges, made a mark on the equally burgeoning field of Fourth Amendment law during that time. He ruled in 1924 that even though the Fourth Amendment didn't yet apply to state and local officials, liquor seized by Buffalo police from the storeroom of a local soft drink establishment should be suppressed because federal officers, who *were* bound by the Fourth Amendment, had, in effect, commissioned the Buffalo police to inspect the establishment on the feds' behalf.<sup>7</sup>

And it was "Wild Bill" Donovan – a Buffalo native who had already received the Medal of Honor for his service in World War I – who was U.S. Attorney for the Western District at the time, and who lost that case before Judge Hazel.<sup>8</sup> Donovan would leave the Western District later that year, becoming Assistant Attorney General at the behest of Harlan Fiske Stone to help clean up the Justice Department, whose leadership had been implicated in the Teapot Dome scandal.<sup>9</sup> Donovan thereafter served in World War II, founding the Office of Strategic Services, and receiving the Distinguished Service Medal and the National Security Medal for his service.<sup>10</sup> It's reported that shortly before Donovan's passing in 1959, President Eisenhower visited him and

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Goodwin Film & Camera Co. v. Eastman Kodak Co.*, 207 F. 351 (W.D.N.Y. 1913).

<sup>5</sup> *Stahlbordt Co. v. Ford Motor Co.*, 233 F. 678 (W.D.N.Y. 1916)

<sup>6</sup> *Wright Co. v. Herring-Curtiss Co.*, 177 F. 257 (C.C.W.D.N.Y. 1910), *rev'd*, 180 F. 110 (2d Cir. 1910); *Wright Co. v. Herring-Curtiss Co.*, 204 F. 597 (W.D.N.Y. 1913), *aff'd*, 211 F. 654 (2d Cir. 1914).

<sup>7</sup> *In re Schuetze*, 299 F. 827 (W.D.N.Y. 1924).

<sup>8</sup> *See id.* at 827.

<sup>9</sup> DOUGLAS WALLER, *WILD BILL DONOVAN* 38-39 (2011).

<sup>10</sup> *Id.* at 116, 349, 378.

thereafter mused of this Buffalo lawyer and American patriot that he was the “last [American] hero.”<sup>11</sup>

From the beginning, then, the Western District’s jurists and lawyers have been at the forefront of the nation’s service. And the celebrated cases of this District further reflect the history of America in the 20<sup>th</sup> century and beyond: from antitrust litigation against Standard Oil in the trust-busting era<sup>12</sup> to Smith Act prosecutions against members of the Communist Party in the 1950s.<sup>13</sup> There were the Attica prison riot cases<sup>14</sup> and the Buffalo school desegregation case.<sup>15</sup> Judge Curtin, yet another distinguished Western District jurist, presided over years of difficult litigation arising out of Love Canal, which had focused the entire nation at the time on the urgent need for environmental protection.<sup>16</sup>

And even as we celebrate tonight, first year law students, preparing for their torts exams, are pondering the concepts of proximate cause and foreseeability by considering the tale of the S.S. MacGilvray Shiras, owned by Kinsman Transit, and how it broke loose from its moorings on the Buffalo River one January night, only to set in motion a cascade of events that would end in the disruption of all river transport for about two months.<sup>17</sup> Judge Burke, who the older lawyers in this room fondly recall, took on the difficult litigation that ensued, and wrote a decision in *Kinsman Transit Company* that was affirmed, with modification, by the Court of Appeals.<sup>18</sup> Judge Burke’s analysis is still, today, the subject of study in torts classes across the nation.

The Western District has a long and storied tradition. Its judges and lawyers have tackled some of the most complex and difficult litigations of the modern era, and have done so with intelligence, commitment, and with a keen practical sense that is emblematic, I think, of the District’s special contribution to the Second Circuit, and to the country.

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<sup>11</sup> Evan Thomas, *Spymaster General*, VANITY FAIR, Mar. 2011.

<sup>12</sup> *United States v. Vacuum Oil Co.*, 153 F. 598 (W.D.N.Y. 1907).

<sup>13</sup> *United States v. Noto*, 262 F.2d 502 (2d Cir. 1958), *rev’d*, 367 U.S. 290 (1961).

<sup>14</sup> *Al-Jundi v. Mancusi*, 113 F. Supp. 2d 441 (W.D.N.Y. 2000).

<sup>15</sup> *Arthur v. Nyquist*, 415 F. Supp. 904 (W.D.N.Y. 1976).

<sup>16</sup> *United States v. Hooker Chemicals & Plastics Corp.*, 850 F. Supp. 993 (W.D.N.Y. 1994).

<sup>17</sup> *In re Kinsman Transit Co.*, 1964 A.M.C. 2716 (W.D.N.Y. 1963), *modified and aff’d*, 338 F.2d 708 (2d Cir. 1964).

<sup>18</sup> *Id.*

I first experienced this Western District sensibility as a newly appointed judge, sitting for only the second time on the Court of Appeals. My colleague and friend, Dick Wesley, who is a true son of the Western District, and who is here tonight with his daughter, was presiding. During the first case that was argued that morning, one of the lawyers was pressing a particularly farfetched idea. Judge Wesley listened for a while. Then he leaned across the mahogany bench in our Manhattan courtroom and interrupted: “Counselor,” he said, “I’ve got to tell you, this won’t fly, it just isn’t going to play, in the Geneseo post office.”

Now, I have to admit that at the time, I thought I’d missed something in the record.

But over the years, I’ve come to associate the Geneseo post office standard with the virtues of the Western District itself: with common sense, practical wisdom, with the intelligence and insight of judges and lawyers who know and cherish their communities, and who are committed to serve them.

Every year for the last 30 years, the Erie and Monroe County Bar Associations have collaborated on a dinner that provides an opportunity for the judges and lawyers of the Western District to recognize the service of those attorneys who’ve gone the extra mile: assisting the otherwise unrepresented; educating the next generation in civics and the rule of law. The judges and lawyers of the Western District are keenly aware of the special role lawyers play in sustaining our constitutional republic. You take that responsibility seriously. This was obvious to me last year, when I attended that dinner to see bar association members turn out in numbers, and on the very night of a Bills game.

So, in closing, let me return to where I began: with thanks, this time to *all* the judges of the Western District and to the lawyers here tonight as well. We rightly celebrate 125 years of exceptional service to the communities of the Western District and to our constitutional republic. Thank you for that service, for your commitment to strengthening our institutions and safeguarding the rule of law. I look forward to working with you in the years ahead in our joint project to improve the administration of justice and the strength and resiliency of the federal courts.