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THE DISTRICT OF COLUMBIA COURTS: A JUDICIAL ANOMALY*

Theodore Voorhees**

During its eighteen decades the District of Columbia has had a history of many courts and endless judicial change. Normally, when tracing the history of an American court system one can start from its establishment on a certain date and find, subject to a few changes over the years, that it has retained its identity.¹ This is not the case with the courts of the District of Columbia.

Until very recently, the District's judicial system has evidenced little coherence, foresight, or planning. This is graphically illustrated by Congress's choice of nomenclature for the District's courts. Confusion resulted when Congress named the District's trial court the "Supreme Court."² Moreover, the name "court of appeals" has been applied to two neighboring, but separate courts.³ Further examples include the establishment of

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³ The Court of Appeals of the District of Columbia was established by Congress in 1893. Act of Feb. 9, 1893, ch. 74, 27 Stat. 434. The name was changed to the United States Court of Appeals for the District of Columbia in 1943, Act of June 7, 1943, ch. 426, 48 Stat. 926, and to the United States Court of Appeals for the District of Columbia Circuit in 1948. Act of June 25, 1948, ch. 646, 62 Stat. 870 (codified in 28 U.S.C. § 43 (1976)). In addition, there is the District of Columbia Court of Appeals, which corresponds to the supreme courts of the various states. See notes 85-89 and accompanying text infra. This court was origi-
"circuit courts" serving no specified circuits and the creation of a "Superior Court" when there were no inferior courts.

In a period of less than two centuries the District of Columbia has witnessed a procession of courts and court systems. Today, four courts predominate: the United States Court of Appeals for the District of Columbia Circuit; the United States District Court for the District of Columbia; the District of Columbia Court of Appeals; and the Superior Court of the District of Columbia. Each of them is to some degree an offshoot of the District's first court, the Circuit Court of the District of Columbia, established by Congress in 1801.

Congress's broad constitutional power to establish a judicial system for the District of Columbia has provided it with the opportunity to experimen


Two cases illustrate the confusion generated by the use of the name "court of appeals." In O'Donoghue v. United States, 289 U.S. 516 (1933), the Controller General reduced the salaries of two judges of the Court of Appeals of the District of Columbia. Congress had authorized the reduction of the salaries of judges serving on Article I courts pursuant to the Legislative Appropriation Act, ch. 314, § 107(a)(5), 47 Stat. 402 (1932). The Supreme Court held the Court of Appeals of the District of Columbia to be an Article III court, whose judges serve during good behavior and whose salaries may not be reduced. 289 U.S. at 551.

Subsequently, in Palmore v. United States, 411 U.S. 389 (1973), the Supreme Court ruled that the District of Columbia Court of Appeals and the Superior Court were Article I courts. The defendant had argued that only Article III courts were empowered to try felony prosecutions for violations of federal law. Id. at 393. In rejecting this contention, the Supreme Court held that persons convicted for violations of the D.C. Code have no right to have their cases heard by Article III judges. Id. at 407.

The first court established by Congress for the District of Columbia was the Circuit Court of the District of Columbia, Act of Feb. 27, 1801, ch. 15, § 3, 2 Stat. 105. See notes 14-39 and accompanying text infra. The District obtained a federal circuit court of appeals in 1948. See note 3 supra.


See note 4 supra. See Appendix for a schematic outline of the courts of the District of Columbia.
ment with, improve, and reform the District's court system. This review of
the history of the District's courts will focus on some of the major issues
now confronting American courts and assess Congress's performance in
dealing with them. The experience within the District should be particu-
larly timely in light of the present, on-going critical reexamination of al-
most every aspect of judicial administration in the United States.

The development of the District's courts may be conveniently separated
into four eras: 1801-1863, the period of the Circuit Court; 1863-1893, the
eyearly years of the Supreme Court of the District of Columbia; 1893-1948,
the period when the strictly federal courts emerged; and 1948 to date, the
years during which the District obtained something in the nature of a state
court system of its own.

I. THE CIRCUIT COURT: 1801-1863

By Act of Congress, the District of Columbia became the seat of the
national government on the first Monday of December, 1800. On Febru-
ary 27, 1801, Congress established the Circuit Court of the District of Co-
lumbia, consisting of a chief judge and two assistant judges. One year
later, Congress authorized the court's chief judge to hold a District Court
of the United States with the same powers and jurisdiction enjoyed
by the other United States District Courts. Thus, the Circuit Court was both
federal and local, and during its sixty-two years of existence it was the only
court of general jurisdiction in the District of Columbia. Congress, ever

12. Five particular issues are within the general scope of this article: the importance
of an independent judiciary freed from pressure by the executive or legislature; the question
of a judge's tenure; removal of the disabled judge or the judge guilty of misbehavior in office;
the desirability of specialized courts; and the future of the dual, federal-state court systems.
13. See, e.g., Ashman & Lee, Non-Lawyer Judges: The Long Road North, Chi.-Kent L.
Rev. 565 (1977); Carbon, Berkson & Rosenbaum, Court Reform in the Twentieth Century: A
Critique of the Court Unification Controversy, 27 Emory L.J. 559 (1978); Ellis, Court Reform
in New York State: An Overview for 1975, 3 Hofstra L. Rev. 663 (1975); Kaminsky, Avail-
able Compromises for Continued Judicial Selection Reform, 53 St. John's L. Rev. 466
1031 (1979); Symposium: State Courts in the 1980s and Beyond, 74 Nw. U.L. Rev. 711
(1979).
15. Act of Feb. 27, 1801, ch. 15, § 3, 2 Stat. 105. William Kilty of Maryland was ap-
pointed Chief Judge, and James Marshall of Virginia (brother of Chief Justice John Mar-
shall) and William Cranch were appointed assistant judges. See Carne, Life and Times of
William Cranch, Judge of the District Circuit Court 1801-1855, 5 Rec. Colum. Hist. Soc'y
294 (1902); Cox, Address to the District of Columbia Bar, 23 Wash. L. Rep. 498 (Mar. 2,
1895).
preoccupied with national rather than local affairs, waited almost a century and a half before sorting out the District's courts and assigning them either purely local or federal roles.\textsuperscript{17}

William Cranch, a staunch Federalist, served as chief judge of the Circuit Court from 1806 until 1855. The nephew of President John Adams' wife, Cranch had originally been appointed an associate judge on February 29, 1801, the eve of Adams' departure from office. Because of this lame duck appointment, Cranch was included among the "midnight judges" so bitterly condemned by Jefferson and the Republicans.\textsuperscript{18}

Yet, despite his political antagonism toward Adams and the Federalists, Jefferson in 1806 appointed Cranch the chief judge of the Circuit Court. In so doing, Jefferson was faithful to his declaration that: "We are all Federalists; we are all Republicans . . . the sole criterion for appointment to office must be an affirmative answer to the questions: Is he honest? Is he capable? Is he faithful to the constitution?"\textsuperscript{19} Jefferson, a president seldom praised for the promotion of nonpartisanship, set an important political example in making the Cranch appointment. Nevertheless, with merit selection for the judiciary many decades away, District of Columbia judges constantly had to battle both Congress and the executive to maintain their independence.

Cranch is best remembered outside of Washington, D.C., as the reporter for the Supreme Court of the United States. He published nine volumes of that Court's decisions while also reporting the opinions of the Circuit Court from 1801 until 1840.\textsuperscript{20} Yet Cranch's greatest contribution was his performance as a stalwart, independent, and learned judge who served fifty-four years,\textsuperscript{21} a record probably unmatched by any other American


\textsuperscript{18} For an account of the "midnight judges" appointments, see II A. BEVERIDGE, \textit{LIFE OF JOHN MARSHALL} 559-64 (1916). In \textit{Marbury v. Madison}, 5 U.S. (1 Cranch) 137 (1803), decided two years after Cranch's appointment, Chief Justice John Marshall used the contest over the "midnight" appointments to establish the Supreme Court's power to declare acts of Congress unconstitutional. \textit{Id.} at 176-78.

\textsuperscript{19} \textit{Carne, supra} note 15, at 296.

\textsuperscript{20} \textit{See Cox, supra} note 15, at 499. Cranch's D.C. cases were available in manuscript form but were not published until 1852. It is said that this gave the older practitioners, who seemed to remember every case that Cranch had decided, an advantage over their younger colleagues. \textit{Id.}

\textsuperscript{21} "Chief Justice Cranch occupied a position in the District Court analogous to that of Chief Justice John Marshall in the Supreme Court and to him is generally given credit for the stability of the early court." \textit{Fishback, \textit{Washington City, Its Founding and Development}, 20 REC. COLUM. HIST. SOC'Y 194 (1917).}
Illustrative of Cranch's caliber as a judge is perhaps the most famous proceeding to come before the Circuit Court. Jefferson had ordered the arrest of two men who were charged with treason for participating in the Burr conspiracy. The detainees filed a petition for a writ of habeas corpus on the ground that they were arrested and detained without due process of law. Although the Circuit Court’s two associate judges rejected the petition, Cranch stood up to Jefferson with a ringing dissent:

The worst of precedents may be established from the best of motives. We ought to be upon our guard lest our zeal for the public interest lead us to overstep the bounds of the law and the Constitution; for although we may thereby bring one criminal to punishment, we may furnish the means by which a hundred innocent persons may suffer.

On appeal, Chief Justice Marshall and the Supreme Court agreed with Cranch, and the prisoners were released. Thus, Judge Cranch demonstrated early in American judicial history the importance of a judiciary independent of the executive.

The final events occurring during the Circuit Court’s existence caution against overreliance by the judiciary on protection from the legislature. In 1863 there was a severe conflict among the three branches of government, with the judiciary getting the worst of it. The judges of the Circuit Court at that time were Chief Judge James Dunlop and Associate Judges James S. Morsell and William M. Merrick. All three judges had been appointed to serve during “good behavior.” Judge Merrick, however, was suspected of harboring Southern sympathies. The spark that triggered

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22. Mr. Justice Holmes served 20 years on the Supreme Judicial Court of Massachusetts in addition to 29 years on the Supreme Court of the United States. Mr. Justice Douglas, who had the longest tenure on the Supreme Court, served 39 years. See L. Friedman, The Justices of the United States Supreme Court (1969).


25. Id. at 379 (Cranch, C.J., dissenting).

26. See Ex parte Bollman and Swartwout, 8 U.S. (4 Cranch) 75 (1807).

27. During its existence, the Circuit Court was the second most important court in the District of Columbia, surpassed only by the Supreme Court of the United States, which had come into existence 12 years earlier and heard appeals from the Circuit Court involving judgments of disputes exceeding $100. See Act of Feb. 27, 1801, ch. 15, § 8, 2 Stat. 103. See Act of Feb. 27, 1801, ch. 15, § 3, 2 Stat. 103. Yet, without regard to this provision, their offices were taken from them when Congress abolished the court in 1863. See notes 33-38 and accompanying text infra.

28. See M. McGuire, supra note 23, at 41-42. See generally, W. Webb & J. Wool-
the conflict was Merrick's issuance of a writ of habeas corpus for the release of an underaged soldier. President Lincoln suspended the writ and Judge Merrick himself was placed under house arrest.30

This episode led to the District's first case of court-packing, a subject usually identified with President Franklin D. Roosevelt rather than with Lincoln.31 Although Roosevelt was unsuccessful in his attempt to "pack" the membership of the Supreme Court, Lincoln encountered little difficulty in persuading Congress to abolish the Circuit Court and to create a substitute, all of whose members were to be appointed by the president.32

Lincoln's maneuver occurred in 1863 when the Union's fortunes were low and the safety of the capital was in danger. He was determined to have a court in the District of Columbia whose membership was unquestionably loyal.33 There was, however, little basis for the suggestion that any member of the Circuit Court was in fact disloyal.34 Nevertheless, Congress was persuaded to abolish the Circuit Court and to substitute in its place the Supreme Court of the District of Columbia.35

In this manner, three judges who had been appointed to serve during good behavior were forced out of office, without any proof of misbehavior, by the executive-legislative steamroller. This was a patent abridgment of the constitutional principle of separation of powers36 and, of course, a direct violation of article III's command that federal judges hold office during good behavior.37 To no one's surprise, Lincoln appointed four loyal Republicans to the new court.38 Twenty years later, however, there was a partial reparation when President Cleveland reappointed Judge Merrick to the bench as a member of the successor court.39

30. See M. McGuire, supra note 23, at 43.
31. See generally W. Murphy, Congress and the Court 57-62 (1962).
32. See M. McGuire, supra note 23, at 45-46.
33. Id.
34. Id. at 50.
39. See M. McGuire, supra note 23, at 50. See also Centennial History, supra note 29, at 726.
II. THE SUPREME COURT OF THE DISTRICT OF COLUMBIA: FIRST PERIOD — 1863-1893

The Supreme Court of the District of Columbia was modeled after the Supreme Court of the State of New York. Both were courts of first instance, but when they sat in "general term" (en banc) they served as an appellate court, hearing appeals from rulings of the individual judges. In the District, an appeal from a ruling of general term could be taken directly to the Supreme Court of the United States. Judges of the District's Supreme Court were authorized by Congress to hold a District Court of the United States, with the same power and jurisdiction as other United States District Courts.

Two years after the establishment of the new court, it received a rebuff from the executive branch equal to that delivered by President Lincoln to the Circuit Court. It occurred, however, under more dramatic circumstances. Following the assassination of Lincoln, Mary Surratt and seven male civilians were tried by a military tribunal for conspiracy to murder the President. Five of the defendants, including Mrs. Surratt, were found guilty and sentenced to be hanged. The evidence tying Mrs. Surratt with the conspiracy was meager at best, and five of the nine members of the District's Supreme Court recommended that the penalty in her case be remitted. President Andrew Johnson, however, ordered the sentence to be carried out immediately.

Well after midnight on the eve of the execution, Mrs. Surratt's lawyers called on Judge Wylie of the District's Supreme Court with a petition for a writ of habeas corpus. The petition alleged that the military tribunal had no jurisdiction to try Mrs. Surratt, a defense that was subsequently fully sustained by the Supreme Court of the United States in a similar case. Judge Wylie ordered General Hancock, the Military Governor of the Dis-

43. Id.
44. See M. McGuire, supra note 23, at 53-65. For a full account of the Lincoln assassination and the evidence of guilt of the alleged conspirators, see Mudd, President Lincoln and his Assassination, 50 REC. COLUM. HIST. SOC'y 341 (1952) (Dr. Mudd is the grandson of the surgeon who operated on John Wilkes Booth).
45. See M. McGuire, supra note 23, at 63.
46. See Ex Parte Milligan, 71 U.S. 1 (1866).
District of Columbia and chairman of the military tribunal, to surrender Mrs. Surratt in court at ten o'clock the following day. Judge Wylie waited in court until eleven-thirty that morning when Attorney General James Speed, accompanied by General Hancock, finally appeared. They reported that the court's order could not be complied with since the President had suspended the writ. Then, ignoring the court's majority recommendation for mercy, the lack of proof of guilt, the issue of the military tribunal's jurisdiction, and the court order itself, the executive branch proceeded with the hanging of Mrs. Surratt.47

Essentially a local court, the Supreme Court of the District of Columbia adjudicated controversies of the type generally addressed in the state courts.48 Two attributes, however, distinguished the District's Supreme Court from the state courts. First, the District of Columbia was a federal enclave subject to laws prescribed by Congress, and the local courts were established by acts of Congress.49 Much of the confusing history of the District's courts and the lack of a sensible judicial system stemmed from the fact that Congress was a national legislature. As such, Congress devoted little time to the less important affairs of the city, however pressing they might have been to its residents.50 Second, the Supreme Court of the District of Columbia had an extraordinary power, not possessed by state courts or the United States District Courts. It was authorized to issue process against heads of federal executive departments and to enforce their compliance with its judgments and decrees.51 The full implications of such power went unrealized until well into the present century.52

47. See M. McGuire, supra note 23, at 63-64.
48. The Court also had, however, the powers of a federal court. Act of Mar. 3, 1863, ch. 91, § 3, 12 Stat. 763. See Bicentennial History, supra note 38, at 2-3. See generally J. Noel, The Court-House of the District of Columbia 82-89 (2d ed. 1939). David K. Carter, the first chief judge of the Supreme Court of the District of Columbia, was a staunch Ohio Republican. Carter served on the court for 24 years and had the reputation of a fine jurist among his contemporaries. See Barnard, supra note 41, at 20-23; Centennial History, supra note 29, at 729. Thus, even though Lincoln played politics with judicial appointments he did not compound this error, as did many of his predecessors and successors, by appointing judges who were incompetent or second rate. See generally J. Borkin, The Corrupt Judge (1962).
50. For example, it took 100 years before Congress could be persuaded to establish a District of Columbia Code. See Cox, Efforts to Obtain a Code of Laws for the District of Columbia, 3 Rec. Colum Hist. Soc'y 115 (1900).
52. It was not until the New Deal legislation that the executive branch found itself continually in court. See, e.g., Schechter Poultry Corp. v. United States, 295 U.S. 495

In 1893, Congress established a new federal court, the Court of Appeals of the District of Columbia, and abolished the appellate jurisdiction of the District's Supreme Court. The name of this new appellate court was changed in 1934 to the United States Court of Appeals for the District of Columbia, and in 1948 to the United States Court of Appeals for the District of Columbia Circuit. The Supreme Court of the District of Columbia, however, continued to exercise the powers of both a local and federal court of original jurisdiction until 1936 when it was given a federal name: the District Court of the United States for the District of Columbia. Until 1970, that court remained heavily engaged in the adjudication of local controversies, sharing its local jurisdiction respecting certain civil and criminal matters with the Municipal Court of the District of Columbia.

Until 1973, the United States District Court exercised exclusive jurisdiction over all felony cases arising in the District of Columbia, and concurrent jurisdiction with the Superior Court or its predecessors over misdemeanors. After the three year "take-over" period provided in the Court Reform and Criminal Procedure Act of 1970, the Superior Court assumed jurisdiction over all criminal matters except for cases falling within the exclusive jurisdiction of the federal courts. The organization of the District's two federal courts is now generally comparable with that of their sister courts in the other ten circuits.

Before leaving the developments in the federal court system, it should be noted that Congress has established certain specialized federal tribunals in


53. Act of Feb. 9, 1893, ch. 74, 27 Stat. 434. The new court was empowered to review the orders and decrees of the Supreme Court and those of the Police Court. Subsequently it entertained appeals from the Municipal Court and the Juvenile Court. See Proctor, supra note 51, at 226, 243; Bicentennial History, supra note 38, at 3-14.


58. See notes 71 & 78-79 and accompanying text infra.

59. See notes 80-84 and accompanying text infra.

60. For the criminal jurisdiction of the United States District Court prior to the Court Reform Act, see D.C. Code §§ 11-306 (1961).


62. Id. § 11-923.
the District of Columbia. The first to be created was the United States Court of Claims, which antedates the Civil War.\textsuperscript{63} It was followed in 1924 by the United States Tax Court,\textsuperscript{64} and in 1948 by the United States Court of Customs and Patent Appeals.\textsuperscript{65} In 1956 Congress established the United States Court of Military Appeals\textsuperscript{66} and in 1971 the Temporary Emergency Court of Appeals.\textsuperscript{67} These tribunals were created to adjudicate controversies in highly specialized areas.

IV. THE CREATION OF A STATE COURT SYSTEM WITHIN THE DISTRICT OF COLUMBIA

During the District's short history there have been a series of local courts of limited jurisdiction. Quite often Congress's decision to create, abolish, or consolidate these courts has been guided primarily by political considerations.\textsuperscript{68}

In 1801, Congress established the Justices of the Peace.\textsuperscript{69} Although they started off inauspiciously with the appointment of the "midnight judges,"\textsuperscript{70} the Justice of the Peace Court lasted for more than a century. In 1909, the name of the court was changed to the Municipal Court of the District of Columbia.\textsuperscript{71} In 1801 Congress also established the Orphans Court for the District of Columbia.\textsuperscript{72} This court was abolished in 1870 and its jurisdiction was transferred to the Supreme Court of the District of Columbia.\textsuperscript{73} After a sojourn with the United States District Court, probate jurisdiction was transferred in 1970 to the Probate Division of the Superior Court.\textsuperscript{74}

\begin{itemize}
\item \textsuperscript{64} The United States Tax Court, originally established as the Board of Tax Appeals in 1924, acquired the status of a court in 1954. 26 U.S.C. § 7441 (1976).
\item \textsuperscript{65} 28 U.S.C. § 211 (1976). Also established in 1948 was the United States Customs Court, which sits in New York City. \textit{Id.} § 251.
\item \textsuperscript{66} 10 U.S.C. § 867 (1976).
\item \textsuperscript{68} See, e.g., notes 32-38 and accompanying text supra.
\item \textsuperscript{70} See note 18 supra.
\item \textsuperscript{73} Act of June 21, 1870, ch. 141, § 5, 16 Stat. 160 (1870).
\item \textsuperscript{74} See D.C. Code § 11-2101 (1973).
\end{itemize}
The Criminal Court was established in 1838 to relieve the Circuit Court of the pressure of criminal trials.\textsuperscript{75} It was abolished in 1863, however, and its jurisdiction was transferred to the District's Supreme Court.\textsuperscript{76} In 1870 the Police Court was established and given jurisdiction over minor crimes.\textsuperscript{77} In 1942 it was consolidated into the Municipal Court, which then exercised both civil and criminal jurisdiction.\textsuperscript{78} The name of the Municipal Court was changed in 1962 to the Court of General Sessions of the District of Columbia.\textsuperscript{79} In 1970, Congress commenced a major reorganization of the District's courts with the passage of the Court Reform and Criminal Procedure Act of 1970.\textsuperscript{80} This Act consolidated the Court of General Sessions with the District's Juvenile Court\textsuperscript{81} and Tax Court.\textsuperscript{82} The newly named Superior Court of the District of Columbia was given jurisdiction over all civil matters arising within the District of Columbia, except those within the exclusive jurisdiction of the federal courts.\textsuperscript{83} It was further empowered to handle all criminal cases arising under any law applicable exclusively to the District.\textsuperscript{84}

The history of the District's appellate court, the District of Columbia Court of Appeals, is relatively brief.\textsuperscript{85} Its predecessor, the Municipal Court of Appeals, was established in 1942 to hear appeals from the Municipal Court.\textsuperscript{86} At its inception the local appellate court was an intermediate court, since its decisions were reviewable by the United States Court of

\begin{itemize}
\item \textsuperscript{75} Act of July 7, 1838, ch. 192, 5 Stat. 306 (1838).
\item \textsuperscript{76} Act of Mar. 3, 1863, ch. 91, § 16, 12 Stat. 762 (1863).
\item \textsuperscript{77} Act of June 17, 1870, Ch. 133, 16 Stat. 153 (1870).
\item \textsuperscript{79} Act of Oct. 23, 1962, Pub. L. No. 87-873, 76 Stat. 1171 (1962). The jurisdiction of the court was increased to provide exclusive jurisdiction over all civil claims not exceeding $10,000.
\item \textsuperscript{81} The Juvenile Court was established by Congress in 1906. Act of Mar. 19, 1906, ch. 960, § 1, 34 Stat. 73 (1906). Its purpose was to separate youthful offenders from the criminal procedures used for adults. \textit{See} Thomas v. United States, 121 F.2d 905 (D.C. Cir. 1941).
\item \textsuperscript{82} Originally established as the Board of Tax Appeals, District of Columbia Revenue Act of 1937, ch. 690, 52 Stat. 673, the work of the Tax Court has been handled since 1970 by the Tax Division of the Superior Court. D.C. Code §§ 47-2401 to 47-2413 (1973).
\item \textsuperscript{84} D.C. Code § 11-923 (1973).
\item \textsuperscript{86} Act of Apr. 1, 1942, ch. 207, § 6, 56 Stat. 194.
\end{itemize}
Appeals.\textsuperscript{87} The Court Reform Act, however, significantly expanded its jurisdiction. The District of Columbia Court of Appeals is now a court of last resort, hearing all appeals from the Superior Court and exercising review authority over decisions of the city's mayor and administrative agencies.\textsuperscript{88} Its decisions are subject to review only by the Supreme Court of the United States.\textsuperscript{89} In essence, the District of Columbia Court of Appeals has the same power and stature as the supreme courts of the several states.

V. THE COURTHOUSES

Even such a condensed history of the District of Columbia court system as this one would be incomplete without at least a short account of the courthouses in which the judiciary has functioned.

Prior to the burning of the Capitol by the British in 1814, the Circuit Court often shared with the Supreme Court a room in the basement of the Capitol.\textsuperscript{90} That courtroom was described as "little better than a dungeon."\textsuperscript{91} During much of the time between 1814 and 1822, the Circuit Court was virtually homeless, Congress having failed to provide funds for a court building.\textsuperscript{92} Finally, in 1823, a courtroom was provided in the District's City Hall. Although the City Hall which was to house the courts in Judiciary Square originally belonged to the local government, the federal government took over part of it for the Circuit Court.\textsuperscript{93} For more than a century, all the federal and local courts within the District, with the exception of the Supreme Court of the United States, were housed in Judiciary Square.\textsuperscript{94}

\textsuperscript{87} Act of Apr. 1, 1942, ch. 207, § 8, 56 Stat. 196. Review by the federal court of appeals was discretionary in nature. As an intermediate appellate court, the Municipal Court of Appeals performed "error" review as opposed to the "institutional" review function of the United States Court of Appeals. See Newman, supra note 85, at 455. See generally Davidson v. Jones, 34 A.2d 261, 262 (D.C. 1943).


\textsuperscript{89} Id. § 11-102.

\textsuperscript{90} See J. Noel, supra note 48, at 11.

\textsuperscript{91} II W. Bryan, History of the National Capital 83 (1914).

\textsuperscript{92} See J. Noel, supra note 48, at 11-12.

\textsuperscript{93} Id. at 32. Later more courtrooms were made available to the judiciary in City Hall. Although the rooms are newly furbished, old memories of wrong and injustice linger there like the odor of mould. "The law was given to men, not to angels" (Talmud). Hence there are records of crime unpunished and innocence unvindicated, of wrong where the law aided, memories of affliction stronger than the grave and of hatred stretching its soiled hands to break the quiet of the tomb. All these dwell about the new court-rooms as the old.

\textsuperscript{94} The account of the Judiciary Square courthouses contained in the remainder of this section is based upon the recollections of Mr. George Fisher, Clerk of the United States Court of Appeals for the District of Columbia Circuit; Mr. Alexander L. Stevas, Clerk of the
The Supreme Court of the District of Columbia moved into the City Hall in 1863 at the time the Circuit Court was abolished. The General Term (which ultimately became the United States District Court for the District of Columbia) held its sessions for a time across the street at Building D (now occupied by the Court of Military Appeals) before finally moving in 1952 to the United States Court House on John Marshall Place.

The Special Term of the Supreme Court of the District of Columbia (which in 1936 became known as the District Court of the District of Columbia) remained in the City Hall until it moved in 1952 to the new Federal Court House on John Marshall Place. It also had courtrooms in the A Building at 515 Fifth Street, N.W., and the Esso Building at 3rd and Constitution Avenue, N.W.

As the number of judges of the Superior Court increased, building space was appropriated whenever it could be found in or about Judiciary Square. Building E at 601 Indiana Avenue, N.W., Building F at 613 Indiana Avenue and the Pension Building on F Street between Fourth and Fifth Streets, N.W., provided chambers and courtrooms. The Pension Building alone provided seventeen courtrooms. In 1978 the Superior Court moved to the new District of Columbia Court House at 500 Indiana Ave., N.W.

The Municipal Court of Appeals, which in 1968 became known as the District of Columbia Court of Appeals, had its courtroom on the top floor of the B Building at 409 Fourth Street, N.W. In 1978, that court accompanied the Superior Court in the move to the new District of Columbia Court House at 500 Indiana Ave., N.W.

Thus, despite the great disadvantages that the courts of the District suffered over a period of many years from wholly inadequate and decentralized housing, the courts now are enjoying modern facilities that add greatly to their efficiency. The rapid increase in the case loads of the federal courts, however, makes it evident that the “new courthouse,” now nearly three years old, will soon require enlargement or replacement.

VI. THE GREAT RESPONSIBILITY OF THE DISTRICT OF COLUMBIA COURTS

Every year the courts of the District of Columbia are called upon to adjudicate dramatic controversies which are often of great significance to the whole nation. While this article cannot review all of the important
cases of the past, several broad types of controversies deserve mention as illustrations of the unique role which is played by the District's courts.

Although the combined civil caseloads of the District's federal and local courts greatly exceed their criminal cases in number, it is the latter which comes to the public mind whenever the subject of "the law" is raised. In the Prohibition Era (1919-1934), for example, the District of Columbia was at the center of a challenge to the continuing existence and enforcement of the eighteenth amendment.\textsuperscript{96} The courts were flooded with "liquor cases" which threatened to destroy their reputation, but were saved at the eleventh hour by the ratification of "Repeal."\textsuperscript{97}

As the national revenues move toward being counted in terms of trillions of dollars, also increasing are the dangers of massive corruption. The courts of the nation's capital must carry the burden of providing a forum for prosecution when that becomes needed. A notorious case in point was the trial of Secretary of the Interior Albert B. Fall for accepting a bribe in the Teapot Dome scandal.\textsuperscript{98} Even today, the General Services Administration has provided yet another scene of dishonesty by government officials. Unless there exists complete integrity and competence in the courts of the District, confidence in the federal government itself will constantly erode. But even the efforts by the courts to ferret out corruption are sometimes frustrated. Periodically, congressional legislation will trigger crises that impose severe challenges upon the very functioning of the courts. The notorious Volstead Act was one,\textsuperscript{99} and the recent surge of regulatory activities is another.\textsuperscript{100}

The classic illustration of the need for a strong judiciary is, of course, Watergate. The charges against members of the Nixon administration, bent on taking the law into their own hands, posed enormous difficulties for the judges of the local courts before whom their prosecutions were presented. Those courts proved steadfast and courageous, and Judge Sirica gained and deserved the approbation of the whole country.\textsuperscript{101}

\begin{itemize}
\item 96. U.S. Const. amend. XVIII. Deserving of more than a small footnote in District of Columbia history was the reign of Mabel Walker Wildebrandt, Assistant Attorney General from 1921-1929 in charge of enforcing the prohibition law. Many years before "women's liberation," she brought to the District's courts a crusading spirit that is unmatched even today.
\item 97. U.S. Const. amend. XXI.
\item 98. Fall v. United States, 49 F.2d 506 (D.C. App. 1931).
\item 100. Laws governing civil rights, consumer rights, occupational health and safety, and environmental protection may be cited as examples.
\end{itemize}
On the civil side, the role of the District's courts has also been of transcendent importance. During the New Deal period, Congress enacted a complex legislative program at the behest of President Roosevelt. Much of it was controversial and the country was in a highly divisive mood. The prompt testing of the constitutionality of much of the legislation and clear decisive rulings from the courts dispelled the clamor and uncertainty which at first prevailed.\textsuperscript{102}

Additionally, compliance with federal law depends heavily upon the equitable arm of the courts, and not infrequently that of the courts of the District. One of the most dramatic cases in District of Columbia court history was the trial of John L. Lewis who refused to comply with an injunction in a labor dispute.\textsuperscript{103} Equally heated was the controversy surrounding President Truman's attempted seizure of the steel mills.\textsuperscript{104} The high caliber of the judiciary within the District has insured the enforcement of congressional legislation and the fairness of governmental regulation as well.\textsuperscript{105}

The presence of the federal regulatory agencies in Washington accounts for a large percentage of the litigation in its courts. The Federal Trade Commission, the Civil Rights and Antitrust Divisions of the Department of Justice, the Environmental Policy Administration, and the National Labor Relations Administration are well known in the District's courtrooms, and the same is, of course, true of the many other agencies as well. The burden of the congressional determination to regulate the social, financial, and industrial affairs of the nation has fallen heavily on the courts at the seat of the government.\textsuperscript{106}

\section*{VII. Marks of Progress}

The sweeping court reforms enacted by Congress during the last decade have gone a long way toward resolving the problems that have plagued the District's courts in recent years.\textsuperscript{107} This final section will summarize


\textsuperscript{104} Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).


\textsuperscript{107} See note 12 supra.
briefly the changes resulting from the legislation affecting the District's local and federal courts.

A. Merit Selection

Prior to the District of Columbia Self-Government and Governmental Reorganization Act, all judges of the District's courts were nominated by the President and appointed with Senate approval. The Self-Government Act established a Judicial Nomination Commission to advise the President on appointments to the Superior Court and District of Columbia Court of Appeals. The Commission is charged with recommending three qualified candidates for each impending or existing vacancy without regard to party membership. If none of the Commission's recommendations is acted upon by the President within sixty days, the Commission may nominate one of the candidates subject to senate approval. The absence of political sponsorship should remove any necessity for judicial participation in politics.

The success of the District's merit system has lent encouragement to President Carter's determination to employ a similar system throughout the federal judiciary. An important first step was the appointment of a judicial nominating commission to recommend candidates for United States Circuit Court judgeships. Some progress has also been made to-

ward the creation of nominating commissions for the United States District Courts.\textsuperscript{114}

\section*{B. Judicial Tenure}

In providing that the District of Columbia judges should serve fifteen year terms,\textsuperscript{115} Congress rejected the system of lifetime appointments enjoyed by federal judges. Nevertheless, it declined to readopt the shorter ten-year term that local judges had been serving prior to the establishment of the Superior Court.\textsuperscript{116} The fifteen year term is proving to be a viable intermediate solution to the complex problem of length of tenure.\textsuperscript{117}

The District's Commission on Judicial Disabilities and Tenure was also established by the Self-Government Act.\textsuperscript{118} Comprised of seven members serving staggered terms,\textsuperscript{119} the Commission is empowered to remove judges from the two local courts when it finds that a judge has become physically disabled or is guilty of misbehavior in office.\textsuperscript{120}

An equally important function of the Commission is to evaluate the performance of judges seeking reappointment.\textsuperscript{121} If the Commission determines that a judge is unqualified for further service, no second appointment is permissible.\textsuperscript{122} If a judge is found by it to be qualified, the President is empowered to make or refuse the appointment.\textsuperscript{123} If the Commission finds, however, that the applicant is either well qualified or exceptionally well qualified, the judge obtains the second term without further action by the President.\textsuperscript{124}

\section*{C. Court Unification}

There have been wide differences of opinion as to the usefulness of specialized courts.\textsuperscript{125} Although Congress has frequently established such

\begin{footnotes}
\item[118] D.C. CODE § 11-431(d)(1) appendix (Supp. 1978).
\item[119] Id.
\item[120] D.C. CODE § 11-432 appendix (Supp. 1978).
\item[121] See Comment, supra note 117, at 560-62.
\item[122] D.C. CODE § 11-433(c) appendix (Supp. 1978).
\item[123] Id.
\item[124] Id.
tribunals in the District, there has been a growing conviction within the profession that such a division of judicial labor is unwise and that justice is more efficiently administered in a single, unified court. In creating the Superior Court of the District of Columbia, Congress accepted the latter view and the abolition of numerous specialized courts within the District has been the result.  

To enable the Superior Court to deal with its vastly expanded jurisdiction and to exercise its powers as a unified court, the 1970 Court reform Act increased the number of its judges to forty-four. With its acceptance of modernization, the court has begun to set an example of efficiency and effectiveness for federal and state courts throughout the country. Today, there is a growing interest in the development of new ways of resolving disputes, and perhaps we may see a revival of some new forms of specialized courts. The Superior Court of the District of Columbia, however, now stands as a model deserving of a long trial before turning back toward a fragmented system.

VIII. THE FUTURE OF THE FEDERAL-STATE COURT SYSTEM

There may be grounds for reservations concerning Congress's establishment in 1970 of separate federal and local court systems in the District of Columbia. For seventeen decades the United States District Court and its predecessors exercised jurisdiction over all federal and nearly all local matters. The United States Court of Appeals for the District of Columbia Circuit and its predecessors had similarly broad jurisdiction. Thus,  


126. For an example of an extremely fragmented court system, see Le Clerq, The Tennessee Court System, 8 Memphis St. U.L. Rev. 185 (1978).

127. For an examination of state reorganizations, see Berkson, Carbon & Rosenbaum, Organizing the State Courts: Is Structural Consolidation Justified?, 45 Brooklyn L. Rev. 1 (1978).

128. See notes 70-90 and accompanying text supra.


130. See generally Moultrie, supra note 83.


132. For an interesting proposal concerning dispute resolution, see Crastley, Community Courts: Offering Alternative Dispute Resolution within the Judicial System, 3 Vermont L. Rev. 1 (1978).

133. See notes 40-62 and accompanying text supra.

134. See notes 53-56, 89-93 and accompanying text supra.
at both the trial and the appellate levels, the semiunified system continued long after each of the two federal tribunals had become identified as such.

By 1970, however, both federal courts were heavily overburdened.\(^{135}\) It was perhaps logical for Congress to relieve their caseload by a massive transfer of their local jurisdiction to the previously "inferior" District of Columbia courts.\(^ {136}\) At that time there may have been little reason for Congress to question the wisdom of departing from the unified experience and adopting a dual system similar to that found in the states.

In the last decade, however, there have been two developments that promise to bring the federal and state courts much closer together. The first concerns the increased workload of the federal courts.\(^ {137}\) That case burden has, in turn, forced the state courts to adjudicate matters formerly considered exclusively federal.\(^ {138}\) The second development has been the vast financial support extended to state courts by the federal government since the passage of the Law Enforcement Assistance Administration Act of 1969.\(^ {139}\) Despite all the constitutional protections afforded the states,\(^ {140}\) state courts are now heavily dependent upon the largess of the federal government.\(^ {141}\)

Thus, state courts may face an absorption into the federal court system partly because their dependence upon federal funds will permit inroads into their independence by the federal bureaucracy. Perhaps more important, however, is the inability of the federal courts to handle the litigation spawned by the legislative programs Congress continues to thrust upon


\(^{136}\) When Congress finally established the District of Columbia Code in 1901, it provided that the judicial power be vested in "inferior courts, namely, justices of the peace and the police court," and "Superior Courts, namely, the Supreme Court of the District of Columbia, the Court of Appeals of the District of Columbia and the Supreme Court of the United States." Act of Mar. 3, 1901, ch. 854, 31 Stat. 1189. In 1963 the "inferior courts" had become the Court of General Sessions and the Juvenile Court, while the "superior courts" were the District of Columbia Court of Appeals, the United States District Court for the District of Columbia, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court of the United States. Act of Dec. 23, 1963, 77 Stat. 478.


\(^{140}\) U.S. Const. amend. X.

them. As Assistant Attorney General Meador has pointed out, we are witnessing a forced take-over by the much larger state court system of many responsibilities once regarded as strictly those of the federal courts.

The District of Columbia has had long experience in handling both federal and local matters without resort to separate court systems. The history of its courts suggests that an eventual unification of all the nation's courts might be an acceptable solution to the problems presently confronting the federal judiciary.

142. Federal Legislation dealing with the environment, civil rights, energy, and consumer protection are prime causes for the caseload burden now overwhelming the federal judiciary. See note 131 & 137 supra.

143. See Meador, supra note 141.

1801 - The Circuit Court

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1863 - The U.S. District Court for the District of Columbia

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1863 - The United States Court of Appeals for the District of Columbia Circuit

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1838 - Superior Court of the District of Columbia

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<td>1909-1962 Municipal Court of the District of Columbia</td>
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<td>1962-1970 Court of General Sessions</td>
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