

Retelling the History of the United States District Court for the Southern District of New York

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Introduction

About eighty years ago, Judge Charles Merrill Hough provided a history of the first 130 years of the “Mother Court,” the United States District Court for the Southern District of New York. Some years later, Judge John Knox’s autobiography¹ added to Judge Hough’s description of the Court’s development from its inception more than 220 years ago. Since then, distinguished judges have supplemented the record regarding the Southern District’s place in the history of our federal judiciary. In the early 1980s, Judges Edward Weinfeld, Eugene Nickerson and Roger Miner delivered lectures on the histories of the Southern District and its progeny: the Northern, Eastern and Western Districts of New York. Because more than a generation of lawyers have begun practicing since Judge Miner delivered his lecture in 1984, we thought the time was right to retell the history of our nation’s “Mother Court.” In retelling this history, we have drawn heavily from the histories prepared by Judges Hough, Knox, Weinfeld, Nickerson and Miner, as well as work done by H. Paul Burak some fifty years ago.

Beginnings

In its first session following the adoption of the United States Constitution, Congress passed the Judiciary Act of 1789. The Act, amongst other things, created the Supreme Court, as well as the Circuit and District Courts.² As this brief history demonstrates, the structure and size of the federal system has changed dramatically over the past 220 years.³

On November 3, 1789, the first court organized pursuant to the United States Constitution convened. This court was not the Supreme Court, but rather the District Court for the District of New York, located in Manhattan.⁴ Even though the New York District Court was the first federal court to hold session in the United States, its first-in-time status was a happenstance. The New Jersey District Court was scheduled to open on the same day as the court in New York, and, had it not been for the illness of New Jersey's judge, both states would have shared the "Mother Court" distinction.⁵ To the extent compensation levels are an indicator of importance or prestige, Congress perceived the New York District Court to be less important than other courts in 1789, because the salary apportioned to the judge in New York amounted to \$1,500, as compared to the \$1,600 given the federal judge in Pennsylvania or the \$1,800 awarded to judges in Virginia and South Carolina.⁶

Congress may not have wrongfully benchmarked the salary of the first judge of the New York District Court, James Duane. Although the New York District Court held sessions four times per year, the Court's first decades were slow-paced, with a high-turnover rate for its judges.⁷ At the time of its inception, the primary business of the New York District Court was admiralty cases.⁸ However, business was so slow that the first action was not filed in the New York District Court until April 16, 1790 – five months after the New York District Court first convened.⁹

The first case argued in the New York District Court was *United States of America v. Three Boxes of Ironmongery, Etc.*¹⁰ The case concerned the issue of how much the federal government was legally permitted to collect through customs, which would be the question in almost seventy-five percent of Judge Duane's cases.¹¹ In terms of "firsts," of more note for the New York District Court may be that one of the first lawyers admitted to practice before it was Aaron Burr, of dueling fame.¹²

After Judge Duane resigned in 1794 due to poor health, his successor, John Lawrence, served approximately two years before leaving to take a seat in the United States Senate.¹³ Judge Lawrence was the first District Court judge to have his conduct reviewed by the Supreme Court. In *United States v. Judge*

Lawrence, the Supreme Court upheld Judge Lawrence's denial of a writ of mandamus by the French Vice Consul to apprehend a French sea captain accused of desertion.¹⁴

Approximately one year after the New York District Court convened, Chief Justice John Jay convened the first Circuit Court¹⁵ in New York, and much like the District Court, the Circuit Court in New York struggled to find its footing.¹⁶ Pursuant to the Judiciary Act of 1789, the Circuit Courts: (a) consisted of any two Justices of the Supreme Court, and the District judges of such Districts, "any two of whom shall constitute a quorum"; (b) had both original and appellate jurisdiction; and were (c) required to convene two times per year.¹⁷

Because the Circuit Courts required the presence of at least one Supreme Court Justice to hold session, the Justices were constantly traveling throughout their allotted territories.¹⁸ Aside from the inefficiency of long-distance travel at the close of the eighteenth century, the fact that the Circuit Court for the District of New York had only heard forty-six cases in five years did not help the Justices' spirits.¹⁹ Because the stagnancy of its business proved embarrassing and the Supreme Court Justices frequently could not attend, the Circuit Court for the District of New York would meet and then adjourn without transacting any business simply as a means of keeping up appearances.²⁰

The Circuit Courts were reorganized with the Judiciary Act of 1801, also known as the "Midnight Judges Act."²¹ The 1801 Act doubled the number of Circuits from three to six and created three new judgeships per Circuit. Further, the 1801 Act removed bankruptcy cases from District Court dockets and added them to the Circuit Courts' jurisdiction.²² Under the 1801 Act, Supreme Court Justices no longer were required to preside at every Circuit Court session.²³ However, this change in judicial structure did not last long.

The Era of Little Things – 1800 to 1825

After the controversy of the 1801 Act and the infamous "midnight judges," a more permanent remedy for the Circuit Court's problems was enacted by Congress by way of the Judiciary Act of 1802. The

1802 Act reassigned a Supreme Court Justice to each Circuit, required the presence of only one Justice to hold a session of Court, and transferred the Circuit Courts' jurisdiction over bankruptcy cases back to the District Courts.²⁴ Assigned to New York's Circuit, the renamed Second Circuit, was Brockholst Livingston. Justice Livingston dedicated himself to the Circuit Court's business, helping mold the Court into a significant "metropolitan tribunal."²⁵

The nineteenth century also brought changes to the New York District Court.²⁶ Judge John Hobart, who served between 1798 and 1804, ushered in a new era. Judge Hobart is recognized to be "the first judge who regarded his judicial position as the fitting end of a life consistently devoted to legal work."²⁷ For Judge Hobart, "the court was a permanency, and with him began the line of Judges who, once appointed, found in the judicial work professional occupation and inspiration."²⁸ In 1805, President Jefferson appointed Matthias Tallmadge as Judge Hobart's successor.²⁹ The New York District Court's caseload increased under Judge Tallmadge, so much so that Congress passed the Act of April 29, 1812, which required additional terms of the New York District Court to be held in upstate New York. To accommodate these requirements, a second judge, William Peter Van Ness,³⁰ was appointed.

There has been much debate about the relationship between Judges Van Ness and Tallmadge.³¹ No matter where the blame is placed, the animosity between these two judges was a force behind the District of New York being split into separate Southern and Northern Districts in 1815, with Judge Van Ness presiding over the Southern District, and Judge Tallmadge over the Northern District. Three years later in 1818, the five northernmost counties of the Southern District (Albany, Rensselaer, Schenectady, Schoharie, and Delaware) were transferred to the Northern District.³²

The First Busy Era – 1830 to 1900

It was not until 1827 that the aggregate work of the Second Circuit and its District Courts was sufficient to financially justify the printing of an official reporter.³³ Despite the 30 years of opinions this reporter chronicled, it was still a slim volume, because the New York District Court judges mostly read

opinions from the bench, and their reading notes were considered their private property.³⁴ While a lack of commerce hindered the Court's development prior to 1820, the Southern District could have increased its standing prior to 1825 had its judges been more inclined towards reporting their decisions.³⁵

With the opening of the Erie Canal in 1825, more commerce came to New York City. With more trading came more disputes, which turned into litigation. And most of these disputes fell within the Southern District's burgeoning admiralty jurisdiction.³⁶ Along with the shipping boom in the 1820s and 1830s came population growth in New York City. From 1820 to 1830, New York City's population almost doubled to 200,000 residents – a staggering number when compared to the 30,000 people in the district when Judge Duane was the District Court judge forty years earlier.³⁷

The increase in the Southern District Court's admiralty work was presided over by Judge Samuel Rossiter Betts, who became a leading contributor to the field of admiralty law as he took conscious steps to record and modernize it.³⁸ In 1828, Judge Betts established rules for the "Prize Court," and a decade later, published the first work on American admiralty practice.³⁹ The Southern District's admiralty practice continued to grow during Judge Betts' 40-year tenure, covering "questions of prize, blockade and contraband, resulting mainly from captures of enemy property by United States vessels in the blockade of Confederate ports."⁴⁰

In addition to its expanding admiralty practice, the Southern District's caseload expanded in the mid-nineteenth century because of perceived procedural advantages of federal court, and a New York bar adept to make the most of them. Procedurally, the federal courts had two distinct advantages over state courts in the mid-nineteenth century. The first was the federal courts' liberal rules for gathering evidence.⁴¹ The second was the federal courts' diversity jurisdiction, allowing a party to elect to bring its claim in federal court, rather than state court, which in contrast, required consent from both parties.⁴² These advantages might not have been worth anything, were there not attorneys talented enough to use them for their clients'

advantage. As Judge Weinfeld put it, the New York bar was nothing less than “illustrious.”⁴³ This reputation attracted litigation to the Southern District, expanding the Court’s business in the process.⁴⁴

By the Civil War, the business of the Southern District had grown so great that it was becoming too much for one man to handle, even one of such “extraordinary industry”⁴⁵ as Judge Betts. Rather than appoint a second judge for the Southern District, Congress passed the Act of February 7, 1865, which again split the Southern District and created a new Eastern District.⁴⁶ The Circuit Courts also were reformed a few years later when Congress passed the Act of April 10, 1869, which created a permanent judgeship in each Circuit, with the authority to hear cases involving original and appellate jurisdiction. And the new judgeship in the Second Circuit was essential to addressing the Circuit’s increasing equity workload.⁴⁷ These appointed Circuit judges had the authority to hear cases and issue opinions without the presence of a Supreme Court Justice riding Circuit.⁴⁸ Despite these changes directed towards increasing the jurisdiction and workload of the Second Circuit, the docket of the Southern District in the second half of the nineteenth century still was overwhelming. The Southern District was so overburdened that Charles Benedict, the first judge of the Eastern District, was given jurisdiction by Congress to hear criminal cases from the Southern District. This action made Judge Benedict essentially the only criminal trial judge in the Southern or Eastern Districts of New York for almost thirty years.⁴⁹

The prominence of the Southern District as the nation’s premier admiralty court continued under Judges Samuel Blatchford, William Gardner Choate and Addison Brown after the resignation of Judge Betts. When Congress passed the Bankruptcy Act of 1867, which gave the District Courts original jurisdiction as “courts of bankruptcy,” the Southern District took on increased responsibilities.⁵⁰ The Bankruptcy Act of 1867 provided for both voluntary and involuntary bankruptcies, and allowed District Court judges to appoint “registers in bankruptcy” “to assist the judge of the district court in performance of his duties.”⁵¹ These registers were the predecessors to the referees and bankruptcy judges of today.⁵² However, the Bankruptcy Act of 1867 was short-lived; upon its repeal in 1878, Judges Choate and Brown

were able to concentrate on admiralty cases once again.⁵³ But bankruptcy would return as a core competency of the Southern District with the passage of the Bankruptcy Act of 1898.

The 1898 Act transferred jurisdiction over bankruptcy cases back to the District Courts and was revolutionary in its coverage. It provided bankruptcy protection to corporations as well as individuals, and again included the prospect of both voluntary and involuntary bankruptcies.⁵⁴ Further, the 1898 Act empowered bankruptcy trustees to unwind preferential and fraudulent transfers to avoid preferencing certain creditors.⁵⁵ In 1900, nearly 1,400 bankruptcy cases were initiated in the Southern District, which was more than the combined total of all other new filings in the court that year.⁵⁶ Congress responded to the Southern District's increased caseload by creating a second judicial position for the District in 1903.⁵⁷

The end of the nineteenth century also saw changes for the Northern District of New York.⁵⁸ In 1900, Congress split the Northern District, creating the District Court for the Western District of New York, and assigned the seventeen western-most counties of the state to the newly formed Western District.⁵⁹

The structure of the Circuit Courts also changed during the second half of the nineteenth century. By the late 1880s, it became clear that the Circuit judge positions created in 1869 were less effective than originally hoped for by Congress. Although business seemed to be running smoothly, the Circuit Court gradually began accumulating a "'Customs Calendar' made up of actions at law to recover from the Collector of Customs illegally exacted import duties."⁶⁰ By 1887, it reached the point where processing all of these cases proved too formidable a task for the Circuit judge to handle on his own. That same year, much like what would be done for the Southern District a little over a decade later, Congress appointed a second Circuit judge, E. Henry Lacombe, to dispose of the accumulated customs cases.⁶¹

In 1891, only five years after the appointment of the second Circuit judge, Congress passed the Circuit Court of Appeals Act, which changed the make-up of the federal courts and served as the first step towards the creation of the federal courts as we know them today. The 1891 Act transferred the appellate jurisdiction of the Circuit Court to the newly formed Circuit Court of Appeals. Cases of original jurisdiction

dwindled, and without appellate jurisdiction, there was not much left for the Circuit judges to do.⁶² As the Circuit Court faded, the District Courts, including the Southern District, began to unofficially absorb their responsibilities. Finally, in 1912, the Circuit Courts were abolished, and Congress transferred all Circuit Court records and jurisdiction to the District Courts.⁶³

The Pre-Modern Era: 1912 to 1958

With the absorption of the Circuit Court's business, the Southern District's workload rapidly increased.⁶⁴ At the turn of the century, the New York City economy was booming, as was the population. In addition, expanded federal control over different private and public activities boosted the Southern District's caseload.⁶⁵ As the caseload increased, so did the number of District Court judges. In 1906, a third judge was appointed to the Southern District, the first historian of the Court, Judge Hough. In 1909, when Congress felt the need to add a fourth judge, Learned Hand was appointed to the Southern District. Judge Learned Hand would serve fifteen years in the Southern District before moving on to the Second Circuit.⁶⁶ In 1914, Learned Hand's cousin, Augustus Hand, was appointed to the Southern District. The Judges Hand would serve together on the District Court, and together again on the Court of Appeals.⁶⁷ When Judge Hough was appointed to the Court of Appeals in 1916, he was succeeded by Martin T. Manton, who quickly followed Judge Hough to the Court of Appeals. Judge Manton was succeeded in 1918 by Judge Knox, who would preside over the Southern District into the 1950s – a thirty-seven year tenure exceeded only by Judge Betts.⁶⁸ During Judge Knox's tenure, the number of judges in the Southern District more than tripled. Despite this increase in authorized judgeships, the Southern District judges' caseloads did not diminish for several reasons.

First, between 1920 to 1932, there was an increase in civil and criminal cases in the Southern District, primarily due to the Eighteenth Amendment, which prohibited the sale of "intoxicating liquors."⁶⁹ The prohibition took effect in January 1920, and that year, the Southern District court saw four times as many new cases filed in a single year than in the previous decade.⁷⁰ Most of the Eighteenth Amendment

cases were civil cases brought by the Government, but many criminal liquor cases were filed in the Southern District as well. Crime seemed to go hand-in-hand with prohibition. In fact, from 1927 to 1930, more than 90 percent of criminal cases disposed of by the Southern District, in one way or another, involved liquor.⁷¹

One of the few Eighteenth Amendment cases to be addressed by the Supreme Court was tried in the Southern District before Judge Knox. In 1923, the Dean Emeritus of the College of Physicians and Surgeons of Columbia University, Dr. Samuel W. Lambert, was not enjoined by Judge Knox from prescribing beer and spirits to sick patients for medicinal purposes.⁷² However, three years later, the Supreme Court reversed Judge Knox's ruling in *Lambert v. Yellowley*,⁷³ holding that the practice of medicine was fully subject to the police power of the government.

At the end of 1933, this period of growth and expansion was briefly subdued when the Twenty-First Amendment was ratified, and the Eighteenth Amendment prohibition on the sale of alcohol was repealed.⁷⁴ The reduction in the Southern District's caseload would change with the legal, economic, and political changes that came with the New Deal and the end of World War II.⁷⁵

It was during this "slow period" that some of the most remembered Southern District opinions were written. One of these cases was *Tompkins v. Erie R.R.*, assigned to Judge Samuel Mandelbaum.⁷⁶ In *Erie*, the plaintiff, Harry Tompkins, a citizen of Pennsylvania, was walking on a path alongside railroad tracks in Hughestown, PA, when a train operated by the Erie Railroad, a New York company, passed by. An object protruding from one of the cars knocked Tompkins to the ground, and his right arm was run-over by the wheels of the train.⁷⁷ Judge Mandelbaum applied federal common law, as necessitated by *Swift v. Tyson*, and required that the plaintiff prove ordinary negligence. Judge Mandelbaum ignored the defendant's argument that Pennsylvania's duty of care was applicable, which would have likely absolved the defendant from liability.⁷⁸ *Erie* was affirmed by the Second Circuit, and, as every lawyer knows, the Supreme Court took the case. Justice Brandeis wrote the Court's opinion reversing the decisions of the lower courts. No

longer was *Swift v. Tyson* good law; District Courts sitting in diversity were, and still are, required to apply the laws of the states in which they sit.⁷⁹ *Erie* would become one of the most-cited cases of all time.⁸⁰

In addition, Judge Francis Caffey presided over the seminal antitrust case *United States v. Aluminum Co. of America* (“*Alcoa*”)⁸¹ during this period. In *Alcoa*, the Department of Justice charged the defendants with a laundry list of antitrust violations, including monopolization of the foreign market for aluminum in the United States. Judge Caffey dismissed the case, holding that the Government had failed to show intent to monopolize in violation of the Sherman Act.⁸² At the time, the *Alcoa* trial was one of the most time-intensive trials in U.S. history. It took more than five years and almost seven months of trial days to complete. Trial records numbered approximately 58,000 pages, and Judge Caffey’s long opinion took nine days to read.⁸³ Despite Judge Caffey’s diligence, his decision was reversed by the Second Circuit. In its decision, authorized by Judge Learned Hand, the Second Circuit found *Alcoa* guilty of monopolization, because it controlled ninety percent of the virgin aluminum market — such a large market share was evidence enough to hold *Alcoa* liable.⁸⁴ Judge Hand wrote, “[*Alcoa*] insists that it never excluded competitors; but we can think of no more effective exclusion than progressively to embrace each new opportunity as it opened, and to face every newcomer with new capacity already geared into a great organization, having the advantage of experience, trade connections and the elite of personnel.”⁸⁵ The *Alcoa* opinion is now one of the foundations of United States antitrust law, and has been cited as precedent in over 800 cases.

After World War II ended, there were over 5,800 civil cases pending in the Southern District. In two years, the number of pending cases almost doubled, even though 4,700 cases in the Southern District were terminated in 1947.⁸⁶ In 1948, the civil caseload per judge in the Southern District of New York was 614 cases, while the national average was only 271.⁸⁷

In 1950, the amount of litigation involving the federal government began to shrink, but this was offset by an increase in private civil litigation, which proved more difficult and time-consuming for the

Southern District judges to address.⁸⁸ Due to this increasing workload, there were dynamic changes in store for the Southern District, both in the faces and number of judges on the Court.⁸⁹

Prompted by the high post-war caseloads, four judges, John F. X. McGohey, Irving R. Kaufman, Gregory F. Noonan, and Sydney Sugarman, were appointed to the Southern District bench.⁹⁰ However, shortly after these appointments, the Court faced the death of Judge Hulbert and the resignation of Judge Rifkind.⁹¹ And although Judge Rifkind was succeeded by Judge Weinberg, the Southern District remained undermanned and overwhelmed.

By 1954, civil caseloads were reaching new highs, criminal matters were accumulating, and on top of that, Judges Goddard and Leibell retired.⁹² Later that year, those vacancies, along with two new appointments, were filled by Archie O. Dawson, Lawrence E. Walsh, Alexander Bicks and Edmund L. Palmieri.⁹³ Between 1955 to 1958, the Southern District judges were able to reduce the Court's pending caseload by 2,000 cases.⁹⁴

Thankfully, Congress passed the Jurisdiction Act of 1958, which was intended to reduce the total amount of federal litigation. However, because the 1958 Act deemed "a corporation a citizen not only of the State of its incorporation but also of the State of its principal place of business, and most large corporations, while not incorporated in New York, [had] their principal place of business there,"⁹⁵ the Act actually increased the caseload of the Southern District.

The Modern Era: 1959 to the Present

Upon the retirement of Judge Clancy in 1959, the Southern District was reduced to sixteen active and six senior judges. This still was the largest complement of federal judges in any District in the United States. That same year, due to the Southern District's workload, a Judicial Conference recommended six new judges be added to the Southern District.⁹⁶ Between 1961 to 1963, the Southern District was expanded with eight nominations made by President John F. Kennedy. These appointments were crucial to the

functioning of the Southern District, as its caseload during the early 1960s constituted between eighteen and twenty percent of all pending civil litigation in the entire federal court system.⁹⁷

Over the past fifty years, Southern District judges have conducted trials in many significant cases. For example, in 1961, Judge Lloyd MacMahon presided over the trial of Carmine Galante, boss of the Bonanno crime family, who ultimately was convicted of drug-trafficking.⁹⁸ During the trial, Galante and other defendants threw objects and shouted obscenities, which prompted Judge MacMahon to have them handcuffed, shackled, and gagged so the trial could proceed in an orderly fashion.⁹⁹ Many view Judge MacMahon's response to these outbursts as the precedent today, which enables federal judges to assert control over unruly courtrooms.¹⁰⁰

The government scandals of the 1970s led to the highly publicized Mitchell-Stans trial conducted in the Southern District.¹⁰¹ In a criminal trial before Judge Gagliardi, former Attorney General, John Mitchell, and former Commerce Secretary, Maurice Stans, were tried for criminal conspiracy, obstruction of justice and perjury. The Government alleged that the two men had impeded a Securities and Exchange Commission investigation of financier Robert Vesco in return for a secret contribution of \$200,000 to President Nixon's 1972 campaign.¹⁰² After a forty-eight day trial, the jury acquitted Mitchell and Stans on all counts, although Mitchell would be found guilty of similar charges one year later, related to his role in the Watergate cover-up.¹⁰³

In the late 1970s, the Southern District asserted itself as a forum for addressing securities law matters, particularly insider trading in violation of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5.¹⁰⁴ In 1978, Judge Richard Owen presided over *United States v. Chiarella*,¹⁰⁵ where the defendant, an employee of a financial printer, bought shares of companies he knew were about to be acquired through tender offers prior to public dissemination of the information. At trial, the defendant was found guilty of insider trading.¹⁰⁶ *Chiarella* made its way to the Supreme Court, which reversed the conviction, holding that Section 10(b) liability is "premised upon a duty to disclose . . . arising from a

relationship of trust and confidence between parties to a transaction.”¹⁰⁷ In response to the *Chiarella* decision, the SEC promulgated Rule 14e-3, which forbid any trading on the basis of material nonpublic information regarding tender offers by anyone with knowledge that the information originated from an insider.¹⁰⁸

The 1980s opened with an event at the Southern District worthy of a made-for-television movie.¹⁰⁹ For years, inmates facing trial at the Southern District’s 40 Centre Street courthouse were housed nearby at the Metropolitan Correctional Center (“MCC”). The twelve-story complex contained an inmate exercise area on the roof, which was enclosed by a heavy wire screen. One Sunday morning in 1981, a group of inmates, including a convicted narcotics dealer, captured a prison guard and held him hostage on the roof. In the meantime, armed accomplices hijacked a sightseeing helicopter and attempted to land on the roof of the MCC to ferry the convicted drug dealer to safety. However, the helicopter could not break through the MCC’s thick wire mesh, and the plan was foiled.¹¹⁰

There were many notable trials in the Southern District during the 1980s involving individuals associated with organized crime, politicians, and Wall Street financiers. One of the most famous financiers facing criminal charges in the 1980s was Drexel Burnham executive Michael Milken. Milken was investigated by the FBI and indicted on ninety-eight counts of racketeering, mail fraud, securities fraud and other crimes.¹¹¹ However, this case never went to trial because Milken pled guilty to six securities and reporting violations. He was sentenced to ten years imprisonment, of which he served two before his release.¹¹² In the Milken investigation, law enforcement was aided by Ivan Boesky, a Wall Street arbitrageur, who informed on Milken’s activities. Boesky himself was charged with insider trading and accepted a plea bargain for which he received a \$100 million fine and three years in prison, of which he served two before his release.¹¹³

Another famous Rule 10b-5 trial, similar to *Chiarella*, was held in the Southern District in 1985 before Judge Charles Stewart. The government alleged that R. Foster Winans, a Wall Street Journal

reporter best known for his “Heard on the Street” column, leaked information about the contents of his column before it was published, which allowed his associates to make significant profits.¹¹⁴ After a bench trial, Judge Stewart found Winans and two co-defendants guilty of violating 15 U.S.C. §§ 78j, 78ff, Rule 10b-5, and federal mail and wire fraud statutes.¹¹⁵ The conviction was eventually upheld by the Supreme Court in *Carpenter v. United States*,¹¹⁶ where the Supreme Court split 4-4.

In terms of corruption and organized crime cases in the Southern District, one of the more significant cases was the 1985 “Pizza Connection Trial,” before Judge Pierre Leval. The trial focused on drug distribution and money laundering in pizza parlors across the United States. Nineteen defendants were tried in what is still one of the longest trials ever to be held in the Southern District, lasting from October 1985 to March 1987. Nearly all of the defendants were found guilty.¹¹⁷ Perhaps more notable than the “Pizza Connection Trial” was the “Mafia Commission Trial,” held from February 1985 to November 1986. In that case, eight defendants, including heads of New York’s “Five Families,” were tried on charges including extortion, racketeering, labor payoffs, and loan-sharking. After a jury found all of the defendants guilty, Judge Richard Owen sentenced most of the defendants to 100 years in prison.¹¹⁸

Government corruption again was put in the spotlight when Stanley Friedman, the former Bronx Democratic Party chairman, was tried before a Southern District judge for brokering bribes in connection with a lucrative computer contract given by the city Parking Violations Bureau. The trial was supposed to be held in the Foley Square Courthouse, but the location was moved to New Haven, due to the publicity surrounding the case. Judge P. William Knapp made the trek to New Haven to preside over the trial, and Friedman was found guilty of racketeering, conspiracy and mail fraud.¹¹⁹

In the 1990s, the caseload of the Southern District continued to include high-profile organized crime cases, as well as securities and financial fraud prosecutions.¹²⁰ Regrettably, the Southern District was also tasked with addressing the aftermaths of many of the decade’s tragic terror plots. The trial of Ramzi Yousef, who orchestrated the 1993 World Trade Center bombing, was held in the Southern District in 1997.

Found guilty, Yousef was sentenced by Judge Kevin Duffy to life in prison without parole.¹²¹ Other terrorism prosecutions conducted in the Southern District in the 1990s included the “Manila Air Conspiracy” and “Blind Sheikh” trials. The trial relating to the 1998 bombings of U.S. embassies in Kenya and Tanzania was held in the Southern District in 2001.¹²²

With the construction of the Daniel Patrick Moynihan U.S. Courthouse in 1994, the Southern District was given an additional home to its base at the Thurgood Marshall U.S. Courthouse at 40 Centre Street, where it had held trials since 1936. This new location added to a previous expansion of the Southern District’s “physical plant,” when the United States Courthouse in White Plains opened in 1983.¹²³ No matter where the Southern District judges have sat, their contributions to the evolution of legal doctrines in this country have been significant. Between 1980 and 2000, seventy-six rulings from the Southern District were reviewed by the Supreme Court. We are not aware of another District in the country which has had as many of its rulings reviewed by the Supreme Court, in a comparable period.

Moving into the twenty-first century, the Southern District has continued to preside over significant civil and criminal litigation.¹²⁴ A number of these cases have been high-profile insider trading affairs. For example, in 2004, media magnate Martha Stewart was found guilty of obstructing justice and lying to investigators about insider trading, in a trial presided over by Judge Miriam Cedarbaum.¹²⁵ Most recently, Raj Rajaratnam, the former CEO of the Galleon hedge fund, was found guilty in the Southern District of fourteen counts of securities fraud and conspiracy.¹²⁶ Rajaratnam’s illicit trading had generated profits/avoided losses of \$72 million.¹²⁷ The eleven-year sentence administered by Judge Richard Holwell was the longest sentence ever imposed for insider trading to date.¹²⁸

On the antitrust front, the importance of *Verizon Commc’ns Inc. v. Law Offices of Curtis V. Trinko, LLP*¹²⁹ rivals that of *Alcoa*, decided close to fifty years earlier. *Trinko* was a class action where customers of AT&T, which was a new entrant to the New York City local phone services market, sued Bell Atlantic (which would become Verizon) for refusing to allow AT&T to use its existing network and provide retail

services at wholesale rates, as required by the Telecommunications Act of 1996.¹³⁰ Judge Sidney Stein granted the defendant's motion to dismiss the case, stating that "[e]ven a monopolist, however, has no general duty under the antitrust laws to cooperate with competitors."¹³¹ Judge Stein was reversed by the Second Circuit, which, in turn, was reversed by the Supreme Court. Justice Scalia, writing for the majority, ruled along the same lines as Judge Stein that the Sherman Act does not require a company to cooperate with a competitor. Nor does it restrict a company from exercising "independent discretion as to parties with whom he will deal."¹³² The *Trinko* decision has had a significant impact on the "essential facilities" doctrine, as well as more general "refusal to deal" cases.¹³³

Of late, bankruptcy proceedings have come to the forefront of the Southern District's docket. In 2002, Worldcom filed for bankruptcy in the Southern District in the largest bankruptcy proceeding ever conducted at that time in the United States.¹³⁴ The Worldcom bankruptcy was only the first of several significant bankruptcy cases brought in the Southern District in the past ten years. On September 15, 2008, Lehman Brothers filed for bankruptcy protection in the Southern District. Bankruptcy Judge James Peck was assigned to the case and faced the daunting task of satisfying over 100,000 creditors and managing Lehman's \$639 billion in total assets and \$613 billion in total debt.¹³⁵ The Lehman bankruptcy eclipsed Worldcom as the largest bankruptcy in U.S. history, and Lehman assets are still being divided to this day.

Nine months after the Lehman filing, General Motors filed for reorganization in the Southern District, in what would be the fourth largest bankruptcy in the country's history. Bankruptcy Judge Robert Gerber supervised an asset sale in which the federal government bought over half of the iconic company.¹³⁶ Bankruptcy proceedings for Chrysler soon followed before Bankruptcy Judge Arthur J. Gonzales in the Southern District. Judge Gonzales ordered a sale of assets which the Supreme Court essentially endorsed by choosing not to review it.¹³⁷ The management of these bankruptcies is evocative of the Southern District's bankruptcy prowess at the turn of the twentieth century.

For many, the Lehman bankruptcy signaled the legal beginning of the financial crisis that engulfed the United States. Since then, the Southern District has played an important role in determining which actors contributed to the economic troubles and addressing the consequences of risky decision-making by financial institutions. Perhaps the most significant of these cases involved Bernie Madoff's Ponzi scheme, in which investors were defrauded of over \$18 billion dollars.¹³⁸ Madoff pled guilty to eleven felonies before Judge Denny Chin.¹³⁹ At sentencing, Madoff's lawyers requested no more than a twenty-year sentence, taking into account his advanced age and health problems. Describing Madoff's behavior as an "extraordinary evil," Judge Chin sentenced him to 150 years in prison.¹⁴⁰

One case originating in the Southern District in 2003, *Twombly v. Bell Atlantic Corp.*,¹⁴¹ has had sweeping effects on all federally filed lawsuits, and is approaching the same significance that *Erie* attained seventy-five years ago. In *Twombly*, the plaintiffs brought a class action lawsuit alleging that the defendants had conspired to prevent competitive entry into the local telephone and internet services markets in violation of § 1 of the Sherman Act. Judge Gerard Lynch dismissed the suit for failure to state a claim. After the Second Circuit reversed, the Supreme Court reinstated Judge Lynch's decision. Prior to *Twombly*, the notice pleading standard to overcome a motion to dismiss was minimal. As the Supreme Court had written in *Conley v. Gibson*,¹⁴² "[a] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." The *Twombly* Court adopted a stricter "plausibility" standard, stating that "[t]he need at the pleading stage for allegations plausibly suggesting (not merely consistent with) agreement reflects the threshold requirement of Rule 8(a)(2) that the 'plain statement' possess enough heft to 'sho[w] that the pleader is entitled to relief.'"¹⁴³ Any doubt that the stricter plausibility standard would be confined to antitrust cases was dispelled in *Ashcroft v. Iqbal* (a case from the Eastern District),¹⁴⁴ decided by the Supreme Court two years after *Twombly*.¹⁴⁵

While the Southern District has maintained its notoriety for handling high-profile trials and proceedings during the last decade, it also has served as an innovator, as it did with admiralty and bankruptcy in the nineteenth century, and securities law and antitrust in the twentieth century. The Southern District is one of fourteen District Courts selected to participate in a ten-year program aimed at increasing judicial experience in patent cases. As part of this program, ten Southern District judges have been designated patent pilot participants. It is the hope that this program will increase judicial capacity and efficiency in this technical field.¹⁴⁶

Concluding Remarks

Over the past 220 years, the Southern District has evolved from a one-man court led by Judge Duane, to a twenty-three seat active bench (with twenty-one senior judges), which has presided over some of the most significant cases in this country's history. Judge Duane waited five months before the first case was filed in his court; now, nearly thirty cases per day are filed on average in the Southern District.¹⁴⁷ The judges of the Southern District continue to be sought-after jurists capable of handling the most complex of cases in our federal system. Those who have had the opportunity to practice in the Southern District, from Aaron Burr to lawyers admitted last month, should consider themselves privileged to appear before such a distinguished bench.

¹ John C. Knox, *A Judge Comes of Age* (1940).

² Judiciary Act of 1789, ch. 20, 1 Stat 73 (1789).

³ *See, e.g.*, Charles Merrill Hough, *The United States District Court for the Southern District of New York* (1934).

⁴ H. Paul Burak, *History of the United States District Court for the Southern District of New York*, at 1 (1962); Hon. Roger J. Miner, *The United States District Court for the Northern District of New York – Its History and Antecedents*, Annual Lecture Sponsored by the Federal Bar Council and the Second Circuit Historical Committee, at 9 (April 10, 1984).

⁵ Burak, *supra* note 4, at 1.

⁶ Hough, *supra* note 3, at 5.

⁷ *Id.* at 7-8.

⁸ *Id.*

⁹ Burak, *supra* note 4, at 2.

¹⁰ *Id.* at 2.

¹¹ Hough, *supra* note 3, at 8-9.

¹² Burak, *supra* note 4, at 1.

¹³ Hough, *supra* note 3, at 10.

¹⁴ Burak, *supra* note 4, at 2; *United States v. Judge Lawrence*, 3 U.S. (3 Dall.) 42 (1795).

¹⁵ The Judiciary Act of 1789 created three Circuit Courts; Chief Justice Jay presided over the Eastern Circuit, which included New York, New Jersey, and the New England states. The Judiciary Act of 1801 divided up the United States into six Circuits, with New York part of the Second Circuit. Hough, *supra* note 3, at 15.

¹⁶ Hon. Edward Weinfeld, *The Southern District Court: Its Impact On The Law*, Annual Lecture Sponsored by Federal Bar Council and Second Circuit Historical Committee, at 4 (April 6, 1981).

¹⁷ The Circuit Courts had “original jurisdiction” over all cases where the amount in controversy exceeded \$500, diversity suits, and suits where an alien was a party. The original jurisdiction of the Circuit Courts gradually eroded until it was abolished in 1912. Burak, *supra* note 4, at 9-11.

¹⁸ Hough, *supra* note 3, at 7. *See also History of the Federal Judiciary: Supreme Court of the United States*, www.fjc.gov/history (last visited Jan. 5, 2012).

¹⁹ Burak, *supra* note 4, at 10.

²⁰ Hough, *supra* note 3, at 14.

²¹ When the Judiciary Act of 1801 was passed, President Adams was to cede the presidency to Thomas Jefferson in nineteen days. During this time, President Adams filled as many of these new appointments as possible, and was said to still be signing commissions at midnight, just as he was to leave office. Ross E. Davies, *A Certain Mongrel Court: Congress's Past Power and Present Potential to Reinforce the Supreme Court*, 90 MINN. L. REV. 678, 688 (2006).

²² Hough, *supra* note 3, at 15.

²³ *Id.*

²⁴ Judiciary Act of 1802, 2 Stat. 156 (1802).

²⁵ Hough, *supra* note 3, at 17.

²⁶ Judge Lawrence resigned in 1796 and was replaced by Judge Robert Troup, who had served as Judge Duane’s clerk. Judge Troup was soon succeeded by Judge Hobart in 1798. *Id.* at 11.

²⁷ *Id.* at 11.

²⁸ *Id.* at 11-12.

²⁹ Burak, *supra* note 4, at 3.

³⁰ Hough, *supra* note 3, at 17-18.

³¹ *See Id.* at 18; Miner, *supra* note 4, at 12;

³² Miner, *supra* note 4, at 13.

³³ The reporter was titled *Paine’s Reports*. Hough, *supra* note 3, at 20-22.

³⁴ *Id.* at 21.

³⁵ *Id.* at 21-22.

³⁶ Weinfeld, *supra* note 16, at 20.

³⁷ Hough, *supra* note 3, at 24.

³⁸ *Id.*

³⁹ Burak, *supra* note 4, at 5.

⁴⁰ *Id.* at 5.

⁴¹ Weinfeld, *supra* note 16, at 27.

⁴² *Id.* at 25-26.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Hough, *supra* note 3, at 24.

⁴⁶ *Id.* at 28.

⁴⁷ *Id.*; Act of April 10, 1869, ch. 22, 16 Stat. 44 (1869).

⁴⁸ *Id.*

⁴⁹ Hough, *supra* note 3, at 28.

⁵⁰ Bankruptcy Act of 1867, 14 Stat. 517 (1867).

⁵¹ Bankruptcy Act of 1867, 14 Stat. 517 (1867).

⁵² *Id.*; *see also* Ronald Cook, *History of the Bankruptcy Court in Erie, Pennsylvania*, at 1 (March 2009), available at <http://www.pawb.uscourts.gov/pdfs/ErieCourtHistory.pdf> (citing Charles J. Tabb, *The History of Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. L. REV. 5, 19 (1995)).

⁵³ Burak, *supra* note 4, at 7.

⁵⁴ Bankruptcy Act of 1898, ch. 541, 30 Stat. 544 (1898).

⁵⁵ *Id.*

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- ⁵⁶ Burak, *supra* note 4, at 8.
- ⁵⁷ Hough, *supra* note 3, at 30.
- ⁵⁸ Miner, *supra* note 4, at 25.
- ⁵⁹ *Id.* at 13.
- ⁶⁰ Hough, *supra* note 3, at 30.
- ⁶¹ *Id.*
- ⁶² *Id.* at 31.
- ⁶³ *Id.* at 31.
- ⁶⁴ Burak, *supra* note 4, at 12.
- ⁶⁵ *Id.*
- ⁶⁶ *Id.*
- ⁶⁷ *Id.* at 12-13.
- ⁶⁸ *Id.* at 13.
- ⁶⁹ *Id.* at 15.
- ⁷⁰ *Id.* at 13.
- ⁷¹ *Id.* at 15.
- ⁷² *Upholds Pint Limit on Liquor for Sick*, N.Y. Times, Dec. 20, 1924.
- ⁷³ 272 U.S. 581 (1926).
- ⁷⁴ *Id.*
- ⁷⁵ *Id.*
- ⁷⁶ Irving Younger, *What Happened in Erie*, 56 TEX. L. REV. 1011, 1018 (1977)
- ⁷⁷ *Id.* at 1012-14.
- ⁷⁸ *Id.* at 1020-21.
- ⁷⁹ *Erie R.R Co. v. Tompkins*, 305 U.S. 637 (1938).
- ⁸⁰ Younger, *supra* note 71, at 1011-12.
- ⁸¹ 44 F. Supp. 97 (S.D.N.Y. 1941).
- ⁸² *Id.*
- ⁸³ Peter Lattman, *Law Blog History Lesson: United States v. Alcoa*, Wall Street Journal: Law Blog, May 8, 2007, available at <http://blogs.wsj.com/law/2007/05/08/law-blog-history-lesson-united-states-v-alcoa/>.
- ⁸⁴ *United States v. Alcoa*, 148 F.2d 416, 428-33 (2d Cir. 1945).
- ⁸⁵ *Id.* at 431.
- ⁸⁶ Burak, *supra* note 4, at 16.
- ⁸⁷ *Id.* at 17.
- ⁸⁸ *Id.*
- ⁸⁹ *Id.*
- ⁹⁰ *Id.* at 17-18.
- ⁹¹ *Id.* at 18.
- ⁹² Burak, *supra* note 4, at 18.
- ⁹³ *Id.* at 18.
- ⁹⁴ *Id.*
- ⁹⁵ *Id.* at 19.
- ⁹⁶ *Id.* at 19-20.
- ⁹⁷ *Id.* In 1960, the Southern District had 24 judges, the most of any District Court in the country. In 1960, the second largest court in terms of judges was the District Court for the District of Columbia which had 17 judges, while the Southern District of California was the third largest court with 13 judges. See *Judges: United States Courts of Appeal and District Courts*, 24 F.R.D. at vii, West Publishing (1960).
- ⁹⁸ Craig Wolf, *Lloyd F. MacMahon, a Federal Judge, Dies at 76*, N.Y. Times, April 9, 1989.
- ⁹⁹ *Id.*
- ¹⁰⁰ *Id.*
- ¹⁰¹ In 1970, the Southern District still had the most judges (25) of any District Court in the country. The D.C. district court remained second with 23 judges, while the Central District of California was third with 17 judges. See *Judges: United States Courts of Appeal and District Courts*, 48 F.R.D. at vii, West Publishing (1970).
- ¹⁰² Eric Pace, *Lee P. Gagliardi, 80, Nixon Aides' Judge*, N.Y. Times, Nov. 5, 1998.
- ¹⁰³ Lawrence Meyer, *John N. Mitchell, Principal in Watergate, Dies at 75*, Wash. Post, Nov. 10, 1988.
- ¹⁰⁴ 15 U.S.C. § 78(j) (2011).
- ¹⁰⁵ 450 F. Supp. 95 (S.D.N.Y. 1977).
- ¹⁰⁶ *United States v. Chiarella*, 588 F.2d 1358, 1362-64 (2d Cir. 1978).

- ¹⁰⁷ *Chiarella v. United States*, 45 U.S. 222, 230 (1980); see also Frank P. Luberti Jr., *An Outsider Looks at Insider Trading: Chiarella, Dirks, and the Duty to Disclose Material NonPublic Information*, 12 FORDHAM URB. L.J. 777, 796 (1983).
- ¹⁰⁸ Jonathan R. Macey, *Securities Trading: A Contractual Perspective*, 50 CASE W. RES. L. REV. 269, 286 (1999).
- ¹⁰⁹ In 1980, the Southern District again had the most judges (34) of any District Court. The D.C. District Court remained second with 22 judges, while the Eastern District of Pennsylvania ranked third in 1970 with 20 judges. See *Judges of the Federal Courts*, 85 F.R.D. at vii, West Publishing (1980).
- ¹¹⁰ Robert McFadden, *Escape by Copter Foiled at U.S. Jail in Manhattan*, N.Y. Times, Jan. 26, 1981.
- ¹¹¹ J. Kelly Strader, *White Collar Crime and Punishment: Reflections on Michael, Martha, and Milberg Weiss*, 15 GEO. MASON L. REV. 45, 59-65 (2007); Kurt Eichenwald, *Milken Set to Pay a \$600 Million Fine in Wall St. Fraud*, N.Y. Times, April 21, 1990.
- ¹¹² *Good Boy, Mr. Milken*, Time, Aug. 17, 1992.
- ¹¹³ Ronald Sullivan, *Milken's Sentence Reduced by Judge; 7 Months are Left*, N.Y. Times, August 6, 1992; Kurt Eichenwald, *For Ivan Boesky, Punishment Was Tax-Deductible*, N.Y. Times, May 25, 1990.
- ¹¹⁴ *United States v. Winans*, 612 F. Supp. 827, 829-30 (S.D.N.Y. 1985).
- ¹¹⁵ *Id.* at 850.
- ¹¹⁶ 484 U.S. 19 (1987).
- ¹¹⁷ Arnold H. Lubasch, *17 Found Guilty in 'Pizza' Trial of a Drug Ring*, N.Y. Times, March 3, 1987; Arnold H. Lubasch, *Two Sides Rest in 'Pizza' Trial After 15 Months of Evidence*, N.Y. Times, Jan. 22, 1987.
- ¹¹⁸ Arnold H. Lubasch, *Judge Sentences 8 Mafia Leaders to Prison Terms*, N.Y. Times, Jan. 14, 1987; Arnold H. Lubasch, *U.S. Jury Convicts Eight as Members of Mob Commission*, N.Y. Times, Nov. 12, 1986.
- ¹¹⁹ George C. Cohn, *The New Encyclopedia of American Scandal 147-48* (2001).
- ¹²⁰ In 1990, the Southern District still had the most judges, (33), of any District Court. In 1990, the Central District of California and the Eastern District of Pennsylvania tied for second with 28 judges. See *Judges of the Federal Courts*, 129 F.R.D. at vii, West Publishing (1990).
- ¹²¹ *Proud Terrorist Gets Life for Trade Center Bombing*, CNN U.S. (Jan. 8, 1998), available at <http://articles.cnn.com/>.
- ¹²² Fact Sheet, United States Department of Justice: Office of Public Affairs, Prosecuting and Detaining Terror Suspects in the U.S. Criminal Justice System (June 9, 2009).
- ¹²³ See *The Hon. Charles L. Brieant Jr. Federal Building and Courthouse White Plains, New York*, available at http://www.nysd.uscourts.gov/site_whiteplains.php (last visited Jan. 21, 2012). In 2008, the White Plains Federal Court was renamed the Hon. Charles L. Brieant, Jr. United States Courthouse.
- ¹²⁴ In the year 2000, the Southern District still had the largest bench of all the District Courts with 44 judges. The Central District of California had 34 judges, while the Eastern District of Pennsylvania had 30 judges. See *Judges of the United States District Courts*, 188 F.R.D. at vii, West Publishing (1990).
- ¹²⁵ *Stewart Convicted on all Charges*, CNNMoney (Mar. 10, 2004), available at http://money.cnn.com/2004/03/05/news/companies/martha_verdict/.
- ¹²⁶ *Away with You*, Economist, Oct. 17, 2011, available at <http://www.economist.com/blogs/schumpeter/2011>.
- ¹²⁷ David S. Hilzenrath, *Raj Rajaratnam, Hedge Fund Billionaire, Gets 11-Year Sentence for Insider Trading*, Wash. Post, Oct. 13, 2011.
- ¹²⁸ *Id.*
- ¹²⁹ 540 U.S. 398 (2004).
- ¹³⁰ *Law Offices of Curtis V. Trinko, LLP v. Bell Atlantic Corp.*, 123 F. Supp. 2d 738, 739 (S.D.N.Y. 2000).
- ¹³¹ *Id.* at 741-42.
- ¹³² *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 407-08 (2004) (citing *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919)).
- ¹³³ See, e.g., Robert A. Skitol, *Three Years After Verizon v. Trinko: Broad Dissatisfaction with the Whole Thrust of Refusal to Deal Law*, Antitrust Source, April 2007.
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- ¹³⁶ Michael J. De La Merced, *Court Ruling Clears Path for G.M. to Restructure*, N.Y. Times, July 6, 2009.
- ¹³⁷ Michael J. De La Merced, *A Judge Who Reshaped the Corporate Landscape*, N.Y. Times: Dealbook, Dec. 29, 2011.
- ¹³⁸ *60 Minutes: The Madoff Scam: Meet The Liquidator*, CBS News, June 20, 2010..
- ¹³⁹ Press Release, United States Attorney, Southern District of New York, Bernard L. Madoff Pleads Guilty to Eleven-Count Criminal Information and is Remanded into Custody (Mar. 12, 2009).
- ¹⁴⁰ Beth Healy & Casey Ross, *Madoff Gets 150 Years in Prison*, Boston Globe, June 30, 2009.
- ¹⁴¹ 313 F. Supp. 2d 174 (S.D.N.Y. 2003).
- ¹⁴² 355 U.S. 41, 45-46 (1957).
- ¹⁴³ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

¹⁴⁴ 556 U.S. 662 (2009).

¹⁴⁵ *Iqbal* originated in the Eastern District of New York, which came into existence when the Southern District was split in 1865. See *supra* text accompanying note 46.

¹⁴⁶ Press Release, Office of the District Court Executive, Southern District of New York, Ten S.D.N.Y. Judges to Participate in Patent Pilot Program Starting November 26 (Nov. 3, 2011).

¹⁴⁷ See *U.S. District Courts—Civil Cases Commenced, Terminated, and Pending (Including Transfers) During the 12-Month Periods Ending March 31, 2010 and 2011* and *U.S. District Courts—Criminal Cases Commenced, Terminated, and Pending (Including Transfers) During the 12-Month Periods Ending March 31, 2010 and 2011*, www.uscourts.gov (last visited Jan. 5, 2012).

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