already had been ratified by the required nine states. Ratification by New York was opposed by powerful forces led by Governor Clinton, while Hamilton, Jay and Duane argued for adoption. The outcome of the debate is well known. On April 30, 1789, Chancellor Livingston administered the oath of office to the first president of the United States. A federal republic had been created, and the history of the Federal Judiciary in New York was about to begin.

The New York supporters of Washington and the new federal Constitution assumed high office in the national government. John Jay became Chief Justice of the United States, Alexander Hamilton was the first Secretary of the Treasury, and James Duane became the first Judge of the United States District Court for the District of New York, the "Mother Court."

At this point, I am constrained to take issue with Judge Cabranes, my distinguished colleague from the District of Connecticut. Last year, from this podium, Brother Cabranes boldly advanced the heretical claim that his District is the Mother Court, citing no less an authority than Judge Timbers for the proposition. The Cabranes-Timers thesis is predicated upon the fact that one Richard Law, then a Judge of the Supreme Court of the Nutmeg State, was nominated by President Washington for Judge of the District of Connecticut twenty-four hours before the President nominated James Duane for the District of New York.

While it is true, as asserted by Judge Cabranes, that President Washington sent to the Senate on September 24, 1789 a list of eleven nominations including the name of Richard Law for appointment to various District Courts, and that the President did not nominate James Duane until the next day, priority in judicial nominations does not establish the seniority of a Court. In fact, all twelve nominees were confirmed by the Senate at the same time, on September 26, 1789. What Judge Cabranes did not mention, and what ordinarily establishes the primacy of a Court, is the date of its first sitting. The Judiciary Act of 1789 provided that the District Courts of New York and New Jersey were to hold their first sessions on the first Tuesday of November, 1789. The New Jersey Court did not convene on the appointed day because of the illness of the Judge of that Court. (He probably was felled by swamp gas). However, the United States Court for the District of New York, with Judge Duane presiding, did sit for the first time on November 3, 1789 as mandated by the Judiciary Act. It thus became the first court ever convened under the sovereignty of the United States and there-
fore is fully entitled to the designation of "Mother Court." According to the Judiciary Act, the District Court of the District of Connecticut was not allowed to convene until the third Tuesday of November, 1789, apparently to allow for the development of some precedent by the District of New York.

Unfortunately, the Mother Court passed away in 1814, survived by two children, the Northern District and the Southern District, the Northern being the elder. I shall develop this theme in greater detail later. Suffice it to say at this point that the younger child, craving attention and respect, has for many years misrepresented itself as a Court that no longer exists. Today we debunk the myth perpetrated for so many years by the naughty younger child.

Although Judge Duane was born in New York City and served with distinction there as Mayor and as the first Judge of the District of New York, his avocation was upstate land development. He inherited from his father a large tract of land in the present Northern District County of Schenectady and continued to purchase land in that area and elsewhere in the Mohawk Valley until late in his life. The present Town of Duanesburg, created in 1765, was almost entirely owned by him, and he contracted with twenty German families from Pennsylvania to begin the settlement there. Following his retirement from the Bench, Judge Duane took up permanent residence in Schenectady, where he had spent considerable periods of time with his family over the years.

Judge Duane was not the first to be impressed with the scenery of Schenectady and the Mohawk Valley area. Schenectady was chosen as a capital village by the Iroquois League and bore the Indian name of Schonowe. The Dutch called the place Schoonachtendel, meaning beautiful valley. Arendt Van Curler, nephew of the first Patroon Van Rensselaer and founder of Schenectady, wrote of "the most beautiful land on the Mohawk river that eye ever saw, full a day's journey long."

In this lovely valley Judge Duane died in 1797. He is buried beneath the church at Duanesburg in the Northern District with his wife, Mary, daughter of Robert Livingston, Jr., third lord of the Livingston Manor. The land upon which my wife and I reside in the Town of Livingston, Columbia County, was once a part of that same Livingston Manor. We of the Northern District claim as
our own James Duane, lawyer, patriot, statesman, colonizer and Judge of the first United States Court, who lies at eternal rest in the place he loved so well.\textsuperscript{47}

Judges Lawrence, Troup and Hobart followed Judge Duane in short order as Judges of the District of New York. In 1805 President Jefferson appointed Mathias B. Tallmadge to succeed Hobart. While Tallmadge has suffered at the hands of some historians, others have referred to the “distinction” of his judicial service.\textsuperscript{48}

Born at Stamford in Dutchess County in 1774, Tallmadge studied law with Ambrose Spencer at Hudson following his graduation from Yale.\textsuperscript{49} Colonel James Tallmadge, his father, had led a company of volunteers at the capture of Burgoyne at Saratoga.\textsuperscript{50} Spencer, Tallmadge’s preceptor, conducted a successful law practice at Hudson prior to his service as New York Attorney General and later Chief Judge of the New York Supreme Court.\textsuperscript{51} The City of Hudson, now County Seat of Columbia County, was founded by New England whaling men at a convenient location on the Hudson River in 1783 and held a significant position as a whaling port until the early 19th century.\textsuperscript{52} Much of its early architecture has been preserved, and the City is rich in history. It is my birthplace, and I spent a large part of my career in law practice and public service there. It can be said that I, like Judge Tallmadge, learned a great deal about life and law at Hudson. My preceptor was Abram Miner, my father, now in his fifty-seventh year of practice in that City.

After he completed his law studies at Hudson, Tallmadge married Elizabeth, daughter of Governor George Clinton, and began the practice of his profession at Herkimer, County Seat of Herkimer County, another location now in the Northern District. There is no record of how romance came to Mathias Tallmadge, but it is significant that his brother James, also a distinguished lawyer, served for a time as private secretary to Governor Clinton. In addition to his involvement in law practice at Herkimer, Tallmadge was serving as a State Senator when he was called to the Bench by President Jefferson. It can be assumed that he moved to New York City with great reluctance to take up his duties as United States Judge for the District of New York, apparently the first “upstate” man to do so.\textsuperscript{53}
In 1812, seven years after Tallmadge’s appointment, Congress provided for a second judge for the District of New York, the first time that two judges were authorized for a single district. The Act also required that terms of the Court be held at Utica, Geneva and Salem and that a clerk be appointed to reside at Utica. Judge Hough attributes this development to the beginning of “[f]ederal business . . . in the interior of New York State.” According to the docket books of the District of New York, however, there was considerable federal litigation outside of New York City long before 1812. The new legislation provided that the senior judge preside, that his opinion would prevail in case of disagreement, and that he act with the Supreme Court Justice in holding the Circuit Court. This state of affairs would not long satisfy the man appointed to the junior judgeship by President Madison on May 27, 1812. An examination of the path followed by William Peter Van Ness to that position provides a reliable basis for a prediction of things to come in the New York Federal Courts.

Van Ness was another Columbia County man, born in 1778 in the Town of Claverack (now Ghent). His father was Peter Van Ness, a regimental commander at the surrender of Burgoyne and first Judge of the Court of Common Pleas of Columbia County. A large portrait of Peter Van Ness arriving by carriage in full regalia to hold a session at the courthouse in Claverack adorns the rear wall, opposite the Bench, in the main courtroom at the present County Courthouse in Hudson. During my service as District Attorney of Columbia County, I often turned to address that painting after receiving unfavorable rulings from certain successors of Judge Van Ness. Shortly after the birth of his son William, Peter Van Ness removed his family to Kinderhook, where he constructed the mansion known as Lindenwald, later the home of President Martin Van Buren and now a national historic site. Washington Irving was a frequent visitor there, and his Legend of Sleepy Hollow is set in Kinderhook. It is said that the characters of the book, including Ichabod Crane and Katrina Van Tassel, were based on people Irving met during his visits to the Van Ness household. As for the Headless Horseman, Kinderhook residents say that he still rides through the silence of an autumn night, just as he did long before Mr. Irving became a visitor to their town and learned their local legends.

Judge Peter Van Ness participated in terms of Oyer and Terminer in Columbia County from 1788 to 1795. During those years, three men were convicted of horse stealing, two of robbery and another of forgery. All were sentenced to be hanged and the sentences were carried out in all cases, the last *within two miles of the court house in Claverack on or near the road leading to
Kinderhook. Many Columbia County residents still believe in capital punishment, if it's not too severe.

Following his education at Columbia College and his study of law in the office of Edward Livingston, William Van Ness began law practice in New York City and quickly became involved in political activities. He was best known as a supporter and protege of Aaron Burr, and he acted as Burr’s second in the infamous duel with Alexander Hamilton. Indicted for his part in the duel, Van Ness fled to Kinderhook, where he sought the help of Martin Van Buren, with whom he previously had political differences. Van Buren assisted him in the restoration of his civil rights and the two later became associated in several enterprises, including the Bank of Hudson. After their reconciliation, Van Ness and Van Buren had other quarrels, and it cannot be denied that the political career of William Van Ness was indeed an eventful one. The Van Ness political record has been described as “devious,” and it has been said that he “confused truth and fiction” in his written defense of Burr.

I have concluded that the separation of the District of New York into two parts in 1814 was in large part the work of William P. Van Ness. In this conclusion, I take issue with Judge Hough, who has written that Judge Tallmadge sought the separation “in order that he might reign alone” in one district. I have found no historical support for such an accusation, and the letter of John T. Irving to Van Ness, cited by Hough, reveals nothing other than an animosity toward Tallmadge and an opinion that there was no necessity for the separation of the District of New York. Whether Van Ness shared these views is not apparent in the Hough discussion. The character of the man, his zealous pursuit of advancement, his recent appointment to the Bench, and his partisan political affiliations all suggest that Van Ness was dissatisfied with his position as second fiddle in the District of New York and pressed for a separate district where he could preside alone. When Henry Werker refers to me as the successor to Van Ness, I trust that he refers only to the fact that Van Ness and I were the only native sons of Columbia County to be appointed to the Federal Bench in New York.

By the Act of April 9, 1814, the District of New York was divided into the Northern and Southern Districts, the Southern District to be held in New York City and the Northern to be held at Utica, Canandaigua and Salem. The statute assigned Judge Tallmadge to the Northern District and Judge Van Ness to the
Thus ended the glorious history of the United States District Court for the District of New York, the "Mother Court." Although the two new courts were created at the same time, I have designated the Northern District as the eldest child of the Mother Court, because the Senior Judge of the Mother Court became the Judge of the Northern District. In the unusual case of the division of a two judge district court into two separate districts, it is commonly accepted that the senior judge of the original district brings his seniority to the new court to which he is assigned. This is recognized in the legislation, where the name of Judge Tallmadge proceeds the name of Judge Van Ness.

Here I must digress to take issue with the mathematics customarily employed by the Southern District. In 1939 a large celebration was conducted to commemorate the 150th year of the Southern District. By my computation, 1814 plus 150 equals 1964. The younger child obviously has had a problem with arithmetic, having celebrated its 150th birthday twenty-five years too soon. 1989 will not mark the 200th anniversary of the Southern District. Passing reference also should be made to the grandchildren of the Mother Court — the Eastern District, created from the Southern in 1865 and the Western, created from the Northern in 1900. Perhaps all the Mother Court's descendants should share in celebrating the 200th anniversary of their common ancestor in 1989.

By 1818, the Counties of Rensselaer, Albany, Schenectady, Schoharie and Delaware and the remainder of New York State lying north of those counties were included in the Northern District. The seventeen westernmost counties of the state were separated to form the Western District in 1900. With the addition of the Counties of Columbia, Green and Ulster from the Southern in 1978, the Northern District attained its present territorial complement of thirty-two upstate counties, bounded on the north by Canada and the St. Lawrence River, on the east by Lake Champlain and the States of Vermont and Massachusetts and on the south by the State of Pennsylvania. This is an area in excess of 30,000 square miles. I once told a Southern District lawyer that I could get in my car and drive for a full day without coming to the end of the Northern District. He replied: "I once had a car like that."

In separating the Districts, Congress also provided that the Northern District Court have Circuit Court jurisdiction, with appeals to lie to the Circuit Court of the Southern District. After 1826, appeals were allowed directly to the
Supreme Court, as in the case of other Circuit Courts. It should be remembered
that the Circuit Courts had both trial and appellate jurisdiction from 1789 to 1891,
and that these courts originally consisted of a Supreme Court Justice, sitting as a
Circuit Judge, and a District Court Judge. It was not until 1869 that separate Cir-
cuit Judges were appointed, and the Circuit Court of Appeals as we know it today
was established in 1891.\textsuperscript{70} The Circuit Courts of Appeals today are recognized by
the Bar, and certainly by the District Judges, as the sources of most legal
knowledge. One lawyer, however, has had the temerity to describe them as
Courts for the correction of the errors of District Courts and the perpetuation of
their own. The summary orders issued by the Circuits have caused the bar some
concern, not only as to the question of precedent, but also as to intelligibility. I
am told that one such order consisted of only one line in the following words:
"We reverse, substantially for the reasons stated in the opinion of the Court
below."

By 1912, the remaining trial jurisdiction of the Circuit Courts had been
transferred to the District Courts, which then became the principal federal courts
of original jurisdiction.\textsuperscript{71} It is interesting that the so-called Midnight Judges’ Act
of 1801,\textsuperscript{72} repealed in 1802,\textsuperscript{73} providing for Three-Judge Circuit Courts of trial and
appellate jurisdiction, established a separate Circuit Court of the District of Al-
bany to be held in the City of Albany for all counties to the north of Dutchess and
Ulster.\textsuperscript{74}

The omission of Congress to appoint a Marshal and District Attorney
for the Northern District was cured by the Act of March 3, 1815,\textsuperscript{75} and the Northern
District finally was ready for business. According to the Common Rule Book,
Judge Tallmadge convened the first session of the Northern District at Utica on
September 7, 1815. A Marshal and a Clerk were appointed, and the Clerk was
directed to procure a seal. Judge Tallmadge also ordered the Clerk "to apply to
and receive from the Clerk of the Southern District of New York all the papers
pertaining to any prosecution or prosecutions founded on a seizure made within
the Northern District of New York — to the end that said suits may be tried
within the said Northern District of New York."\textsuperscript{76} Judge Van Ness apparently
was greatly agitated by this seemingly innocuous order as will be seen in the
curious case of the Merchant Schooner Lord Nelson.

On June 5, 1812, just thirteen days before the Declaration of the War of
1812, the Schooner Lord Nelson was captured on Lake Ontario by the U.S. Navy
Brig Oneida, commanded by Lieutenant M.T. Woolsey.\textsuperscript{77} According to Lieutenant
Woolsey, the Schooner was seized for suspected violations of the Embargo Laws, but it was the opinion of James Crooks, one of the vessel’s Canadian owners, that the purpose of the seizure was to “secure . . . a naval force on the Lake preparatory to war which, no doubt, was determined upon long before.” As a matter of fact, the Lord Nelson was renamed “Scourge” after her capture and did become part of the United States naval force on Lake Ontario, where she later capsized in a line-squall while awaiting action against the British-Canadian squadron. An account of the vessel’s destruction, described as a classic of naval drama, was written by James Fenimore Cooper.

The Lord Nelson was libeled by the government in the United States District Court for the District of New York, her sale was ordered by Judge Van Ness on August 29, 1812 and the proceeds of sale were paid into Court. After the separation of the District, Judge Tallmadge procured copies of the libel and related papers from the Clerk of the Southern District, determined that the seizure was improper and, on July 11, 1817, directed that the Clerk of the Southern District pay the proceeds to the owner-claimants. Judge Van Ness, who continued to be a legend in his own mind, decided that all cases commenced in the District of New York were to be continued in the Southern District. In his typically pompous style, he decreed that the Northern District had no jurisdiction to order the payment of the proceeds, although the case arose in the territory that had become part of the Northern District. In good lawyerly fashion, the United States Attorneys for the Northern and Southern Districts devised a plan to get the money paid to the claimants. Jonathan Fisk, U.S. Attorney for the Southern and bearer of the same surname as a later U.S. Attorney (without the “e”), and Roger Skinner, U.S. Attorney for the Northern and later District Judge in the Northern, proposed that Judge Tallmadge’s decree be confirmed by Judge Van Ness. Apparently, Judge Tallmadge rejected that proposal, but the matter was resolved by the Act of April 3, 1818, which provided that the Northern and Southern Districts were to have jurisdiction over all causes and seizures arising within their respective districts even though commenced in the District of New York. The claim of Judge Van Ness that the Southern District was the sole successor to the District of New York was laid to rest by this legislation.

There is one footnote to the story of the Lord Nelson. When the Northern District decree for payment finally was presented, six years after the seizure, the claimants could not be paid. The Clerk of the Southern District, one Theron Rudd, an appointee of Van Ness, and a figure infrequently referred to in the histories of the Southern District, had absconded with over $100,000 of court funds.
In 1819 the Congress of the United States declined to make an appropriation to pay the former owners of the hapless Schooner. It was not until 1930, following the adoption of an international treaty, that the owner's heirs finally were paid. At last report, the Hamilton-Scourge Foundation of Hamilton, Ontario was preparing to raise the vessel from the waters of the lake, where this archeological treasure can still be seen.

Mathias Burnet Tallmadge, first Judge of the Northern District, died in 1819. Before his death, the War of 1812 had been concluded by the Treaty of Ghent and American independence was secured. New York's ports had been freed from the British blockade and construction of the Erie Canal had been commenced.

By appointment of President Monroe, Tallmadge was succeeded by Roger Skinner, a Jeffersonian Democrat and the former United States Attorney for the Northern District. Skinner had served in state office as District Attorney, Senator and Member of the Assembly from Washington County before his appointment to the Bench. He was born at Litchfield, and it seems certain that he studied at the law school there before his admission to practice in Connecticut.

Apparently, Judge Skinner was a resident of Albany at the time of his commission on November 24, 1819. In 1818, Congress had designated Albany and Utica as the places for the holding of court, and Judge Skinner conducted terms in those two cities until his untimely death in 1825, a mere six years after his appointment. He is buried in the Albany Rural Cemetery.

In 1838, Congress added Rochester and Buffalo terms of court and required the judge to designate a term in Saint Lawrence, Clinton or Franklin County. In the same year Canandaigua was added to Albany as a place for holding the Circuit Court, and the district was divided into three divisions for the jury trial of issues of fact in the divisions where the issues arose. Although the divisions were abolished by statute in 1860, divisions for jury selection purposes only have been continued by local rule. In 1864 Auburn was added as a location for the District Court, the additional term to be designated by the judge was made discretionary, and Utica was added as a location for the Circuit Court. With the separation of the Western District in 1900, Buffalo and Rochester were
eliminated, and Binghamton and Syracuse terms were added to the Northern District. Syracuse also was designated as a place of holding the Circuit Court. Although a term at Malone was added in 1937, the court has not held a session there in some years and, in fact, no federal court facility presently exists in that far northern location so battered by the storms of winter.

The third Judge of the Northern District, Alfred Conkling, made significant contributions to the development of American law. Inheritor of a family name synonymous with patriotism in the Revolutionary War, his descendants included great lawyers, judges and statesmen. Following his graduation from Union College in Schenectady in 1810, Conkling studied law in the office of Daniel Cady in Johnstown, Fulton County, and was admitted to the bar in 1812. Cady was a distinguished lawyer of his day and served as Justice of the New York State Supreme Court in the Fourth Judicial District and as Judge of the New York Court of Appeals. It was Judge Cady who advised the heirs of Sir William Johnson that the vast estates surrounding the manorial home in Johnstown could not be recovered after confiscation by the new republic. Sir William was the famous English Indian Commissioner who did so much to hold the loyalty of the Iroquois for the Crown. Although Sir William died before the Revolution, his son and heir, Sir John Johnson, actively opposed the American forces in the Revolution, and that opposition resulted in the confiscation of the Johnson holdings.

Following his admission to the bar, Alfred Conkling moved to the adjoining County of Montgomery and served as its District Attorney. He was elected to the 17th Congress as an anti-Jackson Democrat and moved to Albany after his congressional service. He practiced law in that city until 1825, when President John Quincy Adams appointed him to the Northern District Bench, a position he was to hold with great distinction for the next twenty-seven years.

Judge Hough, in his not entirely unbiased history of the Southern District, refers to the publication by Judge Betts of the first "worthy" work on American Admiralty Practice. In point of fact, the first definitive book on Admiralty jurisdiction, law and practice was published by Judge Alfred Conkling of the Northern District in 1848. The Conkling publication included forms of pleading and other tips useful to the bar, features not available in the earlier Betts book. Judge Conkling was a prolific writer. His treatise on the organization and