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Paul Finkelman, Roberta Sue Alexander, eds. *Justice and Legal Change on the Shores of Lake Erie: A History of the U.S. District Court for the Northern District of Ohio.* Athens: Ohio University Press, 2012. xii + 374 pp. $49.95 (cloth), ISBN 978-0-8214-2000-3.

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Legal and Constitutional History from Below—Below the Supreme Court, That Is . . .

When Felix Frankfurter and James Landis wrote their landmark history *The Business of the Supreme Court* in 1928, they were dismayed that they could say little about the business of the lower federal courts. "Our national history will not be adequately written until the history of our judicial systems can be adequately told through monograph studies of individual courts," they urged in a footnote.[1] Legal and constitutional historians were slow to respond. Mary K. Bonsteel Tachau's *Federal Courts in the Early Republic* (1978), a study of the district and circuit courts in Kentucky, published fifty years after Frankfurter and Landis's call, is generally regarded as the pioneering scholarly effort, although a few less weighty tomes preceded hers. In recent decades the record has improved, driven in part by the founding of federal court historical societies and encouraged by the Federal Judicial Center. Eight of the eleven circuit courts of appeals have established historical societies as have the D.C. Circuit and the Federal Circuit. The Center lists twenty-five district court historical societies in its list of historical programs (`http://www.fjc.gov/history/home.nsf/page/federal_links.html`). The Center lists twelve histories of lower federal courts published since 2002. The historian of New Jersey's district court, Mark Edward Lender, counted sixteen book-length studies of circuits or individual district courts published between 1987 and 2003.[2]

At their best, as in Tachau's study and David G. Chardavoyne's recent, straightforwardly titled *United States District Court for the Eastern District of Michigan* (2012), these histories not only discuss not only the institutional history of the courts and the character of their judges and other personnel, but they also explain the legal doctrines and precedents that govern areas of law, how the district judges applied those doctrines and precedents and helped to develop them, the social, economic, and political context in which they acted, and how their decisions affected their communities and were affected by community interests and social realities. At their most limited, they may consist of nothing but brief biographies of judges and excerpts from a few of their opinions.

Many of these books have been sponsored by court historical societies. But even courts without formal historical societies have been inspired to chronicle their histories. Such was the case in the northern district of Ohio, where the members of the court themselves secured the help of the prolific legal historian Paul Finkelman. Roberta Sue Alexander, who had published a history of the southern Ohio district court in 2005, joined the effort. The result is this book of thirteen essays and two introductions, one by Finkelman and the other by Judge Dan Aaron Polster.

The compilation is divided into two sections. Part 1 consists of four essays dealing with aspects of the court's history between its inception in 1855 and the first decades of the twentieth century. Alexander discusses the court's organization and early business during the term of its first judge, Hiram V. Willson, who served to 1866. The docket was slight. Willson heard few civil cases, most of them involving debt and bond collections. The criminal side was a bit fuller, with counterfeiting, obstructing or robbing the mail, forgery, and embezzlement of federal funds predominating. But the most controversial cases involved the Fugitive Slave Act. The most contentious of all is the subject of Finkelman's essay–the cases arising out of the rescue of fugitives taken by slave catchers in Oberlin and Wellington, Ohio. Finkelman makes clear how powerfully politics influenced the trial, with the Democratic Judge Willson and the court officers serving the proslavery administration of President James Buchanan, carefully selecting the members of the grand jury and only indicting Republicans. Having told that part of the story, Finkelman focuses on the details of the trial, without further locating it in the great controversy over slavery.

The eminent labor historian Melvyn Dubofsky contributes a third essay to the first section, describing how a succession of judges between the 1870s and 1930s, influenced by what he calls "Victorian legal culture" (p. 76), acted against the interests of labor even as they believed they were even-handedly protecting the rights of all. They viewed workers' injury claims with suspicion and were hostile to the notion of organized rather than individual action, consistently issuing injunctions against boycotts and strikes. When Congress moved to loosen restrictions that common-law doctrines imposed in these areas, the judges interpreted them narrowly. Dubofsky compellingly demonstrates judges' antipathy towards organized labor, but despite his brief allusion to Victorian legalism, he makes no effort to convey the worldview that underlay that hostility nor how it diverged from newer views underlying dissenting arguments promulgated by Justice Oliver Wendell Holmes and others. The last essay in part 1, by the equally eminent legal and constitutional historian Melvin Urofsky, details the 1918 trial of Eugene V. Debs for violating the Espionage Act passed the year before. Urofsky too begins by briefly setting the stage, in this case focusing on Debs's position as the nation's preeminent socialist and his delay before challenging federal restrictions on wartime dissent. After that, he too concentrates on the legal case, without discussing its wider impact or place in the history of American civil liberties.

Part 2 consists of nine essays, some of them dealing with legal themes and others with specific cases. Judge Polster's excellent, though brief, introductory essay concisely describes changes in the court's workload and docket since 1960. With the exception of one historian and one political scientist, all of the authors of the essays are lawyers, only some of whose scholarship indicates prior interest in legal history. Among the latter are Richard B. Saphire, who discusses how the district court brought the antidiscrimination ethos of *Brown v. Board of Education* (1954) to northern Ohio. He describes "the long and tortured process" (p. 131) of breaking down segregation in Cleveland's schools, the city of Parma's intransigent resistance to integrated public housing, and–briefly–the important role Judge Frank Battisti played in the controversies. Lawyer and legal historian Tracy Thomas uses three cases to illustrate the slow shift towards sex equality in the law–a reflection, she says without much further discussion, of changes in the broader society. She highlights the role of the first of the district court's woman judges, Ann Aldrich, in challenging older legal presumptions. Other essays address religious symbols and public funding of secular elements in religious schools; zoning and other public controls over physical space; cases involving corruption among public officials; cases arising out of the Kent State shootings in 1970; the prosecution of a highly principled Mennonite draft resister, which illustrated how judges' commitment to neutral enforcement of law can trump personal opinions and sympathies; the many denaturalization and deportation trials of alleged Nazi death-camp guard John Demjanjuk; and death-penalty litigation in the district court.

All of the essays in the book are well written, a tribute not only to the skill of the authors but also, no doubt, of the editors. All provide intrinsically interesting information. Practitioners in the district court will no doubt enjoy reading them. But they do not address the sorts of themes that legal and constitutional historians, or his-

torians in other fields, think central. Despite introductory paragraphs providing background information to the cases, the authors do little to locate the court's activity in the social, economic, and political milieu of which they are a part. One gets little sense of how the district courts project federal power–the political and legal will of a national majority–into localities, how local governing institutions push back or why, or how successful the court has been in imposing its will. Although many of the essays provide doctrinal background to cases, few discuss the constraints that doctrine, precedent, and Supreme Court overview place upon the judges, or the circumstances in which judges can exercise more or less discretion in applying the law. A disproportionate number of cases appear to merit discussion because they became important precedents when reviewed by the Supreme Court, something of an irony in a book designed to illustrate the importance of a lower federal court. Moreover, there is little analysis of the degree to which the district court's legal opinion influenced how the appellate courts approached those cases.

Only Alexander's essay on the first decades of the court and Judge Polster's introduction to part 2 attend to the court's business, docket, physical accommodations, administrative arrangements, the appointment process, and similar institutional developments. Essays dealing with such institutional issues, no longer of interest to the historical profession as a whole, nonetheless should have been assigned to someone. Nor do the essays discuss how court decisions and precedents affect the day-to-day lives of the people in the district–the sort of social history that does speak to the central interest of contemporary historians. The book is a resource that scholars can mine for the information bearing on all these matters, but the authors do not provide the answers or even ask the questions.

However, the work fulfills the goals that the judges of the district court aspired to when they decided to sponsor a history. As Chief Judge Solomon Oliver Jr. observes in his foreword, the judges wanted "to shed light on the work of the court as a whole" and to test whether they had met the central test of a judiciary–"whether we fairly and consistently rendered impartial justice to the litigants who come before us" (p. x). The essays do that, and legal scholarship is the better for the effort.

Notes

[1]. Felix Frankurter and James Landis, *The Business of the Supreme Court: A Study in the Federal Judicial System* (New York: The Macmillan Company, 1928), 52n174.

[2]. Mark Edward Lender, *"This Honorable Court": The United States District Court for the District of New Jersey, 1789-2000* (New Brunswick, NJ: Rutgers University Press, 2006), xv.

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