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A STUDY IN PERFIDY

ALLAN D. VESTAL†

"Crooked judges exist. 'Fixed' decisions are realities."¹

Little has been written about dishonest conduct on the part of judges. This is, perhaps, understandable since only rarely has such dishonesty been disclosed. However, an incomplete, inaccurate picture of our courts is obtained if the shady, the abnormal, is not reported along with the normal. The first step in any meaningful analysis of the judicial process is complete and accurate information about the operation of our courts. It seems, therefore, eminently desirable that any deviational conduct on the part of judges be accurately reported so that it becomes part of the available data. Probably the outstanding example of dishonesty on the federal bench is found in the life of Martin T. Manton, one-time senior circuit court of appeals judge.

BACKGROUND

The background of Judge Martin T. Manton—a man infamous not famous—can only be sketched in. Judge Manton was born on August 2, 1880. In his twenty-first year he received his LL.B. from Columbia University. This was the first of six degrees he was to receive in his legal career. He was admitted to practice in New York in 1901 and started his practice in Brooklyn. After ten years he moved into New York City and became a partner in the firm of Cochran and Manton. Married in 1907, the Mantons did not have children of their own but adopted two children.²

On August 23, 1916, Judge Manton was appointed a Judge of the Federal District Court for the Southern District of New York by President Woodrow Wilson,³ succeeding Charles N. Hough.⁴ At the time he went on the bench he was worth upward of a million dollars after just

† Professor of Law, State University of Iowa.
2. The Court of Appeal decision affirming the conviction of Judge Manton is found in 107 F.2d 834 (2d Cir. 1939), cert. denied, 309 U.S. 664 (1940). The Court of Appeals was composed of Supreme Court Justice Stone and retired Justice Sutherland and Court of Appeals Judge Charles E. Clark who was appointed to the court on March 9, 1939, after Judge Manton resigned. 101 F.2d v.
3. See, for general background, Records in Manton v. United States in Court of Appeals for Second Circuit (hereinafter referred to as Record) 617 et seq. and WHO'S WHO IN LAW 587-88 (1937 ed.).
4. Ibid.
fifteen years of practice. His first opinion is found in Volume 235 of the Federal Series. In his almost 23 years on the federal bench he was to write over 650 opinions. After less than two years on the district bench in 1918 Judge Manton was advanced to the Court of Appeals of the Second Circuit by President Wilson. After he had been on the court for twelve years he became the senior circuit judge.

On December 7, 1929, Judge Manton gave an address at the laying of the cornerstone of the new law building of the New York County Lawyers' Association. Mr. Martin Conboy, chairman of the law building committee, introduced Judge Manton as a judge who has "a very deep sympathy with this organization and the ideals that it represents and a spirit of splendid and fine courtesy to the members of the profession appearing in his court." In his speech Judge Manton talked of the role of the lawyer and the duties of the advocate. Concluding his address he said:

Members of the Bar today, lawyers, remember your duty to manly independence and courteous dignity. If I were reformulating your oath of office, I would place therein these words: "I will forever, at all hazards, assert the dignity, independence and integrity of the American Bar, without impartial justice [sic], the most valuable part of American life, can have no existence."

The national courts hold in high esteem the New York County Lawyers Association. Its constant watch and fruitful aid in matters pertaining to the material wants of our court and judicial requirements has long been appreciated. Its great interest in the maintenance of the Bar's ethical and high standard has made for a strong Bar. The devotion to the individual judges of the court has eased their labors and gratified their hearts. We of the Bench have an affection based upon this constant kindness and respectful attention which is bound to be enduring. May we work on in common accord in our common mission for the true administration of justice...

5. Record 659.
7. Record 626.
8. Record 619. For general background, see Record 617 et seq.
9. YEARBOOK, NEW YORK COUNTY LAWYERS' ASSOCIATION 315 (1930). Judge Manton was not, in fact, a benevolent judge. For an example of his conduct on the bench, see LOWENTHAL, THE FEDERAL BUREAU OF INVESTIGATION 142 (1950). And see note 29 infra.
10. YEARBOOK, NEW YORK COUNTY LAWYERS' ASSOCIATION 316, 320 (1930).
Judge Manton later wrote an article on "Popularizing" the Law and "Legalizing" the News which appeared in the United States Law Review. The article began by recognizing the fact that the public generally depreciates and distrusts the legal profession. Several examples of this feeling were cited and judge Manton pointed out that our laws and the legal profession were in great need of a thoroughgoing interpretation to the general public. He stated:

But something should be done about all this, and the prime responsibility for its doing rests upon the lawyers, not because such episodes threaten the legal profession with destructive assault or annihilation, but because they tend to undermine the confidence of the citizen in the justness and soundness of our government and in the general standards of honesty and probity of the public servants, upon whom have been devolved the duties of enactment, interpretation and administration of the laws. The fact is, of course, that only in the rarest cases are such officials faithless to their trust.\(^{11}\)

Early in the twenties, Judge Manton's continuing interest in activities outside the field of law was apparent. The Forest Hills Terrace Corporation, one of the basic building blocks of the Manton empire, was organized.\(^{12}\) This corporation held pieces of property in the New York area including 206 acres in Jackson Heights. Indicating the scope of this activity, by 1928 this piece of property was subject to a mortgage of more than 1,800,000 dollars.\(^{13}\)

Sometime around 1929 a man named William J. Fallon visited Judge Manton. As Judge Manton remembered the visit it took place in Bayport, at the Judge's home, and at the time Fallon attempted to sell the Judge certain stock in an encyclopedia company. This was not the first meeting of the two. Some fifteen or twenty years before this meeting Fallon was a witness in a murder case on Long Island in which Judge Manton was an attorney for the defense. Fallon was around

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In 1929 Judge Manton collected in an article his ideas on building up a law practice. The article reflected the high ethical standards which seemingly were the basis of the judge's philosophy at that time. Manton, Building Up a Law Practice, 63 U.S.L. Rev. 566 (1929). See also the opinion written by Judge Manton affirming the conviction of the Alien Property Custodian for defrauding the government, United States v. Miller, 24 F.2d 353 (2d Cir. 1928).

12. Record 658. The close relationship between Manton and the Forest Hills Terrace Corporation can hardly be questioned. Record 658.

13. Record 679.
during the trial, but the friendship of the two did not date from this early meeting. Rather the 1929 meeting apparently was the start of the close association of the two. The friendly nature of the relationship of the two was not—and could not—be denied. Indeed, in Judge Manton's brief on appeal from his conviction, it was stated, "it is, of course, true that the appellant knew and was friendly with Fallon."

One of the turning points of the Manton career was the depression which started in 1929. Manton was a speculator of the most extreme sort—the type of individual who would suffer most in a depression. He had borrowed vast sums of money. For example, on December 16, 1929, he personally borrowed 345,000 dollars from Samuel Ungerleider and Company. This unsecured loan was made just shortly after the break in the market and was made to the man who was then making a relatively small salary as a court of appeals judge. During the early years of "this terrible depression" as he described it, Judge Manton saw his estate diminish from one valued in the millions until on June 14, 1934, he could swear that he was insolvent—in debt to the extent of more than 500,000 dollars with very few assets. Judge Manton remarked at one time: "I know there was a depression. I felt it myself." Financially Manton found himself on the verge of ruin; psychologically the impact must have been extreme.

In a speech before the American Bar Association made in Grand Rapids, Michigan, on Friday, September 1, 1933, Judge Manton remarked:

All this change in the outward conditions of our life is most extraordinary. See how characters in the current scenes have changed and have disappeared. See how the amazing company of yesterday has disappeared in silence. The greatest utility man of the Middle West is outlawed in Greece; two men thought to be unexcelled bankers in New York City are out of

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14. Record 628.
15. Appellant's brief p. 19. For the closeness of this relationship, see Record 586 et seq.
17. Record 658.
18. Government Exhibit #120, Record 999.
19. Record 784.
20. In the statement issued announcing his resignation, Judge Manton referred to the depression and indicated that he was forced by the economic developments which had occurred to incur obligations, that is, borrow money. N. Y. Times, Jan. 31, 1939, p. 8. For Judge Manton's analysis of the depression, see his speech given at the annual meeting of the Vermont Bar Association in October, 1933, found in 27 REPORT OF PROCEEDINGS (1934) 130, 136, wherein he stated, referring to the depression, "A lesson taught the profession from this is that nothing can take the place of that commodity called an honest lawyer."
A STUDY IN PERFIDY

Banking; a Swede, thought to be the miracle man of international finance, is a suicide; a banking house that sold his securities—his wares—is demobilized. These and others too numerous and unnecessary to mention are as completely severed from the life of the nation as if they were in their graves.  

Certainly the misuse of office of Judge Manton can only be understood when one considers the background of the depression which was felt so keenly by Judge Manton.

In the years immediately after the crash, until 1935 or 1936, Judge Manton found himself in urgent need of funds to recoup his fortune. Commenting on the malfeasance of Judge Manton at the close of his trial, the presiding Judge, Judge W. Calvin Chesnut, viewed this economic pressure as extremely important. Judge Chesnut stated:

Viewed as a whole, the evidence in the case is susceptible of the following interpretation. The defendant, a high judicial officer of the United States Government, was possessed of a great personal fortune which, being largely invested in corporate equities, was seriously threatened by financial conditions existing a few years ago. In the attempt to save his fortune he violated the most fundamental feature of his judicial office which requires absolute impartiality and personal disinterestedness in the performance of official duties, and agreed to use the power and influence of his great position to procure large sums of money by loans or otherwise from litigants, to bolster up his fading fortune.

It is unfortunately true that in other walks of life other persons have yielded to the temptation to use unlawful methods to avert financial disaster in a period of abnormal economic conditions; but this, of course, affords no excuse for the defendant in this case. All public office is a public trust; but the judicial office is even more than that—it is a sacred trust. It is abhorrent to our conception of public justice that a judge should be influenced by the idea of personal profit in deciding the controversies of other people.

American Tobacco Company—Lord and Thomas—Sullivan

Sometime, apparently in 1932, Judge Manton while walking to work had a conversation with Louis Levy of the law firm of Chadbourne,

23. The close relationship of Manton and Levy and the making of the $250,000
Stanchfield & Levy, then representing the American Tobacco Company in a 10,000,000 dollar suit pending in the Court of Appeals for the Second Circuit. In the course of the conversation Judge Manton said that Mr. James J. Sullivan wanted to obtain a loan of 25,000 dollars. The judge asked Mr. Levy if he had any clients interested in making such a loan to Mr. Sullivan. Mr. Levy told the Judge to send Mr. Sullivan to him.  

Sullivan ultimately got a loan of a quarter of a million dollars—ten times the amount originally mentioned—in May from Lord and Thomas, the advertising agency for the American Tobacco Company. On June 13, 1932, in a decision written by Judge Manton, the pending case was decided in favor of the American Tobacco Company. Of the 250,000 dollars received by Sullivan, the major part went into the corporations in which Judge Manton had substantial interests.

**Fox Theatres Corporation**

In June, 1932, Judge Manton, at the suggestion of counsel in an intended suit in equity for the appointment of receivers for the Fox Theatres Corporation, contacted one or more of the district judges concerned and sought informally to persuade them that a trust company should not be selected as a receiver for the corporation. He failed to secure an acceptance of his view at the district court level. Failing in his attempt, Judge Manton shortly thereafter, acting under his assignment of 1930, sat as a district judge, entertained an application for a receiver of the corporation and appointed individual receivers. This arbitrary use of power was clearly contrary to the wishes and practices of the judges who normally handled such matters. The feeling of the district court judges was clearly evident two days later when they adopted and promulgated two new rules known as 1-A and 11-A which became effective.

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24. Record 775 et seq.
25. Record 779. Judge Manton asserted that he first learned of the loan in June of 1932. Record 783.
26. Rogers v. Hill, 60 F.2d 109 (2d Cir. 1932); Rogers v. Guaranty Trust Co., 60 F.2d 114 (2d Cir. 1932).
27. Record 780 et seq.
29. The personality of Judge Manton cannot be sketched in a brief article such as this. One author has stated, "For years Judge Manton had had a bad name among lawyers, and his receivership appointments had looked suspicious. But there was no evidence, and he was a fearsome personage to criticize. He had wide influence, and his host of friends included James J. Hines." Hughes, Attorney for the People, 318-19 (1940).
July 1, 1932, and were designed apparently to restrict the action of assigned judges in the Southern district. At a later time, on August 24, 1934, Judge Manton appointed Milton C. Weisman as receiver of the Fox Theatres Corporation. The background of Mr. Weisman was very interesting. He had acted as the attorney for Judge Manton in the settlements made for the judge with several banks to which Judge Manton was deeply indebted. Judge Manton later testified that only a small fee had been charged by Mr. Weisman and Judge Manton did not remember whether even the small fee had been paid. The settlements were concluded at about the time that Mr. Weisman was appointed as a receiver for the Fox Theatre Corporation.

About a year later Judge Manton was interested in receiving several loans from the Fort Greene Bank and at that time he talked to John L. Lotsch who was connected with the bank. According to Mr. Lotsch, Judge Manton made certain representations that if he received loans from the Fort Green Bank deposits would be made in that bank by the receivers for the Fox Theatre Corporation and for another corporation. It was this Lotsch who had a case pending at this time before the Court of Appeals for the Second Circuit. A decision was rendered by the court of appeals on July 8, 1935, in favor of Mr. Lotsch's client. On July 19, 1935, a 15,000 dollar loan was made by the Fort Greene Bank to Judge Manton. At about the same time deposits were received by the Fort Greene Bank from the receiver of the Fox Theatre Corporation. On July 19, 1935, the balance of deposits in the Fort Greene Bank for the Fox Theatres Corporation was 50,000 dollars. At about the same time the balance in the Fort Greene Bank for the other receivership mentioned was about 25,000 dollars. The Fox Theatres Corporation receivership appears once again in the Manton tale. One of the last acts of Judge Manton as a judge was the appointment of Kenneth Steinreich as co-trustee with Weisman of the Fox Theatres Corporation. Although the relationship of Steinreich to Judge Manton seems to be somewhat remote, during the course of the trial Steinreich's name appeared a number of times in connection with business transactions with Judge Manton. Certainly there is ample evidence to show that Judge Manton was

31. Milton Weisman was retained as attorney for the Evans Case Company in the Art Metals Company case. Record 97. See text accompanying note 56-60 infra.
32. Record 765-67.
33. Record 157 et seq. See text accompanying note 81-88 infra, concerning the Electric Autolite Company case.
34. Government Exhibit #25, Record 911.
36. Record 772.
using his authority as judge to promote his own personal interests.

IRT Receivership

In 1932 Judge Manton asserted that the public interest required that he sit as a district court judge in the southern district of New York. Overriding the rules which had been promulgated by the district court judges after the start of the Fox receivership, Judge Manton ordered that applications for the appointment of receivers be made to him as well as to the regularly assigned district court judge. Manton's apparent reason was to prevent the appointment of a certain New York trust company as a receiver for the Interborough Rapid Transit Company. Manton at a later time justified his intervention at the district level in the following terms:

It is a misapprehension of my action and of my views to assume that the difference of opinion existing between the District Judges and myself as to the relative fitness of individuals and trust companies as equity receivers was the sole ground upon which I acted in determining the existence of adequate and sufficient public interest. . . .

I considered and determined that in view of the far-reaching public interests involved, the immense numbers of the public affected, the vast and unprecedented investment of the city of New York in the subway system leased to the Interborough Company, and the unprecedented and extraordinary importance and complexity of the issues involved and likely to be litigated, there was clearly presented to me a case which was essentially within the intent and purpose of Congress as evidenced by sections 22, 23, and 213, and that the public interest required the appointment of a Circuit Judge to hold the District Court in which the case should be heard. . . .

On the day after promulgating the order regarding applications, on the petition of the American Brake Shoe and Foundry Company, Judge Manton, acting as a district court judge, appointed two receivers for the IRT. They were Victor Dowling and Thomas E. Murray. The

37. This order dated August 25, 1932, is found in Record 1018.
38. See text accompanying note 30 supra.
background of these two individuals was rather interesting. Mr. Dowling was a partner in the law firm of Chadbourne, Stanchfield and Levy, mentioned in connection with the American Tobacco Company Case. Judge Manton also appointed as counsel in the IRT receivership the same firm, Chadbourne, Stanchfield and Levy.

Thomas E. Murray, the second receiver appointed in August of 1932, had sometime prior to that made an investment in the Forest Hills Terrace Corporation, a corporation under the control of Judge Manton. In May of 1932 and in July of 1932 Mr. Murray had given Judge Manton two checks in the sums respectively of 15,000 and 7,500 dollars in exchange for stock in the Forest Hills Terrace Corporation. One of the checks was in fact made out to Judge Manton personally and endorsed over to the corporation. At the time of Manton's trial in 1939 it was brought out that Mr. Murray had received nothing in the way of dividends from the investment made in 1932. It should also be noted that this investment of 22,500 dollars was made in a corporation which apparently had very few assets at the time of the investment. When Judge Manton testified voluntarily on June 14, 1934, in the office of Carl J. Austrian, attorney for the State Superintendent of Banks in charge of the liquidation of the bank of the United States, he testified concerning the assets and liabilities of the Forest Hills Terrace Corporation. The substance of his testimony seemed to be that the Forest Hills Terrace Corporation was insolvent at that time. There is no reason to believe that this was not substantially true in 1932.

Shortly after Judge Manton's actions, a stockholder in the Manhattan Railway Company petitioned District Judge Woolsey to vacate Judge Manton's orders and appointments and to appoint new receivers. Judge Woolsey consolidated two related cases and signed an order setting aside the appointments made by Manton as "wholly void and of no juridical effect." The operation of the order was suspended pending outcome of appeal and the petition to vacate Manton's orders assigning himself to hold district court and to hear applications for appointment of receivers was denied for want of jurisdiction.

On appeal, Judge Woolsey's decree was reversed by the Court of

42. Record 786.
43. See text accompanying note 23-27 supra.
44. Record 799.
45. Record 800-01.
46. Government Exhibit #120. Record 999. See also cross examination of Judge Manton Record 718 et seq.
47. Record 680.
Appeal and the Supreme Court affirmed the Court of Appeals. The Supreme Court, while granting that Manton possessed the power to take the action he had taken, questioned the propriety of its exercise and suggested that Manton withdraw from further participation in the receivership proceedings. The Court stated:

Granting that the latter was most sincere in what he did, there was yet no compelling reason for assigning himself. Had he reflected he probably would not have made such an assignment; but he acted hastily and evidently with questionable wisdom. This action has embarrassed and is embarrassing the receivership. If he were now to withdraw from further participation in the receivership proceedings the embarrassment would be relieved; and the belief is ventured here that, on further reflection, he will recognize the propriety of so doing and, by withdrawing, will open the way for another judge with appropriate authority to conduct the further proceedings.

When the case reached Judge Manton after the Supreme Court decision, he still seemed to be very reluctant to turn the matter over to another judge. He spelled out, as indicated above, reasons for his actions, and concluded: "In the light of these profound convictions and with great respect, I cannot for the present bring myself voluntarily to withdraw from this case, whatever may be my ultimate decision."

Manton's ultimate decision to withdraw was spelled out in a decision handed down September 30, 1933. He reiterated the reasons for his continuing to sit. A further reason was given for the delay in that he wished to dispose of issues presently before him prior to turning the case over to another judge. He said that while he was determining these issues:

[An] affidavit of personal bias or prejudice was filed by the same parties who had but recently failed in the United States Supreme Court in the question raised concerning my jurisdiction.

Though my personal preference was, and the inclination of any judge whose fairness was challenged naturally would be, to retire from the proceedings, I felt it my duty to remain, however unpleasant and distasteful, and not to retire simply on the

49. Johnson v. Manhattan Ry., 61 F.2d 934 (2d Cir. 1932).
51. Id. at 505.
Manton mentioned in closing that he was to preside over the Circuit Court of Appeals convening in October and referred to his many administrative duties connected therewith. "The task of supervising these receiverships, added to these other duties, is too onerous to continue another year. For this reason I have decided to withdraw."[44]

Manton's withdrawal came only after a restraining order had been issued by Associate Justice Harlan F. Stone, pending action by the full Supreme Court on an application by the Manhattan Railway Company to divest Judge Manton of all jurisdiction in the proceedings. Circuit Court Judge Julian W. Mack was designated by the Chief Justice to act in Manton's stead.[55]

ART METAL WORKS v. ABRAHAM AND STRAUS

On February 18, 1932, the case of Art Metal Works v. Abraham and Straus was docketed in the Court of Appeals for the Second Circuit. Ultimately a decision favorable to the Evans Case Company, which had assumed the defense, was handed down on April 30, 1934, in an opinion written by Judge Manton.[56] Judge Learned Hand dissented.

Alfred F. Reilly, president of the Evans Case Company, testifying for the government in the Manton trial, related a tale of contacts with William J. Fallon and arranging for payments of large sums of money which were supposedly given to Judge Manton.[57] In the Court of Appeals decision on the appeal of Judge Manton, Mr. Justice Sutherland, Circuit Justice, speaking for a court composed of himself and Mr. Justice Stone and Judge Charles E. Clark said that:

[T]he jury could have found, and, in support of their verdict we may properly assume, did find, the following:

Reilly, president of the company, was one of the conspirators.

54. Id. at 221.
56. 70 F.2d 639; 70 F.2d 641 (2d Cir. 1934). In the original case, 70 F.2d 639, action was brought for patent infringement and the court had dismissed for non-infringement. In 107 F.2d 940 (2d Cir. 1939) on rehearing, the decree was reversed with the majority finding that the patent had been infringed, cert. denied, 308 U.S. 621 (1939).
57. In a rehearing of the companion case upon the original record, 107 F.2d 944 (2d Cir. 1939), the court held per curiam "that an incorrect result was reached by the majority of the court on the former appeal and that the decree of the District Court should be affirmed for the reasons stated in the dissenting opinion of Judge L. Hand."
58. Record 56 et seq.
He advised with Fallon about the case on a number of occasions. He gave Fallon, at the latter's request, many sums of money aggregating thousands of dollars and for several years carried him on the payroll of the Evans Case Company at $100 per week and paid him other sums, the whole amounting to nearly $20,000. The district court, having decided the case against the Evans Company, the company appealed. In another case decided in its favor an appeal was taken by the losing party. After some negotiations between Reilly and Fallon, the former expressed a willingness to pay $25,000 upon Fallon’s assurance of favorable action by Manton on the appeal, $15,000 to go to Manton as a loan. At a later time, Reilly was informed by Fallon by telephone that he had learned that the decision would be favorable and “that the Judge [Manton] was in bad circumstances for the money and wanted to know if I could not get $10,000 as quickly as possible.” About the same time, decisions favorable to the Evans Case Company were handed down, the opinions being rendered by Manton. Reilly then paid Fallon $10,000 in cash and also gave him three $500 checks. The $10,000 was entered in the books of the Evans Case Company as “Prepaid Royalties, Air-Flow.” Subsequently, on motion of Reilly, the board of directors of the company directed that the item be transferred to the “legal and professional account for litigation expense.”

In the summer of 1934 Mr. Reilly met Judge Manton at the Belle Terre Hotel at Port Jefferson on Long Island. In that summer they met approximately five times and played golf on a few occasions. Mr. Reilly had lunch at Judge Manton's house on two different occasions and lunched with the Judge at the Lawyers Club. This association continued into 1935.

The final development in this case occurred several years later. On February 5, 1939, Mr. Reilly received a long-distance telephone call from Judge Manton. Although there is some conflict in the evidence about the nature of the conversation it is undisputed that Judge Manton made the call from a telephone in the Savoy Plaza Hotel on that Sunday morning. Mr. Reilly testified that the apparent purpose of the phone call was to cover up the payments that had been made to Mr. Fallon. Later that day Mr. Reilly called Judge Manton and started to talk to him. Mr.

59. Record 84. See also Record 629-39.
Reilly apparently asked Judge Manton if it was all right to talk. Mr. Reilly testified that Judge Manton said "I don't think exactly." That conversation was terminated after an arrangement was made for Judge Manton to call Mr. Reilly. Later Judge Manton called Mr. Reilly. Apparently Judge Manton was calling from a telephone outside of his residence. Mr. Reilly testified that the tenor followed rather closely the conversation of the morning. These conversations followed close on Judge Manton's resignation of the first of February.

**WARNER LOAN**

In early May, 1933, a case involving the Warner Brothers was argued before the Court of Appeals for the Second Circuit. Judge Manton was a member of the court. Sometime between the arguing of the case and the decision in the following September, Judge Manton spoke to Mr. Warner and arranged to get some funds from Mr. Warner. Judge Manton received a check drawn to his order for 25,000 dollars from the Colfax Trading Company (a Harry Warner Corporation). Another 25,000 dollar loan was arranged and checks in the amount of 25,000 dollars received by Judge Manton on September 11, 1933, just the day before a decision favorable to Warner Brothers was handed down by the Court of Appeals, Judge Manton joining in the opinion.

At about the same time Judge Manton addressed the American Bar Association. In his address delivered before the Grand Rapids, Michigan, meeting on September 1, 1933, Judge Manton stated:

A young man coming out of college today, competing for position and honor, requires a better education and should be a finer example of the purposes of a college than ever before. All this promises a better professional competition for the age in which we live. The old lawyers as well as the young, to be successful today, must bear in mind that the practice has changed but the opportunities are measureless for integrity and effort. As natural as day follows night, come the rewards of honor.

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60. Judge Manton's testimony concerning the calls is found in Record 630 et seq. Mr. Reilly's testimony concerning the calls is found in Record 85 et seq. and 115 et seq.
61. Record 788.
62. Record 788.
63. Record 790. The case was Cinema Patents Co. v. Warner Bros. Pictures, 66 F.2d 744 (2d Cir. 1933). (Record erroneously has the date of decision as Dec. 12, 1933). $40,000 had been repaid by the time of Judge Manton's trial. See Appellant's Brief, 65.
And about a month later in a speech to the Vermont Bar Association on October 4, 1933, at its 56th annual meeting, at the Pavilion Hotel at Montpelier, Judge Manton stated:

A lesson taught the profession from this is that nothing can take the place of that commodity called an honest lawyer. . . . Lawyers in great majority have been so true to their calling that we have much to swell us with pride. . . . The discipline of the bar is the discipline from within amid all the temptations. No regulations of conduct is necessary for most of our lawyers. Here indeed is a tribute to a great profession. . . .

At the end of 1933, on December 27, Judge Manton administered the oath of the United States Attorney to Mr. Martin J. Conboy who succeeded Thomas E. Dewey. "Photographs of the ceremony showed Postmaster General Farley back of Mr. Conboy. Back of [Judge Manton] stands Dewey who was five years later to expose the judge and drag him from the bench he was already secretly using for his own profit."

SETTLEMENTS

On July 23, 1934, Judge Manton and the corporations in which he was interested settled certain primary and contingent liabilities with the Mercantile Bank and Trust Company and the Bank of the United States. In the case of the Mercantile Bank, Judge Manton's indebtedness amounted to approximately 164,000 dollars. This was settled with a 31,500 dollar payment. The liability to the Bank of the United States was settled for 23,500 dollars. This against an original liability of 124,000 dollars. This latter settlement of July 20, 1934, was approved by Judge Kenneth O'Brien who was a director of the Alamac Esplanade Corporation, one of the corporations apparently dominated by Judge Manton.

At the time of these settlements Judge Manton was examined concerning his assets and liabilities. He admitted assets of only 6,250 dollars and listed liabilities of more than a half a million dollars. It was probable that his liabilities were closer to three quarters of a million dollars.

65. 27 REPORT OF PROCEEDINGS, VERMONT BAR ASS'N 136-37 (1934).
66. HUGHES, ATTORNEY FOR THE PEOPLE 52 (1940).
67. Record 704.
68. Record 705.
69. Record 671, 688-89.
70. Record 706 et seq.
72. Record 685-86.
At the time of this voluntary examination negotiations were being carried on for the sale of certain property by a Manton corporation to Samuel Ungerleider and associates. The contract ultimately signed on August 17, 1934, provided for a sale price of 400,000 dollars. Of this amount 175,000 dollars was paid to the Manton enterprise, the Forest Hills Terrace Corporation, prior to the time the contract was executed. One of the checks in the amount of 25,000 dollars received in part payment for the hotel bears the date of June 11, 1934, three days before the examination of Judge Manton. In the Judge's voluntary examination this sum of 25,000 dollars is not mentioned in any of the testimony. Some eleven months later Judge Manton was able to state that his net worth was close to three quarters of a million dollars.

Another settlement of a claim was made by Judge Manton in 1935. In October, 1931, the judge used stock of the National Cellulose Corporation as security for an obligation, and at that time apparently promised to repurchase from the Ungerleider Financial Corporation the National Cellulose stock on or before October 26, 1935, for a price of 361,000 dollars. In 1935 the Judge represented to the successor in interest of the Ungerleider Financial Corporation that he was "unable to make any better settlement than $125,000," and the obligation was settled for the latter figure. This, of course, was four months after the Judge had written the letter indicating that he was worth upwards of 750,000 dollars.

Electric Autolite Co. v. P & D Manufacturing Company

On April 22, 1935, the case of Electric Autolite Company v. P & D Manufacturing Company was docketed in the Court of Appeals for the Second Circuit. John L. Lotsch was a defense attorney. He was introduced to Judge Manton by William J. Fallon after an adverse decision had been rendered in the District Court. Lotsch was connected with the Fort Greene National Bank in Brooklyn. Less than one month after the case was docketed in the court a loan of 10,000 dollars was made to Judge Manton by the Fort Greene Bank with Lotsch acting as an inter-

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73. Record 713 et seq.
74. Record 718.
77. Record 724.
78. Record 727.
79. Record 725.
80. Record 727.
81. Record 145 et seq. Lotsch introduced himself, according to Manton, to the Judge in the Spring of 1935. Record 642.
It was at this time that Judge Manton wrote a letter to the bank stating that "This is to certify that my net worth is upwards of $750,000. Yours very truly, Martin T. Manton." The Electric Autolite case was argued in June of 1935 by Mr. Lotsch and Judge Manton sat on that case. On July 8, 1935, a decision favorable to Mr. Lotsch was handed down by the court with Judge Manton writing the opinion. On July 19, 1935, the second loan was arranged for Judge Manton from the Fort Greene National Bank. Mr. Lotsch indicated that statements were made that if a loan was arranged certain deposits would be made in the Fort Greene National Bank by certain receivers of corporations. And on July 19, 1935, as mentioned before, deposits were made in the Fort Greene National Bank by Milton C. Weisman, receiver of the Fox Theatres.

In October, 1935, the Fort Greene National Bank made a loan of 25,000 dollars to Mr. James J. Sullivan, a business associate of Judge Manton. Some stock belonging to Judge Manton was used as collateral and Judge Manton guaranteed payment. In December, 1935, Mr. Sullivan died and Manton assumed this obligation to the Fort Greene National Bank.

**General Motors Corporation v. The Preferred Electric and Wire Corporation**

In September of 1935, the case of General Motors Corporation v. The Preferred Electric and Wire Corporation was docketed in the Court of Appeals for the Second Circuit. John L. Lotsch was an attorney in this case as he was in the Electric Autolite case. In the lower court a request for a stay had been denied and Lotsch then applied to Judge Manton for a stay. Manton granted the stay and according to Lotsch, on the day after the argument asked Lotsch for another loan of 25,000 dollars. This is the loan that was made on October 21, 1935, to James

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84. Record 155 et seq.
86. Record 733.
87. Record 733. (The record is in error regarding some of the dates. This is quite apparent on examination.) See text accompanying note 31-32 supra.
88. Record 646.
89. Record 161 et seq.
90. Manton's testimony on this point is found in Record 728.
91. Record 162. The close relationship of Judge Manton to Mr. Lotsch at this time could hardly be denied. In Government Exhibit #37, the telephone log for the
J. Sullivan who was president of a corporation controlled by Judge Manton. The loan was guaranteed by Judge Manton. Sullivan then drew his check for the full amount payable to himself which he then endorsed in blank and which after being certified by the bank was handed to Judge Manton. Manton endorsed it and deposited it to the credit of the Ungerleider Financial Company. The decree of the lower court in the General Motors case was reversed in an opinion written by Judge Manton. This decision was handed down on November 4, 1935.

Judge Manton’s method of conducting business was one that suggested that all was not meet and proper. During the fall of 1935 a number of transactions occurred which were indicative of the business methods of the Judge. According to the record of the Manton trial, during the fall of 1935 the Judge kept large amounts of cash (totalling approximately 70,000 dollars), in the safe in his office. During that period of time Nathan Levy loaned 25,000 dollars to the Judge and delivered the money to the Judge in cash. This was an unsecured loan. In October, 1935, the Judge received 25,000 dollars in cash as a loan from an unknown individual, according to the Judge’s testimony, through James J. Sullivan. All in all, during 1935, Manton received 92,000 dollars in cash. In addition to the loans mentioned, Manton, during 1935, borrowed 15,000 dollars from Weingarten, 24,625 dollars in cash from William W. Bachman, 15,000 dollars from Joseph Gans.

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firm of Schechter, Lotsch & Sulzberger listed incoming calls to John L. Lotsch as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>In or Out</th>
<th>Party called or calling</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sept. 30</td>
<td>9:47</td>
<td>I</td>
<td>Judge Manton</td>
</tr>
<tr>
<td>Oct. 2</td>
<td>4:50</td>
<td>I</td>
<td>Judge Manton</td>
</tr>
<tr>
<td>Oct. 7</td>
<td>2:30</td>
<td>I</td>
<td>Judge Manton</td>
</tr>
<tr>
<td>Oct. 11</td>
<td>1:45</td>
<td>I</td>
<td>Judge Manton</td>
</tr>
</tbody>
</table>

The argument of the case took place on Oct. 7, 1935. Record 162. Lotsch’s testimony on this point is found at Record 163 et seq. Manton’s guarantee was dated Oct. 16, 1935. Record 164.

92. Record 166 and Record 728.
93. Record 165 and Record 728.
94. General Motors Corp. v. The Preferred Electric & Wire Corp., 79 F.2d 621 (2d Cir. 1935), cert. denied, 296 U.S. 655 (1935). Rehearing because of Manton’s disqualification, 109 F.2d 614 (2d Cir. 1940); Court reached same result.
95. Record 744.
96. Record 741.
97. Levy was connected with the Kings Brewery Company which went into bankruptcy. Apparently James J. Sullivan was appointed trustee of this company. Levy loaned additional amounts to Judge Manton in early 1936. Record 757.
98. Record 741.
99. Record 742.
100. Record 748.
101. Record 748 et seq.
102. Record 734 et seq.
103. Record 734.
and 5,000 dollars from Newman. This latter was part of 25,000 dollars borrowed by Newman. All of the loans from Newman, according to the Judge, were unsecured.

**SMITH V. HALL**

On November 21, 1935, an appeal was taken to the Court of Appeals for the Second Circuit in the case of Smith v. Hall, a patent infringement case. Hall was introduced to William J. Fallon and ultimately agreed to pay 60,000 dollars to Fallon ostensibly for Judge Manton, receiving one note from Judge Manton. Payments were made over a period of time with the final payment being made after a decision in Hall's favor was handed down by Judge Manton on April 6, 1936.

In the Court of Appeals decision on the appeal of Judge Manton, Mr. Justice Sutherland, Circuit Justice, speaking for a court composed of himself, Mr. Justice Stone and Judge Clark, said that:

"[T]he jury could have found, and, in support of their verdict we may properly assume, did find, the following:

In the year 1934, an appeal was taken from the decision of the district court in Smith v. Hall, a patent infringement case. More than a million dollars was involved. Hall was introduced by Forrest W. Davis, one of the defendants named in the indictment, to Fallon as one who, Davis had advised, could help him in the litigation. Hall told Fallon of the litigation and was asked by Fallon for copies of the decision, briefs and record so that he might show them to Manton. At a later meeting, Fallon reported that Manton after a conference had said that for $75,000 a decision in Hall's favor could be obtained. It was finally agreed that the amount should be reduced to $60,000. A check was given for $5,000 on account. So far, there is no direct evidence connecting Manton with this transaction. But later along, Hall, being dissatisfied with the situation, Fallon agreed to obtain Manton's note, and upon that basis a second check for $5,000 was given, and thereafter Hall received a note signed by Manton payable to Davis for $5,000."
A STUDY IN PERFIDY

After investigating this matter an F. B. I. agent, Mathias K. Griffin, testified:

According to what I testified, $15,000 was deposited by the Allied Rediscount Corporation [a Fallon corporation] in its own account at the Sterling National Bank, which amount was received from Hall Brothers. There was $10,500 transferred by the Allied Rediscount Corporation to the Forest Hills Terrace Corporation. . . . There was $4,700 transferred from the Forest Hills Terrace Corporation to Martin T. Manton.\textsuperscript{111}

The witness testified that these transactions occurred between the 23rd of November, 1935, and March 2, 1936.\textsuperscript{112}

\textbf{Lotsch Bribery Case}

Attorney Lotsch, who had been instrumental in obtaining loans from the Fort Green Bank for Judge Manton, was indicted for taking a bribe in December, 1935.\textsuperscript{113} Lotsch testified that he discussed the matter with Judge Manton\textsuperscript{114} and that Judge Manton stated that Judge Edwin S. Thomas was being assigned to criminal matters when Lotsch's case would be heard.\textsuperscript{115} It was assigned to Judge Thomas. Lotsch testified that Judge Manton told him that Thomas would take care of the case for 10,000 dollars and that Lotsch paid it to Manton in two 5,000 dollar payments.\textsuperscript{116} There was no direct proof that Judge Thomas received the money;\textsuperscript{117} Judge Thomas was unable to testify at the time of the Manton trial.\textsuperscript{118}

When the case was tried, Judge Thomas granted Lotsch's motion for a directed verdict of acquittal.\textsuperscript{119} Lotsch was immediately re-arrested on a charge of extorting money under color of office.\textsuperscript{120} He was indicted and sued out a writ of habeas corpus and a district judge dismissed the writ.\textsuperscript{121} Lotsch appealed.\textsuperscript{122} The appellate court then, Judge Manton presiding, reversed the decision and directed that the indictment

\textsuperscript{111} Record 564.
\textsuperscript{112} Record 564.
\textsuperscript{113} Record 169.
\textsuperscript{114} Record 170.
\textsuperscript{115} Record 170 \textit{et seq.}
\textsuperscript{116} On March 2 and 3, 1936. Record 172-78.
\textsuperscript{117} Record 178.
\textsuperscript{118} Record 794 (Testimony of Dr. C. Charles Burlingame). Judge Thomas resigned on April 12, 1939. 101 F.2d v.
\textsuperscript{119} Record 181.
\textsuperscript{120} Record 181-83.
\textsuperscript{121} Record 183.
\textsuperscript{122} Docketed Dec. 19, 1935.
be dismissed. In the course of the opinion the Court of Appeals criticized Judge Thomas for granting the motion for a directed verdict because of a view "erroneously, we believe, held that [Lotsch] was not a master." This decision was handed down on November 30, 1936.

**RENKOFF CASE**

During the establishing of the government's case against Judge Manton, testimony was heard from Morris Renkoff who had been convicted of conspiracy and receiving stolen bonds and who had appealed to the Court of Appeals for the Second Circuit. Renkoff testified that he attempted to fix his case at the Court of Appeals level through one Charlie Rich, who was supposed to have some connection with Judge Manton. 7500 dollars was given as a bribe. Renkoff testified that Judge Manton was unable to fix his case "because the other two judges wouldn't go along with Judge Manton." Renkoff also testified that when the fix was unsuccessful he "made a big holler about it" and that he received his 7500 dollars back.

Although Judge Manton did not get the conviction reversed, he did write a letter to Alexander Holtzoff, office of the Attorney General in Washington, as follows:

**UNITED STATES CIRCUIT COURT OF APPEALS**

Second Judicial Circuit

Chambers of
Martin T. Manton
U. S. Circuit Judge
New York City December 22, 1936.

The Attorney General of the United States,
Washington, D. C.

Attention Mr. Alexander Holtzoff.

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123. United States *ex rel.* Lotsch v. Kelly, 86 F.2d 613 (2d Cir. 1936). Lotsch testified that Judge Manton showed him a draft copy of the opinion prior to the time it was handed down. Record 184-85.

124. 86 F.2d at 614.

125. Record 185.

126. Record 241.


128. Morris Renkoff testified "Charles Rich is the man that I have been knowing for the last 15 years. He was the fixer for Judge Manton." Record 274.

129. Record 274.

130. Record 274.

131. Government Exhibit #46, Record 949.
Dear Sir:

Answering your inquiry of December 15th as to Morris Renkoff who was convicted in the United States District Court for the Southern District of New York on the charge of receiving stolen bonds and sentenced to three years imprisonment and whose conviction was affirmed by the Circuit Court of Appeals, I may say that I presided on the appeal from that conviction. It became necessary for me to review carefully the evidence in that record and the errors assigned and argued on appeal. After reading the record, I was satisfied that Renkoff's guilt was of considerable doubt. We could not reverse because we are without authority to review the weight of evidence. There were no substantial errors committed which would justify our reversing, and therefore the conviction was affirmed.

But in view of my own doubt as to his guilt, and in answer to your inquiry, I unhesitatingly say I think he is entitled to executive clemency.

Respectfully,

MARTIN T. MANTON
Circuit Judge.

SCHICK INDUSTRIES v. DICTOGRAPH PRODUCTS COMPANY

This patent infringement case was docketed on December 19, 1936. Archie Andrews, who held the principal interest in the Dictograph Company, was introduced to Morris Renkoff who agreed to "fix things." Renkoff saw Fallon who was the contact with Manton and the price was set at 25,000 dollars. Renkoff was sent to prison in 1936 so that he was unable to participate further. Andrews then enlisted the aid of George Spector to whom he made large payments of money. Funds then passed from Spector to National Cellulose Company and from this company to the secretary of Judge Manton and to Judge Manton personally. Some funds passed directly from Spector to Manton's official

132. Record 242 et seq.
133. Record 246-47.
134. United States v. Manton, 107 F.2d 834, 843 (2d Cir. 1939).
135. Record 323 et seq.
136. Record 369 et seq. See testimony of Carl A. Herring, FBI agent, Record 383-457. In September, 1937, $2500 was given to Judge Manton by the National Cellulose Company allegedly for delivery to Spector as interest on the "loan" received. The $2500 payment was never satisfactorily explained. In August, 1938, the records of the company were subpoenaed and Judge Manton was informed of this development. Record 357-59. The company was then given a receipt from Spector for the $2500 paid in September, 1937 to Judge Manton. Record 358.
secretary who was an official of a corporation in which Manton had a large interest.\textsuperscript{137}  

During the course of the Schick appeal, Judge Manton took a great interest in the case. In a proceeding that was almost, if not in fact, ex parte he overrode the district court judge concerning the appointment of a special master and the requirement of a bond.\textsuperscript{138} The extreme interest of Judge Manton was revealed at a later time. The attorneys for Schick attempted to postpone the argument before the Court of Appeals so that the case would not be heard by Judge Manton. One attorney reported in the following language concerning the actions of Judge Manton:

After Judge Manton had indicated that he would grant the adjournment and had himself suggested February 4th as the date for the—as the adjourned date, Mr. Jeffery [attorney for Schick] stated that he had an engagement in Virginia during that week, that it would be extremely inconvenient for him to argue the case on February 4th, and then turned to Mr. Neary [attorney for Dictograph], whom he called by his first name, and said, “Jack, will February 4th—Will February 11th be agreeable to you”? or words to that effect. I remember distinctly his calling him Jack, and Mr. Neary replied, “Why, that would be perfectly all right, quite all right.” Then Judge Manton looked at Mr. Jeffery and . . . . stated “This case will be argued on February 4th.”\textsuperscript{139}

The decision in the case was handed down against the Schick Company. Judge Manton concurring in the opinion; the third judge dissented.\textsuperscript{140}

\textbf{Collapse}

By 1937 Judge Manton seemed to be curtailing his activities off the bench; at least the available information does not disclose business transactions of the scope of those of the preceding years. In May Judge Manton received 12,000 dollars from John McGrath\textsuperscript{141} who had been recommended for appointment as receiver or trustee of the Prudence Company by Judge Manton.\textsuperscript{142} McGrath had been so appointed in 1935. On May 28, 1937, McGrath received 32,000 dollars in fees for work done in connection with the Prudence Company and on that same day turned 12,000

\begin{itemize}
  \item 137. United States’ v. Manton, 107 F.2d 834, 843 (2d Cir. 1939).
  \item 138. Record 303 et seq.
  \item 139. Record 310.
  \item 140. Schick Dry Shaver v. Dictograph Products Co., 89 F.2d 643 (2d Cir. 1937) (Augustus Hand dissented).
  \item 141. Record 763.
  \item 142. Record 757-58.
\end{itemize}
dollars over to Judge Manton.\textsuperscript{143} Manton asserted that in July or August, he borrowed 10,000 dollars from Barren Collier who was dead at the time of the Manton trial. Manton asserted that this loan was received in cash; no security was given for the loan.\textsuperscript{144}

By 1938 the net was closing in on Judge Manton. In May or June, 1938, the records of the Forest Hill Corporation and all of Judge Manton's records were turned over to John E. Morrow, Manton's accountant.\textsuperscript{145} Mr. Morrow died a short time later and the records were unavailable at the time of the Manton trial.\textsuperscript{146} On July 1, Judge Manton phoned Forrest W. Davis concerning the loan supposedly made;\textsuperscript{147} Judge Manton asked Davis if he had loaned money to the Judge. Davis, at the time, stated that he did not know anything about a loan.\textsuperscript{148}

In August the records of the National Cellulose Company were subpoenaed; all of the various aspects of Judge Manton's dealings were being investigated.\textsuperscript{149} At this time Judge Manton's reputation was still excellent in some circles. On June 24, 1938, the Judge wrote the foreword to the first edition of Moore's Federal Practice, in which he stated:

> Something of this . . . spirit of resistance against an outmoded judicial system has been evident in business circles for some time. Business men have sought, by means outside the pale of the law, to find a way of adjusting their differences without recourse to the sluggish and cumbersome judicial methods which have given us such an unenviable name. This widespread prejudice has been hurtful to our courts, although it has not been their fault entirely. . . .

This from the man who had done more to tarnish the reputation of the federal courts than any other man in the history of the country. Certainly the unwillingness of businessmen to trust their affairs to the court on which Judge Manton was sitting was entirely understandable.

The final curtain on the judicial career of Judge Manton fell in early

\begin{itemize}
\item[143.] Dewey's letter to Chairman of the House of Representative's Judiciary Committee, N.Y. Times, Jan. 30, 1939, p. 1 (continued on p. 3).
\item[144.] Record 750.
\item[145.] Record 583-84.
\item[146.] Record 584-85.
\item[147.] Supra, n. 10.
\item[148.] Record 527-28. Judge Manton's testimony on this is found Record 641. "In the summer of 1938, after the beginning of an official investigation respecting Manton, Davis, who theretofore had never met Manton, received a telephone call from him in response to which Davis called on Manton at the latter's residence. Manton asked him whether he, Davis, had lent any money to Manton. Davis replied that he had not. Here, again, Manton admitted the conversation, but gave a different version of it." United States v. Manton, 107 F.2d 834, 841 (2d Cir. 1939).
\item[149.] Record 357-59.
\end{itemize}
1939. At least three investigations had been undertaken into his affairs, and all three were nearing completion at about the same time. On Wednesday, January 25, the Attorney General had a conference with Judge Manton and at that time the Judge gave assurances that his resignation would be forthcoming.\(^{150}\) This apparently was the result of an investigation which had been conducted by the Justice Department. The New York World Telegram published the first of a series of articles on Judge Manton two days after the conference between the Judge and the Attorney General.\(^{151}\) Thomas E. Dewey, then District Attorney, also had been investigating Judge Manton for some time. When things started breaking:

Dewey called his assistants into conference, and they agreed that it was their duty to lay before the Judiciary Committee the evidence they had accumulated proving that Manton had accepted separate bribes aggregating $435,000.

Four men in the Racket Bureau worked all Saturday night and Sunday. Dewey telephoned Chairman Summers [of the House of Representative's Judiciary Committee] and explained what he was preparing. . . . [T]he Manton letter . . . was finished at 4 P. M. Dewey signed it and sent it, and later gave a copy of it to the press.\(^{152}\)

On Monday, January 30, 1939, Judge Manton resigned;\(^{153}\) his resignation was accepted on February 1.\(^{154}\)

Just two days before Judge Manton had stepped to a phone in the Savoy Plaza Hotel on his way home from Mass and had called Alfred F. Reilly. Two other calls had been made between these two gentlemen that day.\(^{155}\) Judge Manton knew that the end was at hand. Irresistibly, the course of events was moving. The die was cast. An indictment was returned against Judge Manton covering six cases heard by the court of appeals. They were the Art Metals case, Smith v. Hall, the Electric Autolite case, the General Motors case, United States v. Lotsch, and the Schick case.\(^{156}\)

152. HUGHES, ATTORNEY FOR THE PEOPLE 320 (1940).
153. 100 F.2d v.
154. Record 652. Judge Manton's last opinion was handed down on Jan. 23, 1939, in United States v. Kay, 101 F.2d 270 (2d Cir. 1939). Judge Manton's last judicial act apparently was participation in a decision handed down the day before his resignation was accepted, United States ex rel. Mazur v. Commissioner, 101 F.2d 707 (2d Cir. 1939).
155. Record 630 et seq. Record 85 et seq. See text accompanying note 56-60 supra.
156. It should not be assumed that the indictment covered all of the questionable activities of the Judge. For example, in a case not mentioned in the indictment the
The trial of Judge Manton was anticlimatical and, on the whole, rather uneventful. Calling forty witnesses and introducing 125 exhibits the government methodically traced the transactions and malfeasances of Judge Manton. A vast amount of work had gone into preparation of the case. Vast numbers of records and accounts had been subpoenaed so that the government was able to reconstruct many of the deals and arrangements.

The defense called as its first witnesses eight individuals to vouch for the reputation for truthfulness and veracity of the defendant. They were Alfred E. Smith; John W. Davis; John H. Delaney, chairman of the Board of Transportation of the City of New York; Raoul E. Desvernine, President of the Crucible Steel Company of America; George B. Ford, Catholic Counselor at Columbia University; Judge Alfred J. Talley; John O'Connor, practicing lawyer; and Emmett J. McCormack, Treasurer of the Moore & McCormack Steamship Company. They all vouched for the reputation of Judge Manton. The government did not cross examine any of the character witnesses. The case for the defense rested almost entirely on the testimony of Miss Marie D. Schmalz, secretary to Judge Manton, and of Judge Manton. Both were examined and cross-examined at length. The defense also called Judges Harrie B. Chase, Thomas W. Swan, Augustus N. Hand, and Learned Hand. Each, under examination, testified that at the time of the conference in the various cases they did not observe "anything about Judge Manton other than he was conferring on the case according to his oath and according to his conscience. . . ." No questions were asked of these judges by the government.

Although it is difficult to tell from the record whether Court of Appeals felt that the original decision of the court with Manton sitting was so suspect that it vacated its decision, stating: "This appeal was before us at a prior term of court and an opinion was rendered which is reported in 2d Cir., 97 F.2d 513. At the current term a motion was made by the trustee in bankruptcy to vacate our decision, recall our mandate, reinstate the appeal and grant a re-argument on the ground that one of the judges who participated in the former decision was disqualified by personal interest. This motion was granted and the case has been reargued upon the original and supplemental briefs." In re 671 Prospect Avenue Holding Corp., 105 F.2d 960, 961 (2d Cir. 1939).

The amount of money received by Judge Manton in the various transactions has been the subject of some dispute. Thomas E. Dewey in his investigation came to the conclusion that the total amounted to $435,000. Hughes, Attorney for the People 320 (1940). The New York Times in reporting the conviction mentioned the figure $664,000. N. Y. Times, June 4, 1939, p. 1.

157. Record 570-73.
158. Miss Schmalz had served as secretary to Judge Manton for 34 years, Record 581. Starting in 1926-27 she had been Treasurer of the Forest Hills Terrace Corporation. Record 581.
159. Record 791-94.
the principal witnesses for the defense were effective or not, there is reason to believe that perhaps their testimony left something to be desired.

There were occasional, bitter exchanges between the attorney for the government and Judge Manton and Miss Schmalz. Mr. Cahill set the tone of his cross-examination when he first spoke to Judge Manton, stating "Now Mr. Witness..." Mr. Cahill continued to refer to Judge Manton in this manner. At one time this exchange took place:

Question by Mr. Cahill: Now, let us turn to the question of the bank indebtedness, Mr. Witness.
Answer: Mr. Manton.
Question by Mr. Cahill: Now, let us turn to the question of the indebtedness, Mr. Witness—
Answer: Mr. Manton.
Question: (Continuing)—In June of 1934 the Harriman National Bank—

A short while later the following exchange took place:

The Court: I think this is perhaps the most relevant inquiry. In summation at the time of that examination do I understand

160. Defendants' Witness, Martin T. Manton, Cross Examination:
"Q. Now, you stated in respect to whatever equity there was left over and above the mortages in the Esplanade Hotel, and I quote: 'It is thought there isn't any equity left in that.' Did you not so state? A. Yes, I think that was the condition of the real estate market at the time.
Q. That is not what I am asking you. A. That is exactly what you are.
Mr. Cahill: That is not what I am asking him, if your Honor please. I am asking him, did he so state.
The Court: Very well.
Record 675.
"The Court: It is perhaps natural enough that you know about it, but I think you should try not to go beyond the question.
The Witness: I do not see the competency of it all.
Mr. Cahill: Now, is the witness sitting as the judge in the court?
Mr. Noonan: Your Honor, I object to that.
The Court: I will rule when I think necessary. Mr. Cahill please proceed."

161. Defendants' Witness, Marie D. Schmalz, Cross Examination:
"Q. In answer to his Honor's last question, do you mean to testify that although Judge Manton was not in town that you never communicated with Judge Manton when he was out of town? A. Why should I?
Q. Now, Madam, will you tell us did you ever communicate with Judge Manton when he was out of town? A. Did I ever communicate with Judge Manton when he was out of town? Did I ever communicate with him?
Q. Yes. A. Certainly.
Q. Now, this—A. I was his secretary, Mr. Cahill.
Q. So we have heard. A. I am glad you have."

162. Record 660.
163. Record 667.
A STUDY IN PERFIDY

the substance of what you were telling the examiner was that you had not only no income other than your salary but that you had no net worth on the then present values?
The Witness: [Judge Manton] Not present worth. (Addressing Mr. Cahill): Now, will you just contain yourself for a moment and let me finish—

Mr. Cahill: Your Honor, may I have some—
The Court: Of course, I appreciate, Judge Manton, that this is your personal case and from that you may have some feeling. I am going to ask you—
The Witness: Pardon me.
The Court: I do not think it will be appropriate for you to undertake yourself to admonish the United States Attorney. Now, let us proceed. What was your question?164

Occasionally the principal witnesses for the defense were unable to explain or remember facts concerning various transactions.165 The fact that the records of the Forest Hills Corporation and the personal records of Judge Manton were unavailable certainly did not help. The explanation concerning their disappearance was at best a rather implausible one.166

The jury was out only four hours before returning a verdict of guilty and of this time more than an hour was spent in eating dinner. Certainly the time spent suggests that there was no serious question in the jury's mind about the guilt of the Judge.

An appeal of the conviction was heard in the Court of Appeals by a court composed of two Supreme Court justices, Sutherland, who was recalled from retirement, and Stone and a court of appeals judge, Charles E. Clark, who was not on the bench at the time Judge Manton was on the court.167 On December 4, 1939, the court of appeals unanimously af-

164. Record 679-80.
165. For example, Defendants' Witness, Marie D. Schmalz, Re-direct Examination:
   "By the Court:
   Q. How was this $3,000 in September, 1937, paid? A. I can't tell you at the moment. I know I paid it.
   Q. Well, was the $3,000 paid in cash or by check, or how was it paid? A. Well, I cannot tell you at the moment, I really don't know, but I know that I paid it.
   Q. How can you tell us that you know you paid it, if you have no recollection of how it was paid? Did you get any receipt for it at the time? A. No.
   Q. Did you get an endorsement on the back of the note? A. I would not remember that.
   Q. If you paid it in cash, would you not have taken a receipt for it? A. Yes."
Record 615.
166. Record 583-85.
167. Judge Clark was appointed on March 9, 1939, 101 F.2d v.
firmed the conviction. A petition for writ of certiorari was denied by the Supreme Court of the United States in a memorandum opinion. Judge Manton served some nineteen months of his two-year sentence in the Northeastern Federal Penitentiary at Lewisburgh, Pennsylvania. He died shortly after the end of World War II, on November 17, 1946, in Fayetteville, New York.

Perhaps it is true that breaches of trust are extremely rare among judges, but there can be no doubt that judges in high places have been guilty of malfeasance in office. England has had her Lord Bacon and Lord Macclesfield; both holding the highest judicial positions and both convicted of breaches of trust. We in America have had our Manton and perhaps others. We would be remiss if we should assume that judges are above examination. Judges are human, and as humans, can err. We must expect that occasionally a judge will be corrupt and we should be prepared for this "grievance of grievances." We cannot cloak such malfeasance in a robe of silence and pretend that it does not exist. The law must be prepared to handle effectively such occasional deviations in order to guarantee the unbiased justice which is the foundation of our system.

A second lesson to be learned is that judges have a moral obligation to rid themselves of outside interests that might affect or appear to affect the decisional processes. As has been stated:

This unfortunate case emphasizes a distinct moral which has long been recognized, that the members of the judiciary should not concern themselves with the active conduct of business, directly or indirectly. The judge must not only really be above suspicion but he must also appear to be above suspicion. . . . Active conduct of business affairs must inevitably give rise to injurious comment which may reflect on the honor of the Bench.

This does not mean that the judge who happens to have resources must sell all he has and give it to the poor. But it does mean that, in discharge of his duty, he should act as though he had done just that. This is exactly how the overwhelming number of Federal judges have always acted and may be expected to act.

168. United States v. Manton, 107 F.2d 834 (2d Cir. 1939).
169. 309 U.S. 664 (1940).