

# Federal Justice in the Mid-Atlantic South

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# Federal Justice in the Mid-Atlantic South:

United States Courts from  
Maryland to the Carolinas,  
1836–1861

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**Peter Graham Fish**

DUKE UNIVERSITY



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To MARIA and JONATHAN



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# Foreword

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Using a wide range of primary and secondary sources, Professor Peter Fish has again drawn for us an impressive portrait of *Federal Justice in the Mid-Atlantic South: United States Courts from Maryland to the Carolinas, 1836–1861*. Volume II of this ongoing historical project is divided into eight parts, several of which discuss issues which echo current concerns. The volume comprehensively considers the various judicial institutions, judges, and company, including grand and petit juries, and their respective treatment of the relatively narrow scope of cases then within federal jurisdiction — much of which was anchored to the adjacent navigable and coastal waters and far-flung seas, at a time when major technological advances and increasingly tumultuous political events augured ill for maintenance of the national fabric, notwithstanding the efforts of circuit-riding Supreme Court Justices to maintain intact that fabric originally spun by the Founders in Philadelphia during the summer of 1787.

Professor Fish focuses on the work of the federal courts in the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina — courts that since 1866 have comprised the United States Court of Appeals for the Fourth Circuit. Each district had a resident district judge who presided over courts scattered within his district and who joined with the circuit-riding Supreme Court Justice, primarily Chief Justice Roger B. Taney of Maryland and Associate Justice James M. Wayne of Georgia, to constitute the circuit courts in their allotted circuits.

In Parts One and Two, Professor Fish examines the politics that enveloped circuit re-alignments in and after the age of President Andrew Jackson, as well as those surrounding judicial appointments and failed appointments, longevity problems, and chronic compensation issues exacerbated by geographical differences. Mundane matters of judicial administration are also discussed. Professor Fish probes the interventionist roles of Circuit Justices, the time-worn autonomy-accountability dichotomy, and the actual housing of the courts as the federal government transitioned from tenancy to ownership of premises in selected ports of entry including Richmond, Virginia, where the original 1858 edifice remains a part of the federal courthouse now named after native Virginian Lewis F. Powell, Jr., Associate Justice of the Supreme Court of the United States (1971–1987).

In Part Three, Professor Fish examines the court business in each of the five districts, using court sitting days and judges' attendance as measures of performance. Each district is given a chapter, with special attention given to the Western District of Virginia, with its six places of court widely dispersed over the district's mountains and valleys. Part Three culminates with Chapter 11, the "Palmetto State Beehive," which provides us with a fascinating study in the judicial process taking place in South Carolina during the antebellum period. Focusing on the trial held in South Carolina in the late 1850s of the crew of the slave vessel *Echo* charged with piracy, a capital crime, Professor Fish adroitly portrays the interactions between the resident district judge, the circuit-riding Supreme Court Justice, the Attorney General of the United States, the hard-pressed federal district attorney, and the team of defense attorneys assembled for this major political trial of the national government's power to quash the Atlantic slave trade and thereby delegitimize the South's most "peculiar institution" of slavery.

In Part Four, Professor Fish turns to cases arising in the mid-Atlantic South that illuminate the powers of the judiciary under a Constitution sufficiently elastic that inherent powers might devolve on the courts; that admiralty jurisdiction might extend to non-tidal "brown waters"; and that out of state corporations might be sheltered by federal courts. Congressional powers characteristically received judicial affirmation, whether in crime control, safety at sea, or controlling the Atlantic slave trade. Exercises of executive power, on the other hand, might receive close scrutiny, even if its exercise of that power fell within what later was denoted the realm of "war powers."

State-nation relations are tracked in Part Five, in the context of what Professor Fish terms "states-centric federalism," a system characterized by "benign federalism" reflected in the adoption of many state judicial practices and procedures. Professor Fish examines the federal judicial lacuna that surfaced when an enterprising real estate developer sought to evict the commandant of Fort Monroe, Virginia from some of the fort's beachfront property but which case could not then be removed from the state courts. Similar "benign federalisms" give way to confrontational federalism, such as when the national government, having custody of Africans landed from a captured slave vessel, faces state demands for their surrender — presumably preparatory to their sale into slavery — to local South Carolina officials acting under that state's famous "Police Bill."

Far-reaching changes in the American economy wrought by major technological advances, especially in transportation and infrastructure, receive thorough treatment in Part Six. Professor Fish therein explores the role played by the courts in adjudicating patent and copyright disputes, featuring in the former category inventors, assignees, and infringers in disputes swirling around Singer's sewing machine, Goodyear's vulcanized rubber, and Woodworth's much litigated planing machine. Issues arising out of maritime commerce are also discussed. Considered too are problems of loss in a capitalist economy where debtors, in the wake of the nation's most devastating depression prior to 1929, sought relief under the second national bankruptcy act, spawning judicial dissonance in its interpretation and application and portending desperate outcomes for debtors' slave property subject to creditors' reach. Losses at sea arising out of collisions confronted judges with a morass of conflicting self-serving or non-existent facts, not to mention heated contests between those among them who clung to the fading age of sail on the one hand and those who embraced the emerging age of steam.

The new and improved instrumentalities of commerce emerging during the "transportation age" also sparked controversy. Taney and Wayne on circuit, as well as district judges, took a decidedly protective view of the emerging modes of transportation, whether they were canals facing catastrophic natural disasters in hard times or railroads seeking valuable rights of way or corporations doing business across state lines. On the other hand, judges availed themselves of the travel conveniences afforded by common carriers, a reality that likely led Circuit Justice Taney to impose liability for negligence on the owners of an overturned stagecoach plying the National Road from Baltimore to Wheeling. Contracts dominated economic life during this time as well, and a variety of them are probed here, including conveyances of and titles to real property. One such case examines a title challenge to the ownership of a portion of strategic Harper's Ferry. That prime property becomes the target of an ejectment suit by speculators in a case that implicitly accepted limits on the national government's sovereign immunity, an outcome favorable to the United States, but soon eclipsed by abolitionist John Brown's famous raid.

America proved to be something less than a "peaceable kingdom" during the antebellum period explored in Part Seven, which Professor Fish makes abundantly clear as he delves into the federal criminal justice system based on "few and defined" national powers and even fewer places of incarceration. He again explores the "African Connection" in the context of cases arising in the federal courts in South Carolina, as well as in Eastern Virginia and Maryland. In a survey of the various strategies followed by the government in seeking to suppress the Atlantic slave trade in the wake of its persistent failure to obtain criminal convictions on capital and other felony charges, we see Circuit Justice Taney on a veritable crusade against capitalist investors, builders, and agents for vessels destined for that nefarious form of maritime commerce. And, when all else fails,

there are *in rem* proceedings against apprehended vessels in juryless admiralty courts before district judges and even actions against stealthy ship owners for their captains' failures to return Registry Bonds upon sale of their vessels to foreigners.

Finally, in Part Eight, Professor Fish surveys the kaleidoscope of dramatic events engulfing each of the five districts from 1860 into mid-1861, the "Twilight of the Old Republic." The presidential nominating conventions of the splintering political parties held in Baltimore and Charleston are recounted, as is the precarious political life in the Border State of Maryland where the district judge, having been previously rebuffed by military authorities, absents himself from the bench in the famous case of *Ex parte Merryman* to attend a church conference wherein he overtly reveals his loyalties. Then there is the hand-wringing district judge in Richmond who presides over the last capital piracy trial of Atlantic slave traders south of the Potomac at the very moment of President Lincoln's inauguration, and confronts the last ditch effort by the new President's Secretary of State to maintain a federal presence in his courtroom. Meanwhile, in the Old Dominion's Western district, the legal educator-secessionist district judge becomes one of the state's more frustrated commissioners to the failed Peace Conference held in Washington's Willard Hotel, yet remains inordinately long on the federal bench before donning a robe of gray as does his counterpart in the Eastern District. Professor Fish then turns to North Carolina where another ardent secessionist district judge anxiously awaits the arrival of Circuit Justice Wayne and prepares for the Georgian's grand jury charge predictably calling for fidelity to the Union founded on the rock of the Constitution of 1787. No such charge is forthcoming, but the district judge remains prepared with a countercharge in defense of state sovereignty and secession, a goal that he pursues to the end as a member of the Old North State's secession convention and as a resolute judge in gray. As for South Carolina, Professor Fish dubs it the "alpha and omega" of the nation's greatest constitutional crisis. Tracked are the strategic steps taken by a politically astute and exceptionally competent district judge who essentially becomes a spear-carrier for secession of the Palmetto State; the peculiar role played by railroad politics; the hovering presence of Unionist Wayne; the closing of the federal "Temple of Justice" on telegraphed news of Lincoln's election; the resignation of the judge and other federal officials; and the phenomenal political survival of the ex-United States judge.

All in all, Volume II is a fitting tribute by Professor Fish to those who have promoted and participated in the ongoing development of the history of our circuit, one of America's oldest. Among those responsible for the pursuit of our circuit's history are the late Clement F. Haynsworth, Jr., former Chief Judge of the Fourth Circuit; the late William F. Swindler, John Marshall Professor of Law Emeritus at Marshall-Wythe Law School, William and Mary University; the members of the original History Committee, comprised of the Honorable J. Harvie Wilkinson, III, the late John D. Butzner, Jr., the late Sam J. Ervin, III, the late

Donald S. Russell, and the late H. Emory Widener, along with our long-serving and dedicated Circuit Executive, Samuel W. Phillips. With their aid, Professor Fish has substantially contrib-

uted to our knowledge of the Fourth Circuit in good times and bad, in peace and in war, and in the balancing of law and politics in an America on the cusp of a dramatic transformation.

William B. Traxler  
Chief Judge of the  
U.S. Court of Appeals  
for the Fourth Circuit



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