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THE LEGAL CAREER OF JOHN QUINCY ADAMS

by

WILLIAM G. ROSS*

INTRODUCTION

Like several other presidents -- especially Jefferson, Madison, Grant and Hoover -- John Quincy Adams achieved his greatest distinction outside the White House. The four years that Adams spent in the presidency at odds with a Congress that refused to accept his nationalistic vision¹ were but an unhappy interlude in a long career in which Adams distinguished himself as a diplomat, scholar and congressman. While Adams is remembered today for his numerous talents, his accomplishments as a lawyer usually are not ranked prominently in accounts of his achievements. Yet Adams's legal career was notable in many ways, and William Howard Taft is the only president whose record in the law decidedly outshines Adams's. Adams received a solid legal education, argued several important cases before the U.S. Supreme court and was the only president other than Taft to receive an appointment to the High Court. Like so many other presidents, however, Adams found the study of law boring and frustrating, disdained the exigencies of private practice, failed to make a good living at the bar, and gladly abandoned his practice for politics on more than one occasion. Adams, like other presidents, also used his legal career as a stepping stone into politics and then used his legal knowledge to advance political causes.

The article will discuss Adams's legal education, his early legal practice, his reasons for declining an appointment to the Supreme Court, and his role as counsel in various cases decided by Supreme Court. Adams's legal education provides insight into the nature of legal training in late eighteenth century America and the legal profession during the late eighteenth and early nineteenth centuries. Finally, Adams's career at the Bar provides a means of evaluating various theses that have been advanced concerning the influence of legal training on the performance of presidents in office.

LEGAL EDUCATION

Adams's rather checkered legal career began auspiciously since Adams enjoyed excellent preparation for his legal studies. Accompanying his parents to

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¹ For a recently published discussion and analysis of Adams's presidency, see M.W.M. HARGREAVES, *THE PRESIDENCY OF JOHN QUINCY ADAMS* (1985).

Europe on his father's diplomatic missions, Adams attended schools in Paris, Amsterdam and Leyden during his boyhood and at the age of fourteen became private secretary to Francis Dana, the first American diplomat in Russia.² Joining the junior class at Harvard in 1785, Adams graduated two years later with highest honors.³ Ironically, however, the very richness of Adams's early education instilled in him a taste for politics and an intellectual curiosity that left him unsuited for the plodding tedium of the daily practice of law.

Marked by his Puritan lineage, Adams chose to become a lawyer more out of a feeling of obligation than any special affinity for the law. In an address to the Cincinnati bar near the end of his life, Adams recalled that his mother, the formidable Abigail Adams, had impressed upon him that "in this country every man should have some trade."⁴ In performing what he described as "the duty of selecting a profession," the advice of his parents and his own inclination led him to the law.⁵ Since Adams lived during an age when many a son followed his father's profession, it was natural that Adams chose to enter the profession in which his father had distinguished himself prior to his entry into politics.⁶ Adams preferred to study law under the tutelage of his father⁷ but John Adams's continued absence from the United States as America's first ambassador to Great Britain made it impossible for John Quincy to study at home. Although the nation's first law school had been established several years earlier at Litchfield, Connecticut, Adams does not appear to have considered studying at that institution or at the several American universities that offered law lectures.⁸ Since a minimum three year period of residency in an attorney's office was a prerequisite for admission to the bar in most Massachusetts counties by the late eighteenth century,⁹ it is not surprising that no law school had been established in Massachusetts¹⁰ or that Adams would have avoided formal training that only could

² S. F. BEMIS, JOHN QUINCY ADAMS AND THE FOUNDATIONS OF AMERICAN FOREIGN POLICY 11-12 (1949) [hereinafter BEMIS, FOUNDATIONS OF AMERICAN FOREIGN POLICY].

³ *Id.* at 19-21.

⁴ J. QUINCY, MEMOIR OF THE LIFE OF JOHN QUINCY ADAMS 6 (1858).

⁵ *Id.*

⁶ For a summary of John Adams's busy and distinguished career at the bar, see I L.K. WROTH & H.B. ZOBEL, LEGAL PAPERS OF JOHN ADAMS IXX IO XCIV (1965).

⁷ I THE WRITINGS OF JOHN QUINCY ADAMS 26 (W.C. Ford ed. 1913) [hereinafter WRITINGS]. The elder Adams's extensive knowledge of the theory and practice of law would have enabled him to provide his son with excellent instruction. Indeed, Adams *pere* had significantly contributed to the development of the legal profession in Massachusetts by serving as a teacher to the clerks who worked in his office. WROTH & ZOBEL, *supra* note 6, at lxxx to lxxxiv. Not only did Adams provide his clerks with a solid practical training, but he also instilled in them an intellectual approach to the law. *Id.* at lxxxii. Many of his clerks went on to become leaders of the bar. *Id.* at lxxxii to lxxxiii. In addition to sharing with his students his own considerable learning and experience in the law, Adams provided them with access to his excellent law library, which grew into what Adams later described as the best in Massachusetts. *Id.* at lxxxv to lxxxvi.

⁸ For a discussion of legal instruction in American universities prior to 1800, see Thayer, *The Teaching of English Law at Universities*, 9 HARV. L. REV. 169 (1895).

⁹ See G.W. GEWALT, MASSACHUSETTS LAWYERS: A HISTORICAL ANALYSIS OF THE PROCESS OF PROFESSIONALIZATION, 1760-1840 (Unpubl. Ph.D. Diss. Clark U., 1969) at 133. Although a three-year term of study for college graduates was required throughout the state, the length of apprenticeship for non-college graduates varied between four and seven years. *Id.*

¹⁰ The delay in the commencement of formal legal training in Massachusetts until the institution of the Royal

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have delayed his admission to practice. Accordingly, Adams followed the time-honored custom of “reading law” in a private law office while serving as a law clerk. Perhaps wanting to avoid the diversions and expense of Boston, Adams chose to go to Newburyport to study law at the office of Theophilus Parsons. Whatever other misgivings he may have had about his choice of a career, Adams at least was satisfied at first with his choice of Parsons, a local luminary who later became chief justice of the Supreme Judicial Court of Massachusetts. Adams reflected in a journal that he kept during his law student years upon the “great advantage” of studying in the office of Parsons, whom Adams described as “in himself a law library, and . . . proficient in every useful branch of science.” Parsons’s “chief excellency,” in Adams opinion, was that “no student can be more fond of proposing questions than he is of solving them. He is never at a loss, and always gives a full and ample account, not only of the subject proposed, but of all matters which have any intimate connection with it.”¹¹ In a letter to Abigail three months after his arrival in Newburyport, Adams exulted that Parsons’s “talents are great, his application has been indefatigable, and his professional knowledge is surpassed by no gentleman in the Commonwealth.”¹² Adams soon discovered, however, that Parsons was not the ideal tutor. On several occasions, Adams wrote in his diary that he and his fellow clerks were distracted by Parsons’s frequent conversations with visitors to the office. Six months after his arrival in Newburyport, Adams noted that “if we complain, we are told we must learn to read without suffering ourselves to be interrupted by any noise whatever, a direction with which I believe I shall never be able to comply.”¹³ Adams testily concluded that “[i]t would be much more agreeable to me, if he would

lectures at Harvard in 1815 and the establishment of the Harvard Law School in 1817 is attributable to a number of factors. Charles Warren attributed the delay to the conflict with England, the Embargo of 1808, and the resulting economic disruption that depressed legal business. I C. WARREN, *HISTORY OF HARVARD LAW SCHOOL AND OF EARLY LEGAL CONDITIONS IN AMERICA* 285 (1908). More recently, Arthur Sutherland has disagreed with Warren and attributed the delay to Harvard’s belief that “if education was to be practical, it would not be academically respectable; if it was to be respectably academic, it must be professionally unprofitable.” A.E. SUTHERLAND, *THE LAW AT HARVARD: A HISTORY OF IDEAS AND MEN, 1817-1967* 43-45 (1967). Another study of early legal education has concluded that Massachusetts lawyers themselves were responsible for the delay since the bar regarded the apprenticeship system as a means of regulating and restricting membership in the profession. Gewalt, *Massachusetts Legal Education in Transition, 1766-1840*, 17 *AM. J. LEGAL HIST.* 27, 28 (1973). The retention of the apprenticeship system also provided the bar with a secure source of fees and free labor. *Id.* at 34.

¹¹ ADAMS PAPERS MICROFILM [hereinafter APM], Reel 15 (entry for Nov. 23, 1787). Reprinted by permission of the publishers and the Massachusetts Historical Society from *THE DIARY OF JOHN QUINCY ADAMS*, Vol. II, David Grayson Allen, Robert J. Taylor, Marc Friedlaender, Celeste Walker, editors, Cambridge, Mass.: Harvard University Press, Copyright, © 1981 by the Massachusetts Historical Society. The microfilms of the Adams Family Papers were produced from manuscripts that are presently owned by the Massachusetts Historical Society. Before it was placed on microfilm, part of Adams’s diary was published as J.Q. ADAMS, *LIFE IN A NEW ENGLAND TOWN, 1787-1788* (1903). Adams’s personal diary furnishes a rich source of information concerning his days as a law student. The diary was the beginning of a journal that Adams kept, with only periodic interruptions, until the end of his life. The journal’s copious information, graceful style, and keen insights into the character of Adams and his contemporaries make it one of the most remarkable documents of any American public figure. In reading its lively pages, one can only regret that it is impossible to imagine that any recent American president could have produced such a journal.

¹² I WRITINGS, *supra* note 7, at 37 (J.Q. Adams to Abigail Adams, Dec. 23, 1787).

¹³ APM, *supra* note 11, Reel 15 (entry for Mar. 26, 1788).

receive his company in the other room, and spare us the trouble of an apprenticeship to an art which we cannot acquire.”¹⁴ Adams also complained that Parsons, “for special reasons to him best known,” refused to permit the clerks to build a fire in the office when he was absent, thus forcing his clerks to depart as soon as the light began to fade.¹⁵

Upon arriving at Newburyport in the Autumn of 1787, Adams immediately immersed himself in his work, studying eight hours daily at Parsons’s office and copying legal forms for more hours in his lodgings during the evening.¹⁶ Although Adams managed to read all four volumes of Blackstone during his first two months in Newburyport,¹⁷ he began to despair that he ever could master the vast corpus of the law. Attempting to place the best face on his situation and perhaps trying to convince himself, Adams told Abigail that the study of law “is far from being so destitute of entertainment as I had been led to expect.”¹⁸ Adams explained that his “pleasure” and edification in studying three or four authors had dispelled his “imaginary terrors of tediousness and disgust.”¹⁹ Adams admitted that the growing disrepute of lawyers in Massachusetts and the increasing competition for legal business worried him.²⁰ He later lamented that a “thousand lies [had prejudiced] the people against the `order’ as [the profession] has invidiously been called; and as a free people will not descend to disguise their sentiments, the gentlemen of the profession have been treated with contemptuous neglect and with insulting abuse.”²¹ Moreover, the number of lawyers was growing and “the little business to be done is divided into so many shares, that they are in danger of starving one another.”²² Adams confessed that when he considered these disadvantages, he was “sometimes almost discouraged, and ready to wish I had engaged in some other line of life.”²³ Adams insisted, however, that “I am determined not to despond. With industry and frugality, with patience and perseverance, it will be very hard if I cannot go through

¹⁴ *Id.*

¹⁵ *Id.* (entry for Jan. 16, 1788).

¹⁶ *Id.*

¹⁷ *Id.* (entry for Dec. 12, 1787).

¹⁸ 1 WRITINGS, *supra* note 7, at 37 (J.Q. Adams to Abigail Adams, Dec. 23, 1787).

¹⁹ *Id.*

²⁰ *Id.* at 37-38. Although Adams was disposed to exaggerate the magnitude of his woes, his concern about the growing antipathy toward the legal profession appears to have been rooted in reality. Although popular antagonism toward the legal profession has been widespread throughout American history, it was especially pronounced during the early years of the Republic. See M. BLOOMFIELD, AMERICAN LAWYERS IN A CHANGING SOCIETY, 1776-1876, 32-58 (1976); Chroust, *The Dilemma of the American Lawyer in the Post-Revolutionary Era*, 35 NOTRE DAME LAW. 48, 51-57 (1959); II A.H. CHROUST, THE RISE OF THE LEGAL PROFESSION IN AMERICA *passim* (1965); GEWALT, MASSACHUSETTS LAWYERS, *supra* note 9, at 44-47. Adams’s belief that the profession was overcrowded is more problematical. The ranks of the elite bar were thin because so many upper class lawyers had fled the nation during and immediately after the Revolution. See Chroust, *Dilemma*, *supra*, at 49-50. Although untrained lawyers continued to vex the elite bar, the county bar associations and the courts were succeeding in establishing professional regulations. See GEWALT, MASSACHUSETTS LAWYERS, *supra* note 9, at 33-90.

²¹ LIFE IN A NEW ENGLAND TOWN, *supra* note 11, at 74.

²² 1 WRITINGS, *supra* note 7, at 37-38 (J.Q. Adams to Abigail Adams, Dec. 23, 1787).

²³ *Id.* at 38.

the world with honor.²⁴

In his diary, however, Adams was not so sanguine. Quailing at the prospect of undertaking “the study of a profession which alone ought to employ all the time I can devote to study for twenty years,” Adams scarcely had arrived in Newburyport before he complained that “my eyes and my health begin to fail, and I do not feel that ardor for application, which I should have, to be a man of science.”²⁵ Passing his “most agreeable hours” in wide-ranging discussions with his friends that renewed “the recollection of those happy scenes which we have all gone through in college.” Adams could not muster the same enthusiasm for his studies and by early December he experienced “a depression of spirits” that hindered his sleep.²⁶ On a cold day a week later, he wrote that “[t]he question, what I am to do in this world recurs to me very frequently; and never without causing great anxiety, and a depression of spirits. My prospects appear darker to me every day, and I am obliged sometimes to drive the subject from my mind and to assume some more agreeable train of thoughts.”²⁷

Since Adams’s legal studies and clerical duties did not banish Adams’s worries, he placed himself in a more agreeable frame of mind by reading works of history, philosophy and literature by various authors, including Virgil, Gibbon, Shakespeare, Hume and Rousseau.²⁸ Indeed, Adams begrudged his legal studies the time that they distracted from his more catholic intellectual interests. Expressing regret that “I have so little time at my disposal,” Adams exclaimed on Christmas Day that “[a] thousand subjects call my attention, and excite my curiosity: most of them I am obliged to pass from without noticing them at all; and the few to which I can afford my leisure only lead me to regret that I cannot go deeper. The tedious study of a profession, which requires indefatigable industry and incessant application, is alone sufficient employment.”²⁹

Like law students of all times, Adams also sought relief from the drudgery of his studies in an active social life. A busy commercial town of 5000 inhabitants, Newburyport was not without its diversions even if it might have seemed a trifle dull compared to Boston. Although the studious Adams was hardly transformed into a man about town, Adams seems to have enjoyed more diversions as a law student than he had known during his intense years at Harvard. Many evenings found him playing

²⁴ *Id.* Adams added that “I am most resolutely determined not to spend my days in a dull tenor of insipidity. I never shall be enough of a stoic to raise myself beyond the reach of fortune. But I hope I shall have so much resolution as shall enable me to receive prosperity without growing giddy and extravagant, or adversity without falling into despair.” *Id.*

²⁵ APM, *supra* note 11, Reel 15 (entry for Nov. 14, 1787).

²⁶ *Id.* (entry for Dec. 6, 1787). Although Adams wrote that he previously often “felt dull, low spirited in a manner out of tune,” his present depression was “different from what I ever knew before.” *Id.*

²⁷ *Id.* (entry for Dec. 18, 1787). Adams observed that “I do not wish to look into futurity; and were the leaves of fate to be opened before me, I should shrink from the perusal.” *Id.*

²⁸ *Id.*, *passim*.

²⁹ *Id.* (entry for Dec. 25, 1787).

whist or backgammon, or dancing. Adams also seems to have enjoyed his rooming arrangement. He boarded near Parsons's office, at the home of a Mrs. Leathers whom Adams described in a letter to Abigail as "civil and obliging" and a "good old woman, who even an hundred years ago would have stood in no danger of being hanged for witchcraft."³⁰ It pleased Adams that Mrs. Leathers was "uncannily silent," thereby freeing him from the "the impertinence of conversation."³¹ But Adams enjoyed conversation with Mrs. Leathers's only other boarder, a Dr. Kilham.³²

As his studies progressed, however, Adams's depressions appear to have become increasingly frequent and severe. In early January of 1788, he confided to his diary that "I hope to [G]od I shall not go on in this way squandering week after week, till at the end of three years I shall go out of the office as ignorant as I entered it. I cannot, must not, be so negligent: all my hopes of going through the world in any other than the most contemptible manner depend upon my own exertions, and if I continue thus trifling away my time, I shall become an object of charity or at least of pity."³³ Similarly, Adams lamented a week later that "[i]ndolence, indolence, I fear, will be my ruin."³⁴ The following day, a day of snow followed by steady rain, Adams complained that "I go but little into company, and yet I am not industrious. I am recluse, without being studious; and I find myself equally deprived of the pleasures of society, and of sweet communion with the mighty dead. I am no stranger to the midnight lamp; yet I observe not that I make a rapid progress in any laudable pursuit."³⁵ The following week, Adams, feeling "dull and low spirited," wrote that he felt "no extraordinary inclination for study of any kind" and expressed disappointment that he had failed to take advantage of the long winter evenings.³⁶ He observed that he was reading about eighty pages of Coke each week, but that he did "not understand a quarter part of that."³⁷ Adams's supposed lack of progress particularly vexed him because he seemed to be spending a goodly number of hours in front of his books.

Although Adams's gloom may be traced partly to the intensity of purpose that characterized so many members of the Adams family, and his self-derogating lamentations reflect his Puritan origins, the doubts and frustrations that Adams expressed during his first year of law study have a timeless tenor. Despite their archaic style, Adams's writings seem strikingly modern in substance. Adams's genuine doubts about his ability and stamina to master the vast corpus of an arcane discipline were not so very different from the fears that vex many of today's law students.

³⁰ I WRITINGS, *supra* note 7, at 38 (J.Q. Adams to Abigail Adams, Dec. 23, 1787).

³¹ *Id.*

³² APM, *supra* note 11, Reel 15 (entry for Dec. 19, 1788).

³³ *Id.* (entry for Jan. 12, 1788).

³⁴ *Id.* at 54 (entry for Jan. 15, 1788).

³⁵ *Id.* (entry for Jan. 16, 1788).

³⁶ *Id.* (entry for Jan. 26, 1788).

³⁷ *Id.*

Adams's somewhat overwrought account of his travail forms part of a tradition of histrionic descriptions of initiations into the legal profession. One might wryly describe Adams's journal as an eighteenth century version of John Osborn's *Paper Chase* or Scott Turow's *One L*. Writings such as Adams's are a catharsis to overburdened law freshmen and help to instill professional solidarity. Although Adams ultimately may have suffered an extreme reaction to legal studies,³⁸ his early writings about his legal education provide a classic portrait of the harrowed psychology of first-year law students.

Political events during 1787-88 also seem to have contributed to Adams's melancholia. Skeptical of the proposed federal constitution, Adams was displeased by the growing ascendancy of its proponents.³⁹ Although in February he greeted with resignation the news of Massachusetts's ratification of the Constitution, describing himself as "converted but not convinced,"⁴⁰ the triumph of the federalists in his state clearly rankled him. His sense of isolation was compounded since his father and Parsons staunchly supported the Constitution. Indeed, Parsons's support for the Constitution seems to have diminished Adams's respect for his formerly revered teacher and employer.⁴¹

Adams finally completed his reading of Coke in March, noting that the volumes contained "a vast detail of law learning, but heaped up in such an incoherent mass that I have derived very little benefit from it. [I]ndeed I think it a very improper book to put in the hands of a student just entering the acquisition of the profession."⁴² Adams much preferred Blackstone's *Commentaries* and Wood's *Institutes*, which he described as "an inestimable benefit to late students in the profession."⁴³ The contrast between Coke and Blackstone, Adams wrote, was "like descending from a rugged, dangerous and almost inaccessible mountain, into a beautiful plain, where the unbounded prospect on every side presents the appearance of fertility."⁴⁴

Adams's relief from the burden of Coke and the arrival of Spring may have

³⁸ See notes 49-51 *infra* and accompanying text.

³⁹ APM, *supra* note 11, Reel 15 (entry for Feb. 7, 1788). Adams observed that he had "not been pleased" with the system of government proposed by the constitution and that "my acquaintances have long since branded me with the name of an *antifederalist*." *Id.* Adams's attitude may have been attributable in part to his travels in Europe, where his observation of despotism and monarchy intensified his republicanism and distrust of central authority. See R.E. EAST, JOHN QUINCY ADAMS: THE CRITICAL YEARS 95 (1962).

⁴⁰ APM, *supra* note 11, Reel 15 (entry for Feb. 6, 1788). Adams declared that "I think it my duty to submit without murmuring against what is not to be helped. *Id.* Although Adams's letters and journals do not make frequent references to the ratification process, Adams was interested enough in it to make a trip to Exeter late in February to listen to New Hampshire's debates on ratification. *Id.* (entries for Feb. 21 and 22, 1788).

⁴¹ *Id.* (entry for Feb. 11, 1788). Adams stated that Parsons, who had been a delegate to the state convention, "speaks with pleasure of every little trifling intrigue which served to baffle the intentions of the *antifederalists* though many of them to me exhibit a meanness which I think I scarcely should expect a man would boast." Adams concluded that "Parsons makes of the science of politics the science of little insignificant intrigue and chicanery." *Id.* See also EAST, *supra* note 39, at 96.

⁴² APM, *supra* note 11, Reel 15 (entry for Mar. 8, 1788).

⁴³ *Id.*

⁴⁴ *Id.*

provided some respite from his depression. Early in April, he wrote that “according to the different temperatures of my spirits, I am sometimes elated with hope, sometimes contented with indifference, but often tormented with fears and depressed.”⁴⁵ Although an illness in May renewed his depression, his spirits were buoyed again by a five-week trip to Braintree to visit his parents after their long sojourn in England. Although Adams intended to continue his legal studies during his visit to Braintree, he soon resigned himself to taking a vacation.⁴⁶ On his twenty-first birthday, which he spent in Braintree, he resolved to alter his plan of study: instead of confining himself exclusively to the law, he would devote “some part of each day to studies of a lighter [and] more entertaining kind.”⁴⁷ Since, as we have seen, Adams already had found much time to read literature and history, one suspects that Adams’ real intention was to devote himself less slavishly to his legal studies. Adams’ taste for legal studies do not appear to have increased as he grew older; during middle age, he fell asleep while visiting a lecture at the Harvard Law School.⁴⁸

Even if Adams intended to relax his legal studies, his old problems returned to plague him when he returned to Newburyport. During the Summer, he spent much of his time not on his law studies but on an address that he delivered in September to the Phi Beta Kappa chapter in Cambridge. Although the speech was a triumph, it was followed by rapid deterioration of spirits and severe insomnia that culminated in a form of nervous breakdown. An opiate prescribed by a physician in mid-September and a visit to an uncle in Haverhill provided only temporary relief for his tension.⁴⁹ By October 1, he wrote that “[i]n the present situation of my health I cannot possibly attend at all to study.”⁵⁰ Two days later, he retreated to Braintree, where he remained until March of 1789, except for a few weeks during the winter when he made a half-hearted attempt at continuing his legal studies in Newburyport.⁵¹ During his extended vacation in Braintree, Adams appears to have devoted himself largely to the pleasures of reading, riding, skating, partying and hunting for partridges and quails.⁵²

Adams managed, however, to continue his legal education at a reduced pace, studying Barrington’s *Observations on the Statutes*, Foster’s *Crown Law* and Buller’s *Nisi Prius*.⁵³ Although Adams’ abbreviation of his diary entries following his return to Newburyport deprives us of detailed knowledge of his activities during his final year as a law student, he appears without regret to have resigned himself to a less rigorous schedule of work and study. His diary records an active social life

⁴⁵ *Id.* (entry for April 5, 1788).

⁴⁶ *Id.* (entry for June 23, 1788).

⁴⁷ *Id.* (entry for July 11, 1788).

⁴⁸ R.K. NEWMYER, SUPREME COURT JUSTICE JOSEPH STORY 254 (1985).

⁴⁹ See APM, *supra* note 11, Reel 15 (entry for Sept. 13, 1788).

⁵⁰ *Id.* (entry for Oct. 1, 1788).

⁵¹ LIFE IN A NEW ENGLAND TOWN, *supra* note 11, at 168-69 (editor’s note).

⁵² *Id.* at 169 (editor’s note).

⁵³ *Id.* at 168-69.

and increased interest in feminine company.⁵⁴ By June 1789, Adams wrote to his father that his health had “been restored beyond my expectations, and I have been able . . . to study than I had hoped to when I left Braintree.”⁵⁵ Like many law students, however, Adams despaired that his academic training had not sufficiently prepared him for the nuts and bolts of practice and he observed that “[t]he skill to apply general knowledge to particular cases is no less important than the knowledge itself; and a new piece of mechanism will often perform its operations with great irregularity, however well it may be constructed.”⁵⁶

Adams’s last year of legal studies appears to have passed uneventfully. Although he appears to have suffered again from insomnia from September until mid-November of 1789, his health and spirits later improved. His journal entries, now attenuated, record little of work or study but suggest that he enjoyed an active social life.

In deciding where to set up his practice, Adams considered Newburyport, where he observed that “a residence of three years has already made me better known than I should be in any other situation, and where an agreeable circle of acquaintance would render the station peculiarly pleasing.”⁵⁷ But Adams concluded that “it must be a folly to expect encouragement for a youth “in a town that already had three lawyers in addition to Parsons.”⁵⁸ Although Adams considered Braintree, he did not wish to compete with his cousin William Cranch, who intended to establish his practice there since “by opening offices in the same town we could only divide the small pittance which either of us singly might obtain.”⁵⁹ Accordingly, Adams chose, almost by the process of elimination, to settle in Boston. He told his father, perhaps somewhat disingenuously, that “I trust the opportunities and temptations to dissipation, which I shall probably find there, have no influence upon my determination, unless to increase the reluctance with which I make it.”⁶⁰

ADAMS'S EARLY BOSTON PRACTICE

Adams began his practice of law in Boston in August 1790, the month after he was admitted to the Massachusetts bar. In his 1843 address to the Cincinnati bar, Adams explained that his father’s political prominence did not generate clients since John Adams had so long been absent from the United States and continued to remain away from the Boston area. Adams recalled that “I went, therefore, as a volunteer, an adventurer, to Boston . . . I was without support of any kind. I may say I was a

⁵⁴ *Id.* at 169-70 (editor’s note).

⁵⁵ I WRITINGS, *supra* note 7, at 40 (J.Q. Adams to John Adams, June 28, 1789).

⁵⁶ *Id.*

⁵⁷ *Id.* at 45 (J.Q. Adams to John Adams, Mar. 19, 1790).

⁵⁸ *Id.* at 46.

⁵⁹ *Id.*

⁶⁰ *Id.*

stranger in that city, although almost a native of that spot.”⁶¹ Of course, Adams was not nearly so bereft of support. As the son of the vice president, he inevitably enjoyed a considerable prominence and he himself was well acquainted with many luminaries of the bar of the Boston area. During his law student days he often had socialized with prominent judges and on at least one occasion he had dined with the state attorney general.⁶² Moreover, the fledgling lawyer enjoyed more assistance from his family than the honor of its name. Adams opened an office in a house, on Court Street, that belonged to his father and he stocked his bookshelves with volumes from his father’s excellent law library, which Adams admitted at the time “will give me perhaps some opportunities, which few of the young gentlemen of the profession have possessed.”⁶³ Indeed, Adams’s family continued to be his principal source of financial support since Abigail convinced John during the Spring of 1791 to provide their son with a quarterly stipend of twenty-five pounds in return for his help with the family’s Boston estate.⁶⁴ Adams was fortunate to enjoy such support, since he suffered at first from a paucity of clients. Indeed, Adams told the Cincinnati bar that “I can hardly call it a practice, because for the space of one year . . . it would be difficult for me to name any practice which I had to do. For two years, indeed, I can recall nothing in which I was engaged that might be termed practice, though during the second year there were some symptoms that by persevering patience practice might come in time. The third year I continued this patience and perseverance, and, having little to do, occupied my time in the study of those laws and institutions which I have since been called to administer. At the end of the third year I had obtained something which might be called a practice.”⁶⁵

Although Adams was not overwhelmed with legal business during his first years in Boston, his progress was not quite so slow as he recollected. His carefully maintained account books indicate that he had little business during his first sixteen months in practice, but that the volume of his work increased markedly during 1792 and continued to grow at a healthy pace. The following chart of fees received by Adams traces his progress:⁶⁶

	<i>Amount of Fees Collected</i>	<i>Number of Fees</i>
Aug.-Dec. 1790	2 pounds, 8 shillings	4
1791	6 pounds, 10 shillings	8
1792	77 pounds, 11 shillings	62
1793	222 pounds, 4 shillings	94
Jan.-June 1794	170 pounds, 11 shillings	77

⁶¹ QUINCY, *supra* note 4, at 7.

⁶² APM, *supra* note 11, Reel 15 (entry for Mar. 5, 1789).

⁶³ I WRITINGS, *supra* note 7, at 47 (J.Q. Adams to John Adams, Mar. 19, 1790).

⁶⁴ M.B. HECHT, JOHN QUINCY ADAMS 65 (1972).

⁶⁵ QUINCY, *supra* note 4, at 7.

⁶⁶ See APM, *supra* note 11, Reel 215.

Although comparisons are difficult to make, Adams's income in 1793 was roughly the equivalent of approximately \$60,000 in today's money. Although Adams, of course, was not taxed on this income, his income was not sheer profit because he had to pay overhead expenses. Adams's accounts from the second period of his practice a decade later suggests that his net income probably was about two-thirds of his gross income.⁶⁷ This would still have left Adams in his third full year of practice with an income equivalent to a present-day after-tax income of \$40,000. In addition to comparing favorably with the income of a junior practitioner today, Adams's income also was relatively high by the standards of late eighteenth century America.⁶⁸

Like most lawyers of the era, Adams had a diverse practice. Adams dispensed advice to clients, prepared writs, drafted wills, and handled a substantial amount of litigation that frequently required him to go to court. Although most of Adams's business seems to have involved commercial matters, he helped at least two clients with naturalization proceedings and prepared petitions to Congress for at least two others.⁶⁹

Adams tried his first case two months after establishing his practice, addressing a jury for fifteen minutes in the Court of Common Pleas.⁷⁰ Adams confided in a letter to his mother that he had been "too much agitated to be possessed of a proper presence of mind" since he received the case on three hours' notice.⁷¹ Adams also might have been daunted because his opponent was Harrison Gray Otis, who already had begun to develop a formidable reputation even though he was only two years older than Adams.⁷² Charles Adams assured his brother that his first effort probably was not so bad and tried to console him by observing that "[t]he person who is unintimidated upon such occasions has not the common feelings of human nature."⁷³ But the incident appears to have distressed John Adams, who reported to John Quincy that a friend had written to him "that your diffidence was remarked and your tremor observed, when you opened at the Bar."⁷⁴

⁶⁷ See note 107, *infra*, and accompanying text.

⁶⁸ There is a paucity of information concerning professional incomes during this period. Since most records of income are those of successful lawyers, existing documents provide few clues about average incomes or income ranges. It is reasonable to conclude, however, that most lawyers did not make substantial incomes from their practices. See Gewalt, *Massachusetts Legal Education*, *supra* note 10, at 219-21; I CHROUST, *THE RISE OF THE LEGAL PROFESSION*, *supra* note 20, at 87-90. Examples of the income of successful attorneys suggest that Adams's income was not insubstantial. John Marshall's income in 1793 and 1794, after he had practiced law for a decade, was about 400 pounds, after expenses; Marshall's income had been about twice as high a few years earlier. *Id.* at 87-88. During Thomas Jefferson's third year of full time practice, in 1770, he had collected 213 pounds out of 521 pounds owed to him. *Id.* Patrick Henry collected 260 pounds out of annual fees of 425 pounds. *Id.*

⁶⁹ APM, *supra* note 11, Reel 215.

⁷⁰ I WRITINGS, *supra* note 7, at 61 & n.1.

⁷¹ *Id.* at 61.

⁷² HECHT, *supra* note 64, at 64.

⁷³ I WRITINGS, *supra* note 7, at 61 n.1 (Charles Adams to J.Q. Adams, Oct. 21, 1790).

⁷⁴ *Id.* (John Adams to J.Q. Adams, Dec. 17, 1790).

With time to spare throughout his early years at the bar, Adams maintained an active social life and rekindled his literary and scholarly ambitions. During June and July of 1791, he published in the *Columbian Centinel* a series of eleven essays attacking Thomas Paine's defense of the French Revolution in *The Rights of Man*, which in turn had been composed in response to Edmund Burke's pamphlet opposing the Revolution. Written under the pseudonym Publicola, the essays widely were assumed to have been authored by John Adams,⁷⁵ an outspoken opponent of the French Revolution who was widely criticized for his sympathies toward Great Britain. The essays were a skillful, learned, biting and often wry defense of the American political system. Adams wrote that "[t]he Constitution of the United States appears to me to unite all the advantages, both of the French and of the English, while it has avoided the evils of both. By that Constitution, the people have delegated the power of alteration, by vesting it in the Congress, together with the State Legislatures; while at the same time it has provided for alterations by the people themselves in their original character, whenever it shall evidently appear to be the wish of the people to make them."⁷⁶ Although Adams's legal education may have informed his essays and he relied upon Blackstone as authority for one point, the essays as a whole reflected Adams's intense interest in political philosophy rather than any learning in the law.

In 1793, the *Columbian Centinel* published another series of articles by Adams, who under the name Marcellus defended Washington's recent declaration of neutrality in the war between Britain and France. Pointing out that the infant republic's twelve hundred miles of coastline were vulnerable to foreign invasion,⁷⁷ Adams declared that the nation's "happiness consists in a real independence, disconnected from all European interests and European politics" and that "it is our duty to remain, the peaceable and silent, though sorrowful spectators of the sanguinary scene."⁷⁸

Adams reiterated this time theme in another series of articles published in November and December 1793, when he castigated the French minister to the United State, Edmund "Citizen" Genet, who toured the nation in an effort to muster support for France's war against Great Britain. Adams particularly denounced Genet for challenging the authority of President Washington by asking the people to demand that he call Congress into special session. Adams declared that "[t]he interference of foreigners upon any pretence whatever, in the dissensions of fellow-citizens, must be as inevitably fatal to the liberties of the State, as the admission of strangers to arbitrate upon the domestic differences of man and wife is destructive to the happiness of a private family."⁷⁹

⁷⁵ HECHT, *supra* note 64, at 68.

⁷⁶ I WRITINGS, *supra* note 7, at 91-92 (Letter of Publicola, *Columbian Centinel*, July 2, 1791).

⁷⁷ *Id.* at 142 (Letter of Marcellus, *Columbian Centinel*, May 4, 1793).

⁷⁸ *Id.* at 140.

⁷⁹ *Id.* at 159 (Letter of Columbus, *Columbian Centinel*, Dec. 4, 1793).

Adams's other major literary effort during his leisurely years of legal practice defended the theater in Massachusetts against Attorney General James Sullivan, who had enforced the state's prohibition against the theater by arresting an actor during a performance at a newly opened "underground" playhouse in Boston. Like Adams's other essays, this article reflected Adams's interest in political science more than his training in law, but the article was more directly concerned with legal issues than were the other articles. Defending the civil disobedience of the theater owner, Adams wrote that "[t]he constitution of this State is expressly paramount to the laws of the legislature, and every individual in the community has the same right with the legislature to put his own *honest* construction upon every clause contained in the constitution."⁸⁰ Adams argued that "if that construction militates with that of the legislature, he has an indisputable right to violate their laws predicated upon their construction."⁸¹

In addition to his literary and journalistic activities, Adams busied himself by participating in local politics. He served on a committee to effect the incorporation of the northern part of Braintree into Quincy and he sat on another committee that studied the possibility of police reform. Adams preferred, however, not to immerse himself too deeply in politics. He confided to his father that he wished to establish financial independence before embarking upon a public career since he did not wish to be "completely in the power of the people."⁸² Adams also recognized that political or literary activities might unduly retard his development as an attorney, the occupation for which he depended "not only for my reputation, but for my subsistence."⁸³

A journal that Adams kept during the Spring of 1792 as he approached the age of twenty-five -- an age by which many men in the eighteenth century had attained considerable eminence--revealed his frustration over the slow progress of his legal career and his grim resolve to continue plodding. In a particularly doleful entry on May 16, 1792, Adams lamented that his poor use of time was "calculated to keep me forever in that state of useless and disgraceful insignificance which has been my lot for some years past."⁸⁴ Noting that many of his contemporaries already had distinguished themselves in the world, Adams averred that "I still find myself as obscure [and] unknown to the world, as the most indolent or the most stupid of human beings. In the walks of active life, I have done nothing." While Adams described his ambition as "constant and unceasing," he regretted that his exertions were "feeble, indolent, frequently interrupted, and never pursued with an ardor equivalent to its purposes."⁸⁵ Continuing his education, Adams continued to read widely in both law and literature. He continued to prefer the latter. Adams noted that

⁸⁰ *Id.* at 127. (Letter of Menander, *Columbian Centinel*, Dec. 19, 1792).

⁸¹ *Id.*

⁸² *Id.* at 186. (J.Q. Adams to John Adams, Apr. 22, 1794).

⁸³ APM, *supra* note 11, Reel 20 (entry for May 16, 1792).

⁸⁴ *Id.*

⁸⁵ *Id.*

“[t]he professional studies are tedious: they require some certain object, some focus upon which to collect the rays of application.”⁸⁶ In an echo of his years in Parsons’s office, Adams cried, “Support me ye powers of patience, through these sandy deserts of legal study, from whence I am to pick up a scanty subsistence by forcing an unnatural cultivation.”⁸⁷

By the fourth year of his law practice, Adams finally began to reap the rewards of his years of patience. As he recalled in 1843, he found his practice “swelling to such an extent that I felt no longer any concern as to my future destiny as a member of that profession.”⁸⁸ At the age of twenty-seven, Adams finally was able to tell his father that he no longer would need his allowance.⁸⁹ With characteristic Adams circumspection, however, John Quincy wrote to his father that while the legal profession “gives me bread,” he feared that his satisfaction with his success would make him “indolent and listless.”⁹⁰ It is therefore not surprising that Adams in May 1794 accepted with alacrity President Washington’s appointment as minister to the Netherlands. The appointment was attributable in large measure to Washington’s gratitude for Adams’s help in stemming public support for Genet, although the Senate’s unanimous confirmation of the appointment indicates that Adams’s abilities enjoyed bi-partisan recognition. Adams’s lack of clients therefore appears to have been a blessing in disguise, for it gave him the leisure to publish the articles that led to a long and distinguished diplomatic and political career which better suited his tastes and talents than did the practice of law. In comparing his legal and diplomatic careers, Adams observed late in his life that the latter was “not, perhaps, of more usefulness, but of greater consequence in the eyes of mankind[.]”⁹¹ Adams contended, however, that his “education at the bar, if not an indispensable qualification, was at least a useful appendage” to his diplomatic career.⁹²

Adams’s willingness to take the post in the Netherlands further underscored his distaste for the practice of law inasmuch as Adams believed that he could not easily resume his legal career after his tour of duty abroad ended. Adams wrote to his father shortly before he sailed for Europe that he could not return to the practice of law “without losing many of the advantages which rendered its practice tolerable.”⁹³ After acquiring what he described as a “confined and limited” reputation only after “four years of constant application and attention to business,” Adams contended that “[m]y absence will not only stop its growth, but will carry me back to that obscurity in which I began.”⁹⁴ Observing that his new duties would

⁸⁶ *Id.* (entry for May 3, 1792).

⁸⁷ *Id.* (entry for May 4, 1792).

⁸⁸ QUINCY, *supra* note 4, at 7-8.

⁸⁹ HECHT, *supra* note 64, at 76.

⁹⁰ I WRITINGS, *supra* note 7, at 185 (J.Q. Adams to John Adams, April 12, 1794).

⁹¹ QUINCY, *supra* note 4, at 8.

⁹² *Id.*

⁹³ I WRITINGS, *supra* note 7, at 194 (J.Q. Adams to John Adams, July 27, 1794).

⁹⁴ *Id.* at 195.

“have very little affinity with those of the practicing lawyer,” Adams contended that his absence from the law would dull his legal acumen.⁹⁵ After noting drily that he doubted whether he would wish to devote his few leisure hours in the Netherlands to the study of Littleton’s *Tenures* or Coke’s *Commentaries*, Adams predicted that “two or three years’ intermission will have the double effect of disgusting me with them, and of disqualifying me from the practice of the law without a redoubled application to them.”⁹⁶ Adams also recognized that his contemporaries at the bar would continue to advance in their careers during his absence and that “in returning to the bar I shall descend as much below the level of my ambition and pretensions as I have been by my present appointment raised above it.”⁹⁷ With perhaps undue pessimism, Adams told his father that “I have abandoned the profession upon which I have hitherto depended for a future subsistence. Abandoned it at a time when the tedious novitiate of hope and fear was nearly past; when flattering and brightening prospects were every day opening more and more extensively to my own view; when I was at least upon a footing of equal advantage with any one of my standing in the profession, and advancing if not rapidly at least with regular progression towards eminence; when the reward of long and painful expectation began to unfold itself to my sight and give me a rational hope of future possession. At this critical moment . . . I have stopped short in my career, forsaken the path which would have led me to independence and security in private life, and stepped into a totally different direction.”⁹⁸

Despite all of these misgivings, however, Adams concluded that his acceptance of the diplomatic post was “infinitely preferable” to remaining at the bar “to perform duties which may be executed equally well by any other man.”⁹⁹ It is natural that Adams chafed under the yoke of legal practice since his father’s high governmental positions and his own experiences as a boy in Europe had exposed him to a more exciting way of life. As one of Adams’s biographers aptly observed, “[h]e had begun his connection with public affairs so early, had been so intimately associated with important events concerning his country’s welfare while still so young, that he felt he was frittering away his life. What to a young man reared in more normal circumstances would have appeared a perfectly natural period of youthful development seemed to him a time of mature obscurity.”¹⁰⁰

ADAMS'S SECOND CAREER AT THE BAR

Although Adams recalled late in life that his assignment to The Hague indeed deprived him of “the exercise of any further industry or labor at the bar,”¹⁰¹ the

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 194.

⁹⁹ *Id.* at 196.

¹⁰⁰ B.C. CLARK, JOHN QUINCY ADAMS 39 (1932).

¹⁰¹ QUINCY, *supra* note 4, at 8.

commencement of his diplomatic career did not in fact mark the end of his legal career, even though he never again considered the law to be his principal occupation. After spending nearly seven years abroad as diplomat, serving as minister to Prussia after the completion of his duties in the Netherlands, Adams briefly resumed the practice of law in Boston when he returned to the United States in 1801. Contrary to his fears when he had left Boston for The Hague, Adams was able to establish a successful practice at once, partly because of his public prominence but also because U.S. District Court Judge John Davis appointed Adams as Commissioner in Bankruptcy as a political favor for his appointment to the bench by John Adams.¹⁰² John Quincy Adams also was prominently mentioned in 1801 for a seat on the Supreme Judicial Court of Massachusetts but he expressed disinterest in the post,¹⁰³ a lack of interest that probably is attributable to his general distaste for the law. Although Adams continued to practice law for eight years, until he was named ambassador to Russia in 1809, Adams spent most of those years immersed in politics and scholarship and had little enthusiasm for the practice of law. As Professor Bemis has observed, “[t]he retired diplomat bent his body over the grindstone of the law, but the political urge kept stirring in his breast.”¹⁰⁴ After serving briefly in the Massachusetts House of Representatives, Adams served in the United States Senate from 1803 to 1808 and from 1806 to 1809 he was a professor of rhetoric at Harvard.

Setting up shop beneath the *Columbian Centinel's* printing office on State Street,¹⁰⁵ Adams conducted a practice that seems to have picked up where his earlier practice had left off. Adams's practice was primarily commercial. He drafted indentures, deeds and mortgages and handled a substantial volume of litigation.¹⁰⁶ His efforts generated moderate pecuniary rewards that appear to have given him an income that was fairly average for Boston attorneys during this time. In 1802, the only year during this period when the law was Adams's principal occupation, Adams's gross receipts from his practice amounted to \$1646.80. His expenses amounted to \$684.61, leaving a net profit of \$962.19.¹⁰⁷ Since the typical income of a lawyer in early nineteenth century Massachusetts has been estimated at “well under \$1000 per year,”¹⁰⁸ Adams seems to have immediately established a solid practice. Despite his political eminence, however, Adams did not establish an especially lucrative practice.¹⁰⁹

¹⁰² CLARK, *supra* note 100, at 68.

¹⁰³ See IV WRITINGS, *supra* note 7, at 95 (J.Q. Adams to James Madison, June 3, 1811).

¹⁰⁴ BEMIS, FOUNDATIONS OF AMERICAN FOREIGN POLICY, *supra* note 2, at 112.

¹⁰⁵ APM, *supra* note 11, Reel 135 (J.Q. Adams to William Gray, Mar. 19, 1802).

¹⁰⁶ *Id.* Reel 215.

¹⁰⁷ *Id.* Some of Adams's expenses during the year 1802 involved the re-establishment of his business. He paid, for example, one dollar for the installation of his sign and also purchased some office furniture and a number of books. Adams also paid one hundred dollars for his annual rent. *Id.*

¹⁰⁸ Gewalt, *Massachusetts Legal Education*, *supra* note 10, at 220. Gewalt's conclusion, an educated guess based upon the small sampling of extant sources, seems reasonable. Gewalt does not explain whether he refers to gross income or net profit.

¹⁰⁹ Joseph Story, for example, earned slightly less than \$7000 from his practice in Massachusetts in 1811. II CHROUST, THE RISE OF THE LEGAL PROFESSION, *supra* note 20, at 89 n.305. Alexander James Dallas of Philadelphia was earning about \$10,000 by 1801. *Id.* at 88-89.

Even though Adams's political and academic duties occupied most of his time after 1802, Adams had the distinction during this time of arguing several cases before the United States Supreme Court. The cases all involved commercial matters. One of the cases, *Fletcher v. Peck*,¹¹⁰ was one of the most important cases in American history because the Court's final decision unequivocally established the principle that the Supreme Court has the right to invalidate an act of a state legislature that conflicts with the U.S. Constitution and presented a ringing defense of vested property rights. *Fletcher* was an action by the purchaser of land in Georgia to recover his money on the ground that the seller's title was invalid because the Georgia legislature had rescinded the statute pursuant to which the seller had obtained the land.¹¹¹ The Georgia legislature had rescinded the statute in the wake of a scandal over the bribes that land speculators had paid to legislators to obtain title to 35 million acres of lands in western Georgia. Adams represented the seller of the land and argued before the Court during the Winter of 1809 that the state of Georgia had valid title to the land and that the act of rescission was invalid. In a characteristic depreciation of his legal abilities, Adams confided to his journal that "I was under the usual embarrassment which I have always experienced in public speaking, and notwithstanding all the pains I have taken, not sufficiently clear in my arrangement and method. In point of effect I was apparently not forceful, and in my exposition, dull and tedious almost beyond endurance."¹¹² Although the Court ruled against the seller because of a technical defect in its pleading,¹¹³ Chief Justice Marshall indicated in oral remarks from the bench that the Court nevertheless favored the substantive arguments advanced by Adams and the case remained on the docket after the parties amended their pleadings.¹¹⁴ When the case was re-argued in 1810, however, Adams did not participate inasmuch as he was in St. Petersburg serving as ambassador to Russia. His place was taken by Joseph Story, who the following year began his distinguished thirty-four year tenure on the Court. In a landmark opinion following Story's argument, Marshall declared that the Court could not entertain the purchaser's claim that the original granting law was invalid because it had been procured by fraud and corruption. The act of rescission was unconstitutional because it violated vested rights, the underlying principles of society and government, and the clause of the Constitution that prohibits any state from impairing any obligation arising under a contract.¹¹⁵

Although Adams is generally regarded as an example of public and private probity,¹¹⁶ Adams may have engaged in questionable ethics in the *Fletcher* case

¹¹⁰ 10 U.S. (6 Cranch) 87 (1810).

¹¹¹ For a general discussion of the case, see C.P. MAGRATH, YAZOO: LAW AND POLITICS IN THE NEW REPUBLIC, THE CASE OF FLETCHER V. PECK (1966).

¹¹² APM, *supra* note 11, Reel 30 (entry for Mar. 2, 1809).

¹¹³ *Fletcher*, 10 U.S. (6 Cranch) at 125. Marshall ruled that Peck's answer was insufficient as a matter of law because the defense that the governor had authority to convey the land did not necessarily deny the claim that the legislature lacked the power to sell the land.

¹¹⁴ APM, *supra* note 11, Reel 30 (entry for Mar. 11, 1809).

¹¹⁵ *Fletcher*, 10 U.S. (6 Cranch) 87.

¹¹⁶ An example of Adams's concern about avoiding possible conflicts of interest in his law practice arose in

inasmuch as he probably recognized that there was no actual controversy between the parties to the case. Since both sides appear to have been striving for the same result -- an adjudication that the plaintiff had proper title to the land -- the action may have been the sort of "feigned case" that the Supreme Court is loath to adjudicate.¹¹⁷ Adams observed in his diary that Justice Livingston remarked to him at President Madison's inaugural ball shortly after Adams's argument of the case that the Court had been reluctant to decide the case at all "as it appeared manifestly made up for the purpose of getting the Court's judgment on all the points."¹¹⁸

During the same term that he argued *Fletcher v. Peck*, Adams argued another case, *Hope Insurance Company v. Boardman*,¹¹⁹ that involved important questions about the jurisdiction of federal courts. In *Boardman*, the defendant, a Rhode Island corporation, had argued on appeal that federal courts had no jurisdiction over the claim of the plaintiffs, who were two merchants residing in Massachusetts, because the complaint failed to aver the citizenship of the individuals who composed the defendant corporation. According to the defendants, the failure to aver the citizenship of those individuals contravened decisions of the Supreme Court in *Bingham v. Cabot II*, which had required an affirmative pleading of citizenship in cases in which federal jurisdiction was based upon diversity of citizenship,¹²⁰ and *Strawbridge v. Curtiss*, which had established the rule that complete diversity must exist between all plaintiffs and all defendants.¹²¹ In urging the Court to reject the defendant's argument that *Bingham v. Cabot II* required the plaintiff to allege the citizenship of the individual members of the corporation, Adams asserted that the defendant's contention was at odds with the very concept of corporate status. Adams explained that

1804, when Adams informed Rufus Greene Amory, who had asked Adams to obtain a document to be used as evidence in two insurance cases, that he had acted as counsel for underwriters the previous summer in a case that was ending in the Supreme Judicial Court of Massachusetts. Although Adams stated that he did not know whether there was any distinction between that case and the cases for which Amory wished to receive the evidence, Adams explained that "I mention it, first as a reason which would induce me to decline charging any thing, for any service on the side opposed to that for which I was engaged, even if I thought I could fairly make a charge in such a case on any consideration; and secondly, that in any communications to me on the subject you may be aware of the relation in which I stood to the question upon those policies." APM, *supra* note 11, Reel 135 (J.Q. Adams to Rufus Greene Amory, Mar. 6, 1804).

¹¹⁷ See MAGRATH, *supra* note 111, at 65, 67-68. MaGrath published for the first time an "Agreement of Counsel" signed by Martin for Fletcher and John Quincy Adams for Peck that seems to suggest that the parties colluded to obtain an advisory opinion from the Court. The parties waived all exceptions to the pleading and submitted the case to the Court upon the covenants contained in Fletcher's declaration and the facts stated in the special verdict of the parties.

¹¹⁸ APM, *supra* note 11, Reel 30 (entry for Mar. 7, 1809). Adams recorded that Chief Justice Marshall had made a similar remark to Cranch. Likewise, in his concurring decision in the case the following year, Justice Johnson stated that "I have been very unwilling to proceed to the decision of this cause at all. It appears to me to be strong evidence, upon the face of it, of being a mere feigned case. It is our duty to decide on the rights but not on the speculations of parties. My confidence, however, in the respectable gentlemen who have been engaged for the parties, has induced me to abandon my scruples, in the belief that they would never consent to impose a mere feigned case upon this court." *Fletcher*, 10 U.S. (6 Cranch) at 147-48.

¹¹⁹ 9 U.S. (5 Cranch) 57 (1809).

¹²⁰ *Bingham v. Cabot*, 3 U.S. (3 Dall.) 382 (1798). The Court had rendered an earlier decision in the same case, 3 U.S. (3 Dall.) 19 (1795).

¹²¹ *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806).

“[i]t is the body politic, the moral person, that sues” rather than the individuals who compose the corporation.¹²² “Its powers, its duties and capacities are different from those of the individuals of whom it is composed,”¹²³ Adams stated. “It can neither derive benefit from the privileges, nor suffer injury by the incapacities, of any of those individuals.”¹²⁴ With some exaggeration, Adams declared that the defendant’s objection would exclude all corporations from the federal courts.¹²⁵ Adams reasoned that the individual members of corporations constantly changed and that the rule urged by the defendants would permit corporate defendants to evade the jurisdiction of the federal courts by taking in a new member who was a citizen of the plaintiff’s state.¹²⁶ Adams argued that the principle of diversity jurisdiction “applies with the greatest force to the case of a powerful moneyed corporation erected within, and under the laws of a particular state.”¹²⁷ Adams explained that “[i]f there was a probability that an individual citizen of a state could influence the state courts in his favour, how much stronger is the probability that they could be influenced in favour of a powerful moneyed institution which might be composed of the most influential characters in the state.”¹²⁸ “What chance for justice,” Adams asked, “could a plaintiff have against such a powerful association in the courts of a small state whose judges perhaps were annually elected, or held their offices at the will of the legislature?”¹²⁹

Adams’s argument in favor of broad federal jurisdiction was consistent with his nationalist principles and the belief in a strong federal judiciary that was so important to Adams and his father. In urging the court to retain jurisdiction, Adams argued that “it is as much the duty of this court to exercise jurisdiction in cases where it is given by the constitution and laws of the United States, as to refuse to assume it where it is not given.”¹³⁰ Adams suggested that the Court in *Bingham v. Cabot II* may have been “over scrupulous” because the jurisdiction of the federal courts “was an object of jealousy” at the time that *Bingham* was decided and “there was, probably a desire on the part of the court to remove all ground of suspicion, by deciding doubtful cases against the jurisdiction.”¹³¹ Despite what Professor Herbert A. Johnson has described as Adams’s “able argument,”¹³² the Court in *Boardman* ruled in favor of the defendant. In its one-paragraph decision, the Court explained

¹²² *Hope Ins. Co. v. Boardman*, 9 U.S. (5 Cranch) at 59.

¹²³ *Id.*

¹²⁴ Adams explained, for example, that the infancy of any or even all of the members of a corporation would not invalidate its acts and that the alienage of its members do not prevent it from holding lands. *Id.*

¹²⁵ *Id.* at 60.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 59.

¹³¹ *Id.* at 58. Adams observed that the effect of *Bingham v. Cabot II* had been “to exclude many cases upon nice questions of pleading, which would otherwise have been clearly within the jurisdiction of the courts of the United States.” *Id.*

¹³² G.L. HASKINS & H.A. JOHNSON, *FOUNDATIONS OF POWER: JOHN MARSHALL, 1801-15*, at 616 (Oliver Wendell Holmes Devise History of the Supreme Court of the United States No. 2, 1981).

that it was relying upon its recently announced decision in *Bank of the United States v. Deveaux*,¹³³ in which the Court had held that the citizenship of the individual shareholders of the Bank of the United States should be considered in determining whether complete diversity existed between the parties.

Marine insurance cases such as *Boardman* formed an important part of Adams's practice and made up a substantial part of the docket of the Supreme Court during its early years.¹³⁴ Five years prior to his argument in *Boardman*, Adams obtained a favorable ruling in a leading insurance case, *Head and Amory v. The Providence Insurance Co.*,¹³⁵ which he argued before the Supreme Court in February 1804.¹³⁶ In *Head and Amory*, the owner of merchandise that was aboard a Spanish ship that had been captured by the British sued the insurer of the merchandise to recover for the loss of the merchandise. The insurance company contended that it had no liability under the policy because the insurance policy had been discharged by an agreement into which the parties had entered before the insured learned of the loss. After the trial court instructed the jury that the insurance company had proved the existence of an agreement to cancel the policy, the jury had returned a verdict in favor of the company. As counsel for the owner of the merchandise, Adams argued that the evidence presented by the insurance company to demonstrate the existence of the subsequent agreement was not valid because the agreement between the parties was not in writing, the company had not executed the agreement in accordance with the requirements of its charter and constitution, and the testimony of the company's witness drew conclusions of law rather than conclusions of fact.¹³⁷ Further points were presented by a co-counsel for the plaintiffs. In an opinion in support of the Supreme Court's decision to reverse the lower court's ruling and remand the case for a new trial, Chief Justice John Marshall accepted Adams's contention that the agreement was not valid because the insurance company had not observed the proper corporate formalities since its charter required that its president sign any binding agreement and its constitution further provided that its secretary must counter-sign any such agreement.¹³⁸ The favorable decision came as a surprise to Adams, who had predicted that the Court would "turn against us."¹³⁹

In another marine insurance case that he argued before the Court early in 1804,

¹³³ 9 U.S. (5 Cranch) 61 (1809).

¹³⁴ See HASKINS & JOHNSON, *supra* note 132, at 454-92. Professor Johnson was observed that the development of the law of marine insurance may have served as the nexus between modern rules of casualty insurance and the law of business contracts. It also may have provided a substantial source of subsidiary case law in the fields of trade regulation and prize jurisdiction. *Id.* at 454.

¹³⁵ 6 U.S. (2 Cranch) 127 (1804).

¹³⁶ Adams received payment of two hundred dollars for his work on the *Boardman* case. APM, *supra* note 11, Reel 215 (entry for Feb. 7, 1804).

¹³⁷ *Head & Amory*, 6 U.S. (2 Cranch) at 138-55.

¹³⁸ *Id.* at 166-69.

¹³⁹ I MEMOIRS OF JOHN QUINCY ADAMS 295 (C.F. Adams, ed. 1874). Although the Court remanded the case, its opinion that none of the evidence to which the shipper objected was admissible led Adams to presume that the corporation would not request another trial. APM, *supra* note 11, Reel 135 (J.Q. Adams to Rufus G. Amory, February 25, 1804).

Adams was less successful. In that case, *Church v. Hubbard*,¹⁴⁰ the Court reversed a judgment of the Circuit Court which had held that Adams's client, a cargo insurer, was not liable under an insurance policy which relieved the insurer from liability for losses caused by seizure by the Portuguese for illicit trade. The Supreme Court agreed with the insurer on the merits of the case, holding that the Circuit Court properly found that the terms of the insurance policy would exclude the underwriter for liability if the vessel had been seized for illicit trade. The Court ruled, however, that the insurer had failed to properly authenticate two Portuguese edicts concerning illicit trade and the Portuguese judgment of sequestration of the vessel.¹⁴¹ Adams's evident impatience with these technicalities was reflected in his remark to the Court during oral argument that the plaintiff sought to defeat the defendant's ostensibly "strong and unanswerable" defense under the language of the policy by demonstrating that the proof that supported the defense "was not clothed with that official solemnity which could alone entitle it to credit, and that it wanted that most powerful of all tests of truth -- a bit of sealing wax."¹⁴²

It is noteworthy that Adams argued the *Head and Amory* and *Church* cases while he was serving as a United States senator. Although Adams's age obviously perceived no impropriety in this, Adams does not appear to have conducted any significant legal practice during his six years in the Senate. Adams's primary legal work seems to have been to act as a Washington agent for Massachusetts businessmen. Even in the *Church* case, Adams originally had intended to employ Luther Martin to argue the defendant's case. In a letter to his client, Adams praised Martin's "general professional eminence, as well as his particular familiarity with causes of a commercial nature."¹⁴³ Since Martin was one of the outstanding advocates in the early Republic and regularly appeared before the Supreme Court, Adams's preference for Martin to argue the case does not necessarily imply any derogation by Adams of his own legal talents. Indeed, Adams's decision, without consulting his client,¹⁴⁴ to argue this important case himself with the assistance of John Thomson Mason as co-counsel suggests that Adams had a higher opinion of his own legal

¹⁴⁰ 6 U.S. (2 Cranch) 187 (1804).

¹⁴¹ In his opinion for the Court, Chief Justice Marshall held that an unsworn certification by the American consul at Lisbon did not provide proper authentication of the edicts. *Id.* at 236-38. Marshall likewise ruled that a certificate of the judgment under the seal of the secretary of state of foreign affairs of Portugal, together with the American counsel's certification of an English translation, did not constitute proper authentication of the judgment. *Id.* at 238-39. Marshall explained that foreign judgments could be authenticated only by 1) an exemplification under the great seal; 2) a copy proved to be a true copy; or 3) a certificate which itself is properly authenticated. *Id.* at 238.

¹⁴² *Id.* at 202. In a letter to his client following the Court's opinion, Adams explained that the Court's opinion demonstrated that the plaintiff was bound eventually to lose the case on its merits if he chose to carry on the contest. Adams stated that "I would recommend to the underwriters to be peculiarly cautious at their next effort to get the papers in an unquestionable form." APM, *supra* note 11, Reel 135 (J.Q. Adams to Peter Chardon Brooks, Mar. 6, 1804). In another letter three weeks later, Adams gave additional advice to Brooks about the procedure for procuring proper authentication. *Id.*

¹⁴³ APM, *supra* note 11, Reel 135 (J.Q. Adams to Peter Chardon Brooks, Jan. 21, 1804). *See also id.* (J.Q. Adams to Peter Chardon Brooks, Jan. 8, 1804).

¹⁴⁴ *See* APM, *supra* note 11, Reel 135 (J.Q. Adams to Peter Chardon Brooks, Mar. 6, 1804).

talents than he generally professed.

REJECTION OF SUPREME COURT APPOINTMENT

Adams resumed his diplomatic career in 1809 when President Madison dispatched him to St. Petersburg as America's ambassador to Russia. While serving as ambassador to Russia, Adams in February 1811 was nominated to serve on the United States Supreme Court as the successor to William Cushing, who had died the previous September. Like most Supreme Court nominations, the selection of Adams was the product of a complex process. President Madison, in close consultation with Thomas Jefferson, had hoped that the death of Cushing, an arch-Federalist who was one of the original members of the Court, would afford an opportunity to place on the Court a justice who would have the intelligence and courage to challenge Marshall and propound sound republican doctrine.¹⁴⁵ The first choice of Madison and Jefferson had been Levi Lincoln, a distinguished Massachusetts lawyer whose Republican credentials seemed impeccable.¹⁴⁶ Although the Senate readily confirmed Madison's nomination of Lincoln, Lincoln refused the post. Madison then turned to Alexander Wolcott, a collector of customs in Connecticut whose most outstanding qualification for the post was his ardent Republicanism. After the Senate rejected Wolcott by a wide margin, Madison nominated Adams, who was confirmed by the Senate in a voice vote. Since Adams's Republican credentials were far from unimpeachable,¹⁴⁷ Madison's selection of Adams seems to suggest that he was seeking a candidate whose nomination would not create a political uproar or end in another embarrassing defeat in the Senate.¹⁴⁸ Madison probably also had other motives. He might have hoped that Adams's tenure on the Court would quicken his growing Republicanism and thereby improve Republican prospects among Adams's supporters in Massachusetts.¹⁴⁹ Even if Madison feared that Adams might not be wholly converted to the Republican cause, Madison might have hoped that the tenacious Adams would at least have the strength of character not to fall under the spell of Marshall, as had other Republican appointees to the Court. Finally, Madison might have intended to remove Adams as a possible challenger for the presidency in 1812.¹⁵⁰

The news of Adams's appointment to the Court took three months to reach Adams in St. Petersburg. In a letter to Madison, Adams declined the appointment on the ground that he would not be able to leave Russia for another year to take up

¹⁴⁵ See Dowd, *Justice Joseph Story and the Politics of Appointment*, 9 AM. J. L. HIST. 265, 266-68 (1965).

¹⁴⁶ *Id.* at 270.

¹⁴⁷ Adams had gradually shed the staunch Federalism of his early political career. As Professor Dowd pointed out in discussing his nomination to the Court, Adams's record during the years 1808 to 1811 was checkered. He had supported Jefferson's embargo and had attended the Republican convention that had nominated Madison for the presidency. Dowd, *supra* note 145 at 276.

¹⁴⁸ See Dowd, *supra* note 145, at 277, 284.

¹⁴⁹ *Id.* at 276.

¹⁵⁰ *Id.* at 277.

his judicial duties inasmuch as his wife was pregnant and the long trip home would be dangerous to a newborn child.¹⁵¹ Adams explained in his letter that he could not expect the President to “keep an office of such importance vacant a full year longer to await my return, and this consideration is decisive to induce me to decline the appointment.”¹⁵² Adams went on, however, to explain to Madison that he did not believe that judicial service fitted his interests or abilities. Although Adams acknowledged that he had received an adequate legal education and that he had practiced law during “several short periods in the course of my life,” he told Madison that “the great proportion of my time has been employed in occupations so different from those of judicial tribunals, that I have long entertained a deep and serious distrust of my qualifications for a seat on the bench.”¹⁵³ Adams strongly urged Madison to appoint in his place John Davis, the federal district court judge in Massachusetts who had appointed Adams as Commissioner in Bankruptcy.¹⁵⁴ Madison does not appear to have given any serious consideration to Davis, and he nominated instead Joseph Story, who was most pleased to take his place on the Court after the Senate speedily confirmed his nomination.

In a letter to his father, Adams reiterated his refusal to permit the President to leave the seat vacant for a year “merely to suit my private convenience,”¹⁵⁵ his reluctance to take a seat for which he believed that Davis was better qualified,¹⁵⁶ and “my own sense of my own unfitness for a seat in judicial tribunals.”¹⁵⁷ But after John Adams wrote to his son to urge him to reconsider his decision because the judicial post would secure his return home and shelter him from the vortex of politics,

¹⁵¹ IV WRITINGS, *supra* note 7, at 94 (J.Q. Adams to James Madison, June 3, 1811). It is ironic that the child died before Adams returned to the United States.

¹⁵² *Id.*

¹⁵³ *Id.* at 95. Similarly, Adams had explained two months earlier in his letter to Thomas Boylston Adams that “I am conscious of too little law even for practice at the bar, still less should I feel myself qualified for the bench of the Supreme Court of the United States.” *Id.* at 47-48 (Apr. 10, 1811).

¹⁵⁴ *Id.* at 95-96 (J.Q. Adams to James Madison, June 3, 1811). Aside from being an old friend of the Adams family, a strong Federalist and an appointee of John Adams, Davis had won John Quincy Adams's approbation by having the courage to uphold the constitutionality of the Embargo Act of 1807 even though many Federalists and the New England mercantile interests vehemently opposed the Act. In an opinion issued on October 8, 1808, Davis had enunciated a broad vision of Congress's discretion under the commerce power. *See United States v. The William*, 28 F. Cas. 614 (D. Mass. 1808) (No. 16,700). In a letter two months after the decision, Adams had told William Branch Giles that “[y]ou have not heard what means were used and by whom to bias that decision, nor how much disappointment has followed from that honest firmness and incorruptible integrity of our district judge.” III WRITINGS, *supra* note 7, at 264 (Dec. 10, 1808). Adams declared that efforts to sway Davis's judgment would have succeeded “had not his good sense and his spirit been superior to every consideration of party management.” *Id.* Similarly, in his letter to Madison, Adams declared that Davis, “on one signal and not untraying occasion, manifested at once the steadiness of his mind, his inflexible adherence to the law, his independence of party prejudices and control, and his determination to support at the post allotted to him the administration of government in all constitutional measures.” IV *id.* at 96 (J.Q. Adams to James Madison, June 3, 1811). In a letter to his brother Thomas Boylston Adams after learning about Cushing's death but before hearing of his appointment, Adams declared that his occupation of a Supreme court seat to the exclusion of Davis would be “an atrocious usurpation.” *Id.* at 48 (Apr. 10, 1811).

¹⁵⁵ *Id.* at 101 (J.Q. Adams to John Adams, June 7, 1811).

¹⁵⁶ *Id.* at 99.

¹⁵⁷ *Id.*

Adams presented blunter reasons for his refusal of the post. Far from removing him from politics, Adams contended that even if “my own passions would allow me to stand aloof from all politics, as much as every *judge* ought to, the passions of others would involve me in them. If my heart is sufficiently impartial towards all of my countrymen to make me a proper umpire in their controversies, their hearts are not impartial enough to make them fit to be judged by me.”¹⁵⁸ Adams also reluctantly revealed that he was “deeply dissatisfied with what is called the administration of justice, both in our state and federal courts.”¹⁵⁹ Adams explained that he believed that courts in the majority of cases sacrificed justice to “mere *forms* or to general *rules*” and that he entertained “some very heretical opinions upon the merits of that *common law*, so idolized by all of the English common lawyers and by all the parrots who repeat their words in America.”¹⁶⁰ Since he had adopted these views only after careful consideration, he could not easily eradicate their deep roots from his mind. Moreover, the hostile public response to some of his public expressions of these views had warned him “to be extremely cautious in future how I mingled such edged tools as those in the political controversies of the times.”¹⁶¹ Adams concluded that “I have not weight and influence enough in my country to bring it over to my opinions, and I have too much independence of spirit to renounce them myself. In any other than a judicial station I have no call to discuss them. There a sense of my duty would often compel me to bring them out, and if I did, you may be assured that neither my life nor the good people of America would be tranquilized by it.”¹⁶²

Adams’s antipathy toward the common law was shared by many Americans of his generation. Although the colonists had invoked the common law as a defense against the tyranny of Parliament and the Crown,¹⁶³ the common law fell into disfavor during the reaction against British institutions that followed the Revolution. This hostility was most pronounced in frontier areas and among Anti-Federalists and their political descendants, the Jeffersonians and Jacksonians. Attempts to reject the common law during this period ranged from rejection of English precedent to advocacy of the adoption of civil codes.¹⁶⁴ It is somewhat surprising that Adams, a late and tepid convert to Republicanism, would have joined the more ardent Republicans in derogating the common law. Unlike many of his fellow Republicans, Adams was an inveterate anglophile and he remained immune to the francophilia that characterized so many Republicans who professed to admire the French civil code. Nor did

¹⁵⁸ *Id.* at 145 (J.Q. Adams to John Adams, July 21, 1811). Similarly, in his letter to Thomas Boylston Adams prior to learning of his appointment, Adams had explained that “I am . . . and always shall be, too much of a political partisan for a judge; and although I know as well as any man in America how and when to lay the partisan aside, I do not wish to be called so often and so completely to do it, as my own sense of duty would call me, were I seated upon the bench.” *Id.* at 48 (Apr. 10, 1811).

¹⁵⁹ *Id.* at 145 (J.Q. Adams to John Adams, July 21, 1811).

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 146.

¹⁶² *Id.*

¹⁶³ See e.g., L.M. FRIEDMAN, A HISTORY OF AMERICAN LAW 95 (1973).

¹⁶⁴ See II CHROUST, THE RISE OF THE LEGAL PROFESSION, *supra* note 20, at 51-73; Chroust, *Dilemma*, *supra* note 20, at 65-69.

Adams share the intense egalitarianism that underlay much of the hostility toward the common law among Republicans, who bitterly complained that the arcane complexities of the common law enabled lawyers to take advantage of the common man. As the son of a distinguished common-law lawyer who had appealed to the common law in defense of the rights of the American colonists, Adams might particularly have been expected to respect the common law.

Adams's doubts about the common law may be explained in part by his cosmopolitanism; certainly his extensive travels in Europe and his wide reading had exposed him to the merits of civil law. Adams's attitude may also be traced to the frustrations that he experienced as a student and practitioner of the common law and perhaps also to the doubts that he not altogether disingenuously professed to have about his abilities as a lawyer. Whatever the reasons for Adams's skepticism about the common law, Adams did not belong to the classes of Americans who were most antagonistic toward the common law during the decades following the Revolution. Adams's doubts about the common law suggest that antipathy toward the common law was more widespread during the early nineteenth century than generally has been supposed. The common law system in America may have been preserved more from the inertia of men such as Adams who refrained from joining the ranks of active opponents of the common law than because the common law enjoyed broad and positive support.

ADAMS THE LAWYER-PRESIDENT

Adams's refusal of a seat on the Supreme Court insured that he would remain in the "vortex of politics." There is no doubt that this suited his tastes and ambitions. Ralph Waldo Emerson may not have greatly exaggerated his point when he observed that Adams -- for all of his erudition -- was a "bruiser" who loved political combat.¹⁶⁵ Following the termination of his service in Russia in 1814, Adams served as commissioner to the peace conference in Ghent in 1814, as minister to the Court of St. James from 1815 to 1817, as James Monroe's secretary of state from 1817 to 1825, and as president from 1825 to 1829.

In attempting to assess the impact of Adams's legal career on his presidency, it is useful to consider William Howard Taft's observation that

It is of great advantage to a President to be a lawyer -- at least that was my experience. Of course he can not look up questions of law himself while he is in the office, save in a very exceptional case, and he has to depend on his Attorney General and his other advisors, but being a lawyer he is able to weigh the advice more certainly than one who hasn't had that professional experience. In the matter of appointments, the

¹⁶⁵ S.F. BEMIS, *JOHN QUINCY ADAMS AND THE UNION* 195 (1956) (quoting VI *JOURNALS OF RALPH WALDO EMERSON* 349-50 (E.W. Emerson & W.E. Forbes eds. 1911)).

most critical duty the President has to perform is the selection of Federal Judges, and in this respect he has a great advantage in resisting the political pressure often brought to bear upon him to appoint very indifferent or objectionable men to the Bench.¹⁶⁶

Although Taft's remarks seem cogent, the degree to which legal training will affect a President's performance in the White Houses obviously is a function of the incumbent's own peculiar experiences the law and the unique circumstances of his tenure. Moreover, the multiplicity of independent variables that affect any President's behavior in office obscures -- perhaps beyond recognition -- any traits that might be attributed to legal training. Perhaps this accounts for the paucity of scholarly commentary on the legal careers of the twenty-six presidents who have been formally trained in the law.

It is particularly difficult and perhaps futile to attempt to assess the impact of Adams's legal career upon his presidency. In all probability, however, the impact was small. Unlike presidents such as Abraham Lincoln, whose legal career yielded technical skills, professional experience and social connections that provided the basis for a political career, Adams's political career was not dependent upon his activities as a lawyer. Adams's legal career seems to have provided him with few technical skills, professional experiences, social contacts, or traits of character that helped him to win the presidency or significantly influenced his conduct in office. Adams's familiarity with legal terminology and concepts obviously must have been useful to him, but his experiences as a diplomat, legislator and Secretary of State clearly provided far richer and more relevant technical preparation for his presidential duties. Similarly, the many social connections that Adams acquired through his family background and his pre-presidential political career were far more important to him than any that he acquired through his law practice. Likewise, Adams's remarkable powers of self-discipline seem to have been forged more by the rigors of his early education than by his legal studies or practice. Although the legal studies that Adams often found distasteful may have honed his extraordinary powers of self-discipline, the rigors of Adams's education prior to his apprenticeship with Parsons had already had shaped his character. Indeed, Adams's experiences at the law can perhaps best be defined in negative rather than positive terms. His frustrating life as a law student and lawyer seem to have made him suspicious and disdainful of the law's proclivity for technicalities and delay. Nevertheless, Adams himself apparently believed that a legal education, supplemented by a broad liberal education, provided the best training for a public career, for he arranged for all three of his sons to study law as part of their grooming to continue the Adams political dynasty.¹⁶⁷

¹⁶⁶ William Howard Taft to Alfred C. Meyer, January 28, 1924, Papers of William Howard Taft, Manuscript Division, Library of Congress, Series 3, Reel 260.

¹⁶⁷ BEMIS, JOHN QUINCY ADAMS AND THE UNION, *supra* note 165, at 95. Professor Bemis also pointed out that Adams believed that legal training would "provide some private competence for protection against the suffrage of a fickle public." *Id.*

And even though Adams's education was primarily forged through the non-legal reading in which he immersed himself throughout his life, his legal training must have provided him with important technical skills that made him a more effective public official. In discussing Adams's crusade against slavery during his years in the House of Representatives, for example, Professor Bemis remarked that "[n]obody could be more resourceful than Adams in finding technicalities within the *lex parliamentaria* to make an unwilling majority -- and the country behind him -- listen to him."¹⁶⁸ Adams's legal training also must have served him particularly well in such other activities as the negotiations for the Treaty of Ghent in 1814 and his participation in the Senate trials of Judge John Pickering in 1803 and Judge Samuel Chase in 1804.

Since Adams's legal career had relatively little impact upon his intellectual and social development, it is difficult to try to use Adams's legal career as a basis for generalizations about the impact of legal training upon presidential performance. Indeed, such generalizations would be tenuous at best under any circumstances. The difficulty of making such generalizations is illustrated by one of the few studies of the relationship between legal training and presidential performance.¹⁶⁹ That study, by Professors Thomas M. Green and William D. Pederson, has pointed out that a disproportionately large number of what James Barber has termed "active-negative" presidents were lawyers. Of the nine presidents, including John Quincy Adams, whom the study of lawyer-presidents has assigned to that group, seventy-eight percent, or all but two, were lawyers.¹⁷⁰ In contrast, only forty percent of the ten "active positive" presidents were lawyers. Fifty percent of the four "passive-negative" presidents were lawyers and seventy-one percent of the fourteen "passive positive" presidents were lawyers.¹⁷¹ Professors Green and Pederson have pointed

¹⁶⁸ *Id.* at 338.

¹⁶⁹ Green & Pederson, *The Behavior of Lawyer-Presidents: A 'Barberian' Link*, 15 PRESIDENTIAL STUDIES Q. 343, 346 (1985). Professor Barber's typology is presented in J.D. BARBER, *THE PRESIDENTIAL CHARACTER: PREDICTING PERFORMANCE IN THE WHITE HOUSE* (1972).

¹⁷⁰ Professor Barber has defined the "active-negative" president as one who expends intense efforts in his duties but reaps few emotional rewards. Barber also has found that "active-negative presidents" also are characterized by "a perfectionist conscience." *Id.* Many of the "active-negative" presidents, such as John Quincy Adams, Herbert Hoover, Woodrow Wilson and Lyndon Baines Johnson, also have exhibited a rigid inflexibility that has impeded them from accomplishing the principal goals of their presidencies. In addition to John Quincy Adams, the lawyers that Green and Pederson assign to the group are Andrew Jackson, Woodrow Wilson, James Knox Polk, John Adams, Grover Cleveland, and Richard Nixon. The two non-lawyers are Lyndon Johnson, who briefly attended law school at Georgetown, and Andrew Johnson.

Adams's career at the bar is strikingly similar in many respects to that of Woodrow Wilson. Like Adams, Wilson initially professed to enjoy his legal studies but found the law to be increasingly frustrating. Wilson, like Adams, abandoned his formal study of law and continued his legal studies at home after suffering a nervous breakdown. Wilson practiced law only for one year, a period during which he had few clients, diverted his attention to literary interests, and received necessary financial assistance from his parents. Throughout his career at the bar, Wilson aspired to a literary or political career and abandoned his law practice to pursue graduate studies in political science. See H.W. WILKINSON, *WOODROW WILSON: THE ACADEMIC YEARS* (1967); G.S. OSBORN, *WOODROW WILSON: THE EARLY YEARS* (1968). It is interesting to note that both presidents ended their terms in office in frustration after Congress rejected idealistic proposals.

¹⁷¹ Green & Pederson, *supra* note 169, at 345. Professor Barber has defined "active positive" presidents

out that the “active negative” lawyer-presidents tend to have applied themselves intensely to the law but that they tend not to have been career lawyers.¹⁷² John Quincy Adams obviously fits this description.

While the pioneering study of Professors Green and Pederson is provocative, it does not adequately support their conclusion that “good lawyers generally make lousy presidents and poor civil libertarians.”¹⁷³ Their study involves so few persons and so many different historical periods and independent variables that it provides little basis for evaluating the impact of legal training upon conduct in office. There are many reasons other than legal training, for example, why many of the least successful presidents have been lawyers.¹⁷⁴ Similarly, the stained civil liberties records of such lawyer-presidents as Lincoln, Wilson and Franklin Roosevelt should be attributed much more to the simple fact that they served during wartime than to the fact that they were lawyers.

Despite the difficulty of drawing any correlation between legal training and presidential success, it may be plausible to suggest (as Professors Green and Pedersen seem to do) that a legalistic mentality may impede the creativity and flexibility of a president. Professor Thomas A. Bailey, for example, suggested that constitutional lawyers have been ineffective presidents because “[s]uch men, brought up to revere the law and to study the Constitution through the lenses of the states’ rights Founding Fathers, have tended to recoil from resolute action” that might impinge upon the Constitution and upset the delicate balance of powers.¹⁷⁵

Even if legal training can dim political vision, John Quincy Adams is not an example of the perils of legal training. As President, Adams propounded an ambitious program of national improvements that failed in part because it contravened accepted notions of what constituted the proper constitutional bounds of federal power.¹⁷⁶ As we shall see below in Section VII, Adams’s later career in the House of Representatives was characterized by a similar boldness of vision.

as flexible persons who are successful in relating to their environment. Active-positive presidents, such as Franklin Roosevelt and Harry Truman, are creative and energetic chief executives. He defines “passive positive” presidents as those, such as William Howard Taft and Warren Harding, who are receptive and compliant. “Passive negative” presidents are defined by Barber as those who enter public service out of a sense of duty, and take refuge from “the conflict and uncertainty of politics by emphasizing vague principles (especially prohibitions) and procedural arrangements.” Professor Barber places Dwight Eisenhower and Calvin Coolidge in this category. *Id.* at 344-45.

¹⁷² *Id.* at 348-49.

¹⁷³ *Id.* at 350.

¹⁷⁴ For example, Presidents Fillmore, Pierce, and Buchanan were lawyers whose presidencies generally have been rated as unsuccessful. Although one might argue that their legal training impeded their ability to deal creatively and flexibly with the sectional crisis that plagued their presidencies, it is highly questionable whether any non-lawyers could have successfully found solutions to the seemingly intractable disputes between North and South. Fillmore’s legal training may have helped him to ameliorate the sectional crisis in 1850, when Fillmore played an important role in designing the legislation that became known as the Compromise of 1850.

¹⁷⁵ T.A. BAILEY, *PRESIDENTIAL GREATNESS* 234 (1966).

¹⁷⁶ See BEMIS, *JOHN QUINCY ADAMS AND THE UNION*, *supra* note 165, at 60-70.

Disregarding the delicate legal forms and constitutional balance that had kept sectional controversies under control, Adams emerged during his post-presidential career as the principal congressional advocate of abolitionism. Similarly, Adams's views on constitutional issues (discussed below in Section VIII) and his defense of the *Amistad* captives (discussed below in Section IX) were characterized by a scorn for narrow legalism and were infused with a belief in broad human freedom. In all of these situations, however, we may detect both positive and negative influences of Adams's legal training. Adams's frustrating months in Parsons's office and his boring years at the Boston bar may have accentuated his impatience with the more stultifying aspects of legalism. At the same time, as we have seen, Adams's legal training provided him with technical skills and broad learning that no doubt proved useful to him during his tenure as President and member of the House of Representatives.

Adams's legal background also may have proved to be of some use in his selection of federal judges. Adams made two nominations to the Supreme Court. His first nominee, Robert Trimble of Kentucky, was confirmed by the Senate but died after serving on the Court for only two years. Adams nominated another Kentuckian, John J. Crittenden, to succeed Trimble. Since Adams nominated Crittenden following his defeat by Andrew Jackson at a time when he faced a hostile Senate, Crittenden's nomination was doomed from the start. The Senate delivered the *coup de grace* to the nomination when it postponed action on February 12, 1829.

Adams's nomination of Trimble was based upon the usual mix of considerations involving narrow political expediency, competency, geography and judicial philosophy. Trimble was politically attractive because he was a resident of the state of Kentucky, a state then at the height of its national prominence. The death of Trimble's predecessor, Justice Thomas Todd, another Kentuckian, had left both Kentucky and the Southwest "unrepresented" on the Court. Although Tennessee, the other populous Southwestern state, may have had an abundance of legal talent, there was no political profit in nominating anyone from Andrew Jackson's home state. Kentucky, on the other hand, was politically significant to the Adams Administration. It also was legally significant to the Supreme Court because of the number of contested land claims from Kentucky that reached the Supreme Court.¹⁷⁷ Trimble was philosophically attractive to Adams because Trimble, during his nine years as a federal district judge prior to his elevation to the Court, appears to been a staunch defender of federal supremacy at a time when federal powers were under fierce attack from states' rights advocates in Kentucky.¹⁷⁸ During his brief tenure on the Court, Trimble continued to defend federal power, agreeing with Chief Justice John Marshall in nearly every case.¹⁷⁹ Although Trimble parted company with

¹⁷⁷ See G.E. WHITE, *THE MARSHALL COURT AND CULTURAL CHANGE 1815-35*, at 303 (Volumes III and IV of the Oliver Wendell Holmes Devise History of the Supreme Court of the United States) (1988).

¹⁷⁸ *THE JUSTICES OF THE UNITED STATES SUPREME COURT 1789-1969*, at 515-16 (L. Friedman & F. Israel, ed. 1969).

¹⁷⁹ *Id.* at 516.

Marshall to uphold a state bankruptcy law in *Ogden v. Saunders*¹⁸⁰ and wrote an opinion for an apparently unanimous Court in the final *Antelope Case*¹⁸¹ that upheld a decree that had the effect of requiring some of the Africans who were captured from the Spanish slave ship “Antelope” to remain in slavery, Trimble’s record does not appear to have given Adams any cause for major disappointment.¹⁸² G. Edward White has concluded that Trimble’s record on the Court presents “a tantalizing example of a potentially distinguished judicial career cut short before it could be fully assessed.” According to White, Trimble “might have become one of the leading judges on the late Marshall Court and a strong supporter of jurisprudential orthodoxy.”¹⁸³

ADAMS AS LEGAL PHILOSOPHER

Although Adams faced financial difficulties after his retirement from the presidency¹⁸⁴ he does not appear to have considered the possibility of practicing law. Instead, Adams in 1830 chose the far less lucrative option of seeking a seat in the United States House of Representatives. Elected to nine terms, Adams served in the house from 1830 until his death in 1848. As a congressman, Adams became an outspoken opponent of slavery.¹⁸⁵

Although Adams’s role in the difficult constitutional issues that vexed the nation during this period of sectional controversy were primarily political rather than intellectual, two discourses by Adams made not insignificant contributions to constitutional theory. In an oration delivered at Quincy on July 4, 1831, at the height of the nullification controversy, Adams argued that the concept of the Union was interwoven into the most fundamental fabric of the American polity inasmuch as the Declaration of Independence itself established a union. In support of this position, Adams pointed out that the Declaration of Independence referred to a “United States of America” and the “United Colonies,” named no individual state, and that the delegates signed the Declaration not as representatives of any state but as representatives of the entire nation. Adams declared that “[t]he Declaration of Independence was a social compact, by which the whole people covenanted with each citizen of the United Colonies, and each citizen with the whole people, that the United Colonies were, and of right ought to be, free and independent states. To this compact, union

¹⁸⁰ 25 U.S. (12 Wheat.) 213 (1827).

¹⁸¹ *The Antelope Case*, 25 U.S. (12 Wheat.) 546 (1827).

¹⁸² Trimble’s opinion in *Ogden* should not be regarded as any apostasy from his belief in broad federal power. Although Marshall and Story dissented in *Ogden*, the Court’s ruling did not represent any derogation of federal power. Moreover, the decision helped facilitate the very sort of national commercial growth that Adams -- and Marshall and Story -- championed. Likewise, although Trimble himself was a slaveholder, his opinion in the *Antelope* decision did not significantly strengthen the foundations of the peculiar institution that Adams so detested.

¹⁸³ WHITE, *supra* note 177, at 302-03.

¹⁸⁴ BEMIS, JOHN QUINCY ADAMS AND THE UNION, *supra* note 165, at 197-200; L.L. RICHARDS, THE LIFE AND TIMES OF CONGRESSMAN JOHN QUINCY ADAMS 20-22 (1986).

¹⁸⁵ See generally, RICHARDS, *supra* note 184.

was as vital as freedom or independence.” Adams contended that the “hallucination” of state sovereignty emerged only later among proponents of states’ rights. According to Adams, no free person would submit to the sort of absolute and unlimited state power comprehended by the word “sovereign.” He traced the existence of an American doctrine of sovereignty to the baneful influence of Blackstone, who had contended that Parliament possessed sovereignty. Adams’s ideas may be traced in part to the influence of Nathan Dane, whose writings on the Union had been sent to Adams by Story.¹⁸⁶ Dane had written in opposition to the doctrine of nullification in his *Appendix* to the ninth volume of his *General Abridgement and Digest of American Law*.¹⁸⁷ In his *Appendix*, Dane set forth the ideas that the theory of a united American people preceded the Constitution and could be traced to the establishment of the Continental Congress in 1775 and the Declaration of Independence in 1776. While Adams’s ideas may not have been wholly original, his espousal of them helped to widen their currency. Within a short time, Adams’s oration had been published in a pamphlet that was distributed throughout the nation.¹⁸⁸ John Marshall wrote to Adams to commend his ideas and to state that he had never before heard the suggestion that “the Declaration of Independence was also a declaration of a previously-existing union.”¹⁸⁹

Adams espoused many of the same views eight years later in an oration delivered in New York on the fiftieth anniversary of the establishment of the federal government.¹⁹⁰ Adams stated that Declaration of Independence had proclaimed the inhabitants of the States to be “*one people*,” living under a government instituted “*under the solemn mutual pledges of perpetual union*.”¹⁹¹ Adams argued that the Articles of Confederation had betrayed the ideals of the Declaration by substituting the doctrine of state sovereignty for the rights of the people in a national union.¹⁹² Recounting in detail the shortcomings and failures of the Articles of Confederation,¹⁹³ Adams declared that the work of the revolution was “but half done.”¹⁹⁴

¹⁸⁶ BEMIS, JOHN QUINCY ADAMS AND THE UNION, *supra* note 165, at 231.

¹⁸⁷ For a discussion concerning the views of Dane and other nineteenth century scholars on sovereignty, see E.K. BAUER, COMMENTARIES ON THE CONSTITUTION (1965).

¹⁸⁸ VIII MEMOIRS, *supra* note 139, at 388.

¹⁸⁹ BEMIS, JOHN QUINCY ADAMS AND THE UNION, *supra* note 165, at 236.

¹⁹⁰ J.Q. ADAMS, THE JUBILEE OF THE CONSTITUTION. A DISCOURSE DELIVERED AT THE REQUEST OF THE NEW YORK HISTORICAL SOCIETY, IN THE CITY OF NEW YORK ON TUESDAY, THE 30TH OF APRIL 1839 (1848).

¹⁹¹ *Id.* at 9. (emphasis in original).

¹⁹² *Id.* at 30-36. According to Adams, “[t]here was thus no congeniality of principle between the Declaration of Independence and the Articles of Confederation. The foundation of the former were a superintending Providence -- the rights of man, and the constituent revolutionary power of the people. That of the latter was the sovereignty of organized power, and the independence of the separate or dis-united States. The fabric of the Declaration and that of the Confederation, were each consistent with its own foundation, but they could not form one consistent symmetrical edifice. They were the productions of different minds and of adverse passions -- one, ascending for the foundation of human government to the laws of nature and of God, written upon the heart of man -- the other, resting upon the basis of human institutions, and prescriptive law and colonial charters. The corner stone of the one was *right* -- that of the other was *power*.” *Id.* at 17. (emphasis in original).

¹⁹³ *Id.* at 11-36.

¹⁹⁴ *Id.* at 17.

between the promulgation of the Declaration of Independence and the adoption of the Constitution and that “the constituent power of the people had never been called into action.” During that time, “[a] confederacy had been substituted in the place of a government; and state sovereignty had usurped the constituent sovereignty of the people.”¹⁹⁵ Adams contended that the revolution was therefore the work of thirteen years and “had never been completed” until the federation government began to operate under the Constitution.¹⁹⁶ Adams declared that “[t]he Declaration of Independence and the Constitution of the United States, are parts of one consistent whole, founded upon one and the same theory of government, then new, not as a theory, for it had been working itself into the mind of man for many ages, and been especially expounded in the writings of Locke, but . . . never before . . . adopted by a great nation in practice.”¹⁹⁷ Adams denounced the doctrine of state sovereignty as “anti-revolutionary” and a denial of belief in natural equality, the inalienable rights of man, and the idea that the people are the only legitimate source of power.¹⁹⁸ Adams contended, however, that the nation’s leaders had remained true to the principles of the Declaration of Independence and the Constitution and that adherence to those principles had secured for the nation prosperity, military security, justice and personal liberty.¹⁹⁹

ADAMS AND THE *AMISTAD* CASE

At the age of seventy-three, Adams returned to the bar for one last time for what was one of the most significant and personally satisfying chapters in his legal career -- his successful representation of thirty-nine Africans who sought freedom from Spanish slave traders. The Africans, most of whom had recently been captured on the west coast of Africa, had mutinied on the slave ship *Amistad* in 1839 during a voyage between ports in Cuba, where Spanish law permitted slavery but prohibited the importation of slaves.²⁰⁰ The Africans slew the captain of the ship, held two surviving Spaniards as captives, and ordered their captives to sail to Africa. The Spaniards, however, had managed to secretly steer the vessel toward the United States and the small schooner anchored near Montauk, Long Island in August. Captured several days later by a U.S. naval vessel, the Africans were taken to Connecti-

¹⁹⁵ *Id.* at 38-39.

¹⁹⁶ *Id.* at 40.

¹⁹⁷ *Id.* at 40-41.

¹⁹⁸ *Id.* at 41. Adams contended that “[t]he grossly immoral and dishonest doctrine of despotic state sovereignty, the exclusive judge of its own obligations, and responsible to no power on earth or in heaven, for the violation of them” is not found in the Declaration of Independence or in the Constitution. *Id.*

¹⁹⁹ *Id.* at 118. Adams could not resist attacking the republicans who had opposed the presidential policies of Washington and the elder Adams. *Id.* at 85-114, *passim*. Adams particularly disparaged the naivete of Americans who had confused the spurious freedom professed by revolutionary France with the genuine freedom embodied in the principles of the Declaration of Independence, *id.* at 85-95, and even cast upon himself once more the mantle of Marcellus to excoriate the activities of Genet. *Id.* at 93-94; see notes 77 and 78, *supra*, and accompanying text. Adams acknowledged, however, that the republicans had not undone the work of his father and Washington after they came to power in 1801. *Id.* at 114-15.

²⁰⁰ For a thorough discussion of the case, see H. JONES, *MUTINY ON THE AMISTAD: THE SAGA OF A SLAVE REVOLT AND ITS IMPACT ON AMERICAN ABOLITION, LAW AND DIPLOMACY* (1987).

cut and jailed. The case immediately became a *cause celebre* in which battle lines were drawn between abolitionists who wanted to return the mutineers to Africa and the pro-slavery Van Buren Administration, which contended that the Africans were slaves who should be returned to Cuba. The outraged protests of the Spanish government infused the case with international significance. The United States District Court in January 1840 ruled that only one of the Africans, a boy who long had resided in Cuba, was a slave and must be returned to Spanish authorities. The Court held that the other Africans were free men who had been illegally kidnapped and must be returned to Africa. In April, the Circuit Court affirmed the district court's decision. Fearful of losing Southern political support, the Van Buren Administration appealed the case to the United States Supreme Court.

A few months before the case came before the Court, the abolitionist defense committee attempted to find an attorney of national eminence and political stature to plead the case before the nation's highest tribunal. Adams, who had given legal assistance to the defense at earlier stages of the case, seemed like the ideal choice. As a member of the House of Representatives, Adams had distinguished himself as one of the most outspoken and tenacious opponents of slavery. For the past four years, Adams had fought the House's "gag rule," by which proponents of slavery attempted to suppress the controversy over slavery by prohibiting any debate or other action on any petition, memorial or resolution concerning slavery. Dubbed "Old Man Eloquent" for his persistent and ringing attacks on the gag, his clever attempts to evade it, and his unremitting congressional remarks on the taboo subject of slavery, Adams finally secured the repeal of the gag in 1844.²⁰¹ Despite his hatred of slavery and his support for the abolitionist cause in the *Amistad* case, Adams was reluctant to involve himself further in the case. In response to entreaties by the defense committee, Adams protested that he was too old and long removed from the active practice of law. After finally deciding that he could not flinch from what he viewed as a moral duty, Adams immersed himself in the case and refused to accept fees for his services. Although the abolitionist Roger S. Baldwin provided Adams with a complete brief, Adams studied lawbooks, consulted with defense attorneys, visited the Africans, unsuccessfully attempted to persuade Attorney General Henry D. Gilpin to dismiss the case, and studied two copious scrapbooks of clippings on the case.²⁰²

Argument before the court commenced on February 22, 1841, when Gilpin presented the government's position, arguing that international law required the United States to return the Africans to Spanish authorities inasmuch as the Spanish-American treaty of 1795 provided for the delivery of one nation's property upon presentation of proper proof of ownership. Gilpin was followed by Baldwin, who spent the remainder of the first day and part of the next day pleading the case for the Africans before Adams spoke. Baldwin argued that the United States could not give

²⁰¹ RICHARDS, *supra* note 184, at 175-79.

²⁰² See JONES, *supra* note 200.

extra-territorial force to a foreign slave law and that the Spaniards had failed to produce proper evidence in support of their claims. On the third day, Adams continued the defense's argument, making his first appearance before the Court since he argued the *Fletcher* case in 1809. The circumstances were most inauspicious. Burdened by his duties in the House and irritated by the ordinary infirmities of a man of his years, Adams felt that he had failed to devote adequate time for preparations. On the very eve of the day for which oral argument was scheduled, Adams was sorely shaken when his coachman died from injuries suffered a day earlier in a carriage accident shortly after he had dropped Adams off at the Capitol, where the Supreme Court then met.²⁰³ Chief Justice Taney granted Adams's request for a two-day adjournment, but this hardly gave Adams time to regain his equanimity. On the evening before arguments commenced, Adams recorded in his diary that he meditated on the "mysterious, cheering and awful" dispensation of angels until "my impending duties brought me down again to the earth."²⁰⁴ Late in the day, he had yet to prepare a frame for his argument, and he observed that "[o]f all that I have written, nine-tenths are waste paper."²⁰⁵ The next morning, Adams walked to the Capitol in what he called "a thoroughly bewildered mind--so bewildered as to leave me nothing but fervent prayer that presence of mind may not utterly fail me at the trial I am about to go through."²⁰⁶ On the second day, as Baldwin continued his argument, Adams suffered from what he described as "increasing agitation of mind, now little short of agony" since he had yet failed to assemble "[t]he very skeleton" of his argument.

Although Adams's distress and agitation continued into the third day of the proceedings, he immediately achieved equanimity when he finally rose to speak. Adams observed accurately that the structure of his argument was concentrated upon "the steady and undeviating pursuit of one fundamental principle, the ministration of *justice*." Appealing to the principles of natural law expressed in the Declaration of Independence, Adams stated that "I know of no other law that reaches the case of my clients, but the law of Nature and of Nature's God on which our Fathers placed our own national existence."²⁰⁷ In making this argument, Adams alleged that the Van Buren administration had improperly interfered in the case and had connived with the Spanish authorities to deprive the captives of their right to freedom.²⁰⁸ In attempting to demonstrate a clear pattern of executive interference, Adams first quoted a letter that Secretary of State John Forsyth early in the case had written to

²⁰³ X MEMOIRS, *supra* note 139, at 425-27.

²⁰⁴ *Id.* at 428-29.

²⁰⁵ *Id.* at 429.

²⁰⁶ *Id.*

²⁰⁷ J.Q. ADAMS, ARGUMENT OF JOHN QUINCY ADAMS, BEFORE THE SUPREME COURT OF THE UNITED STATES, IN THE CASE OF THE UNITED STATES, APPELLANTS, VS. CINQUE, AND OTHERS, AFRICANS, CAPTURED IN THE SCHOONER AMISTAD 9 (1841) [hereinafter ARGUMENT]. (emphasis in text).

²⁰⁸ See, e.g., *id.* at 5-6. Adams charged that the Van Buren administration in all of its proceedings had evinced "[s]ympathy with the white, antipathy to the black." *Id.* at 6. Adams presented his arguments only one week before the expiration of the term of Van Buren, whose Democratic Party had been defeated in the election of the previous November.

the Spanish ambassador that stated that the Administration and the courts assumed that the claimants “alone were the parties aggrieved; and that their claims to the surrender of the property was founded in fact and in justice.”²⁰⁹ Adams quoted another letter from Forsyth to the District Attorney of Connecticut, in which Forsyth told the District Attorney to “take care that no proceeding of your Circuit Court, or of any other judicial tribunal, places the vessel, cargo, or slaves beyond the control of the Federal Executive.”²¹⁰

Adams also contended that correspondence between Spanish ambassadors and Forsyth demonstrated that Forsyth had attempted to assure the ambassador that the executive branch would work to assure the return of the Africans. Adams first read a letter from the Spanish ambassador Calderon to Forsyth in which Calderon demanded that the vessel should be set at liberty and the captives sent to be tried by the proper tribunal for violation of Spanish laws, and that it be declared that no judicial tribunal in the United States had the power to institute proceedings against subjects of Spain for crimes committed on board a Spanish vessel or in Spanish waters.²¹¹ In an echo of his castigation of Genet, Adams was outraged by Calderon’s disregard for America’s constitutional separation of powers, as expressed in Calderon’s stated presumption that the President already had already stayed the proceedings of the court.²¹² Adams was equally outraged that Forsyth had not immediately and emphatically rejected Calderon’s demands.²¹³ Adams contended that Forsyth “has degraded the country, in the face of the whole civilized world, but only by allowing these demands to remain unanswered, but by proceeding . . . throughout the whole transaction, as if the Executive were earnestly desirous to comply with every one of the demands.”²¹⁴ Adams further cited a letter from Forsyth

²⁰⁹ *Id.*

²¹⁰ *Id.* at 12-13.

²¹¹ *Id.* at 13-16.

²¹² *Id.* at 14-15.

²¹³ Adams stated that “the Secretary ought to have shown Mr. Calderon, that the demand for a proclamation by the President of the United States, against the jurisdiction of the courts, was not only inadmissible but offensive -- it was demanding what the Executive could not do, by the constitution. . . it would violate the principles of our government generally and in every particular; it would be against the rights of the negroes, of the citizens, and of the States.” *Id.* at 29. Adams argued that the claim that the captives should be delivered was equally inadmissible since the President has no power to arrest either citizens or foreigners and the Secretary also should have repudiated the ambassador’s suggestion that the captives should be returned to Cuba. According to Adams, “[t]he Secretary should have called upon the Spanish ambassador to name an instance where such a demand has been made by any government of another government that was independent. He should have told him, that such a demand was treating the President . . . not as the head of a nation, but as a constabler, a catchpole.” *Id.* at 29-30. Adams also stated that Forsyth ought to have corrected the ambassador’s mistaken assumption that the case was pending before a court of the state of Connecticut rather than a federal court. *Id.* at 30.

²¹⁴ *Id.* In particular, Adams faulted Forsyth for asking the Spanish ambassador to forward documents to him, contending that “it was no part of the business of the American Secretary of State to look after the evidence.” *Id.* at 31-32. Adams later complained that Forsyth “had suffered both Mr. Calderon and his successor to remain under the impression that if their demands were not complied with, for the kidnapping of these people

to the Chevalier d'Argaiz, Calderon's successor, in which Forsyth indicated that the government had instructed the United States District Attorney for New York to offer advice and assistance to the two Spaniards who claimed to own the Africans, who had been arrested in New York and were being sued in an action pending in a New York court.²¹⁵ Again, Adams faulted the Secretary of State for failing to answer a later letter from d'Argaiz in which the ambassador had urged the government to return by *fiat* the Africans to Cuba.²¹⁶ Accusing Forsyth and the Spanish ministers of "conspiracies" against the Africans, Adams also cited a note from Forsyth to the Secretary of the Navy dated January 7, 1840 in which Forsyth had acknowledged that a federal ship was under orders to return the Africans to Cuba as soon as the Connecticut federal court rendered its expected decision in favor of the Spanish and later had instructed the district attorney in Connecticut to place the Africans on board ship without waiting for an appeal. Adams also pointed out that the Connecticut district attorney early in the proceedings had invited instructions from Forsyth. Adams lamented in his diary that he had analyzed the correspondence between Forsyth and the Spanish ministers "with critical research as far as I was able, but with not half the acuteness, nor with a tenth part the vigor" that he could have mustered if he had enjoyed access to all documents.

Adams spoke for four and a half hours on the first day of his presentation to the Court. Although Adams noted in his diary that "I did not, I could not, answer public expectation," he consoled himself that he had "not yet utterly failed."²¹⁷ After a restless night of little sleep, Adams nevertheless awoke "with much encouraged and cheerful feelings."²¹⁸ Upon arriving at the Capitol, however, Adams learned that the day's proceedings would be adjourned for several days because Justice Philip P. Barbour had been found dead in his bed.²¹⁹ When Adams resumed his argument on March 1, he once again excoriated Forsyth and the Administration for acquiescing to the demands of the Spanish government.²²⁰ He cited a letter of December 30, 1839 in which d'Argaiz had demanded that the government transport the Africans to Cuba to be tried for murder. Adams professed to find this demand an even more outrageous violation of human liberties and international law than was the ambassador's earlier demand for the delivery of the Africans to their owners or the custody of the Spanish ambassador.²²¹ Adams was

by the Executive, it was not for the want of a will to do it, or of a disposition to contest the claims put forth in so extraordinary a manner upon our government." *Id.* at 35.

²¹⁵ *Id.* at 33-36. Adams cited also a later letter from the ambassador stating that Forsyth's letter had encouraged him to visit the United States Attorney in New York, who was reported to have received the ambassador with great cordiality but explained that he could not interfere with the judicial process. *Id.* at 35-36.

²¹⁶ Does the Celestial Empire allow a proceeding like this?" Adams asked. "Is the Khan of Tartary possessed of a power competent to meet demands like these? I know not where on the globe we should look for any such authority, unless it be with the Governor General of Cuba with respect to negroes." *Id.* at 38.

²¹⁷ X MEMOIRS, *supra* note 139, at 431.

²¹⁸ *Id.* at 432.

²¹⁹ *Id.*

²²⁰ ARGUMENT, *supra* note 207, at 59-66.

²²¹ *Id.* at 62-63.

further outraged that Forsyth had issued an opinion that the President should direct a United States Marshal to deliver the Africans to the Spanish minister for trial.²²² Adams asked whether the precedent would “not have disabled forever the effective power of the Habeas Corpus.”²²³ Adams likewise decried a later order of President Van Buren commanding the Marshal to deliver the Africans to the Marshal regardless of the pendency of judicial proceedings.²²⁴ He also attempted to demonstrate that Cuba conducted an extensive slave trade that contravened Spanish law²²⁵ and he drew upon his extensive knowledge of treaty law and practice to demonstrate that slaves could not be included in cargo as property unless they were specifically denominated as such. Adams also argued with vehemence that the government’s position would undermine the principle of *habeas corpus* by placing every American at the discretion of executive caprice or tyranny. Adams went on to argue at some length that the Supreme Court’s decision in 1825 in the case of *Antelope*²²⁶ was inapposite.²²⁷ Although Adams acknowledged that the Court in that case had recognized that international law permitted slavery and that the legality of the seizure of a ship engaged in the slave trade depended on the law of that vessel’s country, Adams emphasized that Chief Justice Marshall’s opinion for the Court had stated that the opinion settled no principle and that it acknowledged that the slave trade contravened the laws of nature. Adams also contended that the *Amistad* case was distinguishable from the *Antelope* decision insofar as the blacks on the *Amistad*, in contrast to the Africans captured from the *Antelope*, were never slaves and had been kidnapped and taken to Cuba in violation of Spanish law.²²⁸

Adams closed his argument on a personal note. Pointing out that he had devoted little of his career to the law, Adams said that he had not imagined that he ever again would appear before the Supreme Court. Yet, Adams observed, destiny had let him to “appear again to plead the cause of justice, and now of liberty and life, in behalf of my fellow men, before that same Court, which in a former age I had addressed in support of the rights of property.”²²⁹

Adams’s argument drew mixed reviews. Although Adams’s argument natu-

²²² *Id.* at 74-75.

²²³ *Id.* at 80.

²²⁴ *Id.* at 80-82.

²²⁵ *Id.* at 56-59.

²²⁶ 23 U.S. (10 Wheaton) 66 (1825). See J.T. NOONAN, *THE ANTELOPE: THE ORDEAL OF THE RECAPTURED AFRICANS IN THE ADMINISTRATION OF JAMES MONROE AND JOHN QUINCY ADAMS* (1977).

²²⁷ ARGUMENT, *supra* note 207, at 94-134.

²²⁸ *Id.* at 116-17, 122, 131, 133. Although Adams correctly pointed out that Marshall had conceded that the slave trade violated natural law, Professor White has pointed out that “[n]o natural law principles were packed into constitutional language by the case; indeed, the use of an abstract natural justice argument as an alternative ground for invalidating the slave trade was explicitly rejected. The decision left slavery as a practice not only established but apparently invulnerable to attack from unwritten natural law arguments.” WHITE, *supra* note 177, at 703. The absence of precedent in favor of the natural law argument upon which Adams relied in his argument in the *Amistad* case makes Adams’s persistent appeals to an abstract justice all the more extraordinary and underscores Adams’s deep belief in the primacy of natural law.

²²⁹ *Id.* at 135.

rally offended proponents of slavery, more telling criticism was registered by some abolitionists who believed that Adams's appeal had been too emotional and political and had lacked legal precision.²³⁰ While Adams's arguments appear to have been well received by the Court, the audience whose opinion was most important, the effect of his argument upon the Court's seven-to-one decision in favor of the Africans is problematical. Although Chief Justice Story praised Adams's argument as "[e]xtraordinary, I say, for its power, for its bitter sarcasm, and its dealing with topics far beyond the record and points of discussion," he also observed that Adams had emphasized too many extraneous points.²³¹ Story's opinion for the Court ignored Adams's sweeping appeals to the principles of justice and his contention that the Van Buren Administration had unduly interfered in the case. The Court's opinion rested primarily upon the rather narrow legal ground that the Africans were free because the prosecution had failed to prove its claim that they were property. Since they never had been slaves, the 1795 treaty between Spain and the United States was not applicable. Story explained that the captives were natives of Africa who were unlawfully kidnapped and unlawfully transported to Cuba in violation of the laws, treaties, and edicts of Spain, which recently had "utterly abolished" the African slave trade and deemed it a "heinous crime."²³² Moreover, the claimants had knowledge of those provisions. The Court also held that the treaty between the United States and Spain provided no support for the claimants' contention that the Court had no right to examine evidence beyond proof of Spanish ownership of the vessel.²³³

The impact of Adams's argument was further diluted by his failure to submit his argument to the Supreme Court reporter in time for it to be published in the Court's official *Reports*.²³⁴ Eventually, however, Adams's argument received wide distribution as an abolitionist tract.

While Adams's argument in the case may have lacked intellectual precision, Adams did not need to make a careful legalistic presentation since his co-counsel and the brief already had informed the Court of the salient legal issues. Rather, Adams did what he could best to do for the Africans' case: he brought the passion of their cause to the Supreme Court, he appealed to the judges' sense of history and justice, and he lent to the case the weight of his distinguished name.

The *Amistad* case marked the end of Adams's career at the bar, although he would serve as Speaker of the House until his death in 1848. The case provided a fitting end for a legal career that was more notable than Adams or many of his biographers have recognized.

²³⁰ JONES, *supra* note 200, at 181-82.

²³¹ 2 LIFE AND LETTERS OF JOSEPH STORY 348 (Story, William W., ed. 1851).

²³² *United States v. The Amistad*, 40 U.S. (15 Peters) 518, 593 (1841).

²³³ *Id.* at 594-95.

²³⁴ JONES, *supra* note 200, at 192.

CONCLUSION

Although John Quincy Adams attained considerable eminence at the bar, his sporadic and often frustrating career as a lawyer was less distinguished than were his accomplishments as a diplomat, statesman and man of letters. The influences of Adams's experiences at the law on the development of his character and his political career are better defined in negative than in positive terms.

Adams's legal education, for example, added little to the self-discipline and intellectual attainments that he already had acquired long before he set forth for Newburyport. Adams's early legal practice likewise provided few skills or personal contacts that were useful to him in his political career. Adams's experiences of studying and practicing law were useful to Adams, however, insofar as they convinced him that his real interests were literary and political. His relatively lean first years of legal practice also afforded him the leisure to pursue his literary interests and to undertake political activities that helped lead to political office. Although Adams's second career at the bar was more eventful and distinguished, success at the bar seems only to have confirmed Adams's conviction that his real interests and talents were political rather than legal. Similarly, Adams's role in the *Amistad* case underscored his essential impatience with the law and his predilection to see legal issues from a political perspective.

Adams's preference for politics was sealed by his rejection of a Supreme Court appointment. Adams is to be commended for having sufficient candor and respect for the Court to admit that he was temperamentally and perhaps intellectually unsuited for service on the High Bench and that his presence there would unduly politicize the Court. It is unfortunate that certain other nominees have lacked comparable courage and independence. The irony is that Adams's erudition, conscientiousness and sound devotion to republican principles suggest that he might have made an outstanding justice.

The difficulty of demonstrating that Adams's legal career had any significant impact upon his political career underscores the difficulty of making broad conclusions about the effects of legal training upon the performance of presidents. Although Adams's legal training surely provided him with some useful technical skills and perhaps made him better able to select highly qualified Supreme Court justices, Adams's legal training and practice ultimately seems to have little impact upon his presidency. Moreover, Adams's willingness to propound a nationalistic program that was far ahead of its time tends to belie the theory that lawyer-presidents are unduly legalistic. So many other factors influenced Adams's presidency that it is well nigh impossible to isolate the impact of Adams's legal experiences. Adams's career suggests, however, that there may be a conflict between the plodding qualities necessary for a successful career at the bar and the more dynamic qualities necessary for a successful political career.

