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Book Reviews

DANIEL WEBSTER AND THE MODERNIZATION OF AMERICAN LAW

THE PAPERS OF DANIEL WEBSTER: LEGAL PAPERS. ALFRED S. KONEFSKY and ANDREW J. KING, editors. University Press of New England, 1983. 2 Vols.: Vol. 1, pp. xxxix, 571; Vol. 2, Pp. XX, 694. Vol. 1, \$45.00; Vol. 2, \$55.00.

R. KENT NEWMYER*

"[G]eneral histories still usually ignore law as argued and adjudicated in the courts, and with few exceptions biographers of lawyers and judges famous in their time hurry over the legal chapters in their subjects' lives in order to get them into the more familiar and, hence, more comfortable arena of politics."¹ So wrote Lyman Butterfield, editor-in-chief of *The Adams Papers*. His observation, made with John Adams in mind, is equally true of Daniel Webster, although Webster's reputation as a lawyer of immense ability is generally recognized, not to say unduly celebrated. Numerous articles touching on his legal career have been written:² there is one solid monograph devoted entirely to Webster's United States Supreme Court practice;³ and, almost without exception,

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1. LEGAL PAPERS OF JOHN ADAMS, xix (L. Wroth & H. Zobel eds. 1965).

2. See, e.g., E. Wheeler, *Daniel Webster*, in 3 GREAT AMERICAN LAWYERS 289-330 (D. Lewis ed. 1908); Newmyer, *Daniel Webster as Tocqueville's Lawyer: The Dartmouth College Case Again*, 11 AM. J. LEGAL HIST. 127 (1967); 1 C. WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 686-728 (rev. ed. 1926).

3. M. BAXTER, DANIEL WEBSTER & THE SUPREME COURT (1966).

general histories of the Supreme Court make some mention of Webster's influence on American public law through his arguments in such leading cases as *Dartmouth College v. Woodward*,⁴ *Gibbons v. Ogden*⁵ and the *Charles River Bridge*⁶ case.

To acknowledge Webster's genius as a lawyer, however, is not necessarily to understand it. The problem is that most of Webster's lawyering did not take place at the Supreme Court level where most scholarly attention has been focused. Before Webster made his debut before that Court, he had practiced extensively in the state and lower federal courts in New England. Moreover, Webster maintained an extensive practice in these courts even after his emergence as the leader of the Supreme Court bar and after his decision to enter national politics. It is clear—or rather it is made clear in these admirable volumes by Professors Konefsky and King—that to understand Webster the lawyer, indeed Webster the politician and the man, one must understand his private law practice.

I.

These two volumes are the first installment of a three-volume series of the Webster Legal Papers, and as such are part of the comprehensive Webster Papers project being conducted at Dartmouth College under the general editorship of Charles M. Wiltse. Volume one concerns Webster's New Hampshire practice. It covers his legal education in Salisbury and, beginning in 1804, in the Boston office of Christopher Gore, and then his early practice, first in rural New Hampshire and then after 1807 in Portsmouth. Volume two deals exclusively with Webster's Boston practice which began in earnest when he moved there in 1816 and continued throughout his professional life. A projected third volume, edited solely by Professor King and treating primarily Webster's practice before the Supreme Court of the United States, will complete the Legal Papers series.

Volumes one and two are organized with special attention to the needs of researchers in early American legal history—and those needs regarding Webster's legal career are considerable. To begin

4. 17 U.S. (4 Wheat.) 518 (1819).

5. 22 U.S. (9 Wheat.) 1 (1824).

6. 36 U.S. (11 Pet.) 420 (1837).

with, the vast scope of the material threatens to be overwhelming. There was rarely a time in Webster's public life when he did not have cases pending in the courts,⁷ and he kept working papers for most of them, some of which were preserved by his son and executor Fletcher Webster. From this mass of unorganized documents the editors have culled those that are capable of yielding a representative and coherent view of Webster's practice—a feat of scholarship in itself.

Geography and chronology are the main heads of organization, and within these care is taken to treat the various functional aspects of Webster's practice as well as the substantive legal issues which engaged his attention. By seeing Webster the novice in rural New Hampshire,⁸ as well as Webster the legal lion of commercial Boston,⁹ we are able to chart his professional growth and development. We see him address juries¹⁰ and follow him in the various phases of practice which take place prior to and outside formal court room advocacy. And of course we see him handle the full range of legal issues at both the trial and appellate level.¹¹ In short, the sensible design of the volumes, along with timely statistical breakdowns of cases argued, permits the reader to make ordered sense out of an incredibly large and diverse corpus of documents. Without such wise editorial guidance these important sources would be largely inaccessible except to specialists willing to spend a lifetime in the archives.

Making the documents accessible means making them understandable, and here also the editors succeed admirably. Webster, as he complained to his friend James Bingham in 1806, lived "a life of writs and summonses."¹² English common law writ pleading was still the dominant mode of practice in early nineteenth-century New England, and the fact that each state modified this En-

7. See generally, A. KONEFSKY & A. KING, *THE PAPERS OF DANIEL WEBSTER* (1983). The documents contained in these volumes demonstrate that from the time Webster completed his legal studies until the time of his death, there was not a period in his life when he was not in court.

8. 1 KONEFSKY & KING, *supra* note 7, at 89-132.

9. 2 KONEFSKY & KING, *supra* note 7, at 344-656.

10. *Id.* at 93-95.

11. *Id.* at 415-527 (marine insurance), 378-415 (contract and arbitration), 345-56 (commercial law), 527-64 (banking), 564-70 (property), 581-643 (federal equity jurisdiction and remedies).

12. Letter from Daniel Webster to James Hervey Bingham (Jan. 19, 1806) in 1 KONEFSKY & KING, *supra* note 7, at 67.

glish inheritance by statute and practice only makes the process more difficult to comprehend. Legal scholars as well as historians will be grateful for the manner in which these technical aspects of Webster's practice are presented. Concise explanatory essays are placed in close proximity to the documents, which themselves are arranged organically around cases and issues. When necessary, the court structure itself is sketched out so that the institutional context of the documents is always clear. The cases in which Webster was engaged are analyzed both in terms of the legal doctrines involved and the political and economic issues at stake. Individuals who figure in the documents are identified when possible in footnotes and appear as well in the detailed index.

Taken together and in sequence, the explanatory essays, notable both for their clarity and scholarship, constitute a convenient brief introduction to leading developments in American law in early nineteenth-century New England. Reading the notes and documents in conjunction gives the reader an intimate feeling for the practice of law in this period. Through Webster the lawyer—as he makes his way from Boscawen to Boston, from anonymity to fame—we catch a glimpse of the dynamic relationship of law and history which worked to transform New England and the nation.

II.

Webster's legal apprenticeship in rural New Hampshire is a convenient benchmark from which to measure the magnitude of this transformation. The mode of learning law, as well as the law he learned in the law office of Thomas W. Thompson beginning in the fall of 1801, were essentially colonial in nature—a point which the editors make vivid by parallel quotations on legal education from William Livingston in 1745 and Josiah Quincy in 1832.¹³ Ap-

13. *Id.* at 3. Livingston is quoted as saying:

"Tis a monstrous Absurdity to suppose, that the Law is to be learnt by a perpetual copying of Precedents.

. . . .

Either [they] have no Manner of Concern for their Clerk's future Welfare and Prosperity . . . or must imagine, that he will attain to a competent Knowledge in the Law . . . by gazing on a Number of Books, which he has neither Time nor Opportunity to read . . .

. . . .

As if, in order to be fitted for a Profession . . . a Man must devote himself to the Servitude of Scribbling eternally; a way of spending Time the most irksome and

prenticeship as a means of instruction in law looked back to England, to a static corporate social order. Because the law taught was fine-tuned to local circumstances, it suited early nineteenth-century New England, where local communities and local markets still predominated.

Communal imperatives in fact conditioned both the social dimension and legal substance of Webster's early lawyering. Take, for example, the documents concerning his pre-1807 debt collection practice, centering mainly in the area around Boscawen, New Hampshire.¹⁴ Statistics indicate that most of this practice took place in the Court of Common Pleas, i.e., at the trial rather than the appellate level of the state judicial system.¹⁵ Almost eighty percent of the cases tried at this level dealt with debt collection and promissory notes.¹⁶ A close look at the 216 civil cases shows that Webster achieved a remarkable record of success—sure evidence of his mastery of the common law mode.¹⁷

This legal system, the editors make clear, was a remarkably

intolerable to a young Gentleman of a thoughtful and studious Turn of Mind, and introductive of a total Depression of Spirit.

.....

[S]ervile Drudgery

Id. Quincy's critique, as the authors note, reflects much of Livingston's disdain, despite the fact that Livingston's description was made in 1745 while Quincy's appeared almost one hundred years later in 1832:

What copying of contracts! What filling of writs! What preparing of pleas! How could the mind concentrate itself on principles . . .

.....

Books were recommended as they were asked for, without any inquiry concerning the knowledge attained from the books previously recommended and read. Regular instruction there was none; examination as to progress in acquaintance with the law,—none; occasional lectures,—none; oversight as to general attention and conduct,—none. The student was left to find his way by the light of his own mind . . .

.....

How could the great principles of the law . . . take an early root . . . by reading necessarily desultory . . . and mental exercises . . . conducted, without excitement and without encouragement, with just so much vagrant attention as a young man could persuade himself to give . . .

[C]ondemned . . . to drudge[.]

Id.

14. *Id.* at 89-137.
15. *Id.* at 72 n.4.
16. *Id.* at 73.
17. *Id.* at 73-75.

functional blend of the English-colonial legal inheritance and the needs of nineteenth-century Americans on the New Hampshire frontier.¹⁸ A balance was also struck in this legal system between a rising individualism shaped by market values and a still-strong sense of community interest. At the local level, for example, where debts were small, merchants and traders were likely to be neighbors, if not friends. Debt collection rested on the fact that the rural credit structure was a delicate network of mutually beneficial relationships. It followed that the main purpose of litigation was not to establish liability, which was hard to disguise and generally admitted. Nor did Webster and his fellow lawyers press suits to exact the last pound of flesh from the debtor. Docketing cases and obtaining nisi prius judgments, in fact, often were used to facilitate arbitration and settlement out of court among parties bent on avoiding nonpayment and economic collapse.¹⁹ Merchants, traders, and farmers, thrown together by the local market, recognized that what hurt one tended to hurt all.²⁰

Webster the young lawyer was part of this self-contained world—a facilitator and preserver of communal values. These values, one must conclude from the documents presented, were connected primarily with property; with buying, selling, struggling for a modest profit, and searching for the main chance.²¹ In assisting his clients to exploit opportunity, Webster was called upon to know the law of real property. He also had to be familiar with the basic principles of contract which still centered around the common law actions of debt, covenant, and *assumpsit*.²² More than that, he had to understand the general workings of capitalism in a rural setting. Indeed, tracking Webster's legal footsteps in Boscawen reveals the extent to which market values permeated village life, even if the market was local in nature.²³ Seeing this system through the documents—personal letters, business correspondence, depositions, writs, and other legal forms—places capitalism in its social setting and conveys a tangible sense of the law's impact on

18. *See id.* at 61-182 (early nineteenth-century law practice in rural New England), 185-542 (Webster's Portsmouth practice).

19. *Id.* at 86-87.

20. *Id.* at 90.

21. *See id.* at 296-332.

22. *Id.* at 297.

23. *Id.* at 89-137, 138-63.

the lives of real people.²⁴

III.

If Webster was a preserver of community interests during his practice in Boscawen, he also was increasingly a representative of forces which would transform that agrarian world and pull it into the larger orbit of New England commerce. The same apparatus of debt collection available to Boscawen businessmen also was available to coastal merchants in Portsmouth and Boston whose ventures reached out to embrace interior markets.²⁵ These entrepreneurs, as the editors make clear and as Webster's practice shows, were contemptuous of "country credit" and impatient with the accommodations which the law and lawyers made in order to prop up the structure of rural credit.²⁶

Webster was caught between two worlds: on the one hand, personal and professional ties bound him to Boscawen; on the other hand, proven ability and a growing reputation attracted him to business interests in Portsmouth and Boston which could offer him handsome fees and a chance to be on the cutting-edge of the commercial-legal revolution that was underway. He did not resist long. Like most of the outstanding lawyers of the early republic, he was drawn willingly into the urban orbit of commercial capitalism—first in Portsmouth and then in Boston.

Portsmouth stood midway between Boscawen and Boston on the scale of legal change underway in New England, and the editors do a commendable job of placing Webster in this new legal setting. The "scope" of Webster's new practice is treated in chapter ten,²⁷ and it is followed by a separate chapter devoted to "Procedure and Trial Practice" which includes a careful discussion of special pleading, patterns of litigation, and the "posttrial phase" of legal proceedings.²⁸ Chapter twelve is devoted to documents and editorial exposition on the "Substantive Acts of Practice": contracts and commercial law, the law of property, torts, family law

24. *Id.*

25. For a summary of the debt collection procedures then available, see *id.* at 82-88.

26. For an informative account of Webster's close dealings with one debtor, Moses Lewis, and his representation on behalf of the Boston law firm, Gore, Miller & Parker, see *id.* at 111-27.

27. *Id.* at 185-246.

28. *Id.* at 260-93.

and maritime law as it was practiced in the common law courts (especially the law governing masters and mariners).²⁹ Contract law, which was the substantive foundation of Webster's practice in Portsmouth, is depicted as still looking mainly to the eighteenth century.³⁰ Considerations of fairness had not yet given way to fungibility, and the theory that the mere will of the parties was the prime determinant in contract formation was still a half century away. Equally revealing of the premodern condition of contract law was the fact that there appeared to be little theorizing at all.³¹

Legal modernization was manifestly underway, however, in the more highly structured commercial world of Boston, where Webster moved in 1816 and from which base he maintained his practice thereafter. Propelled by revolutionary developments in textile manufacturing, Boston merchants, shippers, and insurers became increasingly diversified and specialized as they tapped potential national markets. Webster, as the documents show, felt compelled to update his legal knowledge.³² General mercantile and property law, staples of his rural practice, still stood him well in Boston, to be sure. Increasingly, however, he moved into special areas of commercial law—particularly marine insurance, patents and corporations.³³

The documents in chapter six dealing with the "Substantive Aspects of Webster's Boston Practice" illustrate this growing sophistication as well as the emergence of modern principles of contract law.³⁴ Chief Justice Shaw of the Massachusetts Supreme Judicial Court summed up the latter trend well in *Revere v. Boston Copper*,³⁵ when he noted that "the first and fundamental rule in the construction of a contract, is to ascertain the meaning and in-

29. *Id.* at 296-517.

30. For a summary of basic contract actions and Webster's analysis of legal problems involving contracts, see *id.* at 296-302.

31. Since most of Webster's contract cases "involved express or implied agreements easily translated into the standard language of the common counts . . .," there was "little occasion for a legal analysis of contract formation, breach, or damages." *Id.* at 298.

32. Early in his legal career Webster began the habit of cataloguing his law library, suggesting his intention to keep abreast of any changes in the law. For a listing of the books in Webster's law library as of August 12, 1816, see 2 KONEFSKY & KING, *supra* note 7, at 8-12.

33. *Id.* at 344.

34. See generally *id.* at 344-643.

35. 32 Mass. (15 Pick.) 351 (1834). For a discussion of *Boston Copper*, see 2 KONEFSKY & KING, *supra* note 7, at 345.

tent of the parties; and the second is, to look at every clause and word of the instrument in which they have imbodyed their contract, to ascertain that meaning."³⁶ Sentiment and "vague notions of improvidence or inequality"³⁷ of the bargaining parties, he warned, would not concern the court—or presumably the lawyers either. What Boston's entrepreneurs wanted and what lawyer Webster delivered to them was a contract law rooted in mercantile needs and informed by mercantile practice, a law based on uniform principles. Such law was more and more result-oriented and the result desired was a legal environment where capital could be deployed efficiently, rationally, and dependably over long distances through various parties and agents.

IV.

The editors illustrate the process of legal modernization most effectively in treating marine insurance, which was one of Webster's new specialties.³⁸ From 1818 to 1827, Webster argued nineteen marine insurance cases in the lower federal courts and eleven such cases at the state level.³⁹ Initially he appeared most frequently for plaintiffs, but in 1831 he made a deliberate choice to shift his practice so far as possible to the insurance companies because income from that side was "steadier."⁴⁰ The editors surmise that Webster was retained by companies on a continuing basis in order to prevent him from appearing against them.⁴¹ This practice testified to Webster's stature as an attorney and prefigured his well-known arrangement with Nicholas Biddle who had him under permanent retainer for the Second Bank of the United States.⁴²

It must not be inferred, of course, that merely because Webster was an elite lawyer he had a grand plan for the modernization of New England commercial law. Theorizing was not in his temperament, and the case-by-case, day-by-day nature of lawyering mili-

36. *Boston Copper*, 32 Mass. (15 Pick.) at 361.

37. *Id.* at 362.

38. 2 KONEFSKY & KING, *supra* note 7, at 415-24.

39. *Id.* at 415-16.

40. *Id.* at 416.

41. *Id.*

42. Whether Webster was effective in his lawyering for the Second Bank of the United States is another matter, and is doubted by at least one commentator. See, e.g., B. HAMMOND, *BANKS AND POLITICS IN AMERICA* 366-68 (1957).

tated against long-range strategy. Still, Webster's working relationship with leading capitalists in New England put him in the forefront of legal change, as the discussion of the marine insurance case of *Haven v. Holland*⁴³ is made to illustrate. This case arose on an insurance policy underwritten on the ship *Volant*, which was captured on March 23, 1813, by a British cruiser on a return voyage from Europe to New England. The question placed before the court was whether the maneuvers of the *Volant's* captain, which to some extent resulted in the capture and loss of the vessel on its voyage home, constituted a deviation which released the underwriters from liability. The first stage of the litigation, which involved owners, shippers and insurers, was decided when Judge Jackson of the Massachusetts Supreme Judicial Court ruled in favor of the insurers.⁴⁴ The effect of his decision was to shift the burden of loss to the owners and curtail the practical freedom of ship captains in the interest of injecting certainty into marine insurance contracts.

Various efforts to overturn Judge Jackson's ruling ensued at the state level⁴⁵ before Webster entered the litigation in 1816 on the side of the owners of the *Volant*. The owners were being sued by the shippers on the ground that they were responsible for the captain's decision which by Judge Jackson's ruling relieved the insurers of liability. Webster's strategy, which put him on the side of modernization, was to circumvent the force of Judge Jackson's state decision by filing a new diversity suit in Justice Story's federal circuit court sitting in Boston.⁴⁶ Justice Story's ruling vindicated Webster's strategy. Where Judge Jackson had favored insurers by imposing strict construction of the contractual terms at the expense of the owners, Justice Story shifted the burden to insurers,⁴⁷ a position which at the same time permitted captains a wider

43. 11 F. Cas. 846 (C.C.D. Mass. 1821). *Haven* is considered extensively in 2 KONEFSKY & KING, *supra* note 7, at 418-24.

44. *Wiggin v. Amory*, 13 Mass. 117 (1816).

45. 2 KONEFSKY & KING, *supra* note 7, at 421-22.

46. *Id.* at 422.

47. *See Haven*, 11 F. Cas. at 847. The authors note that Justice Story's opinion reflected a concern for giving ship captains sufficient "discretion when confronted by a supposed enemy ship." 2 KONEFSKY & KING, *supra* note 7, at 423. In Justice Story's own words: "It would be most mischievous to the interests of trade to discourage a crew from making a gallant defense by the knowledge that in no event could they reap a reward from the victory." *Haven*, 11 F. Cas. at 847.

range of discretion in planning return voyages without running the risk of deviating from the terms of insurance policies.

The *Volant* case is noteworthy because it does not conform to simplistic notions of legal modernization. At first glance, Judge Jackson appears to have been the champion of principled adjudication; Justice Story, the great champion of principled law (and presumably of corporate interest), favored owners over corporations and flexibility over rigid principle. Webster, one might infer, was more concerned with winning a single case for his clients than he was in furthering scientific jurisprudence. Yet, in fact, both Webster and Justice Story were committed to the rationalization of insurance law in particular, and commercial contracts in general. The key to the *Volant* case, as Professors Konefsky and King make clear, was not the decision itself, but the strategy which shifted the forum from the state to the federal court.⁴⁸ Justice Story's circuit court was well on its way to becoming the dominant commercial law forum for the region; the editors' account of the Justice's injection of actuarial precision into marine insurance adjudication makes the point nicely.⁴⁹

V.

Webster, for his part, fully understood the advantages of the federal forum, and his remarkable working relationship with Justice Story—which garnered him expert legal advice from the Justice as well as suggestions about legal strategy, timely assistance in drafting legislation and even political advice and drafts of speeches—fortified his role as legal broker for New England capitalists.⁵⁰ The editors do not unduly emphasize the social founda-

48. 2 KONEFSKY & KING, *supra* note 7, at 422.

49. *Id.* at 418. For an analysis of Justice Story's commanding position on the First Circuit Court of Appeals, see Newmyer, *Justice Joseph Story on Circuit and a Neglected Phase of American Legal History*, 14 AM. J. LEGAL HIST. 112 (1970).

50. Webster's close relationship with Justice Story is revealed in their correspondence while collaborating in an effort to revive the federal bankruptcy system after its repeal in 1803. See, e.g., 2 KONEFSKY & KING, *supra* note 7, at 278, 280-81, 300-01. An excerpt from Webster's November 19, 1825 letter to Justice Story suggests Webster's desire that Justice Story aid in the drafting of the bankruptcy legislation:

I regret not to have seen you, altho I have nothing very particular to communicate, I should feel greatly obliged to you, if in the multitude of your concerns, you could find time to make a draft of a Bankrupt Law. I am pledged to do something on that subject; & mean to bring it forward early in the Session. The fewer the *words* in which the bill can be drawn the better. . . .

tions of Webster's practice, nor do they reduce it to a simple conspiracy, but their documents and analysis leave no doubt about the matter. The point is made abundantly clear in a short chapter entitled "A Lawyer in Congress," which discusses Webster's legislative efforts on behalf of the Second Bank of the United States.⁵¹

His elite connections are identified even more precisely in the extended treatment of his role in the Spanish Claims Commission.⁵² The Commission was created as a result of the Adams-Onís Treaty of 1819 between the United States and Spain.⁵³ Articles IX and XI aimed to settle the outstanding claims between the two countries, including those arising from unlawful seizures made by Spain of American vessels since the 1790s.⁵⁴ New England shippers turned to Webster to represent them, as the editors point out, because of his "reputation as a commercial and corporate lawyer" and because he was "sound, cautious, politically safe, and well known."⁵⁵ Webster's role as legal spokesman for New England business leaders, a motif of his general practice, is now made explicit. The list of Webster's connections, in fact, "is a who's who of the early nineteenth century commercial elite of New England, and particularly of Boston."⁵⁶

VI.

That Webster was a lawyer for the rich and powerful is not, of course, an original or all-sufficient notion. What is missing and what these volumes permit us to understand is how and why Webster the lawyer made it to the top—and to some extent the price he paid for the trip. In this regard the Boscawen and Portsmouth experiences are no less revealing than his dazzling efforts in the great Supreme Court cases. Even at this early stage, one is struck with the sheer power of Webster's intellect and with the force of his personality. Above all, we sense his genius for making law serve the practical needs of his clients—and of Daniel Webster. The legal profession, if one judges from Webster's career, readily assumes

Id. at 280 (emphasis original).

51. *Id.* at 276-325.

52. *Id.* at 175-275.

53. *Id.* at 175-77.

54. *Id.* at 176.

55. *Id.* at 199.

56. *Id.* at 265.

the ideological coloration of the groups it serves, which is to say that Webster and his professional colleagues were pragmatic, result-oriented and profit-minded. Webster, like the business elite he represented, wanted power, money and the good life. Indeed, Webster's professional zeal seemed to have been connected directly to the penury of his family, the early "specter of financial distress."⁵⁷ On October 26, 1801, for example, he conveyed the "most unpleasant information"⁵⁸ to his friend Bingham concerning his family's economic woes: "It mortifies me, beyond expression," he declared, "to relinquish my study at this period; but I cannot, cannot help it! Necessity is unrelenting and imperious."⁵⁹ The lessons it teaches also are apt to be permanent, and Webster was a quick learner in this as in other things. "Cash," he wrote to his brother and confidant Ezekiel in regard to his decision to study law in Boston, "of all things of a perishable nature, is worth the most—it [deserves?] the most toil. It ever did, does & ever will constitute the real, unavoidable aristocracy that exists & must exist in Society."⁶⁰

Too much can be made of a single statement from a hungry and ambitious young lawyer, of course, and the editors prudently abjure grand speculations. The search for money (and the inability to manage it) is, however, a constant theme of Webster's life. It attracted him into the profession and dictated his decision to study in Boston and ultimately to move there in pursuit of riches and fame. Webster, this is to suggest, not only served the members of the rising economic classes of New England, but was in his basic aspirations and values one of them. It quite naturally followed that he should be under permanent retainer to Biddle; that his clients came from the rich and well-born. It followed, too, that when Webster lost his life savings in the land bust of 1837, the capitalists of Boston and New York should have passed the hat (to the tune of \$100,000) in order to keep him in the Senate.⁶¹ Webster, it would

57. 1 KONEFSKY & KING, *supra* note 7, at 10.

58. Letter from Daniel Webster to James Hervey Bingham (Oct. 26, 1801) in 1 KONEFSKY & KING, *supra* note 7, at 10.

59. *Id.*

60. Letter from Daniel Webster to Ezekiel Webster (May 5, 1804) in 1 KONEFSKY & KING, *supra* note 7, at 24.

61. Letter from Charles Sumner to Joseph Story (Feb. 5, 1845) (available in Houghton Library, Harvard University). Sumner wrote of the "terms" on which Webster settled with "his friends, before he consented to be chosen [to the Senate]. They were \$50,000 to be subscribed in Boston, & the same sum in N York to be settled on his life & that of his wife."

seem, was retained politically by the same group that retained him professionally. When Webster spoke for New England interests in the House and Senate, the detailed knowledge acquired in his profession added to his persuasiveness; when he appeared in court, his political reputation gave authority to his arguments. It was this inimitable mixture of law and policy that was, in fact, Webster's hallmark as a constitutional lawyer.

The format of these volumes does not permit Professors Konefsky and King to explore the relationship of Webster's private law practice to his constitutional lawyering or his political career. The connection is there to be made, however, which is to say that this definitive collection of Webster's private law sources never loses sight of Webster the man. Future biographers will be grateful for this scholarly collection as will historians who want to understand the methodology and substance of early national law.

Id. See also Letter from Harrison G. Otis to G. Harrison (Feb. 7, 1845) (available in Massachusetts Historical Society). Otis also mentioned a "fund" of \$100,000, and noted that this was the third time "that the wind has been raised for him." *Id.*