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# DICTA

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## Calendar

- April 5—Denver Bar Association regular monthly luncheon meeting, 12:15 P.M., Chamber of Commerce dining room.
- May 3—Denver Bar Association regular monthly luncheon meeting, 12:15 P.M., Chamber of Commerce dining room. This is the annual election meeting for the election of officers, trustees, and members of the Board of Governors of the Colorado Bar Association, and is the final regular meeting until fall.
- July 22, 23 and 24—Tenth Judicial Circuit annual conference, Post Office Bldg., Denver, Senior Circuit Judge Orie L. Phillips presiding.
- September 6, 7 8 and 9—American Bar Association annual meeting, Seattle, Washington.

## Judah P. Benjamin, Lawyer and Statesman

By HONORABLE JOHN W. DELEHANT

*Judge of the United States District Court for the District of Nebraska. An address before the Denver Bar Association, February 3, 1947. Your editors regret that lack of space has delayed the publication of this remarkable address until this time.*

I have decided to discuss before you the actual career of some eminently successful practicing lawyer. Such a subject has a direct impact upon the problems of men active at the bar. It frequently reminds them that, great or small, their perplexities are neither wholly novel nor at all insoluble, but have been encountered by other lawyers in other times and surmounted. I, at least, always am, and most of my friends at the bar ordinarily are, absorbingly interested in the careers of the authentically great men of our calling. So, I resolved to refresh your recollection of an American lawyer whose life and work have long intrigued me, whether they be regarded for their contribution to the law, or appraised in their relation to American history's most bitter crisis up to the present hour. My subject is Judah P. Benjamin of New Orleans and London, though no two cities, not even the entire English speaking world, can wholly provide the boundaries of his active life.

In presenting these thoughts upon one of the ablest, and probably the most dramatic and romantic of all American lawyers, I shall first recall for you, all too summarily, a few of the incidents of his life and thereafter offer

some thoughts to which it may well prompt us, particularly in a season of perplexity.

Few men have been as ungenerous as he towards their biographers. He deliberately sought to leave behind him no written record of his life. This determination was prompted by the counsel of his original associate in the practice of law who advised him never to retain personal records, or even the files in a case beyond the period of its immediate pendency. That course was pursued faithfully by Benjamin. And he also made no copies of letters which he personally wrote, and destroyed the original letters which others sent to him. Finally, at the termination of certain critical periods in his life, including the weeks before its end, he devoted a considerable amount of time to the destruction of such material, casually and unintentionally accumulated, as might come under the gaze of the curious. So, those who have sought to reconstruct him for future generations have pursued their task under obvious difficulties.

Benjamin was born in 1811 in St. Croix, one of the presently designated Virgin Islands of the United States, but then British territory, shortly to be ceded to Denmark, which would exploit it for a century and more, and sell it to us during the first World War. Thus, he was born a British subject, a status he was never personally to renounce, for he became an American citizen only through the naturalization, while he was a minor, of his father. His parents had been married in London in 1808 and emigrated thence to the islands in quest of financial success which seems always to have been beyond the competence of his father. He was entirely of Jewish racial origin, his mother being descended from the same Iberian Jewish strain that gave Britain his contemporary, Benjamin Disraeli and, years later, was to give us Justice Cardozo. And some of my well informed Jewish friends advise me that his father undoubtedly was in substantial measure of the same stock, though, so far as I am aware, his precise origin is somewhat obscure.

When he was about five years of age, and perhaps with some relation to the cession of his native island to Denmark, the family removed to North Carolina and later to Charleston, South Carolina, in both of which places his mother had certain relatives, and his father participated in successive small business ventures. The boy attended Fayetteville Academy in North Carolina with conspicuous scholastic success, and at the age of fourteen entered Yale University where he remained until he was nearly seventeen. His formal education was ended without graduation, chiefly, it seems, in consequence of financial reverses suffered by his father, though it is probable that friends had substantially assisted in the payment of his expenses both in the academy and at Yale.

But so mature and thorough was the formal instruction, thus early terminated, that he had acquired a thirst and capacity for cultural learning which prompted him to unremitting and lifelong private study, with the result that, years later, his scholarly friend, Thomas F. Bayard, could write of him: "He excelled in conversation, with an easy flow of diction, embellished by a singu-

lar mastery of languages at the base of which lay the Latin and its fibres of the French and Spanish." Similarly, when the great Senator George G. Vest, years after the Civil War, inquired of a veteran reporter of the United States Senate whose familiarity with that body encompassed the golden age of Webster, Clay and Calhoun, who within his memory was the most finished scholar in the senate, the answer was: "By all odds, Mr. Benjamin of Louisiana."

On leaving the university, Benjamin tarried only briefly in Charleston where his family then lived, and proceeded promptly to New Orleans, whose location was a portent of its commanding position in the commercial life of the still undeveloped Louisiana territory. Beside its wharves passed the great river, the artery of commerce; below it lay the ocean, highway to every port in the world; and above and westerly beyond it stretched a virgin empire. There is evidence that none of these factors escaped the youth's observation.

Bent upon the study of law, he promptly secured employment at the age of seventeen with the leading notary and conveyancer in the city and supplemented his earnings by tutoring young members of prosperous families, though in some instances, his teaching was upon the basis of barter in which he exchanged tuition in English for instruction in French and Spanish, whose practical mastery was to be of immense advantage to him in that multilingual metropolis. Without relaxing his efforts in the way of gainful employment, he shortly entered upon the study of law in a prominent office, worked almost superhumanly, and at the end of four years, or in 1832, entered upon the practice of his profession.

Within three months of his call to the bar he married; and in any appraisal of Benjamin's life, the impact upon it of his marriage must be considered. His bride was a gentile, in fact an aristocratic girl of mixed European French and Creole stock; beautiful and talented, though not highly educated; a stern Catholic, in whose practical religion, ardor and intensity were ingredients far more discernible than Christian charity; selfish, ambitious, vain and wantonly extravagant. After some years of indulgence by her husband, she wearied of the want of cosmopolitanism in New Orleans, and removed to Paris, there to spend with her daughter, and their only child, the rest of her life with the exception of a single brief and disastrous attempt to live in Washington. But this unnatural behavior on her part did not alienate her husband nor induce any estrangement between them. He supported her lavishly in Paris; repaired there annually to be with her, save only for the long interval of the Civil War; and finally spent the months of his retirement with her and their daughter in the palatial dwelling which he had erected in the French capital; and died, also in those surroundings. To this eccentric marital course may be referred some measure of Benjamin's utter absorption in his profession and his public career. Its financial exactions from him were imperative and prodigious; and it liberated him from the normal distractions of domesticity and left him free to yield to his impulse towards concentrated work.

Before leaving this intimately personal aspect of his career, it is appropriate to make a further observation. Benjamin has sometimes been referred to as an apostate from the faith of his fathers. But such a notion appears to be ill-founded. It probably rests almost entirely upon the fact that his funeral services were conducted in a church of the faith of his wife and daughter and he is buried in the celebrated Pere LaChaise cemetery. But a reasonable familiarity with French elasticity in such matters refers them rather to a courtesy toward his family than to an appraisal of his own ecclesiastical status. The truth appears to be that though, even as a youth, and for reasons too complex for present discussion, he became remiss in the observance of the religious practices of Judaism, he never abandoned his basic faith in it, and throughout his life remained justly proud of his racial origin.

His industry and diligence were quickly rewarded with success at the bar. Rarely seen in criminal proceedings, he was a master of the field of commercial jurisprudence, for which New Orleans was so admirably situated. Thus, by the time he was thirty-six years of age, the press of New Orleans, and the annals of its bar placed him among the acknowledged leaders of its lawyers, and he was already a wealthy man.

But at about that point in his life also, adversity first overtook him. His almost incessant application to study resulted in the impairment of his vision in such measure that he could not read. So, he abandoned the law and devoted himself exclusively to the operation and expansion of a large sugar plantation below New Orleans in which he had already invested large sums of money gained in his practice and where he built the beautiful and costly "Bellechasse" mansion. That business initially flourished, and Benjamin invested profitably a great deal of money in scientific and mechanical improvements in the production and refinement of sugar. In fact, lecturing before learned societies and publishing articles in scientific magazines, he became one of the leading authorities of the world upon the technical side of the sugar industry. However, his striking success as a sugar planter, though solidly grounded, was brief. For after a few years a destructive flood ruined his plantation and his collapse was completed by his payment of a friend's note for \$60,000 which he had endorsed with the usual consequence of that gracious gesture.

Fortunately, his relief during some five years from the law's drudgery had resulted in the restoration to full effectiveness of his vision and he returned to his legal practice. His success upon this second service of the law was immediate and striking. It carried him shortly into a substantial share of the larger cases pending in the New Orleans courts and before the state's supreme court. It involved him in litigation and business negotiations in remote California, Texas, and Mexico. And it led him to a position of acknowledged eminence among the advocates before the bar of the Supreme Court of the United States. Some measure of his standing at the American bar may be discerned in the tender to him both by President Fillmore and by President

Pierce of an appointment to membership on the Supreme Court which he declined for a two-fold reason; first, because his financial contributions to his immediate family and his other relatives far exceeded the salary of a justice of that court, and secondly, because he preferred the life of the advocate and the active political career in which by that time he was well advanced.

And that suggests a fleeting and inadequate glance—for time will allow no more—at Benjamin's public career in America, for it is a part both of the man and of the lawyer. In the United States of the three decades preceding the Civil War, it was quite the normal thing for an eminently successful lawyer to be, at the same time, vigorously and officially involved in public life.

Even before the temporary abandonment, for the sake of his vision, of his legal career, he had become a considerable factor in the political life of New Orleans and Louisiana. In 1842, after a bitter campaign, he was elected to the lower house of the Louisiana General Assembly, as a Whig, for he originally adhered to the party of Clay and Webster. From that time forth until he left our shores, he was continuously involved in political controversy, and with a few interludes engaged in the holding of public office. In 1844 and 1845 he took a conspicuous part in the remaking of the constitution of Louisiana as a member of the constitutional convention. In 1851 he was elected as a member of the state senate of Louisiana, and served through its 1852 session. It is interesting that this legislature, of which he was a member, elected him to the United States Senate for a term commencing in 1853, and that, thus elected, he remained in the legislature and in the very center of its many violent controversies; and that, also in the interval prior to assuming his duties in the national senate, he sought and obtained election to the Louisiana Constitutional Convention of 1852, its second in seven years, and in that convention led the prevailing and controlling group of delegates.

If his public career had consisted of nothing more than his service in the United States Senate, that alone would have marked him for distinction. He entered that body on March 4, 1853 with the inauguration of President Franklin Pierce, less than three years after the deaths of Clay and Calhoun and only months after Webster's death, and his tenure ended with the attempted sundering of the Union after the election of Abraham Lincoln. Taking the oath with him were the new senators, Sam Houston of Texas, and Stephen A. Douglas of Illinois. Elected as a Whig, he repudiated his party midway in his term, and became a Democrat. Despite that usually suicidal gesture and the antipathy which it engendered among his former associates and the diffidence of his new political bedfellows, he was reelected in 1859 for a second six-year term. But he forsook the senate on February 4, 1861 to cast his lot, in the then gathering struggle, with the state of Louisiana and shortly with the confederacy.

I wish I might forget the proper limitations of time, and quote for you passages from some of the celebrated speeches which he delivered in the senate. There is eloquence in them; and scholarship, and beauty, and logic,

and pathos. For, of such ingredients is true eloquence compounded. To be sure he spoke in a season of tragic and desperate earnestness, calculated to inspire high sentiments and evoke magnificent diction. But Benjamin was capable of both.

He appreciated how generously the United States had dealt with him. As a consummate realist, he appraised maturely the superior might of union in contrast with the infirmity of discordant elements of a broken nation. And he espoused secession with frank reluctance and took a restrained and sobered view of the prospects of southern success. Yet, as a senator he was consistently the masterly lawyer. In perhaps a half dozen genuinely great addresses upon the senate floor, he vindicated the logic of the position of the withdrawing states, whose only historic answer was the voice of restraining might. Most notable of all was his final effort, upon which he resigned and departed from the senate. Of it no friend, but a general of the Union army, has written: "I heard the farewell speeches of Senators Jefferson Davis of Mississippi and Benjamin of Louisiana. Mr. Benjamin appeared to me essentially different from Mr. Davis. Notwithstanding his incomparable abilities and the fact that he became a secessionist with great reluctance, he never excited animosity in me or in any other northern man so far as I am aware. When I listened to his last speech in the senate, I was transported out of myself. Such verbal harmony I had never heard before! There was neither violence in his action nor anger in his tone, but a pathos that lulled my senses like an opiate that fills the mind with delightful illusions. I was conscious that it was Senator Benjamin who spoke, and that his themes were mighty wrongs and desperate remedies; but his words I could not recite; nor can I yet recall them. Memory, however, restores the illusive pleasure they left, which is like the impression I retain of my youthful days." The tribute itself is sheer eloquence, but for its vindication I invite you to read the speech and its predecessors in their entirety.

Remember, too, that Benjamin coupled a very large and lucrative law practice with the performance of his senatorial duties. While in Washington he appeared repeatedly before the Supreme Court; and during senatorial holidays then much longer than in 1947, he was probably the busiest lawyer in Louisiana, particularly before its Supreme Court.

The magnitude of his practice during that period before the Supreme Court of the United States may be understood when it is remembered that he appeared on retainers in substantial cases arising in many states, and that during the decade of the 1850's his cases there were surpassed in number only by those of the aging Reverdy Johnson, who had succeeded to the pre-eminence held by Webster on the latter's illness resulting in his death in 1852.

But March of 1861 saw an end of all this. For, almost immediately upon withdrawing from the senate, he left New Orleans for a conference at Montgomery, the first capital of the confederacy, never again to see the city of his residence or the members of his family left dwelling there. It was not

possible for one of his great ability to remain aloof from the government of the Confederate States; and the truth is that he sought no abstention.

First, as attorney-general and later as both attorney-general and secretary of war of the new government, he was only doubtfully successful. The task of the confederate secretary of war was destined to be thankless and superhuman, in view of the resolution of Mr. Davis, a West Point graduate and professional soldier and late secretary of war of the United States, to direct the armies of his ill-starred country. But, shortly, Benjamin was relieved of these offices and made secretary of state where he served brilliantly until all was lost.

I must pass over this interlude of authentic statesmanship, though I do it with acknowledged reluctance. If my audience, instead of lawyers, were a class in American history or government, those four years and slightly more, would be a subject appropriate for a dozen lectures, for, through Benjamin's life during them, flows the very history of the confederacy. His correspondence with Mason and Slidell, the commissioners and advocates of the confederate states, at the courts of St. James and the Emperor Louis Napoleon, respectively, is a drama whose theme is the alternating confidence, despair and hope and the final disaster of the short lived republic. And it required Mr. Benjamin, the lawyer, for its leading character.

But with Appomatox and the subsequent flight of the Davis government, the secretary, realizing that in the northern states he was the most hated man of the defeated confederacy, resolved upon a self imposed exile, and by successive disguises, managed to elude the pursuit of the federal soldiers and to escape, first to Cuba, thence, through the Caribbean Islands, and finally, after months of journeying including at least two nearly fatal shipwrecks, to England.

And so, at the age of fifty-four, this man who had already lived more abundantly than most people may anticipate from a century, found himself in the very heart and center of conservative inhospitality, an exile from the soil on which he had earned renown, with a price offered for his capture and return to a vindictive retribution. Too, with very heavy obligations for the support of his family he was in precarious financial condition. For, though he had lately invested all his remaining and available fortune except his lands in southern cotton, of which some eight hundred bales had shrewdly been placed on board ship for England, barely a hundred bales, and these in damaged condition, escaped the vigilance of northern ships and the ravages of storm and reached England. However, the price per bale was such that he realized twenty thousand dollars out of what, without disaster, would have been a comfortable fortune. And this twenty thousand dollars, with prudent rationing, provided him with the means for his family's support pending the restoration of his earning capacity.

The talents of their newly arrived guest were not unknown to the English, who though cautious about offending the now successful North, had quite



generally desired a confederate victory and stood ready to deal kindly with Benjamin as a token of their actual preference in the rebellion. Accordingly, British journalism tempted him with flattering offers of employment in literary pursuits, which he accepted only to the extent of contributing special articles to periodicals, yield him less than enough for his personal subsistence pending his call to the bar.

For he resolved early—if indeed there was every question on the score—to prepare for the English bar. His birth on British soil provided him with the requisite British citizenship. But formal study and preparation were imperative notwithstanding his recognized learning. So, on January 13, 1866 he enrolled as a student of law at Lincoln's Inn with Charles Pollock, the son of Sir Frederick, and himself later Baron Pollock, as his instructor, and with no assurance that the customary three years of apprenticeship would be forgiven. But, to his gratification, on June 6, 1866, he was dispensed from the rest of his term and called to the bar.

This is the place at which his famous text on "Sales" should be mentioned, for it was at this period in his career that it was projected. I have heard it asserted mistakenly that he wrote the volume while he was a student at the inns of court. He actually wrote it in the first two years of his career as an English barrister, those years that were calculated to be lean for him as their counterparts have been for every one of us; and it was published in 1868. Extant originals of letters he wrote to friends and his sisters show that his purpose in writing it was to cover a then textually unexplored field of law with a degree of skill that would challenge the attention to his learning of the British bar and commercial interests; and that he hoped for little if any profit directly from the sales of the work, a prospect that was probably accurately appraised. This was not his first venture into legal literature; and the former one was undertaken at a comparable period in his New Orleans professional career. When he was admitted to the Louisiana bar there was no available digest of the Spanish and French decisions in the area's territorial period or of the opinions of the Louisiana Supreme Court up to that point. Accordingly, and originally for his own use in his practice, Benjamin prepared in his beautiful and careful longhand script such a digest in textual form. But by the time he had been in practice for two years its fame among Louisiana lawyers had grown to such an extent that he had revised and published it in association with his lifelong friend and his fellow student at Yale, Thomas Slidell, later Chief Justice of the Louisiana Supreme Court, and brother, as I recall, of John Slidell who was to be Benjamin's associate in the United States Senate and the confederacy's representative in England under Benjamin's guidance.

His success at the English bar was astonishing, even if it did not achieve the logarithmic proportions sometimes claimed for it. The minimum reality is almost incredible. From sources that, so far as they extend are accurate and reflect his earnings at figures below which they certainly did not fall, it is

shown that in the third year of his practice there, he received more than five thousand dollars in net fees; that they rose quickly to approximately ninety thousand dollars per year, and that in the sixteen years of his practice, he received in net fees, no less than seven hundred fifty thousand dollars. It is claimed, though it is not demonstrable, that for several years his income exceeded one hundred twenty thousand dollars annually. All this on the purely material side.

In professional standing his English legal career was even more exceptional. He was made Queen's Counsel in 1872 and shortly thereafter was accorded a patent of preference. So great became the demand for his services that he was finally compelled to limit his advocacy to cases before the House of Lords and the Privy Council. The most eloquent evidence of the appraisal of his ability and merit is to be found in the fact that when, in June of 1883 he felt constrained, from considerations of health, to retire from practice to the home of his wife and daughter in Paris where, a year later he was to die, he was accorded the then unprecedented honor of a farewell testimonial dinner by the barristers of England, attended by the acknowledged leaders of the bench and bar of the nation.

Many factors undoubtedly conspired in the achievement of this final one of what were actually his three careers at the bar. Some were political, some local. Probably, as has been asserted, he was regarded with initial and auspicious favor by the wealthy tory class of British society, politics, and finance, who had actually desired the defeat of the federal cause in the Civil War and the confusion and ultimate destruction of the upstart nation builded from Britain's rebel American colonies. And, certainly, he was shrewd in seeking his practice chiefly in the industrial north of England with particular orientation to Liverpool whither his fame as a lawyer had preceded him, in consequence of the commercial relations between Liverpool and New Orleans.

But I need not remind the members of a bar association that whatever introductory favor might have issued from those factors, they were not, alone, or even principally responsible for his success.

The cause of that was Benjamin, his vast and cosmopolitan learning, his tireless industry, his striking personality, in fine the man in his entirety. Upon one only of these elements need I dilate. His success argues for the rest. But remember that he was first broadly educated basically, and then schooled with almost equal accuracy in the common law, in the civil law as modified by the Code Napoleon, and in the Spanish law. This diversified scholarship had stood him in good stead in young and developing Louisiana. It is reflected in the text of the original volume on Sales. And it was invaluable in the equipment of the leader of the bar of the center of the commercial empire then maturing under the reign of Victoria and the rival policies of Gladstone and Beaconsfield.

His method in presenting an argument, either orally or in writing, to a court or jury was singular. Invariably, he opened an argument or brief

with a closely reasoned analysis of the abstract legal position which he felt called upon to maintain. And, this done, he proceeded to articulate the facts of his pending case into the law which he had already demonstrated to be valid. Many English barristers and American lawyers have remarked upon the striking effectiveness of this order of presentation under his masterly employment.

I have long regarded a recollection of Mr. Benjamin's career as an antidote to the temptation to despair to which we in the profession are not infrequently subjected. I can not think of any American—not even Abraham Lincoln realistically rescued from juvenile texts on history—who, more repeatedly and more triumphantly than Benjamin, survived that inclination.

On at least three major occasions—and and at other times to some extent—he saw his financial fortunes in ruins. The rich Belleschasse plantation was almost completely destroyed. At least two other business ventures, which time has forbidden me to mention, collapsed to leave him virtually bankrupt. The Civil War and its tragic end despoiled him of a fortune in real estate and left him with only a salvaged fraction of his personal holdings, quite inadequate, for any substantial period, to meet the demands made upon him by his family. Approximately eight years before his retirement he made an outlay of every asset he possessed to provide a dowry of three thousand dollars per year for his daughter whom he dearly loved. And from that point he proceeded, notwithstanding the subsequent expenditure of eight-five thousand dollars in the erection of the new Paris home for his family, to accumulate a final fortune which on his death, included personal property appraised at more than three hundred thousand dollars.

His devotion to his family, both his wife and daughter, and his mother and sisters was notable. I have already adverted to the eccentricity of his own domestic career. Despite its irregularity, it seems never to have embittered him or tempted him to cynicism or to any disordered living. Discord appears to have separated his parents with the consequence that Benjamin assumed the responsibility for the support of his mother and two of his sisters, one unmarried, and the other a widow. He maintained them in luxury and delighted in making lavish presents to his nephews and nieces. Quite incidentally, two sons of one of his sisters were Mr. E. B. Kruttschnitt, a distinguished member of the New Orleans bar at the change of the centuries, and Mr. Julius Kruttschnitt, late president of the Southern Pacific Railroad Company.

The collapse of the confederacy, and his own status as a hunted traitor, left him sorrowful, indeed, but neither despairing nor complaining. He took his plight quite philosophically. In fact, it would be difficult to discover correspondence more ebullient and more uniformly cheerful than the letters he wrote to his sisters during his several enforced pauses at island havens in the course of his hazardous and frequently interrupted journey of escape from Florida to England in 1865. Recognizing that his former distinguished career had definitely and permanently ended in obloquy and in material failure; that his present was perilous both physically and financially, and his future

quite inscrutable, he, nevertheless, refused to descend to pessimism, persisted in good cheer, and spoke confidently of then incubating plans for the re-establishment of his fame and fortune. For us who are wont to bewail a single blighted aspiration, he is surely an exemplar of hope.

But perhaps his most unique characteristic was his ostensible indifference to criticism and calumny. The adjective "ostensible" should not be neglected; for it is hardly to be supposed that a nature as sensitive as his could remain unwounded by the bitter personal recrimination to which he was almost constantly subjected throughout his American career. He literally lived in the midst of controversy; and much of it was undoubtedly inspired by his own success, his bearing, and his subtle and fastidious personality. I shall offer here no adequate catalogue or examination of the accusations brought against him, although without a knowledge of them, it is quite impossible to understand the man or to appraise his career. Not all of them were without foundation, though certainly most of them were rooted in the malice and intemperance of the time and events, during which he lived so actively and daringly and brilliantly.

His financial speculations and promotions, whose index extends from purely personal investments to semi-public ventures in several railroads, both in the southern states, in Texas and in Mexico, and mining operations in California, and Guano development in South America were often stigmatized as chimerical or worse. In his political career, he was censured for the frequent changes in his publicly expressed opinions and programs, for electoral manipulations, and especially for the advocacy of concrete measures cherished by his properous and generous professional clientele. He was cruelly pilloried because of the circumstances of his domestic life, although I am unaware of any charge against his personal morals. His racial origin was constantly urged against him. He was even charged seriously with adherence to the "know-nothing" movement; he whose birth had occurred on foreign soil, whose family was Jewish; and whose cherished-wife and daughter were Roman Catholic. But personal and political hatreds have never made a virtue of sanity or a vice of intrinsic incongruity.

His great learning, ability, and industry made him the natural and acknowledged director of any project to which he bent his efforts; and the confederacy was no exception to this rule. He was recognized as the intellect of the rebellion; the framer of its constitution and principal laws; the inspiration of its propaganda; and especially the genius of its diplomacy. Quite naturally, therefore, all of the intolerant hatred of which the North was so notoriously capable descended on his person. Its variety was almost infinite for he was absurdly charged with the creation of projects ranging from local southern cruelty to federal soldiers, through the depressing harshness of Andersonville, to the attempted burning of New York City. He was, in utter reality, the whipping boy of the confederate states.

The very acuteness of his intellect made him a target for such calumnies.

For without particularization, of which a startling documentation could be drawn from the history of races, nations, philosophy and religion, I merely remind you that, in seasons of controversy, one's intellectual capacity for brilliant and subtle reasoning is a temptation to suspicion and criticism from small and obtuse minds.

In the face of such attacks Benjamin, with almost no departures, maintained a consistent practice. He denied nothing; he answered nothing; with the natural consequence that his tormentors were uniformly infuriated, and often confounded.

The outstanding instance in which he departed from this rule of silence under attack may be mentioned. In 1861, with the incipient war's hatred at its height, a story was circulated through the northern press which found its way to the south, that he had left Yale to avoid expulsion after being detected in a series of petty thefts of personal articles and money from fellow students. Benjamin who had ignored so many accusations of major adult misconduct was singularly roused to rage over this charge, brought more than thirty years after the event, of misconduct at the age of sixteen years. One of the ensuing controversy two facts emerge as probable. It is likely that he did leave the university under some disciplinary stricture, as well as from considerations of financial necessity. But, on the other hand, the specific accusation made against him stands unproved and intrinsically suspicious on at least two grounds; first, it is exact and meticulous as to date and attributes the occurrence to a time more than a year after Benjamin had certainly left Yale; secondly, its origin has been traced to two fanatically anti-semitic and anti-slavery clergymen writing in *The Independent*, an abolitionist organ under the editorship of Henry Ward Beecher, who was himself no paragon either of virtue or of intellectual honesty, but rather a first-rate calumniator.

So much, by way of hurried recollection, of a great lawyer and statesman. I do not vainly imagine that I have portrayed for you either the life, or the character, or the abilities of Benjamin. But I do allow myself the hope that I may have provoked one or another of you to examine the literature touching him, and thereby to catch a glimpse of what intelligence, study and industry did for one man, not always under favorable auspices, and may—who knows—still do for a rare soul who has the good fortune to possess and manifest them.

I close with one further comment. After writing this paper down to the end of the last preceding paragraph, I found myself prompted to read a new volume on Benjamin's life, entitled "Judah P. Benjamin, Confederate Statesman" published in 1943 and written by Professor Robert Douthat Meade. It is an orderly and scholarly biography in the modern method. But I have not been prompted by it to any revision of the foregoing comments. The truth is that it leans quite heavily and with commendable frankness on a biography published in 1906 by Pierce Butler—not the judge, but a southern scholar of Irish descent bearing the distinguished name—and on Butler's material and bibliography. These, I think, are the principal works of broad scope

upon the subject; and between them, particularly for literary style, I am rather inclined to prefer Butler's effort. But that is an arguable conclusion. The Meade volume is altogether excellent and reflects a high measure of critical scholarship.

From our standpoint as lawyers, it is to be regretted that some competent legal scholar has not been prompted to prepare a biographical study of him will repay the reading; and that will be doubly certain if the writer will only with special emphasis on Benjamin the lawyer. Perhaps he may yet beckon to a Beveridge of a later generation; and if he does, I am sure that the result behold his subject in its true context, and not endeavor wholly to divorce the lawyer from the statesman, the politician, and the man.

## **Uniformity in Procedural Matters as Contributing To The Administration of Justice**

By VANCE R. DITTMAN, JR.

*Professor of Law, University of Denver, School of Law. An address before the annual conference of the Tenth Judicial Circuit, Denver, Colorado June 13, 1947.*

In considering the problem of uniformity, we have first to decide exactly how broad we intend this uniformity to be. It is one thing to talk about uniformity in procedure and another thing to talk about uniformity in the interpretation of the rules of substantive law; one thing to talk about uniformity in either aspect within the federal courts alone, and another thing to talk about that same uniformity as extended to all the courts of all the 48 states as well as to all the federal courts. There at least purports to be a uniformity of procedure among the various federal courts, at all levels, in the vast majority of cases coming within their jurisdiction in either the civil or criminal field, and regardless of the state in which that court may be sitting. So, we have at least a framework upon which has been started an already large and a steadily growing body of case law related to the purely procedural field. As to how adequate that will be remains to be determined from that mass of future case law yet unmade.

So far as a uniformity of procedure in that over-all picture which includes the courts of all jurisdictions, we do not, at present, have even a good start to achieve that end. Some effort has been expended in that direction by the adoption of rules of procedure designed after the federal rules, with appropriate changes, as has been done in this state. But such instances are notable because they are unusual, and not because they in any way indicate a trend. Because of this actual picture—uniformity on the one hand and an almost total lack of uniformity on the other—we can form an opinion of some value as to the desirability of the practice.

Before discussing this at greater length, it might be well to dismiss with