der bad conditions.[22] Despite numerous efforts to change this system, it persisted, except for one brief period, until 1891.[23] Since then, the federal judicial system has consisted of district courts with original jurisdiction, intermediate appellate courts, and the Supreme Court.

***Abolition of Courts.***—That Congress "may from time to time ordain and establish" inferior courts would seem to imply that the system may be reoriented from time to time and that Congress is not restricted to the *status quo* but may expand and contract the units of the system. But if the judges are to have life tenure, what is to be done with them when the system is contracted? Unfortunately, the first exercise of the power occurred in a highly politicized situation, and no definite answer emerged. By the Judiciary Act of February 13, 1801,[24] passed in the closing weeks of the Adams Administration, the districts were reorganized, and six circuit courts consisting of three circuit judges each were created. Although Adams appointed deserving Federalists to these so-called "midnight judge" positions just before the change in administration, the Jeffersonians soon set in motion plans to repeal the Act, which were carried out.[25] No provision was made for the displaced judges, however, apparently under the theory that if there were no courts there could be no judges to sit on them.[26] The validity of the repeal was questioned on related grounds in *Stuart v. Laird*,[27] but Justice Paterson rejected the challenge without directly addressing the issue of the displaced judges.

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[22] *Cf.*Frankfurter & Landis, supra at chs. 1–3; J. Goebel, supra at 554–560, 565–569. Upon receipt of a letter from President Washington soliciting suggestions regarding the judicial system, WRITINGS OF GEORGE WASHINGTON, (J. Fitzpatrick ed., 1943), 31, Chief Justice Jay prepared a letter for the approval of the other Justices, declining to comment on the policy questions but raising several issues of constitutionality, that the same man should not be appointed to two offices, that the offices were incompatible, and that the act invaded the prerogatives of the President and Senate. 2 G. MCREE, LIFE AND CORRESPONDENCE OF JAMES IREDELL 293–296 (1858). The letter was apparently never forwarded to the President. Writings of Washington, supra at 31–32 n.58. When the constitutional issue was raised in Stuart v. Laird, 5 U.S. (1 Cr.) 299, 309 (1803), it was passed over with the observation that the practice was too established to be questioned.

[23] Act of March 3, 1891, 26 Stat. 826. The temporary relief came in the Act of February 13, 1801, 2 Stat. 89, which was repealed by the Act of March 8, 1802, 2 Stat. 132.

[24] Act of February 13, 1801, 2 Stat. 89.

[25] Act of March 8, 1802, 2 Stat. 132. Frankfurter & Landis, supra at 25–32; 1 C. Warren, supra at 185–215.

[26] This was the theory of John Taylor of Caroline, upon whom the Jeffersonians in Congress relied. W. CARPENTER, JUDICIAL TENURE IN THE UNITED STATES 63–64 (1918). The controversy is recounted fully in id. at 58–78.

[27] 5 U.S. (1 Cr.) 299 (1803) (sustaining both the transfer of suits between circuits and the sitting of Supreme Court Justices on circuit courts without confirmation to those courts).