

# **A Guide to the Preservation of Federal Judges' Papers**

**Third Edition**

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This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to "conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States government." While its publication signifies that the Center regards the information herein as responsible and valuable, it does not reflect official policy or recommendations of the Board of the Federal Judicial Center.

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## Preface

Since it was first published in 1996, *A Guide to the Preservation of Federal Judges' Papers* has helped judges assess the historical importance of their personal papers. Scholarly works and educational material based on collections of judges' papers are valuable sources of public understanding about the courts. Judges who are interested in donating their personal papers for research confront a range of questions about what to save and how to save it and about the logistics of donating to a manuscript repository. The Federal Judicial Center provides this guide to help answer those questions and encourages anyone with further questions to contact the Federal Judicial History Office, [history@fjc.gov](mailto:history@fjc.gov).

While the value of judges' papers has not changed since the publication of the first edition of the guide, their formats have changed immensely. Physical documents have been replaced by "born digital" material including document files, emails, and voicemails, among others. The third edition of the guide accounts for changes in technology and provides information to judges on the managing, organizing, and storing their personal papers in a digital age.

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Director, Federal Judicial Center



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## Introduction

A judge's chambers papers and other personal records establish a foundation for historical studies that document the role of the federal judiciary in American life. If preserved, these materials can offer future researchers a perspective and a level of detail not available in the official records of the courts. Research collections based on judges' papers are often the most valuable source for illuminating the judicial process. Yet all too often this critical portion of the historical record of the federal courts has been lost, and with it a full appreciation for the contributions of individual judges.

For some judges, particularly those early in a judicial career, the ultimate disposition of their papers may seem like a matter to take up at retirement. However, a useful way to think about the role of a judge in preserving the historical record is this: save now to be able to make decisions later. Judges can preserve their personal papers and make them available for eventual study by donating the materials to a library or archival repository. But unless a judge takes steps to ensure preservation, material may be lost before the judge has an opportunity to consider donating a collection.

In response to frequent requests for information about the disposition of the papers of federal judges, the Federal Judicial Center created this publication describing the preservation of personal papers, in digital and hard-copy formats, and the process of making those materials available for research. The guide is arranged in three parts. Section one explains important considerations for judges related to their papers, including managing, organizing, and storing digital material. Section two describes the value of judges' papers to historians and researchers and provides insight to judges on how their papers, if preserved, might be used in the future to document the history of the judiciary, the courts, and the law. Section three explains the role of manuscript repositories in preserving judges' papers. Guidelines for selecting a proper repository are offered for judges who would like to make a collection of their papers available to researchers.

Throughout this volume, the term "judges' papers" is used to mean a judge's chambers papers as well as other personal records—essentially all of the documents that a judge accumulates over time that are not part of the official files or official court records. While both chambers papers and personal records are the judge's private property, the term "chambers papers" refers specifically to case-related documents, correspondence, and documentation of court administration distinct from the official record of the court. These documents are the primary focus of this guide. Of course, a collection of a judge's papers may also include other "personal records;" used here this term refers to a range of materials that a judge might preserve for future research, such as photographs, awards, and other documents that illuminate aspects of the judge's biography or personal life.

Advances in technology have multiplied the formats in which judges' papers might be produced and stored. In all places where this volume references judges' papers, the term encompasses material produced or stored in hard-copy or electronic form.

This guide should help federal judges take the first step in preserving their chambers papers. The staff of the Federal Judicial History Office at the Federal Judicial Center is available to answer any questions regarding the papers of a federal judge. The History Office may be reached at (202) 502-4180; [history@fjc.gov](mailto:history@fjc.gov); or Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20002-8003.





# Section I. Preserving Judges' Papers in the Digital Age

## Judges' Papers: Quick Facts

- They are the private property of the judge.
- They are not part of the official court record.
- They exist in hard-copy and electronic formats and include not just documents but photographs, audio, video, voicemails, text messages, and more.
- They are valuable to researchers who rely on collections of judges' papers to produce judicial biographies, institutional histories, and legal histories.
- A judge can preserve these materials by establishing a filing system in chambers that includes plans for noncurrent records and by making a plan to ensure that electronic material is properly saved.
- A judge can donate a collection, or portions of it, to a library, historical society, archive or other repository to make the material available to researchers.
- To preserve privacy and confidentiality, a judge can place access restrictions on a collection donated to a repository.

## Judiciary Policies for Court Records and Chambers Papers

### Case Files and Official Court Records

Judiciary policies ensure that official court records are preserved. As keeper of the court's records, the clerk of court has a duty to maintain dockets in accordance with records management policies in the Guide to Judiciary Policy, vol. 10, ch. 6. Docket records are maintained in the federal courts' case management and electronic case filing (CM/ECF) system. Records retention schedules dictate what documents are included in the official record of the court. After designated periods, those records are subject to accession by the archivist of the United States, at which point they become the property of the National Archives.

### Chambers Papers

Chambers papers are not part of the official records of the federal courts, and they remain the private property of the judge or the judge's heirs. Disposition of those papers is the judge's or heirs' prerogative. Neither federal statute nor the policies of the Judicial Conference of the United States make any provision for preserving federal judges' papers. Judges' staffs or the clerks of court cannot determine where the papers will go, and the National Archives cannot accept the collections as part of the records of the courts. Federal records centers do not provide temporary storage of judges' chambers papers. Nor are court funds available for preserving judges' papers.

## Documents Considered Chambers Papers

The term “chambers papers” includes essentially all case-related and court-related material beyond the official case records and court records. Chambers papers frequently include predecisional material, such as case notes, orders, jury instructions, draft memoranda, draft opinions, correspondence, and research. Chambers papers might include documents relating to court administration, service on the Judicial Conference or circuit councils, and membership on the board or committees of the Federal Judicial Center and other agencies of the judiciary. Media reports concerning the judge or specific cases, personnel files, and miscellaneous records of the judge’s activities, such as speeches, awards, and photographs, are also valuable parts of a judge’s chambers papers. Appendix A is an extensive but nonexhaustive list of materials included in judges’ chambers papers.

## **The Historical Value of Chambers Papers**

Researchers use chambers papers to understand the judiciary, the courts, and the law. Collections of judges’ papers preserved in repositories are the basis for judicial biographies, institutional histories, and legal histories. The most valuable judicial research collections are those that complement rather than duplicate the case files, administrative records of the courts, or published sources. Those documents unique to a judge’s chambers will be the most illuminating about the court, the particular accomplishments of the judge, and the era and region in which the judge served. Documents such as memoranda between judges or between the judge and staff that explain the process of judicial deliberation, as well as other predecisional materials that illuminate the judge’s formulation of opinions, management of cases, or approach to court administration, will contribute to a better appreciation of the responsibilities of federal judges.

## **Preserving Chambers Papers to Assist Future Research**

Judges can play an important role in historical preservation and assist future research by planning to donate their chambers papers and other personal papers to a manuscript repository as a collection. Many repositories have the resources to accept and process a comprehensive collection of judicial papers, and many are eager to accession the papers of a federal judge. Possible repositories include universities, historical societies, and law school libraries.

Judges who would like to preserve their personal papers will find numerous advantages in contacting repositories. Discussions with a potential repository will give judges an understanding of the kinds of documents that will make a collection valuable and contribute to public understanding of the federal judiciary. Staff from the repository will also inform the judge of the types of personal and nonjudicial papers that can enhance a research collection. Additionally, the repository can discuss capabilities for digital storage and the compatibility of digital storage formats. Before the transfer of documents, archivists can meet with the judge’s staff and work with them to devise an efficient system for organizing noncurrent materials. A repository may then accept the transfer of noncurrent records and relieve the court or the judge of the burden of storing and maintaining those files.

## **Electronic Material**

Technology has made preservation at once more complex and more achievable for most judges. The risk of losing historically valuable material increases as time passes, and with most newly created material being stored in digital form, ensuring that a judge's materials are preserved requires attention to current technology and digital storage practices. But with the new technical challenges come new opportunities for preservation. In the past, noncurrent documents took up scarce physical storage space in chambers; digital storage space, however, is readily available. Files containing decades worth of material can be archived on thumb drives occupying a fraction of the space in one desk drawer. At the same time, electronic material that is forgotten may be destroyed as technology and file formats become obsolete or as the material is subject to periodic deletions.

Judges interested in preserving their chambers papers for historical research should make a plan for saving their digital materials, particularly document files and emails. Electronic documents are saved on local court servers or on individual computer drives. Though files stored on servers are typically not subject to periodic deletion, nor are they subject to retention practices and policies. Further, practices for storing and saving emails vary by court. (Some courts will delete the individual files of a judge or chambers staff member 30 days after the individual departs from the job.) Inaugurating a system for organizing and storing noncurrent documents and emails on an external drive or thumb drive will help facilitate preservation.

In addition to document files, electronic materials such as calendars, voicemails, text messages, and material stored on mobile devices may be of historical value. For information about the routine retention practices of the courts with respect to specific software programs and technologies, judges can consult their IT staff.

## **Steps to Preserving Chambers Papers**

1. Establish a system for organizing chambers papers. Appendix B provides one suggested approach.
2. Determine where electronic chambers papers are stored and whether they are being saved.
3. Contact a repository to discuss the potential donation of a collection of papers. For samples of judicial collections, see Appendix E. As part of its Biographical Directory of Article III Judges, 1789–present, the Federal Judicial History Office maintains information about the location of research collections of individual judges: [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).
4. Discuss any plans for preservation with family and chambers staff.

## **Organizing Chambers Papers**

Adopting a system for organizing chambers papers is an important first step to historical preservation. Whatever filing system a judge chooses, the organization of chambers papers itself becomes an important record of the judges' work. Repositories that accept judicial collections will usually be interested in maintaining the same organizational structure.

Repositories vary in their policies about retaining different categories of materials, and each collection of judges' papers presents different issues. The judge will find it helpful to consult with the archivists of a potential repository to make sure they agree about important issues. Archivists will welcome the opportunity to meet with judges and their staffs, and their visit to chambers will be invaluable for processing the collection later.

Material routinely found in a federal judge's chambers falls into three series of categories: case-related files, other court-related activities, and nonjudicial activities. Keep in mind that material in each of the categories below may take the form of documents, emails, text messages, voicemails, and other electronic material.

## Series 1. Case-Related Files

Practice varies among courts and chambers regarding the contents of case files and files that the judge maintains separately in chambers. In some instances, local rules specify materials to be placed in the case file. Federal records statutes obligate courts to “preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions” of the court (44 U.S.C. § 3101). Therefore, all materials filed officially with the court in support of litigation belong in the court’s case file. These materials include briefs, depositions, and exhibits made part of the record and are filed and stored in CM/ECF.

For their own reference, judges may wish to instruct staff to include in the chambers files copies of documents from the case files. The other documents in the case files retained in chambers will differ considerably in size and content according to the type of court. The criteria for preservation, however, are the same. Documents that make a judge’s case-related files historically valuable provide information not available in the court record or illustrate aspects of the judicial decision-making process. Appendix B includes suggestions, listed according to type of court, for organizing and preserving judges’ case-related files.

**Opinions and orders.** Some judges keep comprehensive files of their orders and opinions separate from the specific case files. Copies of orders and opinions in chambers files can be helpful for archivists and researchers. If a judge creates a separate file of opinions and orders, a repository may wish to accept the file intact, even if a significant proportion of the writings have already been published. Repositories will also be interested in preserving all unpublished opinions.

**Public correspondence.** Judges involved in high-profile cases may receive letters from the public commenting on the cases. This public correspondence can be some of the most valuable documentation of the impact of the federal judiciary. The papers of J. Skelly Wright at the Library of Congress include extensive public correspondence from the late 1950s to early 1960s regarding the New Orleans school desegregation case that Wright presided over while he was a district judge. The collection maintains the judge’s arrangement of the letters in files marked “favorable” and “unfavorable,” and the correspondence offers a vivid sense of the conflicts surrounding the case and of the challenges facing a lone district judge. Even in less controversial cases, public correspondence can provide one of the few sources explaining public reaction to the work of the courts. Public correspondence can be kept in the case-related files or organized as in Wright’s chambers in general correspondence files.

**Sealed and classified records.** Chambers papers may include documents from a sealed case. Sealing cases or case papers is in some matters pursuant to statute but more frequently is governed by judicial discretion or the rules of each judicial district or circuit. Judges whose papers contain notes or documents from sealed cases ought to consult their local court rules, and access restrictions on the chambers files should parallel those on the case files. Some courts specify a set time that records must remain sealed, while others leave the duration of sealing to the discretion of the judge or clerk of court. The Federal Judicial Center has compiled a survey of local court rules related to records sealing, *Sealed Settlement Agreements in Federal District Court*, Appendix B (2004), which can

guide judges and archival repositories in handling sealed case materials.<sup>1</sup> Judges may also consult the Center's [\*Sealing Court Records and Proceedings: A Pocket Guide\*](#) (2010).<sup>2</sup>

**Classified records.** Classified materials are closed to public inspection by a department or agency of the executive branch and must be declassified by that entity or by the National Archives and Records Administration before they can be made available to researchers.

Most classified records handled by the federal courts are now turned over to the Justice Department's Security and Emergency Planning Staff (SEPS) on termination of a classified case. SEPS holds classified materials, as well as judges' notes from classified trials, in perpetuity. Though some judges stipulate that their notes and papers from classified cases be destroyed on receipt by SEPS, classified materials occasionally remain in chambers papers, particularly those of judges who served before the SEPS transfer process was established.

Classified materials must be held at a facility under conditions approved by the U.S. Department of Defense or another authorized government agency. The Library of Congress and the presidential libraries are equipped to hold classified materials, but many libraries and archival repositories are not. After materials are declassified, they may be transferred with the rest of the judge's papers to a private repository.

SEPS and the National Archives can answer questions regarding classified materials in their collections. SEPS can be reached at (202) 514-9016. The National Declassification Center at the National Archives can be reached at (301) 837-0407, and the Information Security Oversight Office at the National Archives can be reached at (202) 357-5250, [www.archives.gov/isoo/](http://www.archives.gov/isoo/). The Federal Judicial Center's [\*Keeping Government Secrets: A Pocket Guide on the State-Secrets Privilege, the Classified Information Procedures Act, and Classified Information Security Officers, 2d ed.\*](#), is a useful guide for handling classified materials at the courthouse before delivery to an archival repository.<sup>3</sup>

## Series 2. Other Court-Related Activities

**Administrative papers and office files.** A judge's administrative papers can document institutional history as well as the history of judicial administration. A chief judge's files will probably hold the richest documentation in this area, though the files of other judges are likely to contain valuable administrative material. Records may include correspondence, printed policy papers, memoranda, studies, minutes, and committee reports. Additional papers may relate to Judicial Conference and judicial council activities, committee service, and extrajudicial activities. A judge may also preserve general correspondence, office personnel files, travel vouchers, appointment books, diaries, speech files, seminar files, news clippings, biographical files, and law clerk files.

Documents that illuminate court administration and operations—particularly interactions between chief judges and the other judges on the court, or between the court and the Administrative Office, the Federal Judicial Center, and the circuit judicial council—will make a worthy addition to the historical record. As with case files, unpublished documents or those not included in the records of a

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<sup>1</sup> Robert Timothy Reagan, Shannon R. Wheatman, Marie Leary, Natacha Blain, Steven S. Gensler, George Cort, and Dean Miletich, *Sealed Settlement Agreements in Federal District Court* (Washington, DC: Federal Judicial Center, 2004).

<sup>2</sup> Robert Timothy Reagan, *Sealing Court Records and Proceedings: A Pocket Guide* (Washington, DC: Federal Judicial Center, 2010).

<sup>3</sup> Robert Timothy Reagan, *Keeping Government Secrets: A Pocket Guide on the State-Secrets Privilege, the Classified Information Procedures Act, and Classified Information Security Officers, 2d ed.* (Washington, DC: Federal Judicial Center, 2013).

judicial agency are the most significant in a judge's collection. Printed materials that pertain to an area in which the judge was active may help explain documents unique to the judge's collection. Likewise, papers relating to circuit judicial conferences and judicial council business, usually duplicated by the clerk or circuit executive, will be a helpful addition to a manuscript collection when they are related to activities or subjects in which the judge was directly involved—particularly policy documents the judge helped draft or minutes of committees on which he or she played a substantive part.

The same holds true for papers that document a judge's service on the Judicial Conference or its committees, the board or committees of the Federal Judicial Center, or other judicial branch advisory boards: although most such materials will be preserved by the agencies, general records that illuminate the unique documents and correspondence among a judge's papers will be of interest, especially those containing the judge's annotations.

***Appointment books and calendars*** of official responsibilities can be important reference sources that help make sense of other parts of a collection.

***Biographical and clippings files.*** Files that contain updated résumés, copies of entries in various biographical sources, clippings of biographical articles, newspaper and journal articles related to cases, and financial disclosure forms should be included in a manuscript collection. The access restrictions that a judge applies to the broader collection can keep financial records confidential for a stipulated time.

***Invitations and trip files.*** Invitations help document the array of professional and community events in which a judge has participated. Speeches, background material for meetings, agendas, and lists of invited guests are similarly useful in documenting the judge's professional activities. Routine materials related to trips, such as vouchers and correspondence concerning transportation and local arrangements, are less likely to provide information not available elsewhere in the collection.

***Photographic files.*** Photographs can provide valuable historical information if they are dated and the event and participants are identified.

***Speeches and writings files.*** Speaking engagements may constitute a significant part of a judge's interaction with the bar and the public. A collection of the judge's speeches will be informative and useful. If sources the judge relied on are documented in the text of the speech, basic reference materials will be redundant. Notices concerning press coverage of the speech, either in the speech files or in a separate set of scrapbooks, will offer an extra dimension.

***Files on law clerks.*** Files on law clerks and correspondence or other documents that go beyond typical personnel information will help explain the working relationship between judges and their clerks, and any continuing correspondence will document the judge's role as a mentor to the clerk.

### **Series 3. Nonjudicial Activities**

Correspondence and papers related to the judge's professional and private nonjudicial activities illuminate the relationship between judicial service and the judge's other career work, particularly that related to the law. Record of service to organizations or participation in civic affairs, as well as personal correspondence and documents such as diaries, greatly enrich a collection. Diaries especially constitute an important historical record of an individual's service on the federal bench and offer a personal perspective on the court's broader work.

## **Material No Longer Needed in Chambers**

A few special preservation measures are suggested for chambers staff apart from the standard record-keeping practices necessary for the usual conduct of business.

- Note the date a document is created and the person who created it.
- Keep material in clearly labeled folders that are later boxed (hard copy) or saved to an external drive as they were filed in chambers.
- Maintain an inventory that lists files by name and describes their arrangement.
- Photocopy newspaper clippings and older fax papers to make them more durable.

A judge may choose to transfer noncurrent files to a repository when they are no longer needed. This can have two advantages. First, space is at a premium in many courthouses, and inadequate storage for physical documents and other material in hard-copy form could result in loss or damage. Second, archivists, with guidance from the judge, can begin to process the material and dispose of papers that have no historical significance. Note, most repositories do not require donors to select files prior to transfer to the research facility, and many archivists encourage donors to consult with repository staff before destroying materials. The repository will hold the preserved materials until the judge permits their research use.



## **Section II. Completing the Historical Record: The Significance of Judges' Papers**

The significance of chambers papers is not always apparent to those involved in the daily work of the federal courts. Researchers, educators, and students of the courts, however, recognize the unique perspective offered in a judge's chambers papers and personal papers. These materials are a critical source for learning about the judicial service of individual judges and for documenting a judge's professional career. Chambers papers also reflect the diverse backgrounds and experiences of judges who make up the judiciary at any given time and, in the final analysis, promote a broad public understanding of the judicial process and the people who carry out the responsibilities of the federal courts.

Scholarship on the history of the federal judiciary offers abundant examples of the richness of detail and context to be found in research collections donated by federal judges. From this scholarship, in turn, comes the foundation for educational materials and popular understanding of the history of the federal courts. Educators who teach the history of our court system report that a full appreciation of the judiciary's role in public life requires the study of diverse sources that tell us not just about official actions but also describe the individuals who participate in the judicial process, including the citizens who approach the courts, the lawyers involved in cases, and, of course, the judges. And it is the judges' personal papers that often are the richest single source for illuminating the human aspects of the judicial process.

Among the most valuable of a judge's papers are chambers papers. Most judicial collections donated to research institutions will include these and other personal papers documenting a judge's professional career on and off the court. In ways not duplicated by the official case files, chambers papers help to explain the internal work of the federal courts and the process of judicial deliberation. Chambers papers are also a source for understanding a judge's interaction with the bar, and with the public and the press in high-profile cases. These kinds of documents form the foundation of an historical narrative that can bring judicial history alive for students of the courts.

### **How Researchers Use Judges' Papers**

While judges' manuscript collections have potential value for the study of a broad range of topics dealing with public life and the judiciary, judicial collections are particularly valuable for three general areas of research: biographical studies; institutional histories of a single court or the courts of a circuit; and more general studies of legal history.

#### **Biographical Studies**

Chambers papers and other personal papers will enrich a judge's biography. The papers created by a judge are often a key to understanding that individual's distinct impact on the work of the courts. Files maintained in chambers chronicle professional and community relationships as well as the work of jurisprudence. Interest in biographical study extends beyond the well-known figures in the history of the federal courts. Many trial and appellate judges who may not be nationally known play significant roles in the legal affairs of their districts, circuits, or states. Their papers offer valuable insights into the history of those jurisdictions. The availability of personal papers from a cross-

section of judges also makes possible collective biographies, which are an important way of studying the development of the federal judiciary and the diversification of the bench.

Judicial biography has attracted increased attention in recent years, as demonstrated by the growing number of scholarly publications not only on Supreme Court justices but also district and appellate court judges, such as Learned Hand, Sarah T. Hughes, Willis Ritter, Edward Weinfeld, and John Minor Wisdom.<sup>4</sup> These biographies rely in part on personal papers, which bring life and texture to the official records of those judges' courts. In his study of Judge Weinfeld, William Nelson found that only "an unusually rich collection of personal papers" enabled him to trace the challenges that Weinfeld faced in establishing his professional career. The authors of Judge Ritter's biography acknowledged that their book "would be seriously deficient" without access to the judge's papers. The "voluminous" papers of Judge Hughes allowed the biographer to recount the full career of one of the most important women leaders in Texas public life during the mid-twentieth century.

The presence or absence of a judicial collection can determine the historical legacy of a judge. In his recent history of the Supreme Court during the Franklin Roosevelt era, William Wiecek found that "Owen Roberts remains an enigma today, in some measure because he destroyed all his personal papers," while "the extensive collections of [Felix] Frankfurter's papers at the Library of Congress and the Harvard Law School disclose a man of prodigious industry, with an incisive mind and nearly omnivorous interests."<sup>5</sup>

### **Institutional Histories**

In his history of the U.S. Court of Appeals for the First Circuit, George Dargo found that a single judge's collection "documented the history of the court ... in ways that could not be duplicated." Discovery of the collection "proved to be a turning point in [the] search for a First Circuit history."<sup>6</sup> Since the publication of the First Circuit history, recent circuit and district court histories have drawn on collections of judges' papers to enrich their narratives. Histories of the district courts for the Northern District of Illinois, the Southern District of Indiana, the Southern District of Ohio, the District of New Jersey, the Eastern District of Tennessee, and the Southern District of Texas all rely on collections of judges' papers on those courts. Peter Fish's history of the early years of federal courts in the current Fourth Circuit draws from the private correspondence of judges who served on those courts.<sup>7</sup>

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<sup>4</sup> Gerald Gunther, *Learned Hand: The Man and the Judge* (Cambridge, MA: Harvard University Press, 1994); Darwin Payne, *Indomitable Sarah: The Life of Judge Sarah T. Hughes* (Dallas: Southern Methodist University Press, 2004); Patricia F. Cowley and Parker M. Nielson, *Thunder Over Zion: The Life of Chief Judge Willis W. Ritter* (Salt Lake City: University of Utah Press, 2007); William E. Nelson, *In Pursuit of Right and Justice: Edward Weinfeld as Lawyer and Judge* (New York: New York University Press, 2004); Joel William Friedman, *Champion of Civil Rights: Judge John Minor Wisdom* (Baton Rouge: Louisiana State University Press, 2009).

<sup>5</sup> William M. Wiecek, *The Birth of the Modern Constitution: The United States Supreme Court, 1941-1953* (New York: Cambridge University Press, 2006), 63, 89.

<sup>6</sup> George Dargo, *A History of the United States Court of Appeals for the First Circuit: Volume I, 1891-1960* (Boston: U.S. Court of Appeals for the First Circuit, 1993), 217.

<sup>7</sup> Richard Cahan, *A Court That Shaped America: Chicago's Federal District Court from Abe Lincoln to Abbie Hoffman* (Evanston, IL: Northwestern University Press, 2002); George W. Geib and Donald B. Kite, Sr., *Federal Justice in Indiana: The History of the United States District Court for the Southern District of Indiana* (Indianapolis: Indiana Historical Society Press, 2007); Roberta Sue Alexander, *A Place of Recourse: A History of the U.S. District Court for the Southern District of Ohio, 1803-2003*

In one study of the early federal courts in Kentucky, Mary K. Bonsteel Tachau used the personal papers of judges to analyze the role of the federal judiciary in that state. In one of the most thorough investigations of the relationship between judicial appointments and partisan politics, Kermit L. Hall examined the personal correspondence of numerous judges appointed to the federal bench during the mid-nineteenth century. Peter Fish's study of the origins of modern judicial administration examines the papers of judges who served on the Judicial Conference of the United States in the 1930s.<sup>8</sup>

Recent court histories also make clear the challenge of writing a narrative history without access to judges' personal papers. In his history of the U.S. District Court for the District of New Jersey, Mark Lender noted that the "dearth" of papers for a prominent early judge made it difficult to reconstruct the judge's extensive legal career. Roberta Alexander found that the scarcity of judicial collections for the Southern District of Ohio forced her to dig into "the pigeon holes of musty archives" to find the history of the court.

Wider availability of judges' papers would enrich future court histories with more individual perspectives and give these institutional studies a broader importance for understanding the legal culture of the districts and circuits. A judge's personal papers give a broader dimension to an institutional history by offering what is often the only documentation of the public response to a case before the courts. The chambers papers of judges who broke barriers of gender or race on their courts may provide a unique resource for study of the diversification of the bench.

### **Legal History**

Perhaps the greatest potential contribution to be made by judges' papers is toward broad studies of legal history. The papers of federal judges can help to explain a wide variety of topics related to law and public life, including the evolution of legal doctrine, court enforcement of federal legislation, and popularly organized litigation campaigns. Judges' papers can also be useful for analyzing a specific case or related cases.<sup>9</sup>

Unfortunately, the relative scarcity of judges' collections in repositories and the difficulty in locating these scattered papers have deterred many researchers from taking advantage of this kind

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(Athens: Ohio University Press, 2005); Mark Edward Lender, *"This Honorable Court": The United States District Court for the District of New Jersey, 1789-2000* (New Brunswick, NJ: Rutgers University Press, 2006); Patricia E. Brake, *Justice in the Valley: A Bicentennial Perspective of the United States District Court for the Eastern District of Tennessee* (Franklin, TN: Hillsboro Press, 1998); Charles E. Zelden, *Justice Lies in the District: The U.S. District Court, Southern District of Texas, 1902-1960* (College Station: Texas A&M University Press, 1993); Steven Harmon Wilson, *The Rise of Judicial Management in the U.S. District Court, Southern District of Texas, 1955-2000* (Athens: University of Georgia Press, 2002); Peter Graham Fish, *Federal Justice in the Mid-Atlantic South: United States Courts from Maryland to the Carolinas, 1789-1835* (Washington, D.C.: Administrative Office of the U.S. Courts, 2002).

<sup>8</sup> Mary K. Bonsteel Tachau, *Federal Courts in the Early Republic: Kentucky, 1789-1816* (Princeton, NJ: Princeton University Press, 1978); Kermit L. Hall, *The Politics of Justice: Lower Federal Judicial Selection and the Second Party System, 1829-1861* (Lincoln: University of Nebraska Press, 1979); Peter Graham Fish, *The Politics of Judicial Administration* (Princeton, NJ: Princeton University Press, 1973).

<sup>9</sup> See, e.g., John Henry Schlegel, *American Legal Realism and Empirical Social Science* (Chapel Hill: University of North Carolina Press, 1995); Robert J. Kaczorowski, *The Politics of Judicial Interpretation: The Federal Courts, Department of Justice and Civil Rights, 1866-1876* (1985; reprint, New York: Fordham University Press, 2005).

of historical resource. The preservation of more collections from a wider variety of judges and the availability of guides, such as the listings of research collections in the Federal Judicial Center's "Biographical Directory of Federal Judges" (available at [www.fjc.gov](http://www.fjc.gov)), are supporting further examination of aspects of judicial history that are relevant to cultural, political, and economic histories. As a personal record of service on the federal bench and a unique indicator of the judiciary's interaction with other public institutions, the collections of federal judges attract researchers who might not consult the official court records. Judges' papers are excellent sources for integrating the history of the federal judiciary and legal culture into broader studies of American government and public life.

## **Section III. Making Judges' Papers Accessible to Researchers: Donating to a Manuscript Repository**

Judges can make their papers available to researchers by donating them to a manuscript repository. Many repositories have the resources to accept and process a comprehensive collection of judicial papers, and many are eager to accession the papers of a federal judge. Before making any decision about where to donate personal papers, meetings between the judge and representatives of a prospective repository will help to determine if the institution is fully committed to processing and managing the collection. Once an agreement is reached, the judge can instruct chambers staff on the proper arrangement of personal files; the repository can prepare for the accession of the papers; noncurrent files might be transferred to the repository on a regular basis; and family and staff will be fully apprised of the judge's intentions.

The choice of a repository will help to determine the accessibility and the scholarly use of a judge's collection. Collections will be most useful if they are placed in a repository with an established archives or special-collections program and staff to process and make available the materials donated by the judge. A repository that houses complementary collections, such as those of other members of the judge's court or leaders of the legal community, will provide access to scholars of judicial and legal history.

Possible repositories include universities, historical societies, or law school libraries. Some institutions develop specializations in subject matter and may seek the papers of a judge whose career, both on and off the bench, relates to the institution's area of concentration. Similarly, the presidential libraries often accept papers of public figures who had close relationships with the president whose papers the library maintains.

Judges often express interest in donating papers to an alma mater, usually their law school. If the school has an established manuscript program, that may be a suitable choice. Law schools with such collections often seek the papers of graduates. If a school does not have an existing special-collections program, a single collection of papers, without the benefit of professional archivists or facilities for researchers, could prove to be virtually inaccessible. If a judge chooses an institution that does not already have a special-collections program established, a written agreement might include an arrangement for processing the papers and making them available to researchers.

Most court libraries are not equipped to handle the processing and reference services required to administer collections of manuscripts and to accommodate outside researchers. Court librarians, however, can be an excellent resource for identifying regional archival repositories that may be interested in accessioning the collections of judges from the district or circuit.

The Library of Congress accepts the papers of federal judges who, in judicial service or in non-judicial careers, have made what the library believes are exceptional contributions in an area where the library's collections are particularly strong. Most of the Library of Congress's recent collections of judicial papers are from Supreme Court justices and trial and appellate court judges whose work had particular significance for the role of federal regulatory agencies or for federal government policies and operations. The Library of Congress provides a link to a listing of repositories at its website, [www.loc.gov/coll/nucmc/repositorieslist.html](http://www.loc.gov/coll/nucmc/repositorieslist.html).

## **Selecting a Repository**

The following characteristics will ensure that a repository can properly care for a judicial collection.

- an ongoing, professionally managed manuscript collection program available to researchers and offering professional reference services
- established, written policies governing access to and use of the collections
- equal access to all unrestricted collections for all responsible users
- climate-controlled areas for storage, protected against fire and flood
- secure storage, processing, and reference areas with controlled access by the public
- storage of documents in archival containers or a secure digital format
- capacity to handle nonpaper media (e.g., audiotapes, videotapes, and microfilm) if necessary
- established policies and procedures for accepting, preserving, and making available electronic records

## **Determining Policies on Access to a Manuscript Collection**

A judge who wishes to limit access to a manuscript collection should discuss the potential restrictions in detail with representatives of a repository. Archival institutions seek to preserve historically significant materials and make them available for research purposes without excessive delay. Repositories, however, recognize that donors often have legitimate reasons for restricting access to some papers and will generally agree to administer restrictions that a judge wishes to apply to a collection.

Many repositories may not have the resources to administer unduly complicated restrictions or those contingent on something other than the passage of time. Restrictions that require the regular supervision of archival staff may prove too time-consuming or costly. It also is preferable not to apply restrictions that depend on the discretion of a third party. For example, closing case files until a specific date is preferable to allowing access with the permission of an executor, who may be unfamiliar with the collection or who may be difficult to locate, especially years after the judge has died.

Judges should know that many of their papers can be made available for research at the time of deposit, after a relatively brief period of restriction, or upon their death. Speech files, correspondence files on matters related to nonjudicial activities, and files documenting work long since completed might be opened immediately after the files are deposited.

In determining what, if any, access restrictions are proper, a judge might consider several key issues: periods of restriction, equal access, judicial confidentiality, and privacy concerns.

### **Periods of Restriction**

The easiest restriction for a repository to administer, and one likely to provide the best protection of confidentiality, is a provision that limits access to all or part of a collection to all users for a specific period.

Judges who choose to embargo files might consider opening case files some years from the date of termination of the case rather than from the date when the judge's service ends. If a judge dies while serving, restriction until the death of the donor would permit immediate access to chambers case files for recently terminated cases. For a judge with thirty years on the bench, closure until the

judge's death would result in lengthy restrictions on cases long concluded. An access date keyed to the date of the termination of the case offers protection of confidentiality and reasonable access. The judge may choose to offer earlier access to files not related to cases, such as administrative or committee papers.

In practice, judges and their families impose widely varying terms of access. In addition to the restrictions cited above, frequently used provisions include immediate access with permission of the judge, no restrictions, and access restricted until the death of all participating judges. (See Appendix C for a survey of selected access restrictions.)

### **Equal Access**

Most repositories, concerned that privileged access would hinder a fair scholarly exchange, prefer to open materials to all researchers or close them to all researchers. When determining restrictions for papers in a repository, judges should be aware of current archival practices and standards that accord all qualified researchers equal status. Judges may nevertheless be able to place restrictions on collections that limit access to serious researchers or those holding certain credentials or degrees.

### **Judicial Confidentiality**

The chambers papers of almost every judge will contain communications from other judges on the court. Particularly regarding appellate courts, judicial tradition honors the practice of confidential discussions among judges during their decision making and recognizes the need to have those discussions remain confidential long enough to protect the integrity of the judicial process. Some judges believe that confidentiality prevents a judge from making such communications public during the lifetimes of the other judges, if at all. Others believe that, because every judge is a public official, work-related materials should be made available at the point when disclosure will not interfere with the business of the court.

Judges who wish to donate their papers will want to consider how to handle materials containing communications from other judges. The imposition of a longer embargo period on this part of a collection may satisfy concerns about confidentiality without diminishing the historical record by removing integral documents. Restriction of access until the death or retirement of all participating judges may satisfy many concerns about confidentiality, but it may be difficult for repositories to enforce because of the problems of tracking a number of individuals. Before imposing such a restriction, a judge should consult with the repository to see if it would be able to comply.

The Code of Conduct prohibits disclosures for any "purpose unrelated to a judge's official duties." While it has never been construed to prevent the preservation of judges' papers and their donation to repositories for historical research, judges will want to keep the Code of Conduct in mind when making decisions about preservation. Judges may also want to take note of a letter, dated August 7, 2017, and since made public, by the Code of Conduct Committee in response to an inquiry from Chief Judge Diane Wood of the Seventh Circuit Court of Appeals regarding "confidential, internal court communications."

### **Sensitive Records and Privacy Concerns**

When defining the terms of their donation, judges should discuss the presence of any records from sealed cases within their collections to determine whether the repository is prepared to restrict use of those records for an agreed time. Most libraries are willing to accommodate reasonable and uniform restrictions of use on certain records within a judge's collection, but staff limitations may prevent some repositories from being able to implement complicated restrictions that would require periodic reassessment of the records.

A judge involved in a case that resulted in the filing of an unusual amount of personal information may have concerns about the protection of privacy. Particularly if the collection is to be digitized or made available in electronic form, the ease of public searching might threaten the privacy of third parties by prematurely exposing Social Security numbers, medical information, or educational records. It is not necessary to embargo all material of this kind. The Judicial Conference policies regarding public access to electronic transcripts may help a judge determine what personal information to close to researchers for a stated period.

Federal or state privacy laws may apply to some personal third-party information. Further, repositories differ about the nature of their responsibility to protect the privacy of third parties. Most repositories prefer to have donors identify files that require access restrictions and specify what those restrictions are. To avoid misunderstandings about the responsibility for protecting the privacy of individuals, the repository should provide the judge with a full description of its policy. Archivists processing the collection may apprise the donor of materials that raise privacy concerns.

### **Electronic Records**

Electronic records have complicated the archival process and raise issues that potential donors should consider when discussing their personal collections with an archivist at a research institution. Because office systems vary so widely, archivists will benefit from a visit to a judge's chambers to see how electronic records are created and maintained and to offer suggestions for archiving.

Judges and chambers staff who take an active role in the accessioning and processing phases of donation can help ensure that electronic records are organized and cataloged properly. Some donors add a sentence or two to the beginning of each "born digital" record to provide context, such as where a speech was given or the circumstances under which an email was written. When a collection includes both paper and electronic copies of the same documents, donors may be able to advise the archivists of significant differences between the versions (such as emphasis or notes that were handwritten into the printed version of speeches). If related records are maintained in electronic and paper format, electronic directory structures should mirror as closely as possible the filing schemes used for paper documents. Donors who have developed personalized systems for naming computer files (e.g., "Speech.2008.1," "Speech.2008.2") ought to inform the repository of their naming scheme. Digitized photographs or documents should be accompanied by directories or indexes that clearly identify each digital file.

Some judges may have created electronic records using computer programs that have since become obsolete. In such cases, the donor should provide the repository with a copy of the program to ensure that the records are accessible. Some donors simply give their personal computer, including its software and files, to the repository. Most repositories will convert files created on obsolete software into files compatible with currently used programs, such as Microsoft Word or Adobe Acrobat. Conversion of word-processing files into PDF or image files also helps protect them from corruption or alteration. To protect against loss of electronic information during the accession and conversion processes, donors may wish to provide a repository with backup copies of their files on a CD-ROM or external hard drive. Donors should label external memory devices clearly to simplify the accessioning and processing of the collection. Donors may also choose to keep a backup copy of their files for themselves.

Donors should discuss with the repository how electronic records will be made available to the public for research. Some libraries only make hard copies of digital files available to researchers, although this policy will become increasingly problematic as more and more digital records are donated to research facilities. Other repositories make PDF files of digital records available online,



sometimes linking to them directly from the collection's online finding aid. One pitfall of this approach, however, is that records available online may be more heavily used than the nondigital records that are only available at the repository, even though the digital records may not be the most important or representative documents in the collection.

### **Digitizing Records**

It is becoming increasingly common for archival repositories to digitize collections, or portions of collections, to make them available to researchers online. Donors should discuss this possibility with potential repositories. Most repositories are unlikely to commit to digitizing collections upon receipt, but they will likely want to keep the option of future digitization open. The benefit of digitization is that the records become widely available to researchers throughout the world, rather than simply to those who can visit the repository.

## **Preparing a Donor Agreement**

Donating papers to a repository requires an instrument of gift that specifies the circumstances under which the actual transfer of the materials takes place, conveys ownership of the materials, transfers copyright where appropriate, and stipulates conditions under which researchers may view and copy documents. Most repositories will supply a standard form. (See Appendix D for a sample agreement.) Donors, however, often draft a wide range of stipulations in conjunction with a repository.

The donor agreement should state that material will be deposited without transferring title to the documents and should indicate the point at which title will transfer. Many repositories will be reluctant to accept a judge's papers without a transfer of title, however.

### **Essential Components of a Donor Agreement<sup>10</sup>**

***Name of the donor and statement of ownership***—that is, the person holding title to the material. For a judge's chambers papers, the owner is either the judge or the heirs to the papers.

***Name of the recipient.*** Before proceeding with a donation, a donor must ensure that the designated recipient wishes to accept the collection. The repository must be contacted in advance of the donation, and it should supply the wording for specifying the recipient, which may differ from the title of the repository. For example, a donation that will be held in a state university library may require deeding the papers to the state.

***Transfer of title.*** The donor agreement should specify that the title passes to the repository. Rights (of access, use, copyright) should be addressed separately.

***Description of the materials and circumstances of transfer.*** Donors should include a narrative description of the materials included in the donation, including the types of records, the quantity of materials, and the date range of the collection. Where a judge arranges for donation before the end of his or her service on the bench, the agreement should specify the times at which materials will be transferred (e.g., "Chambers files will be deposited annually in February and will comprise files related to cases terminated at least two years earlier. Other office files will be transferred annually and will consist of material no longer needed in chambers."). The agreement should state that the

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<sup>10</sup> See Gary M. Peterson and Trudy Huskamp Peterson, *Archives & Manuscripts: Law* (Chicago: Society of American Archivists, 1985), 24-27; Menzi L. Behrnd-Klodt, *Navigating Legal Issues in Archives* (Chicago: Society of American Archivists, 2008), 52-55.

judge may consult the material as needed and that the repository will return requested files or boxes to the judge for use in chambers.

***Additional shipments.*** If the judge is transferring material periodically, the agreement should note that such transfers will occur in accordance with the present agreement. This provision will eliminate the need for a new document for each addition to the collection.

***Copyright.*** Although chambers papers are the personal property of the judge and subject to the judge's disposal, the law concerning copyright (Copyright Act of 1976, Title 17 of the U.S. Code) stipulates that materials created by government employees while carrying out their duties are not protected by copyright. The materials are therefore in the public domain, and the judge cannot claim a copyright in them.

Judges' donations, however, may also include materials created outside their work for the federal courts and in which they hold copyright. In the donor agreement, judges should clearly indicate their intentions concerning any material to which they hold copyright. It is easiest for both the repository and future researchers if copyright is transferred with the documents; otherwise, researchers will need to contact the holder of the copyright before using any unpublished material. Some repositories may be reluctant to accept a collection if the donor does not assign the copyright. The judge can transfer copyright to the repository and still preserve the right to use the material or to restrict access, but any such provisions should be spelled out in the donor agreement. The copyright may also be transferred to the public domain, in which case researchers can freely publish from the collection. Again, any such transfers must be explicitly stated in writing.

***Disposal.*** The repository may wish for a grant of authority to dispose of material that it determines unworthy of permanent preservation. The judge may ask that such items be returned rather than destroyed. The agreement may also permit transfer of paper records to other formats (such as microfilm or CD) to provide flexibility to an archive with space constraints. If such a provision is included, judges will want to specify that access conditions pertain to material regardless of format.

***Access for processing.*** A clause should explicitly grant access to the archivists (under the burden of confidentiality) for the purpose of processing materials otherwise restricted.

***Access for research.*** The donor agreement should specify whatever access restrictions the judge decides to apply to the collection.

***Subpoena clause.*** Such a clause specifies the responsibility of the repository to contact the donor in the event a portion of the collection is subpoenaed.

It is important to put all conditions in writing. Written agreements, explicitly and clearly stated, prevent misunderstandings and clarify for users, colleagues, and family members precisely what the judge intends.

## **Bequests**

A judge planning to bequeath chambers papers to a repository must work out agreements with the potential repository in advance about the terms of the donation.

## **Tax Deductions for Donations of Papers**

Collections donated by a judge's heirs may under some circumstances qualify as a charitable gift for purposes of tax deductions, but the law is complicated and since 1969 has not permitted deductions by the creator of the records for anything other than the cost of the materials used to create them. Heirs who believe their gift may qualify should consult a lawyer who can advise them on the appraisal

process and possible deductions. The archival repository cannot provide an appraised value of the collection, but the repository staff may be able to recommend several professional appraisers.

## **Transfer of Papers**

Many repositories will accept papers on an ongoing basis as a judge determines that the papers are no longer needed in chambers. Repositories will have different transfer procedures. Some will send archivists to chambers to assist in shipping files, some will ask that all papers be sent to the repository, and some will request that only certain categories of papers be sent. Repositories also have varying policies concerning paying for the shipment of donated papers. Some repositories will pick materials up or pay for shipment. Others ask donors to bear the cost of shipping.

Repositories will appreciate any assistance the judge's staff can provide regarding the contents of the files being shipped. Ideally, each shipment will contain a file list, describing the contents and dates of the files, for each box (hard copies) or drive (electronic).

### **Example:**

Box/drive 1: Case files, terminated January–March 2003

Box/drive 2: Case files, terminated April–August 2003

Box/drive 3: Case files, terminated September–December 2003

If possible, it would be helpful to have a more detailed list for each box or drive:

Box 1: Case files, terminated January–March 2003

- 8800821 Smith v. Jones
- 8802586 White v. Gray
- 8803597 Green v. Blue

A case file containing sensitive material (e.g., personal information concerning a minor child) that would require an unusually long embargo period should be flagged, separated, and placed in a special container or on a separate drive with a date affixed indicating when it may be opened.



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# Appendix A: Inventory of Judges' Chambers Papers

## I. Case Related Files

### Documents typically included in a case file

- Form JS-44, Civil Cover Sheet, and any local cover sheets
- pleadings (e.g. complaint, answer) as defined in Federal Rule of Civil Procedure 7(a), and exhibits attached to pleadings
- indictment, information, or other initiating documents
- warrants
- motions, other documents, and exhibits attached to motions and other documents
- certificates of service
- orders
- depositions and interrogatories (e.g., papers, audiotapes, videotapes), if required by the local rules
- exhibits made part of the record (e.g. papers, audiotapes, videotapes)
- courtroom minute sheets
- jury instructions
- transcripts and recordings (audio and video) of proceedings
- briefs
- judgments
- correspondence (if important)

### Case-related documents—district courts

- judge's memoranda to law clerks or motions to clerks
- law clerk memoranda related to the specific case
- judge's notes on oral argument
- draft opinions or orders
- opinion galleys and proofs
- slip opinions
- correspondence with the public

### Case-related documents—courts of appeals

- judge's notes on oral argument
- judge's memoranda to law clerks or motions clerks
- legal research; related opinions
- bench memoranda
- voting memoranda
- conference notes
- draft opinions with judge's notes
- judicial correspondence
- opinion galleys and proofs
- correspondence regarding publication

- slip opinions

### **Sealed and classified records**

### **Public correspondence**

## **II. Other Court-Related Activities**

### **Administrative papers and office files**

- correspondence
- printed policy papers
- memoranda
- studies
- minutes
- committee reports
- papers related to Judicial Conference
- papers related to judicial council activities
- papers related to committee service
- papers related to extrajudicial activities
- general correspondence
- office personnel files
- travel vouchers authorizations
- appointment books
- diaries
- speech files
- seminar files
- news clippings
- biographical files
- law clerk files
- printed materials received from the Administrative Office, the Federal Judicial Center, the Judicial Conference, or other agencies

### **Appointment books and calendars**

### **Biographical and clippings files**

- résumés
- copies of entries in various biographical sources
- clippings of biographical articles
- newspaper and journal articles related to cases
- financial disclosure forms

### **Invitations and trip files**

- correspondence concerning transportation and local arrangements
- speeches
- background materials for meetings



- agendas
- lists of invited guests

**Photographic files**

**Speeches and writings files**

**Files on law clerks**

### **III. Nonjudicial Activities**

**Files related to service to organizations or participation in civic affairs**

**Personal correspondence**



## Appendix B: Suggested Filing System for Chambers Papers

### District Courts

Each district court judge usually maintains a series of chambers case files. Files of predecisional material will offer insight into the judge's work that is not conveyed in the court record. Such work files make a district court judge's papers an interesting and important part of the historical record. Judges may also retain duplicates of original documents in the court's case files. These copies will help explain the other material in the chambers papers, especially for researchers lacking easy access to the original case files at the National Archives. Of course, some repositories may not be interested in case files that only contain information available elsewhere.

Arrangement by docket number will permit cross-referencing to the court's permanent case files. Name indexes created to permit easy access would be helpful for repositories and researchers as well. Following is the suggested disposition of a judge's case-related documents.

<b><u>Type of Document</u></b>	<b><u>Disposition</u></b>
Judge's memoranda to law clerks or motions clerks	<i>Preserve permanently.</i>
Law clerk memoranda related to the specific case	<i>Preserve permanently.</i>
Judge's notes on oral argument	<i>Preserve permanently.</i>
Draft opinions or orders	<i>Preserve permanently.</i>
Opinion galleys and proofs	<i>Retain those with revision of contents noted; discard unmarked proofs upon receipt of slip opinion.</i>
Slip opinions	<i>Preserve permanently; file one copy in chambers case file and one copy in judge's opinion file (if separate opinion file is maintained).</i>
Correspondence with the public	<i>Preserve permanently; if voluminous, file separately from other case file material and label with case name, noting "public correspondence."</i>

### Courts of Appeals

Like district court judges, appellate judges routinely maintain a series of case files, usually arranged by docket number. Any indexes created by the judge or staff will facilitate use of the collection. The chambers case files of appellate judges are likely to include a different kind of predecisional material because of the frequency of communications between judges serving on a panel. Judges concerned about the preservation and donation of confidential communications may refer to the discussion of restrictions on access that are discussed below.

Following is the suggested disposition of appellate court judges' case-related documents.

<b><u>Type of Document</u></b>	<b><u>Disposition</u></b>
Judge's notes on oral argument	<i>Preserve permanently.</i>
Judge's memoranda to law clerks or motions clerks	<i>Preserve permanently.</i>
Legal research; related opinions	<i>Save memoranda; discard photocopies of cases and law review articles after case is closed, provided they are cited in the judge's opinion. If they are not cited, archivists will be interested in a list of consulted authorities.</i>
Bench memoranda	<i>Preserve permanently.</i>
Voting memoranda	<i>Preserve permanently.</i>
Conference notes	<i>Preserve permanently.</i>
Draft opinions with the judge's notes	<i>Preserve permanently.</i>
Judicial correspondence	<i>Preserve permanently.</i>
Opinion galleys and proofs	<i>Retain those with revision of contents noted; discard unmarked proofs upon receipt of slip opinion.</i>
Correspondence regarding publication	<i>Preserve permanently.</i>
Slip opinions	<i>Preserve permanently; file one copy in chambers case file and one copy in judge's opinion file (if separate opinion file is maintained).</i>

## **Bankruptcy and Magistrate Judges**

As with the chambers papers of district and appellate judges, the records of bankruptcy and magistrate judges distinct from the official case files will be the records of the greatest historical value. Although the court record generally contains more documents created by the work of bankruptcy and magistrate judges than by district and appellate judges, the former will still have files containing internal memoranda, documents related to court governance, and records of judicial committee work requiring donation to a repository if the judge wishes to preserve them for research.

## **Appendix C: Survey of Access Restrictions Placed on Manuscript Collections by Federal Judges**

### **Access policies for selected research collections of federal judges who have donated their papers to manuscript repositories**

Judge: Morris S. Arnold Repository: Torreyson Library, University of Central Arkansas

Access policy: Materials available to researchers as they are processed by the repository; judge regularly transfers noncurrent records to the repository.

Judge: Norman W. Black

Repository: Tarlton Law Library, University of Texas Law School

Access policy: Unrestricted

Judge: John D. Butzner

Repository: University of Virginia Law School Library

Access policy: Unrestricted

Judge: Harry T. Edwards

Repository: Bentley Historical Library, University of Michigan

Access policy: The collection is open to researchers, with permission from the judge or his surviving spouse or children.

Judge: George E. MacKinnon

Repository: Minnesota Historical Society

Access policy: Access with permission of the judge prior to his death; opened after his death.

Judge: Abner J. Mikva

Repository: Lincoln Presidential Library

Access policy: Restricted until ten years after death; earlier access with permission of the donor or executor.

Judge: Giles S. Rich

Repository: Library of Congress

Access policy: Case files closed during the lifetime of all judges who participated in the decision of individual cases.

Judge: Harold Barefoot Sanders, Jr.

Repository: Tarlton Law Library, University of Texas Law School

Access policy: Unrestricted

Judge: William S. Sessions

Repository: Library of Congress

Access policy: Access with permission of the judge. Following his death, access will require permission of surviving spouse, and subsequently the executor for fifteen years following the death of the judge's last surviving spouse.

Judge: Patricia Wald

Repository: Yale University

Access policy: Closed until ten years after death of the judge; earlier access with permission of executor.

## **Access policies for research collections of recent and sitting justices of the Supreme Court of the United States**

Justice Hugo Black

Repository: Library of Congress

Access policy: Access to the collection is restricted during the lifetime of the heirs; permission to use the collection must be obtained from the executors and further permission to publish any writings in the collection, or writing for publication about them, must be obtained.

Justice Harry Blackmun

Repository: Library of Congress

Access policy: Opened to researchers five years after the death of the justice.

Justice William J. Brennan, Jr.

Repository: Library of Congress

Access policy: During the justice's lifetime, access was restricted to researchers with his permission; some materials opened upon his death; "Personal Annual Reviews of the Term's Work" remain closed during the lifetime of all justices who participated in the cases.

Chief Justice Warren Burger

Repository: College of William and Mary

Access policy: Closed to researchers until the later of (a) January 1, 2026, or (b) the tenth anniversary of the death of the survivor of the group of justices with whom Burger served on the Supreme Court.

Justice William O. Douglas

Repository: Library of Congress

Access policy: Materials were originally restricted until the justice's death; later additions to the collection were restricted for five years.

Justice Ruth Bader Ginsburg

Repository: Library of Congress

Access policy: During the lifetime of the justice, access restricted to researchers with her approval; following the death of the justice, individual case files will be closed during the lifetime of justices or judges who participated in the decision of that case.

Justice John Marshall Harlan

Repository: Seeley G. Mudd Library, Princeton University

Access policy: After donation of the papers in 1972, all materials were restricted until July 8, 1979, with the possibility of an extension for an additional year. At the request of the executor, the restrictions were extended for the additional year. The papers were opened to the public on July 9, 1980, without restriction, at the discretion of the university archivist.

Justice Thurgood Marshall

Repository: Library of Congress

Access policy: Collection opened upon the death of the justice.

Justice Sandra Day O'Connor

Repository: Library of Congress

Access policy: During the lifetime of the justice, access restricted to those with her permission; all but case files open upon the death of the justice; individual case files closed during the service of any justice who participated in the case.

Justice Lewis F. Powell, Jr.

Repository: Washington and Lee University School of Law

Access policy: Judicial papers not already public information restricted during the service of any justice or judge who served with Powell, unless access granted by the donor, or granted after the justice's death by the archivist in consultation with the dean of the law school.

Chief Justice William H. Rehnquist

Repository: Hoover Institution, Stanford University

Access policy: Supreme Court case files and related material for October terms 1975–2005 closed during the lifetime of justices who served with Rehnquist during each term; remainder of collection open to researchers upon processing of the collection in 2008.

Justice Potter Stewart

Repository: Yale University

Access policy: Court materials closed during the service of all justices who served with Stewart.

Justice Earl Warren

Repository: Library of Congress

Access policy: Originally restricted until 1985; terms of his will modified restriction to ten years after his death in 1974.

Justice Byron White

Repository: Library of Congress

Access policy: Closed until ten years after his death; open to the public without restriction after that date.

Sources: *Congressional Record*, May 27, 1993, pp. S6724–6726; U.S. Supreme Court, Office of the Administrative Assistant to the Chief Justice; repository websites.





## Appendix D: Sample Donor Agreements

Following are two sample donor agreements, a Harvard Law School Library certificate of gift and a deed of gift from *Records Management Handbook for U.S. Senators and Their Archival Repositories*. The Society of American Archivists has prepared a short guide to donor agreements, available online at [www.archivists.org/publications/deed\\_of\\_gift.asp](http://www.archivists.org/publications/deed_of_gift.asp).

### Harvard Law School Library Certificate of Gift

I, [Name of donor], hereby give, convey and transfer to the President and Fellows of Harvard College (“Harvard”) acting through the Harvard Law School Library (the “Library”) the papers and other materials described on Appendix I attached hereto, to be known as the Papers of [Name of subject]. (Those papers and materials, and any other papers and materials I may deliver to the Library in the future, are referred to herein as the “Collection.”) My gift of the Collection is made subject to the following terms and conditions:

1. Title to the Collection will pass to Harvard on the date on which I sign this instrument, except that title to any papers and other materials I subsequently transfer to the Library will pass on the date of the future transfer. With the exceptions noted below, the Librarian of the Library and/or others so authorized for this purpose by the Librarian will have the right and authority to make all decisions affecting the conveyance, arrangement, description, preservation, accessibility, use, and disposition of the Collection.
2. The Library agrees to provide for the preservation, arrangement and cataloging of the Collection. The Library will have the right to transfer all or part of the Collection to other formats, such as microfilming or digital imaging. In processing the Collection, inappropriate and duplicate material may be disposed of in accordance with the Library’s usual procedures.
3. The Library agrees to make the Collection, subsequent to its cataloging, available to researchers [*option*: who have obtained my written permission]. The Library further agrees to provide me and/or any agent authorized by me access to the Collection during the regular hours of the Library’s Department of Special Collections. [After my death,] [*include foregoing only with preceding option*] [a]ccess to the Collection may be given to any person whom the Librarian or the Librarian’s designees, in their complete discretion, may deem appropriate.
4. By this instrument, I give, convey and transfer to Harvard all of my right, title and interest in the Collection and each work contained therein, including, without limitation, all of my copyrights and other intellectual property rights therein, throughout the world. This gift and transfer includes, without limitation, all renewal copyrights I now or hereafter may have. [*option*: I reserve the right to defer the transfer of copyright and other intellectual property rights for selected material I have so designated on Appendix III attached hereto. With respect to any such selected material, however, I agree that, at the discretion of the Librarian, the Library may make, or permit researchers to make, copies of those materials solely for the recipient’s personal, noncommercial research or educational use or for use that otherwise would not infringe copyright.]
5. The Library agrees to secure from all users of the Collection, prior to providing access to the materials contained therein, a signed “Application for the Examination of Manuscripts” form, which limits use of unpublished materials. The final responsibility for securing permission to use copyrighted material, however, rests with the user of materials protected by copyright.

6. I hereby represent that I am the sole owner of the entire tangible property interest in the Collection, free and clear of liens and adverse claims; that I have not previously granted or transferred any rights in the Collection or the copyrights or other intellectual property rights therein to any other party, except as may be described on Appendix II attached hereto; and that I have the full right, power and authority to make this gift.

7. I agree to execute such further documents and to take such further actions, at Harvard's expense, as Harvard may request from time to time to perfect, confirm or protect the rights conveyed and transferred hereunder to Harvard. This instrument is executed under seal, and will be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts, without giving effect to its choice of law principles. The terms of this instrument will be binding upon my heirs, executors, and personal representatives. This agreement will remain in effect unless and until superseded by a revised written agreement entered into by me and the Library.

\_\_\_\_\_  
(Donor)

\_\_\_\_\_  
(Date)

The gift described above is accepted on behalf of Harvard, subject to the terms, conditions, and restrictions herein set forth.

\_\_\_\_\_  
Librarian for Special Collections  
Harvard Law School Library

\_\_\_\_\_  
(Date)

**APPENDIX I: Description of Collection**

**APPENDIX II: Rights Previously Granted**

The following is a description of all rights in the Collection or the copyrights or other intellectual property rights therein that I (the donor) have previously granted or transferred to any party other than Harvard:

**APPENDIX III: Material as to which Copyright Transfer Is Deferred**

With respect to the following materials comprising part of the Collection, I (the donor) wish to defer transfer to Harvard of the copyright and other intellectual property rights until immediately before my death or such earlier time as may be specified below:

The transfer to Harvard of all copyrights and other intellectual property rights in the materials listed above will occur automatically as of the date described above, as part of the gift of the Collection, without the need of any further act or deed by me (the donor).

## Deed of Gift: Gift of Papers and Other Historical Materials

(Reprinted from Records Management Handbook for U.S. Senators and Their Archival Repositories)

1. Senator \_\_\_\_\_ (hereinafter referred to as the Donor), hereby give, donate, and convey to the \_\_\_\_\_ Library (hereinafter referred to as the Donee), my papers and other historical materials.
2. Title to the Materials shall pass to the Donee upon their delivery to the Donee. Copyright in that portion of the Materials in which copyright resides is retained by the Donor. Upon the Donor's death, copyright is transferred to the \_\_\_\_\_ Library of \_\_\_\_\_ University.
3. Following delivery, the Materials shall be maintained by the Donee in the \_\_\_\_\_ Library. At any time after delivery, the donor shall be permitted freely to examine any materials during the regular working hours of the \_\_\_\_\_ Library.
4. It is the Donor's wish that the Materials be made available for research as soon as possible following their deposit in the \_\_\_\_\_ Library. At the same time, the Donor recognizes that the Materials may include some information which, at present, should not be released. Accordingly, the Donee shall, for the present, restrict access to the following classes of materials:
  - a. Papers and other Materials, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy or a libel of a living person.
  - b. Materials relating to the personal, family, and confidential business affairs of the Donor or other persons referenced by the Materials.
  - c. Material relating to investigations of individuals and organizations, to proposed appointments to office, or to other personal matters affecting individual privacy.
  - d. Materials relating to the work of political consultants in campaigns.
  - e. All office financial accounting and personnel records found in the Materials will be sealed and destroyed after (determine the date).
5. It is the responsibility of the Donee to identify the classes of Materials listed in Paragraph 4. This responsibility will be administered in good faith to the best of the Donee's abilities within the policies of the Library. (Or other language to reflect that this is a difficult responsibility and even with careful stewardship, in the unlikely event that something may happen, this contract is not voided.)

OR

5. The Donor shall have the Materials reviewed to identify the classes of Materials listed in Paragraph 4 and any other Materials which should be restricted. The type and location of restricted materials shall be communicated to the Donee as soon as possible as no part of the Materials will be opened until this review has taken place.
6. Materials which have been restricted from access in accordance with Paragraph 4, sections a-d, can be reviewed from time to time and opened to public access when both Donor and Donee agree that conditions no longer require restrictions. Otherwise, these Materials shall be restricted until \_\_\_\_\_.

There are several options available for paragraph 6:

- a. A date can be named.
- b. If the classes listed in Paragraph 4, sections a-d have different lengths of time restrictions, the wording in Paragraph 6 can follow each section. Lengths of restrictions normally run from five to twenty years.

- c. Or, restrictions can run from when the material was created. For example, the specified material is closed for "X" number of years from date of creation (usually twenty years).
7. Materials restricted shall not be made available for inspection, reading, or use by anyone except the regular employees of the Donee, in the performance of normal archival work on such Materials, and the Donor, or persons authorized by him in writing to have access to such materials.
  8. The Donee reserves the right to restrict access until such time as the Materials which have been restricted from access in accordance with Paragraph 4 are identified and until the Materials have been fully processed and can be made available to the researcher.
  9. Subject to the restrictions imposed herein, the Donee may dispose of any of the Materials which the Donee determines to have no permanent value or historical interest. If in the opinion of the Donee the Materials should be preserved in a different physical format, such as microfilm, the Donee may perform the necessary processing and the original materials shall be disposed. During the lifetime of the Donor, and at the Donor's request, the Materials proposed for disposal shall be returned to the Donor.
  10. As required by Senate Rule XL, Section 5, the Donee stipulates that any machine readable records shall be used only for research purposes and that lists of individual names and addresses found in the records in whatever format shall not be provided to other parties for political or profit purposes.
  11. As provided by Senate Rule XXVI, Section 10(a), all official committee records are the property of the Senate and when found in the Materials will be returned to the appropriate committee, and the Senate Archivist will be noticed.
  12. In the event that the Donor may from time to time hereafter, give, donate, and convey to the Donee, for deposit in the Library, additional papers and other historical materials, title shall pass to the Donee upon their delivery and this instrument of gift shall be applicable to all additional materials.

Date: \_\_\_\_\_

Signatures of both parties:

\_\_\_\_\_  
\_\_\_\_\_

## Appendix E: Selected Inventories of Judicial Collections in Repositories

After processing a manuscript collection, most repositories prepare a detailed finding aid to help researchers navigate the collection. The content and scope of finding aids vary from institution to institution. Some libraries create finding aids that describe their collections down to the box, folder, or item level. Other libraries provide more general descriptions of their collections. Judges who include box or folder lists when they transfer their records to a library will assist the archivists by creating a detailed finding aid. Below are links to finding aids prepared for judicial collections at several repositories. Each offers an example of how judges have organized their judicial and nonjudicial papers.

1. [Papers of Charles Fahy](#), U.S. Court of Appeals for the District of Columbia, Library of Congress
2. [Papers of Gerhard Gesell](#), U.S. District Court for the District of Columbia, Library of Congress
3. [Papers of Wade H. McCree, Jr.](#), U.S. District Court for the Eastern District of Michigan and U.S. Court of Appeals for the Sixth Circuit, Walter P. Reuther Library, Wayne State University
4. [Papers of Constance Baker Motley](#), U.S. District Court for the Southern District of New York, Sophia Smith Collection, Smith College
5. [Papers of Bruce Van Sickle](#), U.S. District Court for the District of North Dakota, Chester Fritz Library, University of North Dakota



# The Federal Judicial Center

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## About the Federal Judicial Center

The Federal Judicial Center is the research and education agency of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620–629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States chairs the Center’s Board, which also includes the director of the Administrative Office of the U.S. Courts and seven judges elected by the Judicial Conference.

The organization of the Center reflects its primary statutory mandates. The Education Division plans and produces education and training for judges and court staff, including in-person programs, video programs, publications, curriculum packages for in-district training, and Web-based programs and resources. The Research Division examines and evaluates current and alternative federal court practices and policies. This research assists Judicial Conference committees, who request most Center research, in developing policy recommendations. The Center’s research also contributes substantially to its educational programs. The Federal Judicial History Office helps courts and others study and preserve federal judicial history. The International Judicial Relations Office provides information to judicial and legal officials from foreign countries and informs federal judicial personnel of developments in international law and other court systems that may affect their work. Two units of the Director’s Office—the Information Technology Office and the Editorial & Information Services Office—support Center missions through technology, editorial and design assistance, and organization and dissemination of Center resources.

