



# The Court Historian

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## *Joint AO/FJC Committee on Court Records Meets for the Third Time*

On November 20, 1992, the Federal Judicial Center hosted the third meeting of the Joint Administrative Office/Federal Judicial Center Committee on Court Records. The purpose of the committee is to bring together individuals from the Administrative Office of the U.S. Courts, the Federal Judicial Center, and the National Archives, as well as other members of the scholarly and archival communities, to discuss issues concerning the preservation of the records of the federal courts.

### **District Court Post-1970 Non-Trial Case Files**

Rosanne Butler, National Archives and Records Administration (NARA) Deputy Assistant Archivist for Special and Regional Archives, reported substantial support among the scholarly community for retaining a sample of the post-1970 district court non-trial case files, slated for disposal in the current records retention schedule. In re-

sponse, NARA has planned to have eight senior staff members undertake development of a methodology to preserve these files, working with the members of the Joint AO/FJC Committee, including experts in technological applications. The first meeting is planned for May 1993, and work is expected to end by December 1994.

### **Bankruptcy Records**

The National Archives reported that the sampling of the pre-1978 bankruptcy records from the Northern District of Alabama was completed and that staff were putting together a reference guide for other regional archives to use in sampling bankruptcy records. NARA, the Administrative Office, and the Center will cooperate in exploiting computerized databases to assist in the identification of individually significant case files. The NARA committee that is being established to devise selection procedures for the preservation of post-1970 dis-

trict court case files will also consider the preservation of the much more voluminous post-1978 bankruptcy case files.

### **Records Management**

NARA's recent report on court records management, *A NARA Evaluation: Records Management in Federal Courts*, found the federal courts' record maintenance practices generally sound but noted the need to clarify requirements for the preservation of electronic records. The Joint Committee also discussed the storage, preservation, and access problems posed by sealed records. The Federal Judicial Center is planning a study of how judges exercise their discretion to seal court records and what options might be available to mitigate the problems of sealed records. The Center is also planning to work with the Administrative Office and NARA to produce a training video on records management for the courts. ✽

## *Federal Judicial History Office Moves*

In October 1992 the Federal Judicial Center and other judicial branch agencies moved into a new judiciary office building adjacent to Union Station. On February 8, 1993, the President signed legislation renaming the building in honor of the late Justice Thurgood Marshall, who died January 24, 1993.

The Federal Judicial History Office continues to welcome information on publications and activities from court

history programs in the district and circuit courts. The office also invites individuals both inside and outside the federal court system to send notice if they would like to receive *The Court Historian*. Requests will be honored as resources permit. Write to: The Federal Judicial History Office, Federal Judicial Center, One Columbus Circle, N.E., Washington, DC 20002; telephone: (202) 273-4180. ✽

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Federal Judicial Center

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## Publications of the Courts

### Second Circuit

- Morris, Jeffrey B. *To Administer Justice on Behalf of All the People: The United States District Court for the Eastern District of New York, 1965-1990*. 1992. Available from Jeffrey Morris, Jacob D. Fuchsberg Law Center, 300 Nassau Road, Huntington, NY 11743; telephone: (516) 421-2244.
- Petruck, Peninah, ed. *Judge Charles Edward Clark*. New York: Oceana Publications, 1991. Available from Peninah Petruck, Second Judicial Circuit of the United States, 1803 United States Courthouse, Foley Square, New York, NY 10007; telephone: (212) 791-0982.
- *United States Courts in the Second Circuit: A Collection of History Lectures Delivered by Judges of the Second Circuit*. New York: Federal Bar Foundation, 1992. Available from the Federal Bar Foundation, 145 East 49th Street, New York, NY 10017; telephone: (212) 644-9771.

### Ninth Circuit

- McLaren, John, et al., eds. *Law for the Elephant, Law for the Beaver: Essays in the Legal History of the North American West*. 1992. Essays by legal scholars John Phillip Reid, R.C. Macleod, Stephen Haycox, David R. Percy, R. Maxwell Brown, Paul Tennant, John R. Wunder, Christian G. Fritz, Kenneth S. Coates, and William R. Morrison. Available from the Ninth Judicial Circuit Historical Society, 125 South Grand Avenue, Pasadena, CA 91105; telephone: (818) 405-7059.
- Mendenhall, Mark, with Chet Orloff. *A History and Guide to the United States Courts for the Ninth Circuit*, prepared by the Office of the Circuit Executive in cooperation with the Ninth Judicial Circuit

Historical Society. July 1992. Available from the Office of the Circuit Executive, P.O. Box 193846, San Francisco, CA 94119; telephone: (415) 744-6150.

- In March of 1993, the United States District Court of Oregon Historical Society published a collection of writings about the development of the federal district court in Oregon entitled *The First Duty: A History of*

*the U.S. District Court for Oregon*.

The work was edited by Carolyn Buan and contains a series of five essays written by Caroline P. Stoel, Ralph James Mooney, Todd A. Peterson, Randall Kester, and Laurie Mapes. Available from Kirk Hall, P.O. Box 1600, Lake Oswego, OR 97035-0889. Questions concerning the book may be directed to Laura Hashimoto at (503) 224-5560. ☞

### Videotapes Available from the Second Circuit Historical Committee

- Ceremony commemorating the 200th anniversary of the Call for a Convention to revise the Articles of Confederation  
Speaker: Professor Richard B. Morris  
February 24, 1987
- Ceremony commemorating the 200th anniversary of the Constitution and designating the Foley Square Courthouse as a National Historic Landmark  
Speaker: Justice William Brennan, Jr.  
September 17, 1987
- Ceremony for the placement of a plaque honoring the authors of *The Federalist*  
October 27, 1987
- Opening ceremony for "Patents— Constitutionally Protected," an exhibit on patent law  
Speaker: Donald Quigg, Commissioner of Patents and Trademarks  
December 16, 1987
- Celebration of Judge Harold R. Medina's 100th birthday  
February 16, 1988
- Eighth Annual History Lecture, "Reds, Reverends, Resisters and Robes: The Second Circuit and Free Expression, 1917-1920"  
Speaker: Professor Jeffrey B. Morris  
June 16, 1988
- Opening ceremony for "Birth of a Nation: The Federal Congress," an exhibit commemorating Congress's 200th anniversary  
Speakers: Judge Dominick Gabrelli and Charlene Bickford  
April 24, 1989
- Opening ceremony for "To Establish Justice," an exhibit commemorating the 200th anniversary of the U.S. District Court in New York  
Speaker: Robert J. Fiske, Jr.  
November 3, 1989
- Opening ceremony for "Judge Charles Edward Clark," an exhibit  
December 13, 1990

## Why Federal Judges Resign

Emily Field Van Tassel, *Associate Historian, Federal Judicial History Office*

Article III judges are entitled, absent misconduct, to hold their positions for life, and most do. However, throughout U.S. history, a small proportion have chosen to give up this highly respected position to pursue other occupations.

From 1789 to 1992, 2,647 men and women served as federal judges. Only slightly over 7% resigned from the bench for reasons other than health or age. Looked at by decade, the percentage of judges leaving the bench has fluctuated over the years but has declined since 1910 as the size of the judiciary has increased. In fact, the highest resignation rate for reasons other than health or age—34%—occurred in the decade when the average number of judges sitting per year was the smallest, 1789–1800.

The next highest percentage of departing judges was in the 1860s. The 27% departure rate for reasons not related to health or age can be accounted for almost entirely by the 14 judges

who resigned (and the one who was impeached) as a consequence of Confederate service or sympathies. Of the other 8 resignations, occurring during a decade in which the average number of judgeships was 59, all but one were because of health or age. Of the 10 judges who left the bench for reasons not related to health or age in the 1870s, half did so under the cloud of congressional investigation.

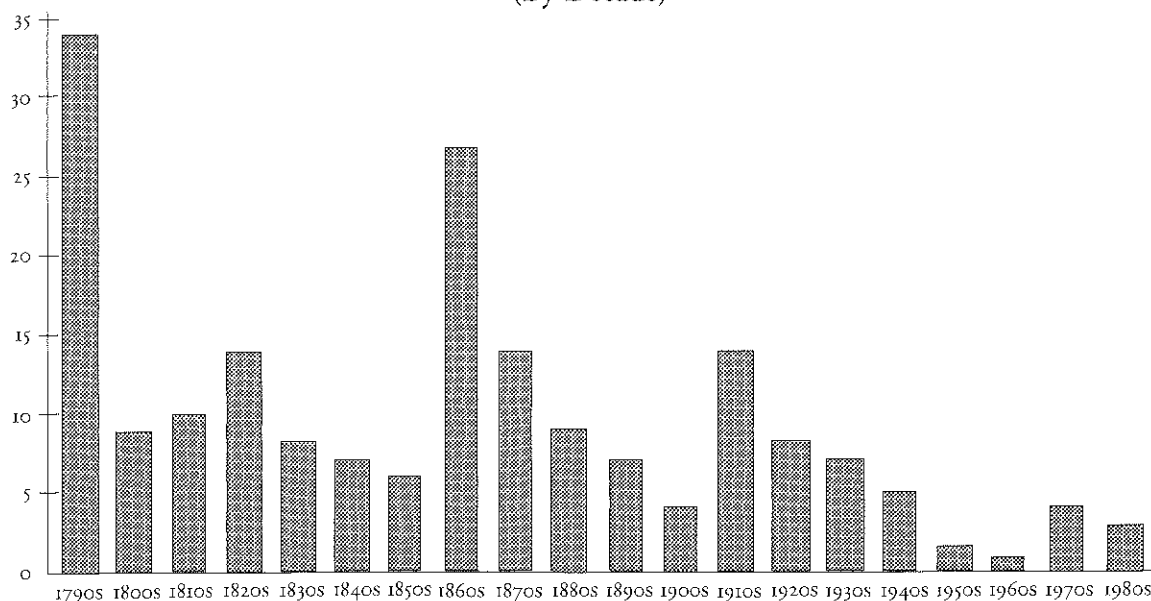
The highest departure rate in the 20th century occurred when roughly 14% of the federal judiciary resigned from the bench prior to retirement in the decade 1910–1919. Although in 1911 salaries for Supreme Court justices went up by \$2,000 and district and circuit judge salaries increased by \$1,000, over the next 15 years, until Congress raised salaries in the mid-1920s, real wages eroded by approximately 55% for Supreme Court justices, 67% for circuit court judges, and 69% for district court judges. Of the 19 judges who resigned for reasons

not related to health or age in the decade 1910–1919, 12 left to take other employment.

The resignation rate steadily declined from 8% in 1920–1929 to 5% in the 1940s. The lowest departure rates in the history of the judiciary occurred in the decades of the 1950s and 1960s: the percentage of judges resigning from the bench before retirement dropped to 2% in the 1950s and 1% in the 1960s. In the 1970s the rate went back up to 4%, the highest it had been since the 1940s, in part because of resignations prompted by inflationary pressures on judicial salaries that were not addressed by Congress. In the 1980s the rate went back down to roughly 3%.

Excerpted from Emily Field Van Tassel, *Why Judges Resign, 1789–1992: A Report to the National Commission on Judicial Discipline and Removal* (Federal Judicial History Office 1993). The information in this report was drawn from the Judicial Biography Database, now being revised, enlarged, and updated by the FJHO.

Percentage of Judges Resigning for Reasons Other Than Health or Age  
(By Decade)



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## *Court History Programs*

### **United States District Court of Oregon Historical Society**

The U.S. District Court of Oregon Historical Society is recording the court's history through oral interviews with judges and prominent lawyers who shaped the court over the years. Histories have been completed with Judges John Kilkenny, Otto Skopil, and Gus Solomon, as well as attorneys Randall Kester, Tom Stoel, and Carol Hewitt. For more information, contact Jeffrey M. Batchelor, 503 Gus J. Solomon United States Courthouse, 620 S.W. Main Street, Portland, OR 97205; telephone: (503) 326-2202.

### **The Historical Society for the United States District Court for the Eastern District of Michigan**

The Historical Society for the Eastern District of Michigan, formed during the first quarter of 1992, has initiated a series of historical projects designed to foster a better understanding of the history of the law and its application in the industrial Midwest. An oral history program will collect and preserve the reminiscences of current and former judges, attorneys, and court officials. A history of the court and a directory of related oral histories and archival collections are also planned. For more information concerning these and other projects, contact Judith K. Christie,

United States District Court for the Eastern District of Michigan, 133 United States Courthouse, 231 West Lafayette, Detroit, MI 48226; telephone: (313) 226-7200.

### **United States District Court for the Eastern District of Tennessee**

The U.S. District Court for the Eastern District of Tennessee announced the formation of a committee to organize the Historical Society for the United States District Court for the Eastern District of Tennessee. John W. Wheeler was selected to chair the committee.

The committee has initiated the following projects: seeking an author to write a formal history of the court; preserving historical materials from the present 60-year-old courthouse before the court moves, in 1995, to a new facility; and participating in a lecture series, sponsored by the University of Tennessee College of Law in memory of deceased U.S. District Judge Robert L. Taylor. Retired Chief Justice Warren Burger is scheduled to give the first lecture on April 13, 1993. For more information concerning these and other projects, contact United States District Court, Eastern District of Tennessee, Office of the Clerk, P.O. Box 2348, Knoxville, TN 37901; telephone: (615) 545-4228.

### **The Second Circuit Committee on Historical and Commemorative Events**

The Second Circuit Committee on Historical and Commemorative Events has made available a list of videotaped programs of its varied activities that could prove useful to court historical programs (see box on page 2). For further information, contact Peninah Petruck, Second Judicial Circuit of the United States, 1803 United States Courthouse, Foley Square, New York, NY 10007; telephone: (212) 791-0982.

### **The Ninth Judicial Circuit Historical Society**

The Ninth Judicial Circuit Historical Society has approximately 100 volunteers working on its oral history program recording the recollections of individuals who made important contributions to western legal history. The Historical Society is producing a video history of law and the federal courts in the West; it has also received a \$10,000 grant from the Federal Judges Association to research and write a history of that organization. For further information, direct all inquiries to: The Ninth Judicial Circuit Historical Society, 125 South Grand Avenue, Pasadena, CA 91105; telephone: (818) 405-7059. ✻

## *Ninth Circuit Announces 1993 Essay Prize in Western Legal History*

The Ninth Judicial Circuit Historical Society announces the 1993 competition for the best manuscript on the legal history of the American West. The Essay Prize in Western Legal History carries a cash award of \$500. Upon recommendation of the prize committee, the winning essay will be published in *Western Legal History*, the journal of the Ninth Judicial Circuit Historical Society.

Authors are encouraged to explore topics that illuminate the contributions of the law, lawyers, judges, and law-related organizations to the social, political, economic, and cultural history of the trans-Mississippi West.

To qualify for the 1993 competition, submissions must be 25-75 pages in length (typewritten and double-spaced) and postmarked no later than December 1, 1993. Please submit an

original and four photocopies of the manuscript, along with a brief biographical statement, to: Essay Prize Competition, Ninth Judicial Circuit Historical Society, 125 South Grand Avenue, Pasadena, CA 91105.

The Essay Prize is made possible through the generous support of the Bancroft-Whitney Company and Western State University College of Law. ✻