Resources for Public Speaking

Judicial Administration

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The administration of the work of the courts has been subject to significant change throughout the judiciary's history. Perhaps the most important shift was a gradual evolution away from the use of various executive agencies to perform administrative roles. During the twentieth century, these duties were gradually assumed by bodies within the judicial branch, such as the Judicial Conference of the United States (founded in 1922 as the Conference of Senior Circuit Judges) and the Administrative Office of the U.S. Courts (founded in 1939). This resource introduces the important inflection points in this evolution as well as the establishment of regularized rulemaking and disciplinary processes during the twentieth century. It provides suggested talking points, in outline form, for those wishing to speak about changes in the administration of the federal courts. In addition to the outline, the resource contains Topic at a Glance, a brief summary in PDF format; a gallery of downloadable images for use in a PowerPoint presentation; links to related resources on the FJC's History of the Federal Judiciary website; a further reading list; and excerpts of historical documents that could be handed out to audience members or incorporated into a presentation.

Topic at a Glance

Introduction. The administration of the work of the courts has been subject to significant change throughout the judiciary's history. Perhaps the most important shift was a gradual evolution away from the use of various executive agencies to perform administrative roles. During the twentieth century, these duties were gradually assumed by bodies within the judicial branch, such as the Judicial Conference of the United States (founded in 1922 as the Conference of Senior Circuit Judges) and the Administrative Office of the U.S. Courts (founded in 1939). This summary introduces the important inflection points in this evolution as well as the establishment of regularized rulemaking and disciplinary processes during the twentieth century.

Judicial Administration in the Early Republic. The 1787 Constitution was essentially silent on the issue of judicial administration. Several early federal statutes contemplated a system of judicial administration that divided power between multiple bodies. The Judiciary Act of 1789 gave federal courts the power to "make and establish all necessary rules for the orderly conducting [of] business." The first Congress gave the Department of the Treasury power to administer all public accounts, which included those of the clerks, marshals, and district attorneys of the federal courts. It also empowered the Department of State to issue commissions—documents signed by the president to formalize an appointment—to federal judges.

Congressional Judiciary Committees. In 1813, the U.S. House of Representatives established a standing committee on the judiciary, which reported to Congress on most legislation involving the federal judiciary and was charged with investigating allegations of misconduct to determine whether to recommend judicial impeachment to the full House. In 1816, the U.S. Senate established its own judiciary committee. In addition to reporting on judicial legislation, this committee has also long overseen much of the judicial nominations process, including holding hearings and making recommendations to the full Senate for or against confirmation.

Interior and Justice Departments. In 1849, Congress created the Department of the Interior, which assumed financial oversight over the federal courts from the Department of the Treasury. With the creation of the Department of Justice in 1870, that department in turn assumed responsibility for the

administration of the courts' finances. In 1888, the Justice Department also relieved the State Department of its role in issuing commissions to federal judges.

Conference of Senior Circuit Judges (1922). The Conference was the first national organization of federal judges as well as the first formal mechanism by which the judiciary could communicate its administrative needs to Congress. The Conference was later expanded to include district judges and the chief judge of the U.S. Court of International Trade. The Conference evolved to become the national policymaking body for the federal courts. It was renamed the Judicial Conference of the United States in 1948.

Modern Rulemaking. In 1934, Congress passed the Rules Enabling Act, which authorized the Supreme Court to promulgate rules of civil procedure for federal trial courts. The process employed for drafting these rules has informed all subsequent judicial rulemaking processes. Under the process established by the Act, the Court appointed a committee of experts on judicial procedure to draft rules, which were then subject to approval by the justices. The court then transmitted the rules to Congress, which could either allow the rules to go into effect or take legislative action to block or rewrite the rules. In 1938, the Court promulgated the Federal Rules of Civil Procedure, which went into effect on September 16 of that year. Rules governing several other forms of litigation followed in subsequent decades.

Administrative Office of the U.S. Courts (1939). The statutory creation of the Administrative Office reflected two related trends: an emphasis on rational government administration and increased independence from the other branches for the judiciary. The new agency was to collect information on caseloads, prepare the judiciary's annual budget request, disburse appropriated funds, and provide other administrative assistance to the courts.

Federal Judicial Center (1967). Congress created the Federal Judicial Center (FJC) to carry out research related to the administration and operation of the federal courts and to conduct education programs for judges and court staff. In 1988, the FJC's mandate expanded to include an office dedicated to conducting programs on the history of the federal judiciary, and in 1992 Congress tasked the Center with contributing to "improvement in the administration of justice in the courts of foreign countries."

Judicial Panel on Multidistrict Litigation (1968). Congress created the Panel on Multidistrict Litigation to consolidate and transfer to a single U.S. district court the pretrial proceedings for multiple civil cases involving common factual questions. The panel is composed of seven judges from the U.S. district courts and U.S. courts of appeals. All seven must be from different circuits.

Judicial Conduct and Disability Act (1980). Under the Judicial Conduct and Disability Act, a complaint of judicial misconduct can be subject to several levels of review—including review by the chief judge of the circuit, the circuit judicial council, and the Judicial Conference of the United States—before it can be referred to the U.S. House of Representatives for a possible impeachment proceeding. The Act also provides several nonimpeachment remedies for judicial misconduct.

Outline

I. Judicial Administration in the Early Republic
   A. The 1787 Constitution was essentially silent on the issue of judicial administration, save for the implicit authorization for Congress to regulate the courts as part of its powers to craft "exceptions" to the Supreme Court's jurisdiction and to create "inferior" tribunals.
   B. Several early federal statutes contemplated a system of judicial administration that divided power between multiple bodies.
      1. The Judiciary Act of 1789 gave federal courts the power to "make and establish all necessary rules for the orderly conducting [of] business." This grant mirrored common-law conventions, by which courts had inherent powers to regulate many areas of practice in their jurisdictions.
      2. The Supreme Court first promulgated rules of practice and procedure to govern its proceedings in 1790.
      3. The first Congress gave the Department of the Treasury power to administer all public accounts, which included those of the federal courts.
      4. The Congress also empowered the Department of State to issue commissions—documents signed by the president to formalize an appointment—to federal judges.
   C. In 1789, Congress passed a statute mandating that in suits at common law federal trial courts should follow the procedures then used in the states in which they sat.
   D. The Act was initially designed to be temporary, but the Process Act of 1792 subsequently specified that the courts should continue to follow the procedures required by the 1789 Act.
   E. The Process Act also permitted the courts to make such alterations to their procedures as they deemed expedient and empowered the Supreme Court to establish rules of equity procedure for the federal courts, a power the Court first exercised in 1822.

II. Congressional Judiciary Committees
   A. In 1813, the U.S. House of Representatives established a standing committee on the judiciary. This committee reported to Congress on most legislation involving the federal judiciary and was charged with investigating allegations of misconduct to determine whether to recommend judicial impeachment to the full House.
   B. In 1816, the U.S. Senate established its own judiciary committee. In addition to reporting on judicial legislation, this committee has also long overseen much of the judicial nominations process, including holding hearings and making recommendations to the full Senate for or against confirmation.

III. Equity Rules
   A. In 1822, using its authority under the 1792 Process Act, the Supreme Court established rules of equity procedure for the federal courts. The rules specified that all situations not otherwise provided for were to be governed by the practices of the High Court of Chancery in England.
   B. The Court issued revised equity rules in 1842 and 1912.

C. The Federal Rules of Civil Procedure (adopted in 1938) merged law and equity into a single form of suit known as a "civil action," but the distinction remained relevant for several other purposes.

IV. Interior and Justice Departments

A. In 1849, Congress created the Department of the Interior, which assumed financial oversight of the federal courts from the Department of the Treasury.
B. Upon its creation in 1870, the Department of Justice assumed responsibility for administering the courts' finances.
C. In 1888, the Justice Department also relieved the State Department of its role in issuing commissions to federal judges. The Justice Department served as the primary administrative body for the federal judiciary until the creation of the Administrative Office of the U.S. Courts in 1939.

V. Conference of Senior Circuit Judges

A. In 1922, Congress created the Conference of Senior Circuit Judges.
B. The Conference was the first national organization of federal judges as well as the first formal mechanism by which the judiciary could communicate its administrative needs to Congress.
C. The Conference initially consisted of the Chief Justice of the United States and the senior judge (later the chief judge) of each circuit.
D. The Conference was later expanded to include district judges and the chief judge of the U.S. Court of International Trade.
E. The Conference evolved to become the national policymaking body for the federal courts.
F. It was renamed the Judicial Conference of the United States in 1948.

VI. Modern Rulemaking

A. In 1934, Congress passed the Rules Enabling Act, which authorized the Supreme Court to promulgate rules of civil procedure for federal trial courts. The process employed for drafting these rules has informed all subsequent judicial rulemaking processes.
B. The Act was the culmination of decades of debate as to whether U.S. district courts should employ uniform, federal rules or continue to follow state procedures in most instances.
C. Under the process established by the Act, the Court appointed a committee of experts to draft rules, which were subject to approval by the justices. The Court transmitted the rules to Congress, which could either allow the rules to go into effect or take legislative action to block or rewrite the rules.
D. In 1938, the Court promulgated the Federal Rules of Civil Procedure (FRCP), which went into effect on September 16 of that year.
E. In 1940, Congress authorized the Supreme Court to create rules for pre-conviction practice and procedure in criminal cases. The Court promulgated the new Federal Rules of Criminal Procedure on December 26, 1944. The rules were transmitted to Congress the following January and went into effect in 1946.

F. In 1958, Congress authorized the Judicial Conference of the United States to conduct a "continuous study" of the rules of practice and procedure in the federal judiciary. In response, the Conference created the Standing Committee on Rules of Practice and Procedure.
G. 1966 amendments to the FRCP abolished existing admiralty rules and brought admiralty and maritime cases within the scope of the FRCP.
H. In 1966, Congress authorized the Supreme Court to create rules of civil appellate procedure in the U.S. courts of appeals. The Court promulgated the rules in 1967, and they went into effect the following year.
I. In 1972, the Supreme Court promulgated draft Federal Rules of Evidence, transmitting them to Congress in 1973. Later that year, Congress passed legislation postponing the rules from going into effect. Congress significantly revised the rules. President Gerald Ford signed legislation creating the new Federal Rules of Evidence in 1975.
J. In 1973, the Supreme Court promulgated rules of bankruptcy procedure under authority granted by a 1964 statute. The rules were substantially revised in 1983 and renamed the Federal Rules of Bankruptcy Procedure in 1991.

VII. The Administrative Office of the U.S. Courts

A. In 1939, Congress created the Administrative Office of the U.S. Courts (AO) to perform many of the administrative functions formerly conducted for the courts by executive agencies.
B. The creation of the AO reflected two broader trends that proved significant in the evolution of judicial administration throughout much of the twentieth century: an emphasis on better organized government administration, and increased independence from the other branches for the judiciary.
C. The new agency was to perform most of the nonjudicial administrative functions of the federal judiciary, including collecting information on caseloads, disbursing appropriated funds, and providing support to courts and the Judicial Conference.
D. In conjunction with Judicial Conference committees, the AO also prepares the judiciary's annual budget request to Congress.
E. In addition, the AO provides legal support to the judiciary, including interpreting laws that affect judiciary operations.
F. The AO provides logistical and management support to courts as well.

VIII. Circuit Administration

A. In the same legislation that created the AO, Congress provided for circuit judicial councils to allow judges of the circuit courts of appeals to oversee administrative matters within their own jurisdictions.
B. Under the 1939 Act, the circuit councils met twice annually to review reports from the director of the Administrative Office of the U.S. Courts and discuss matters of judicial administration.
C. The councils handled matters such as assigning judges to aid congested districts or to help judges requiring support due to medical issues.

D. The councils also set ethical standards for the circuit, a role that was subsequently enhanced by the Judicial Conduct and Disability Act of 1980 (discussed below).
E. Congress expanded the responsibilities of the councils over time. For example, federal laws in the 1960s required circuit councils to approve district court plans for assigning counsel to indigent defendants and for random juror selection.
F. The 1939 Act also required the senior (later chief) judge of each circuit to call an annual conference of all circuit and district judges "for the purpose of considering the state of the business of the courts and advising ways and means of improving the administration of justice within the circuit." This provision was amended in 1990 to permit annual or biennial conferences.
G. In the 1940s, circuit conferences established committees to discuss subjects pending before the Judicial Conference of the United States and to advise the relevant Judicial Conference committees of their views.
H. Circuit judicial conferences also select the U.S. district judge who, along with the circuit's chief judge, represent the circuit on the Judicial Conference.

IX. The Federal Judicial Center

A. In 1967, Congress created the Federal Judicial Center (FJC) to serve the federal judiciary by carrying out research related to the administration and operation of the federal courts and conducting education programs for judges and court staff.
B. In 1988, the FJC's mandate expanded to include an office dedicated to conducting programs on the history of the federal judiciary, and in 1992 Congress tasked the Center with contributing to "improvement in the administration of justice in the courts of foreign countries."
C. The FJC is governed by a board chaired by the Chief Justice of the United States.

X. Judicial Panel on Multidistrict Litigation

A. In 1968, Congress created the Judicial Panel on Multidistrict Litigation to consolidate and transfer to a single U.S. district court the pretrial proceedings for multiple civil cases involving common factual questions.
B. The panel is composed of seven judges from the U.S. district courts and U.S. courts of appeals. All seven must be from different circuits.

XI. Counselor to the Chief Justice

A. The creation of new agencies and judicial bodies gave significant administrative duties to the office of the Chief Justice, who by statute appointed and contributed to the oversight of several important officers and governing bodies.
B. In 1972, Congress authorized the Chief Justice to appoint an administrative assistant to help with matters of court governance and the other nonjudicial functions of the office. This statute was encouraged by Chief Justice Warren Burger, who argued that his nonjudicial workload had become onerous.
C. In 2008, Congress changed the title of the position from administrative assistant to counselor.

D. In addition to aiding with administrative duties, the counselor serves as the Chief Justice's chief of staff and acts as a liaison to the executive and legislative branches.

XII. Judicial Conduct and Disability Act

A. In 1980, Congress passed the Judicial Conduct and Disability Act.

B. Under the Act, a complaint of judicial misconduct could be subject to several levels of review—including review by the chief judge of the circuit, the circuit judicial council, and the Judicial Conference of the United States—before it could be referred to the U.S. House of Representatives for a possible impeachment proceeding.

C. The Act also provided several non-impeachment remedies for judicial misconduct.

XIII. Conclusion

A. The modern trend of judicial administration has been towards more systematic organization increasingly controlled by the judiciary itself, rather than through administration by the other branches of government.

B. Innovations like the transfer of administrative functions from executive to judicial agencies and the creation of the modern judicial rulemaking process have helped to strengthen and consolidate these shifts.

Related FJC Resources

Holt, Daniel S., ed. *Debates on the Federal Judiciary: A Documentary History. Vol 2: 1875–1939*. Washington, DC: Federal Judicial Center, 2013.

Kobrick, Jake, and Daniel S. Holt, eds. *Debates on the Federal Judiciary: A Documentary History. Vol. 3: 1939–2005.* Washington, DC: Federal Judicial Center, 2018.

Ragsdale, Bruce A., ed. *Debates on the Federal Judiciary: A Documentary History. Vol. I: 1787–1875*. Washington, DC: Federal Judicial Center, 2013.

Further Reading

Barrows, Chester L., and William M. Evarts. *Lawyer, Diplomat, Statesman*. Chapel Hill, NC: The University of North Carolina Press, 1941.

Crowe, Justin. *Building the Judiciary: Law, Courts and the Politics of Institutional Development*. Princeton, NJ: Princeton University Press, 2012.

Fish, Peter Graham. *The Politics of Federal Judicial Administration*. Princeton, NJ: Princeton University Press, 1973.

Holt, Daniel S., ed. *Debates on the Federal Judiciary: A Documentary History. Vol 2: 1875–1939*. Washington, DC: Federal Judicial Center, 2013.

Kobrick, Jake, and Daniel S. Holt, eds. *Debates on the Federal Judiciary: A Documentary History. Vol. 3: 1939–2005.* Washington, DC: Federal Judicial Center, 2018.

Murphy, Walter F. "Chief Justice Taft and the Lower Court Bureaucracy: A Study in Judicial Administration." *Journal of Politics* 24 (1962): 453–76.

Ragsdale, Bruce A., ed. *Debates on the Federal Judiciary: A Documentary History. Vol. I: 1787–1875*. Washington, DC: Federal Judicial Center, 2013.

Historical Documents

Thomas W. Shelton, Proposal for Supreme Court Authority Over Civil Procedure, Central Law Journal, February 14, 1913.

Shelton, a leading figure in the American Bar Association, contended that legislatures injected political influences into the judicial process and produced ineffective judicial administration, though it was the courts that were attacked by the public. He called on Congress to "let the Supreme Court free," allowing it to function as an independent branch of government and create a model of rational, effective procedure for the country. Only then would interest-group and partisan influences be removed from the administration of justice.

The times call for a more general and popular study of the elementary principles of government that the body politic may realize that the difficulty is not with the Courts as institutions, but with the conduct thereof. . . . The solution, I profoundly believe, lies much in divorcing the Courts from politics and political influences and requiring them and the Bar to clean their own house. . . .

Pursuing this thought, if lawyers and judges are to be held solely responsible, as in right they should, then they must be given the power to correct the evil by putting into practice all necessary reforms in the Courts. . . . The people should rise up in their might and require that Congress shall set the Supreme Court free. It is a complete solution of the difficulty. . . . Congress should be prevailed upon to do away with the empty pretense of conformity with State practice on the common law side, . . . stop patching conflicting and incompatible statutes, authorize the Federal Supreme Court to prepare a simple, economical, complete, correlated system of pleading and procedure, make it mandatory and stop there. Let the Supreme Court do the rest. . . . Besides, politics have no respective place in jurisprudence. On the other hand, the solemn voice of the Supreme Court would bring the entire Bar and the people to a point of complete acquiescence and the forceful support and there would be permanent results the greatest of which, next to simplicity and economy, would be uniformity in pleading and procedure in the Federal Courts and quite naturally amongst the States. In their own interests, there would eventually be adopted any simple, economical system that bears the impramata [sic] of the approval of the United States Supreme Court; that has proved its merits in the Federal Courts and which has become certain and fixed through precedents.

[Document Source: Thomas W. Shelton, "Reform and Uniformity of Judicial Procedure," Central Law Journal, February 14, 1913, 114–16.]

Chief Justice William Howard Taft, Oversight of Judges, American Bar Association Annual Meeting, Speech of September 1, 1921.

Taft advocated for the creation of the Conference of Senior Circuit Judges throughout 1921. In the 1910s, Taft had described his idea of a council of judges as a way to study conditions in the courts and assist in decisions regarding the reassignment of judges. In a 1921 speech to the American Bar Association, Taft also stated that he saw the Conference as a way to pierce the independence of the district courts and encourage what he often referred to as "teamwork" among the individual judges.

In the bill is another important feature that in a sense contains the kernel of the whole progress intended by the bill. It provides for an annual meeting of the Chief Justice, the senior circuit judges from the nine circuits, and the Attorney-General, to consider required reports from district judges and clerks as to the business in their respective districts, with a view to making a yearly plan for increasing for the time the new and old judicial force of the United States where the arrears are threatening to interfere with the usefulness of the courts. It is the introduction into our judicial system of an executive principle to secure effective team work. Heretofore each judge has paddled his own canoe and has done the best he could with his district. He has been subject to little supervision, if any. Judges are men and some are not so keenly charged with the duty of constant labor that the stimulus of an annual inquiry into what they are doing may not be helpful. With such mild visitation he is likely to cooperate much more readily in an organized effort to get rid of business and do justice than under the "go-as-you-please" system of our present federal judges which has left unemployed in easy districts a good deal of the judicial energy that may be now usefully applied elsewhere.

[Document Source: "Informal Address by Honorable William Howard Taft," Report of the 44th Annual Meeting of the American Bar Association (1921), 564–65.]

Judge Alfred P. Murrah, Need for Centralized Control over Multiple Litigation, Testimony Before Senate Subcommittee on Improvements in Judicial Machinery of the Committee of the Judiciary, October 21, 1966.

Judge Alfred Murrah of the Tenth Circuit was perhaps more intimately involved in studying the problem of complex litigation in the federal courts than any other judge, having done so in various capacities since 1955. Murrah, in a sense, wrote the book on the subject as head of the group that produced the *Handbook of Recommended Procedures for the Trial of Protracted Cases* in 1960. The judge appeared before the Senate Subcommittee on Improvements in Judicial Machinery in 1966 to express his support for the creation of a centralized body to oversee the consolidation of pretrial procedures in multidistrict federal litigation.

As you are fully aware, a virtual "explosion" of litigation has occurred since World War II in all levels of the judiciary. Courts have received and are continuing to receive additional numbers of judges and court personnel. Perhaps this is inevitable in view of the "population explosion" and our expanding economy. But experience has shown and the Judicial Conference of the United States has recognized that the creation of additional judgeships is not the complete answer to the management of judicial caseload. Despite more judges the backlogs of cases continually grow. It is our view that the courts must learn better ways of handling litigation efficiently through the development of new techniques of calendar control and overall judicial administration.

The proposed legislation we are concerned with here today deals with a facet of this overall problem. It is a new and intriguing problem—because it is one peculiar to our modern society. It is the "big case" with geographical dispersion. . . .

At the time of the promulgation of the new Handbook [of Recommended Procedures for the Trial of Protracted Cases], no one could foresee the deluge of antitrust litigation about to descend upon the United States district courts. In 1951 . . . there were 262 antitrust cases commenced in the district courts; in 1960 . . . there were 315 antitrust cases commenced. But in 1962 the number of antitrust

cases docketed in the district courts increased to 2,079. This resulted, of course, from the 1,739 private antitrust cases filed that year as the result of the indictments and convictions in the electrical equipment industry in Philadelphia in 1961. While the Handbook showed the way in litigation confined to a single district, it provided little help in the coordination of thousands of related cases pending in more than 30 jurisdictions across the nation. . . .

The one principle that stands out foremost in the work on the electrical equipment cases is the need for centralized judicial control to avoid duplication of time and effort and the waste of funds. In the electrical cases control was splendidly achieved through judicial cooperation and through the cooperation of members of the Bar. While the necessary control was achieved, it was done so only through hard work. It was apparent from this experience that a loosening of the statutes relating to venue and the transfer of cases in relation to multi-district cases, was not only desirable but necessary. The bill which you have before you, which bears the endorsement in principle of the Judicial Conference of the United States, would accomplish just this.

Mr. Chairman, the Federal judiciary in the last ten years has, on its own resources, made immense strides forward in mastering the protracted and complex case. Certainly, the big case no longer threatens, as it once did, a breakdown in the judicial process. In this instance, we ask the Congress to join with us to provide additional tools to help us in the task of the administration of Justice.

[Document Source: U.S. Senate, Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, Hearings on S. 3815, A Proposal to Provide Pretrial Consolidation of Multidistrict Litigation, 89th Cong., 2nd sess., 1966, pt. 1, 51–53.]