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# Central Legal Staffs in the United States Courts of Appeals

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Federal Judicial Center

FJC-R-78-3

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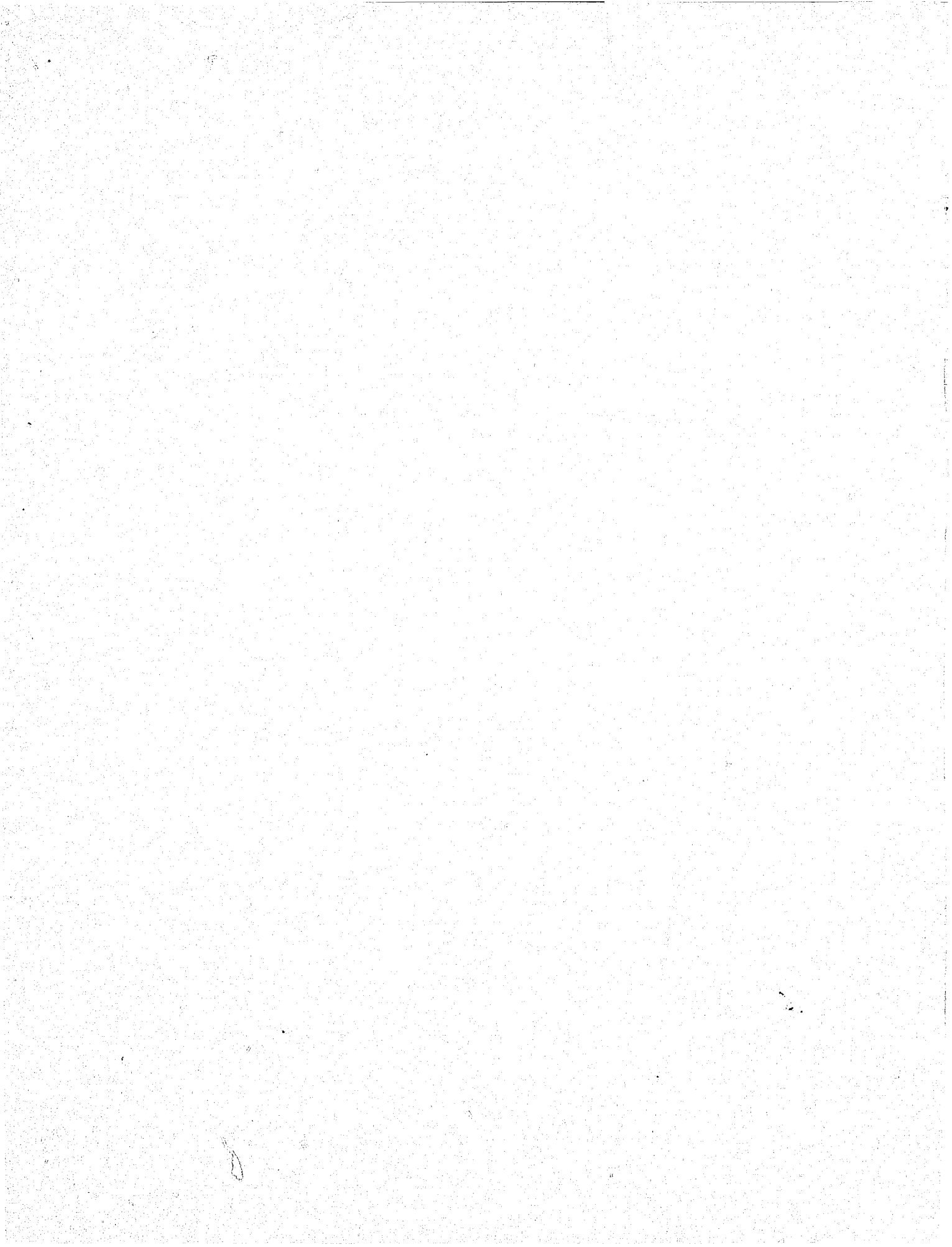
CENTRAL LEGAL STAFFS IN THE  
UNITED STATES COURTS OF APPEALS

A Survey of Internal Operating Procedures

Federal Judicial Center

April, 1978

FJC-R-78-3



## INTRODUCTION

The creation of central staffs was one response of the state and federal courts to the rapid increase in the number of appeals, which began in the early 1960s and continues unabated.<sup>1</sup> In his book, Professor Meador traces the lineage of central staffs in the federal courts back to the United States Court of Military Appeals.<sup>2</sup> That court has employed research attorneys, called commissioners, since its creation in 1951. Numerous appellate state courts, notably in California and Michigan, have employed formal, organized central staffs since the late 1960s. At the same time, the seed was planted for the development of central staffs in the federal courts.

Central staffs evolved from two existing positions within the courts: pro se deputy clerks of the clerk's office, and law clerks to senior judges. The pro se clerks were usually recent law school graduates or law students. Their primary responsibility was to review all pro se matters coming to their courts. The law

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1. Meador, Appellate Courts: Staff and Process in the Crisis of Volume (1974).

2. Id. at 218.

clerks were recent law school graduates who, although assigned to senior judges, were stationed as a pool at the circuit headquarters. Their responsibility was similar to that of the pro se clerks.

The existence and value of central staffs in the federal courts have been recognized. The Fifth Circuit requested and received fiscal 1973 funds to hire additional law clerks for the court. A similar request by the Ninth Circuit was granted for fiscal 1974. Official recognition of central staffs as a distinct arm of the court came with the fiscal 1975 judicial budget. The Senate, in its report on the House appropriations bill for that year, added a proviso that allowed the chief judge of each circuit to appoint a senior law clerk for the court.<sup>3</sup> This proviso has been carried forward with succeeding appropriations.

The final report of the Commission on the Revision of the Federal Court Appellate System recommends that the circuits develop and use central staffs and that the Congress provide adequate funds for such staffs. A similar recommendation was made in the final draft of the American Bar Association Commission on Standards of Judicial Administration's Standards Relating to Appellate Courts.

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3. Appropriations Act, Pub. L. No. 73-433, § 88 Stat. 1187 (1975).

This survey presents a detailed review of the central staffs of the United States courts of appeals. The Federal Judicial Center has published two prior papers on central staffs. The first, Comparative Report on Internal Operating Procedures of the United States Courts of Appeals (FJC 73-16, 1973), contained a summary of central staff procedures. The second, Screening Practices and the Use of Para-judicial Personnel in the U. S. Courts of Appeals: A Study in the Fourth Circuit (FJC 74-7, 1974), focused on the central staff of the Fourth Circuit.

A short word is in order regarding the history of this survey. I wrote to Kenneth C. Crawford, director of education and training for the Center, in February, 1976, and asked whether the Center would consider sponsoring a seminar for senior staff attorneys. There was a growing feeling that the time was ripe for a meeting of the senior staff attorneys to exchange information and ideas on how their staffs function. Mr. Crawford felt such a meeting would be beneficial, and he presented the concept to the Center's Board of Directors. The Board approved the idea and a planning committee was formed, consisting of Mr. Crawford; Earl J. Ross of the Center; Emory G. Hatcher, circuit executive for the Tenth Circuit; and myself. The committee met in August, 1976, and developed a two-and-a-half-day agenda. The seminar was held at the Dolley Madison House on November 29 and 30, and December 1, 1976.

The Center sponsored a second seminar one year later. The planning committee for the second seminar comprised Mr. Ross; Henry Hoppe, senior staff attorney for the Fifth Circuit; Louise D. Jacobs, senior staff attorney for the Third Circuit; and myself. Judge Ruggero J. Aldisert of the Third Circuit agreed to serve as chairman of the second seminar. The seminar was held in New Orleans, December 12-14, 1977. This survey is based upon the information gathered at the two seminars.

For this survey, a central staff is defined as a group of lawyers, located at the circuit headquarters, who work for the court as a whole. Each circuit now employs a central staff. Prior to the September, 1977 meeting of the Judicial Conference of the United States, central staffs were variously referred to as staff attorneys, court law clerks, and pro se law clerks. At the September meeting, the Conference voted to refer to all central staffs as staff attorneys.<sup>4</sup>

The tenure and responsibilities of circuit staff attorneys vary. Central staffs are relatively new to the federal court system. If not in their infancy, central staffs are, in the words of Judge Aldisert, "in the age of 'rugged adolescence.'" This, then, is a time of experimentation, growth, and discussion about

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4. Report of the Proceedings of the Judicial Conference of the United States 56 (Sept. 15-16, 1977).



central staffs and how they should be used. This survey is neutral, in that it does not advocate a particular model of how a central staff should function. Rather, its purpose is to explore how central staffs are used in the various circuits, and to encourage discussion of their value and utility.

Before turning to a circuit-by-circuit discussion of the central staffs, mention should be made of a concern arising from the creation of central staffs. That is the apprehension that a central staff will ultimately lead to a dilution or abdication of the judges' decision-making function--or at least an appearance of dilution or abdication. This concern stems from the belief that overburdened judges will tend to accept staff recommendations without exercising much independent judgment. This certainly has not been the experience in the Tenth Circuit. Nevertheless, the potential for such dilution or abdication is present and must be recognized. I believe, however, that if the judges and staffs are sensitive to this concern, it can be minimized, and that central staffs can make a substantial contribution to the ultimate goal of the federal court system: equal justice under the law.

Richard J. Banta  
Senior Staff Attorney  
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## DISTRICT OF COLUMBIA CIRCUIT

The central staff of the United States Court of Appeals for the District of Columbia Circuit consists of four staff attorneys. They serve the court for one-year terms. The circuit also appoints a senior staff attorney, who functions in a different capacity from that of the staff attorneys.

The clerk of court forwards to the staff attorneys all substantive motions and major procedural motions. The nature of litigation in the District of Columbia circuit is such that many complex cases are first processed through the staff attorneys by substantive motions. These include motions for stays, summary affirmance or reversal, or dismissal. Motions are assigned to the staff attorneys on a rotating basis. The staff attorney prepares a detailed memorandum for a panel of the court; this may require a thorough review of the record and a discussion of the merits of the case. The memorandum, with a recommendation regarding disposition, is then sent to the court. If appropriate, a proposed per curiam opinion or order is also drafted. Thereafter, if the motion does not dispose of the appeal, the staff attorney may be called upon to assist the panel when the matter is heard on the merits. The staff attorneys spend approximately 75 percent of their time working on motions. Their

remaining time is spent assisting the court in the disposition of argued cases.

The senior staff attorney screens all cases after the briefs are filed. Screening identifies cases: (1) that appear to be appropriate for disposition without oral argument; (2) in which there is a possible or obvious jurisdictional defect; (3) that should receive further consideration by the district court or agency, in light of an intervening decision of the court of appeals; and (4) in which an additional issue should be briefed by the parties. This is often related to the question whether the matter is moot.

In cases selected for possible resolution on the briefs, the senior staff attorney, or, at his request, a staff attorney, prepares for the court a recommendation that the case be decided without oral argument. This may include a recommendation regarding disposition. The senior staff attorney refers cases with possible jurisdictional problems, or those that should receive further consideration, to a motions panel, with a recommendation that the case be dismissed or remanded. Finally, the senior staff attorney attempts to organize groups of cases for random assignment to panels of the court, in order to assign related cases to the same panel.

## FIRST CIRCUIT

The central staff of the United States Court of Appeals for the First Circuit includes a senior staff attorney and one staff attorney. The senior staff attorney is appointed for four years; the staff attorney for one to three years.

One of the staff's primary responsibilities is to screen appeals for cases that are appropriate for submission on the briefs without oral argument. The February and September terms of the First Circuit are the busiest. These are the terms when disposition of a substantial number of submitted cases is most necessary. The clerk of court gives the staff the calendar for the February and September terms of court. The staff then screens the briefs of those cases scheduled for oral argument. If the staff attorney believes that a case is a good candidate for submission on the briefs, he or she prepares a memorandum setting forth the facts, issues, and applicable law. This memorandum is forwarded to the court with a recommendation that the case be submitted without oral argument.

If all members of the panel reviewing the case accept the staff recommendation, the case is removed from the docket. Any judge on the panel may direct that a case be argued. Cases removed from the docket

are assigned to a judge. The judge either retains the case for the drafting of an opinion with his own staff, or returns the case to the staff for a complete review of the record, and, if appropriate, the drafting of a proposed opinion, usually per curiam. All staff work is subject to review and approval by the court.

The staff's other primary responsibility is to assist the court in reviewing matters that are not appropriate for a term of court, such as applications for stays or bail, motions to summarily dismiss or affirm, prisoner and other pro se cases, applications for certificates of probable cause, motions for leave to proceed on appeal in forma pauperis, and cases involving recalcitrant witnesses. Such matters are forwarded to the court with a memorandum containing a discussion of the applicable law and a recommendation regarding disposition. Where appropriate, a proposed order or opinion is prepared.

The staff also assists the court with cases during regular terms of court.

## SECOND CIRCUIT

The central staff of the United States Court of Appeals for the Second Circuit consists of seven staff attorneys. Three are hired for indefinite terms, three others for two-year terms, and the remaining one, for a one-year term. The circuit also employs a senior staff attorney who, with another attorney, manages the circuit's Civil Appeals Management Plan.

The primary responsibility of three of the staff attorneys is to prepare, for submission to the court, memoranda on all pro se cases, both criminal and civil. Most of the pro se matters are prisoner petitions, which include applications for leave to proceed on appeal in forma pauperis, applications for certificates of probable cause, and motions for the appointment of counsel. In addition, memoranda are prepared for pro se civil and criminal appeals.

The staff attorneys handle all substantive and emergency motions. Such motions include applications for stays or for bail, motions to affirm and dismiss, petitions for extraordinary writs and for interlocutory appeals, applications for certificates of probable cause, and any other motion that must be considered by a panel of three judges. The court hears oral argument

on most substantive motions. All emergency motions are also referred to the staff attorneys. In addition, the staff attorney to whom the motion is referred prepares a memorandum for the court and reviews the motion for procedural defects. Where possible, he or she assists counsel in resolving these defects, thus avoiding the need for court intervention.

The staff memoranda prepared for substantive motions are submitted to a panel of the court, which rotates on a weekly basis. Each memorandum contains a thorough discussion of the facts and the law, and a recommendation regarding disposition. The memorandum is expected to be sufficiently well done to provide the foundation for an opinion by the court.

The staff attorneys maintain particularly close control of all cases on the criminal docket, under the court's Plan to Expedite Criminal Appeals. The staff attorneys make recommendations regarding certain criminal procedural motions, particularly motions for extensions of time, motions to be relieved as counsel on appeal, and motions to proceed in forma pauperis. These motions are acted upon by the chief judge. Additionally, staff attorneys prepare proposed calendars, grouping cases that involve similar or identical issues to achieve a balanced weekly case load. The Second Circuit sits five days a week, forty-nine weeks a year, and hears oral argument in almost every appeal.

The staff attorneys also undertake special projects for the judicial council. Such projects have included drafting new court rules and reviewing district court practices in handling prisoner petitions.

The Second Circuit also employs two staff attorneys who conduct preargument settlement conferences under the circuit's Civil Appeals Management Plan. They do not prepare research memoranda and are not considered central staff attorneys. In addition to encouraging settlements, these staff attorneys act on certain civil procedural motions, primarily motions for extensions of time, and make recommendations on other civil procedural motions that can be decided by a single judge.



### THIRD CIRCUIT

The central staff of the United States Court of Appeals for the Third Circuit comprises a permanent senior staff attorney and four associate staff attorneys. The associate staff attorneys serve for two-year terms.

The major responsibilities of the staff focus on pro se litigation and on developing a general litigation program. The latter is new to the staff office. It involves reviewing selected cases of more than average complexity. Each such case is reviewed and analyzed by the staff, then forwarded, with a recommendation on disposition, to a panel of the court for consideration on the merits. The general litigation program is experimental, and has been developed in stages. It is expected to continue to evolve with experience. Each stage of the program is preceded by consultation between the senior staff attorney, the chief judge, and the judicial council, and is accompanied by reports from the senior staff attorney to the council.

In its present stage, the program involves staff review of cases that the senior staff attorney selects from those on calendars set for submission to panels considering cases on the merits. Cases chosen are

limited to those classified as medium or hard in difficulty. Earlier, the court determined that staff assistance was not necessary in "easy" cases.

Cases selected for review in the general litigation program involve all areas of law. In each case, a memorandum is prepared and sent to the allotted panel. If appropriate, a proposed judgement, order, or per curiam opinion is also drafted for the panel.

The staff's responsibility for pro se litigation involves processing and developing all pro se matters, from the time the notice of appeal is filed in the district court until the case is either disposed of by motion or submitted to a panel of the court for resolution on the merits. This responsibility includes answering all prisoner and other pro se mail addressed to the court, and corresponding with pro se litigants to insure compliance with the proper filing and motions procedures.

The staff also initially considers such motions as leave to proceed on appeal in forma pauperis, applications for certificates of probable cause or for extraordinary writs, and motions to dismiss or affirm. With each motion, the staff prepares a memorandum containing a detailed discussion of the facts and law, and a recommendation regarding disposition. The motion and memorandum are then sent to rotating motions panels for their consideration. In addition, following the reso-

lution of any pro se motion, the memoranda are forwarded to all panels considering these types of cases on the merits, to assist in disposition of the case.

The staff also screens all appeals for jurisdictional defects and complexity. Cases with jurisdictional defects are withdrawn for assignment to a panel. The staff attorney assigned to the case prepares a memorandum discussing the jurisdictional problem. The case is then forwarded to the appropriate panel for consideration. The briefs in civil appeals are evaluated, and each appeal is assigned a grade of difficulty. This assignment assists the clerk in scheduling a balanced calendar for each court panel during each term of court.

Additionally, the staff reviews every civil opinion submitted to the clerk, and prepares an order of judgment and an order assessing costs. Any difficulties regarding the wording of an order of judgment or an order assessing costs is resolved by the staff attorney and the authoring judge or his staff.

The Third Circuit staff recently initiated an extensive compendium, drafting and updating a program designed to provide the staff office and the court with a number of simple, yet comprehensive, research tools in the areas of civil rights, habeas corpus, section 2255 motions, appellate jurisdiction, the appointment of counsel, and applications for leave to proceed on

appeal in forma pauperis. In addition to the compendium, the staff reviews all Supreme Court and federal advance sheets. All cases relevant to the function of the staff office are placed in a special research filing system that is used extensively in preparing the memoranda on pro se applications.

#### FOURTH CIRCUIT

The central staff of the United States Court of Appeals for the Fourth Circuit includes a permanent senior staff attorney and six associate staff attorneys. The associate staff attorneys are recent law graduates, and are hired for two-year terms.

On a monthly basis, the senior staff attorney screens all appeals in which the parties are represented by counsel. This is done after the appellee's brief is filed. The screening serves two purposes: to remove from oral argument those cases that are appropriate for submission on the briefs, and to assign weights to those cases that will be argued. Assigning a weight helps the clerk prepare a balanced calendar for each term of court. Cases tagged at screening as no-argument cases are assigned by the senior staff attorney to the staff for review. This review requires that a detailed memorandum be prepared for the court, fully discussing the facts and the law. The memorandum contains a recommendation regarding disposition. Finally, the staff drafts a proposed opinion, which, if adopted, is fully dispositive of the appeal. The proposed opinion must be of such quality that it can be adopted as written, as an opinion of the court. Any judge of the panel to which the appeal is submitted can direct that the case be calendared for argument.

All pro se prisoner appeals are also processed through the staff. As with other appeals, a memorandum and proposed opinion are prepared, and the case is submitted to a panel of the court for consideration.

The staff also considers all substantive motions, such as motions to dismiss or affirm, motions for leave to proceed on appeal in forma pauperis, applications for certificates of probable cause, applications for bail, and petitions for extraordinary writs.

Each year, the staff conducts a seminar for newly appointed circuit and district court law clerks. The focus of the seminar is on pro se prisoner cases, including habeas corpus and civil rights.

Finally, the staff is available to assist the judges in whatever manner they request.

## FIFTH CIRCUIT

The central staff of the United States Court of Appeals for the Fifth Circuit consists of a permanent senior staff attorney, an assistant supervising staff attorney, and sixteen associate staff attorneys.

The central staff becomes involved in the appeals process after the briefs have been filed. The cases reviewed by the staff include both civil and criminal appeals. Agency appeals, however, are sent directly to the court by the clerk's office. Cases that have been fully briefed are sent from the clerk's office to the senior staff attorney on a continuing basis. The senior staff attorney or his assistant gives the briefs an initial examination. Those cases that are clearly appropriate for oral argument are returned to the clerk's office. The remaining cases are distributed among the staff for review. If, upon closer review, a staff attorney feels the case should be argued, he prepares a short memorandum setting forth a brief synopsis of the case and a statement of why the case should be argued. This memorandum is returned to the clerk, who in turn forwards it to the court for consideration.

If the staff attorney assigned to a case believes the case is appropriate for disposition without oral argument, a detailed memorandum is prepared, recom-

mending that the case be considered on the briefs. The memorandum contains a recommendation regarding disposition. Such memoranda are then returned to the clerk's office for submission to the court. Any judge can order that a staff-processed case be argued.

The staff also reviews and makes recommendations to the court on motions for bail, for the appointment of counsel, for leave to proceed on appeal in forma pauperis; applications for certificates of probable cause; petitions for writs of mandamus, and the like. One staff attorney has been trained to operate the LEXIS terminal. This staff attorney answers research requests for the circuit judges, the district judges, the staff attorneys, and the judges' law clerks. Finally, two specially trained staff secretaries answer routine prisoner mail. If the mail is in the form of a motion, it is referred to the staff for review.



## SIXTH CIRCUIT

The central staff of the United States Court of Appeals for the Sixth Circuit comprises a permanent senior staff attorney and five associate staff attorneys. The associate staff attorneys are appointed for indefinite terms.

The staff screens each appeal after the appellant's brief is filed. The purpose is to assign a weight to each case, and to make a recommendation concerning the amount of time needed for oral argument. At this stage, certain cases are also classified as no-argument cases. Such cases include those presenting insubstantial or frivolous issues, those in which the appeal is not within the court's jurisdiction, and, initially, all pro se prisoner appeals. Cases classified as no-argument are processed through the staff. The case is reviewed and a memorandum is prepared, outlining the facts and the law and containing a recommendation regarding disposition. The senior staff attorney then refers the memoranda and records to a pre-designated panel of judges for summary disposition.

The staff reviews and makes recommendations on all substantive motions, including motions for leave to proceed on appeal in forma pauperis, applications for certificates of probable cause, motions for stays and

bail, motions to dismiss or affirm, motions for the appointment of counsel, petitions for extraordinary writs, and applications for interlocutory appeals. Again, the staff prepares a memorandum discussing the merits of the motion and containing a recommendation on disposition. A proposed order is submitted to the court with the memorandum.

The staff also assists the clerk's office in processing cases with potential or real jurisdictional problems, answers all prisoner mail, prepares a monthly cumulative index of all Sixth Circuit opinions, and undertakes LEXIS research for nonresident court of appeals judges.

## SEVENTH CIRCUIT

The central staff of the United States Court of Appeals for the Seventh Circuit consists of a permanent senior staff attorney and four associate staff attorneys. The associate staff attorneys are recent law school graduates employed for one or two years.

The senior staff attorney screens all civil appeals to select cases that are appropriate for prehearing conferences. Cases that generally lend themselves to prehearing conferences include (1) related appeals and multiple party appeals, the purpose of a conference being to reduce the number of briefs by designating lead counsel and consolidating briefs; (2) appeals with possible jurisdictional defects; (3) civil appeals in which a settlement might be reached; and (4) other selected appeals. In appeals with potential jurisdictional problems, the conference serves the purpose of either having the parties stipulate to a dismissal (if the defect is obvious) or establishing a briefing schedule to bring the jurisdictional issue before the court at an early stage. The senior staff attorney also schedules and holds prehearing conferences on all criminal appeals.

The circuit executive screens all appeals after the briefs are filed. He establishes the time for oral

argument and screens appeals for cases that are appropriate for submission on the briefs. He also sets the calendar for oral argument. The senior staff attorney assists him in screening, supervising the staff attorneys and the court secretaries, and working on special projects.

Of the four associate staff attorneys, two are assigned to review and research all substantive and procedural motions, petitions for extraordinary writs, and prisoner and other pro se petitions. They may decide motions for extensions of time, motions for stipulated dismissals, and unopposed motions to supplement the record. The motions attorneys also process all prisoner and other pro se petitions and answer prisoner mail.

The two motions staff attorneys also review motions to affirm without oral argument. If the staff attorney believes the motion should be granted, he prepares a detailed memorandum for the court, recommending that the motion be granted. The staff attorney then arranges and attends a conference with the judges who will decide the motion. If the court accepts the recommendation, the staff attorney may assist the authoring judge in preparing the dispositive opinion or order.

One of the two remaining staff attorneys spends all his time reviewing the briefs and records in cases

in which the parties have waived oral argument and the court has agreed to the waiver, or in which one of the parties is a pro se prisoner, or in which a pro se non-prisoner has presented a patently frivolous issue or issues. In these cases, the staff attorney prepares a detailed memorandum containing a recommendation on disposition, arranges and attends a conference with the judges who will decide the case, and assists the authoring judge in preparing the decision.

The fourth staff attorney spends 60 percent of his time reviewing the briefs and records with the third staff attorney. The remaining 40 percent of his time is spent working on cases submitted on the briefs, and maintaining the Seventh Circuit's digest (a monthly cumulative index of Seventh Circuit opinions) and weekly synopsis of opinions.

Finally, the judges occasionally ask the staff to prepare bench memoranda and to draft proposed opinions in argued cases. The staff also undertakes special projects at the court's request.

## EIGHTH CIRCUIT

The central staff of the United States Court of Appeals for the Eighth Circuit includes a permanent senior staff attorney and four associate staff attorneys. The associate staff attorneys serve two-year terms with the court.

Each staff attorney is assigned to two active judges, and, if time permits, performs all work on the cases referred to the staff by those two judges. The judges select the staff attorney assigned to them. The purpose of the assignment system is to foster a more efficient working relationship between the staff and the court.

Most of the staff's work is assigned by the judges on a case-by-case basis. Included in the assignments are cases that are orally argued and cases that are determined, by screening, to be suitable for disposition without oral argument. The staff also receives substantive motions from the court. Certain other matters are referred to the staff by the clerk. Such matters include motions to dismiss for lack of jurisdiction, and pro se prisoner appeals. The staff submits these matters to one of the court's screening panels on a rotating basis.

The screening of cases to determine whether oral argument is necessary and, if so, the length of time for argument, is performed by the clerk and the senior staff attorney. The clerk screens all civil cases; the senior staff attorney screens all criminal cases. When the clerk or the senior staff attorney determines that a case is suitable for disposition without oral argument, that case is forwarded to a panel of the court, with a recommendation that the case be submitted on the briefs. If the panel concurs with the recommendation, the case is then assigned to the staff.

In each case referred to the staff, the staff attorney reviews the record and prepares a memorandum that fully discusses the case and contains a disposition recommendation. In cases deemed suitable for disposition without oral argument, if the staff attorney feels that the case may be appropriate for argument, the referring judge is contacted directly for instructions. After a case is prepared, the staff memorandum is forwarded to a panel of the court. The judge who assigned the case to the staff is a member of the panel and is responsible for preparing the opinion or order. If requested by the judge, the staff attorney drafts a proposed per curiam opinion or order disposing of the appeal.

All substantive motions, including motions for the appointment of counsel, petitions for extraordinary

writs, and the like, with the exception of motions to dismiss for lack of jurisdiction, are referred by the clerk to an administrative panel of the court. If the panel desires, the motion may be referred to the staff for review and recommendation including, if requested, a draft of a per curiam opinion or order disposing of the motion.

Finally, the senior staff attorney assists one of the senior judges in conducting preargument settlement conferences, and undertakes special projects at the court's request.



## NINTH CIRCUIT

The central staff of the United States Court of Appeals for the Ninth Circuit comprises twenty staff attorneys. The permanent staff includes a senior staff attorney, two assistant supervising staff attorneys, and nine associate staff attorneys. Each member of the permanent staff has had legal experience prior to accepting a position with the court. The remaining eight staff attorneys are recent law school graduates and are hired for a one- to two-year commitment.

The staff of the Ninth Circuit is assigned a broad range of responsibilities. One is the screening of all civil appeals. The staff receives from the clerk's office, on a continuing basis, a list of all civil appeals that have been briefed. Each appeal is then reviewed to determine whether there is a jurisdictional problem, and to determine the complexity of the issues raised on appeal. Appeals with obvious jurisdictional defects are immediately pulled and referred to the civil motions section for review. All other appeals are assigned a weight based on the number and complexity of issues. Assigning a weight to each case allows the clerk to schedule as balanced a calendar as possible. Summary appeals, such as prisoner cases, are also pulled at the screening stage for staff review.

After screening, the list is returned to the clerk with the appropriate weight noted by each appeal. In summary appeals, the staff prepares a memorandum that fully discusses the issues raised and the merits of the appeal. The memorandum is returned to the clerk's office. Thereafter, the clerk sets the calendar for the next term of court. The calendar is sent to the staff approximately five weeks before the term begins. The calendar is confidential, since it lists the panel for each case. The supervising staff attorney reviews the calendar, then asks the presiding judge whether the panel wishes the staff to prepare a bench memorandum in any or all cases scheduled before that panel. The size and work load of the circuit is such that inevitably the staff assists panels each month. The range of cases assigned to the staff for bench memoranda encompasses the entire spectrum of appeals.

Several staff attorneys, depending on the case load at any given time, are assigned to consider all substantive motions. They are divided into civil and criminal motions sections. The civil motions section reviews all substantive motions, including motions to dismiss or affirm, applications for stays or for extraordinary writs, petitions for rehearing, and the like. The staff prepares a memorandum on each motion and forwards it to a panel of the court for consideration. The civil section also reviews cases that were assessed, during screening, as possibly having jurisdictional problems.

The criminal motions section functions in a manner similar to that of the civil section. The section reviews motions to dismiss criminal appeals; applications for leave to proceed on appeal in forma pauperis, for certificates of probable cause, for stays; and motions for bail. The section also initially considers matters concerning attorney discipline, vouchers of counsel appointed to represent indigents pursuant to the Criminal Justice Act, and requests by appointed counsel for fees in excess of the statutory allowance. Finally, this section answers all prisoner mail addressed to the court.

In addition to assuming the responsibilities set forth above, the staff is also available as personal law clerks to the judges, to do further work on those cases for which the staff prepared bench memoranda for use during oral argument.

## TENTH CIRCUIT

The central staff of the United States Court of Appeals for the Tenth Circuit is composed of a permanent senior staff attorney and six associate staff attorneys. The staff attorneys are permanent employees of the court and report directly to the judges.

The staff of the Tenth Circuit was established in 1966. Its initial responsibility was to process pro se prisoner matters. In the years since its creation, the staff's duties have expanded with experience. Today it is assigned a broad range of responsibilities.

One of the most important staff responsibilities is to screen all cases brought to the court. Screening consists of reviewing the docketing statement required in all cases. The docketing statement is filed with the court prior to briefing, and within thirty days of either the filing of the notice of appeal in the district court, or the filing of a petition for review or enforcement of an administrative order in the court of appeals. Screening serves two purposes: it assures that the case is within the jurisdiction of the court, and it separates cases by the complexity of issues raised. Based upon information contained in the docketing statement, the case is assigned to one of the

court's four calendars (the A, B, C, or D calendar). The calendar assignment establishes both the briefing schedule and the allotted time for oral argument. All calendar assignments are subject to court approval.

The staff also reviews and makes recommendations on cases carried on the court's miscellaneous calendar. Matters assigned to the miscellaneous calendar are those which, for some reason, are not appropriate for assignment to one of the four regular calendars. Such matters generally include applications for leave to proceed on appeal in forma pauperis, requests for certificates of probable cause, pro se applications for extraordinary writs, and the like. Each such matter is reviewed by a staff attorney, and a memorandum and appropriate order are prepared.

The staff reviews all substantive motions, including motions to dismiss or affirm, motions for leave to proceed on appeal in forma pauperis, and applications for certificates of probable cause. Regarding the latter two, which generally involve pro se prisoner matters, if the staff attorney considering the application believes the motion should be granted, he or she confers with the senior staff attorney and if they agree, the case is placed on the summary calendar. For other motions, a memorandum with a recommendation on disposition is prepared for the court. If appropriate, a proposed order or opinion is also drafted.

The staff reviews all summary (or D calendar) cases and submits them to the court with a disposition recommendation. This review generally includes drafting a proposed order or opinion which, if adopted, terminates the appeal on the merits. Cases assigned to the summary calendar generally include all pro se appeals and all other cases in which it appears, from the docketing statement, that the issues raised are insubstantial or frivolous, or that the decision of the district court or administrative agency was correct on its face. In addition, cases with potential jurisdictional problems are assigned to the summary calendar. If the case has been assigned to the summary calendar for jurisdictional reasons, the staff prepares a memorandum that fully discusses the problem, and makes a recommendation regarding disposition. This may require preparation of a proposed order or opinion which, if adopted, dismisses the appeal. Any judge can direct that a staff-processed case be recalendared for oral argument.

The staff reviews the briefs of all cases tagged, at the screening stage, for potential submission on the briefs without oral argument. If the staff believes that oral argument will not help the decision of the case, a memorandum is prepared outlining the facts and issues, and containing a recommendation that the case be reassigned to the C calendar for submission on the briefs. Any judge on the reviewing panel can direct that a case be argued.

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The staff has the responsibility of monitoring all appeals, which is easily done by use of the docketing statements, in order to group appeals that present the same or similar issues or raise new and important issues of law. Generally, the latter are appeals involving questions of first impression or those that might require an en banc hearing, since the decision may overturn a panel decision. In addition, the staff reviews the calendar for each term of court to assure that similar cases are grouped to make maximum use of judicial time and energy. Using LEXIS, the staff also determines whether, in any case scheduled for oral argument, the district court published an opinion. If so, a list of all Federal Supplement citations is then prepared for each hearing panel.

The staff provides LEXIS research for nonresident court of appeals and district court judges. One staff attorney, in addition to her regular responsibilities, maintains the index to the court's unpublished opinions.

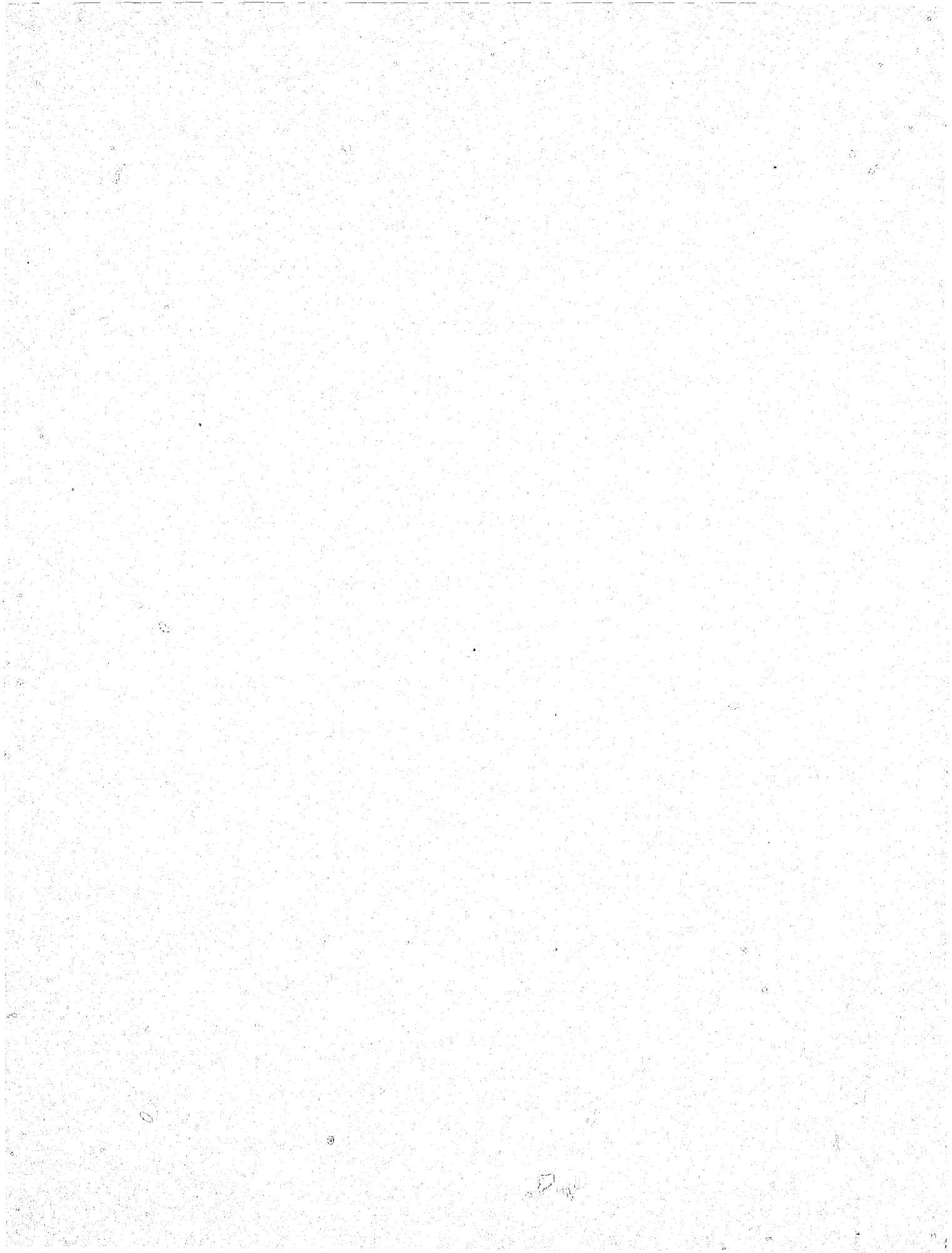
Finally, the staff undertakes special projects for the court. Three such projects were the preparation of a practitioner's guide to the circuit, the development of standard forms for pro se litigation, and the development of a central violations bureau to collect fines imposed for violations of the rules and regulations of the national parks and other federal facilities within the circuit.





## BIBLIOGRAPHY

- American Bar Association Commission on Standards of Judicial Administration. 1977. Standards relating to appellate courts. (final draft) Chicago: ABA Press.
- Bird, R.E. 1978. The hidden judiciary. Judge's J., Winter, 1978, at 4.
- Cameron, J. 1976. The central staff: a new solution to an old problem. 23 U.C.L.A. L. Rev. 465.
- Carrington, P.D.; Meador, D.J.; & Rosenberg, M. 1976. Justice on appeal. St. Paul: West.
- Commission on Revision of the Federal Court Appellate System. 1975. Structure and internal procedures: recommendations for change. Washington, D. C.: Govt. Print. Off.
- Federal Judicial Center. 1973. Comparative report on internal operating procedures of United States courts of appeals. Washington, D. C.: Govt. Print. Off.
- Flanders, S. & Goldman, J. (Federal Judicial Center) 1974. Screening practices and the use of para-judicial personnel in the U. S. courts of appeals: a study in the Fourth Circuit. Washington, D. C.: Govt. Print. Off.
- Leflar, R.A. 1976. Internal operating procedures of appellate courts. Chicago: American Bar Foundation.
- Lesinski, T.J. & Stockmeyer, N.O., Jr. 1973. Pre-hearing research and screening in the Michigan court of appeals: one court's method for increasing judicial productivity. 26 Vand. L. Rev. 1211.
- Meador, D.J. 1974. Appellate courts: staff and process in the crisis of volume. St. Paul: West.



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RATIO OF UNITED STATES COURTS OF APPEALS  
STAFF ATTORNEYS TO JUDGES AND FILINGS

Circuit	Active Judges	Staff Attorneys*	Filings 1976	Staff Attorneys per Judge	Staff Attorneys per 1,000 Filings
D.C.	9	5	1,260	.55	3.97
First	3	1	564	.33	1.77
Second	9	5	1,898	.55	2.63
Third	9	4	1,621	.44	2.47
Fourth	7	6	1,464	.85	4.10
Fifth	15	24	3,629	1.60	6.61
Sixth	9	5	1,628	.55	3.07
Seventh	8	4	1,247	.50	3.21
Eighth	8	5	1,080	.62	4.63
Ninth	13	20	2,907	1.53	6.88
Tenth	7	6	1,110	.85	5.41

NOTE: Staffing set forth herein was taken from the "Present Staff" column at p. 7.27 of The Judiciary Budget Estimates for Fiscal Year 1978.

\* Includes senior staff attorneys.

## THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the research, development, and training arm 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 is chairman of the Center's Board, which also includes the Director of the Administrative Office of the United States Courts and five judges elected by the Judicial Conference.

The Center's **Continuing Education and Training Division** conducts seminars, workshops, and short courses for all third-branch personnel. These programs range from orientation seminars for judges to on-site management training for supporting personnel.

The **Research Division** undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, usually at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal court system.

The **Innovations and Systems Development Division** designs and helps the courts implement new technologies, generally under the mantle of Courtran II—a multipurpose, computerized court and case management system developed by the division.

The **Inter-Judicial Affairs and Information Services Division** maintains liaison with state and foreign judges and judicial organizations. The Center's library, which specializes in judicial administration, is located within this division.

The Center's main facility is the historic Dolley Madison House, located on Lafayette Square in Washington, D.C.

Copies of Center publications can be obtained from the Center's Information Services office, 1520 H Street, N.W., Washington, D.C. 20005; the telephone number is 202/633-6365.





**END**