THE Federal Courts

THIRD EDITION

ROBERT A. CARP

RONALD STIDHAM

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Robert A. Carp, *University of Houston*

Ronald Stidham, *Appalachian State University*

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The Federal Courts

To my sister, Carol Ann, and her daughters, Layla and Ava, with much love and affection

R.A.C.

To Gary Robinette, first cousin and best friend

R.S.

Tables and Figures

Preface

In the time since the second edition of *The Federal Courts* appeared in 1991, many changes have taken place in our federal court system. The presence of the judges appointed by Bill Clinton have now been felt at all tiers of the national-level judicial hierarchy. Indeed, by the end of 1998 about a third of all U.S. trial and appellate judges will bear the Clinton label, and his appointees to the Supreme Court, Justices Ruth Bader Ginsburg and Stephen Gerald Breyer, now have well-established records of helping nudge the High Court in a more moderate ideological direction. Likewise, President Clinton has made significant progress toward making his nominees "look like America"—that is, mirror its diversity of race and gender. Preliminary studies indicate that this more diverse judiciary is, in fact, voting differently on some types of cases than had the virtually all-male, all-white judiciary of the past. In addition, enough time has elapsed since passage of the Sentencing Reform Act of 1987 and the Judicial Conduct Act of 1980 that scholars are in a position to assess the policy consequences of these important judicial reforms.

We have sought to prepare a readable, comprehensive textbook about the federal judiciary and its impact on the daily lives of Americans. It is designed primarily for students in courses on judicial process and behavior, constitutional law, American government, and law and society. We have written the book with minimal resort to the jargon and theoretical vocabulary of political science and the law. While at times it is necessary and useful to use some technical terms and evoke some theoretical concepts in our look at U.S. courts, we address the basic questions on a level that is meaningful to an educated layperson. For those who may desire more specialized explanations or who wish to explore more deeply some of the issues we touch on, the footnotes and selected bibliography contain ample resources for such quests. Readers will find the contributions of historians, political scientists, legal scholars, court administrators, journalists, and psychologists in the pages that follow. Those interested in behavioralism will find much material of interest to them, and so will those who favor a more traditional approach to studying the federal judiciary.

Throughout the text we are constantly mindful of the interrelation between the courts and public policy. We have worked with the premise that significant portions of our lives—as individuals and as a nation—are affected by what our federal judges choose to do and refrain from doing. We reject the often-held assumption that only liberals make public policy while conservatives practice restraint; rather, we believe that to some degree all judges engage in this normal and inevitable activity. Liberals on the bench may well hand down rulings that advance the policy goals of their particular interests (civil rights or environmental protections, for example), and conservatives can be expected to act in ways consistent with their policy interests, such as a tough stand on law and order or advancing the cause of states' rights. The question then, as we see it, is not whether U.S. courts make policy but, rather, which direction the policy decisions will take. In the chapters that follow we will explain why this has come to be, how it works, and what the consequences are for the United States today.

Chapter 1 provides a brief sketch of the organizational structure of the federal judiciary, placed in historical perspective. As we will see, much of the reason why our judges have the powers they do is a function of historical quirks, pragmatic compromises made during now-forgotten political duels, and haphazard factors quite unintended by the founders of the Republic. Our federal judicial system did not appear one day out of whole cloth but is the product of two centuries of evolution, trial and error, and a pinch of serendipity. The distinction between routine norm enforcement and policy making by federal judges is first addressed in this chapter, and we also provide data on the workload of the federal courts.

Chapter 2 outlines the jurisdiction of the three levels of the U.S. courts. Besides a discussion of what judges are authorized to do in the federal system, there is an in-depth look at judicial self-restraint. We believe that a full understanding of how judges affect our daily lives also requires us to outline those many substantive areas into which the federal jurists may *not* roam and where they are *not* free to make public policy.

In Chapter 3 we take a close look at the men and women who wear the black robe in the United States. What are their background characteristics and their qualifications for office? What are their values, and how do these values manifest themselves in the subsequent behavior of the judges and justices? In this chapter we also explore the process of judicial selection and who the major participants are. We strongly emphasize that there is a discernible policy link between the values of a majority of voters in a presidential election, the values of the appointing president, and the subsequent policy content of decisions made by judges nominated by the chief executive.

Chapter 4 is the first of two on judicial decision making. Here we outline those aspects of the decision-making process that are characteristic of *all* judges, and we

do this in the context of the "legal subculture" and the "democratic subculture." Under the former we emphasize the importance of the traditional legal reasoning model for explaining judges' decisions—a model that still accounts for the lion's share of most routine, norm enforcement decision making. Using the lens of the democratic subculture, we look at a number of extralegal factors that appear to be associated with judges' policy decisions: political party affiliation, local customs and traditions, environmental influences such as public opinion, and pressures from Congress and the president. We also take a look at role theory.

Chapter 5 examines the special case of decision making in collegial, appellate courts. We explore the assumptions and contributions of small-group theory, attitude and bloc analysis, and the fact pattern approach to our understanding of the behavior of multijudge tribunals.

Chapter 6 explores the policy impact of federal court decisions and discusses the process by which judicial rulings are implemented—or why some are *not* implemented. We look at the conditions that must prevail if court decisions are to be carried out efficiently and meaningfully, and we also examine the various individuals and institutions that play such a vital role in this process.

In the final chapter we discuss some factors that determine whether judges will engage in policy making and that also predict the substantive direction of policy decisions.

Many people contributed to the writing of this book, and to all of them we offer sincere thanks. At CQ Press, we would like to thank Brenda Carter, Tracy Villano, and Talia Greenberg. Several anonymous adopters of the previous edition offered helpful suggestions for updating and improving the text and we appreciate their assistance. For any errors that remain, we assume responsibility.

Robert A. Carp expresses his gratitude to three of his research assistants: John Dorris, Alex Garcia, and Mark McAdoo. Each was enormously helpful in coding the decisions of the federal district judges, which served as the basis for Figure 3-1 and Table 3-3. He is particularly indebted to McAdoo for his sophisticated suggestions for upgrading the procedures by which data from newly coded cases might be more simply incorporated into a larger database.

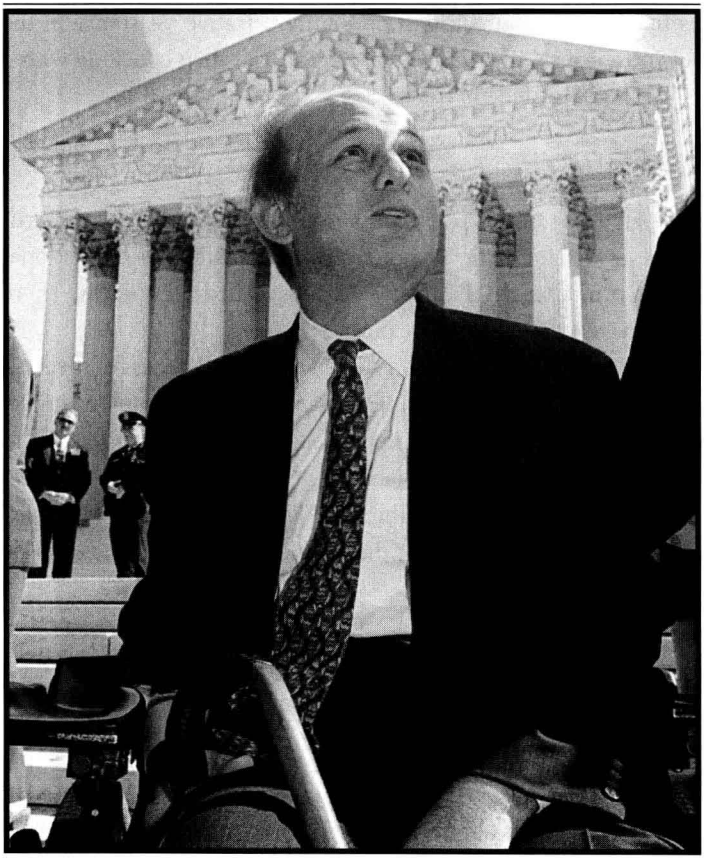
Ronald Stidham would like to express a debt of gratitude to his colleagues in the Political Science/Criminal Justice Department at Appalachian State University. Their friendship and support made the process of writing this new edition much easier. He also expresses thanks to his graduate research assistants, Paul Boyles and Amy Neese, for their help in finding information and checking sources in the library.

The Federal Courts

Contents

CHAPTER 1

History and Organization of the Federal Judicial System



Former White House press secretary James Brady meets with reporters at the Supreme Court to discuss the constitutional challenge to the Brady Act's provision requiring local law enforcement agencies to conduct background checks of prospective handgun purchasers. In *Printz v. United States* the Supreme Court declared the provision unconstitutional.

SINCE KNOWLEDGE OF the historical events that helped shape the national court system can shed light on the present judicial structure, our study of the federal judiciary begins with a description of the court system as it has evolved over more than two centuries. We will first examine the three levels of the federal court system in the order in which they were established: the Supreme Court, the courts of appeals,

and the district courts. The emphasis in our discussion of each level will be on historical development, policy-making roles, and decision-making procedures.

In a brief look at other federal courts we will focus on the distinction between constitutional and legislative courts, using the example of bankruptcy courts to illustrate a major difference in the two types. Next, we will discuss the individuals and organizations that provide staff support and administrative assistance in the daily operations of the courts. Our overview discussion will then conclude with a brief look at the workload of the federal courts.

The Historical Context

Prior to the adoption of the Constitution, the country was governed by the Articles of Confederation. Under the Articles, practically all functions of the national government were vested in a single-chamber legislature called a Congress. There was no separation of executive and legislative powers.

The absence of a national judiciary was considered a major weakness of the Articles of Confederation. Both James Madison and Alexander Hamilton, for example, saw a need for a separate judicial branch. Consequently, the delegates gathered at the Constitutional Convention in Philadelphia in 1787 expressed widespread agreement that a national judiciary should be established. There was a good deal of disagreement, however, on the specific form that the judicial branch should take.

The Constitutional Convention and Article III

The first proposal presented to the Constitutional Convention was the Randolph, or Virginia, Plan, which would have set up both a Supreme Court and inferior federal courts. Opponents of the Virginia Plan responded with the Paterson, or New Jersey, Plan, which called for the creation of a single federal supreme tribunal. Supporters of the New Jersey Plan were especially disturbed by the idea of lower federal courts. They argued that the state courts could hear all cases in the first instance and that a right of appeal to the Supreme Court would be sufficient to protect national rights and provide uniform judgments throughout the country.

The conflict between the states' rights advocates and the nationalists was resolved by one of the many compromises that characterized the Constitutional Convention. The compromise is found in Article III of the Constitution, which begins, "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Thus the conflict would be postponed until the new government was in operation.

The Judiciary Act of 1789

Once the Constitution was ratified, action on the federal judiciary came quickly. When the new Congress convened in 1789, its first major concern was judicial organization. Discussions of Senate Bill 1 involved many of the same participants and arguments as were involved in the Constitutional Convention's debates on the judiciary. Once again, the question was whether lower federal courts should be created at all or whether federal claims should first be heard in state courts. Attempts to resolve this controversy split Congress into two distinct groups.

One group, which believed that federal law should be adjudicated in the state courts first and by the United States Supreme Court only on appeal, expressed the fear that the new government would destroy the rights of the states. Other legislators, suspicious of the parochial prejudice of state courts, feared that litigants from other states and other countries would be dealt with unjustly. This latter group naturally favored a judicial system that included lower federal courts. The law that emerged from this debate, the Judiciary Act of 1789, set up a judicial system composed of a Supreme Court, consisting of a chief justice and five associate justices; three circuit courts, each comprising two justices of the Supreme Court and a district judge; and thirteen district courts, each presided over by one district judge. The power to create inferior federal courts, then, was immediately exercised. In fact, Congress created not one but two sets of lower courts.

The U.S. Supreme Court

A First Look

A famous jurist once said, "The Supreme Court of the United States is distinctly American in conception and function, and owes little to prior judicial institutions."[1] To understand what the framers of the Constitution envisioned for the Court, we must consider another American concept: the federal form of government. The Founders provided for both a national government and state governments; the courts of the states were to be bound by federal laws. However, final interpretation of federal laws simply could not be left to a state court, and certainly not to several state tribunals, whose judgments might disagree. Thus, the Supreme Court must interpret federal legislation. Another of the Founders' intentions was for the federal government to act directly upon individual citizens as well as upon the states. The Supreme Court's function in the federal system may be summarized as follows:

In the most natural way, as the result of the creation of Federal law under a written constitution conferring limited powers, the Supreme Court of the United States came into being

with its unique function. That court maintains the balance between State and Nation through the maintenance of the rights and duties of individuals.[2]

Given the High Court's importance to our system of government, it was perhaps inevitable that the Court would evoke great controversy. A leading student of the Supreme Court says:

Nothing in the Court's history is more striking than the fact that, while its significant and necessary place in the Federal form of Government has always been recognized by thoughtful and patriotic men, nevertheless, no branch of the Government and no institution under the Constitution has sustained more continuous attack or reached its present position after more vigorous opposition.[3]

The Court's First Decade

George Washington, in appointing the first Supreme Court justices, established two important traditions. First, he began the practice of naming to the Court those with whom he was politically compatible. Washington, the only president ever to have an opportunity to appoint the entire federal judiciary, did a good job of filling federal judgeships with party bedfellows. Without exception, the federal judgeships went to faithful Federalists.

The second tradition established by Washington was that of roughly equal geographic representation on the federal courts. His first six appointees to the Supreme Court included three Northerners and three Southerners. On the basis of ability and legal reputation, only three or four of Washington's original appointees actually merited their justiceships. Many able men were either passed over or declined to serve.

The chief justiceship was the most important appointment Washington made. The president felt that the man to head the first Supreme Court should be an eminent lawyer, statesman, executive, and leader. Many names were presented to Washington, and at least one person, James Wilson, formally applied for the position. Ultimately, Washington settled upon John Jay of New York. Although only forty-four years old, Jay had experience as a lawyer, a judge, and a diplomat. In addition, he was the main drafter of his state's first constitution. Concerning the selection of Jay as chief justice, it has been said:

That Washington picked Jay over his top two rivals for the post, James Wilson and John Rutledge, was either fortuitous or inspired—for it would scarcely have added to the fledgling Supreme Court's popular prestige to have its Chief Justice go insane, as Rutledge later did,

or spend his last days jumping from one state to another to avoid being arrested for a debt, as did Wilson.[4]

Washington did, however, appoint both Wilson and Rutledge to the Court as associate justices. Neither man contributed significantly to the Court as a government institution; thus Washington became the first of many presidents to misjudge an appointee to the Court.

The remaining three associate justices who served on the original Supreme Court were William Cushing, John Blair, and James Iredell. Cushing remained on the Court for twenty years, more than twice as long as any of the other original justices, although senility affected his competency in later years. Blair was a close personal friend of Washington's, and Iredell was a strong Federalist from North Carolina who was instrumental in getting that state to join the Union. The appointments of Blair and Iredell, then, have been seen as sheer political reward. Despite the generally mediocre quality of the original six appointees, they were held in somewhat higher esteem by their contemporaries, according to studies of early letters and correspondence.[5]

The Supreme Court met for the first time on Monday, February 1, 1790, in the Royal Exchange, a building located in the Wall Street section of New York City. Compared with today's Supreme Court sessions, that first session was certainly unimpressive. Tongue in cheek, one Court historian noted: "The first President immediately on taking office settled down to the pressing business of being President. The first Congress enacted the first laws. The first Supreme Court adjourned."[6]

Only Jay, Wilson, and Cushing, the three Northern justices, were present on opening day. Justice Blair arrived from Virginia for the second day; Rutledge and Iredell, the other Southerners, did not appear at all during the opening session.

The Supreme Court's first session lasted just ten days. During this period the Court selected a clerk, chose a seal, and admitted several lawyers to practice before it in the future. There were, of course, no cases to be decided. In fact, the Court did not rule on a single case during its first three years. In spite of this insignificant and abbreviated beginning,

> the New York and the Philadelphia newspapers described the proceedings of this first session of the Court more fully than any other event connected with the new Government; and their accounts were reproduced in the leading papers of all the States.[7]

The minor role the Supreme Court played continued throughout its first decade of existence. The period 1790–1799 saw several individuals decline their nomina-