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Third Circuit Judicial Conference Is A “Smashing Success”



By [Matthew Stiegler](#), Philadelphia District Attorney’s Office

The Third Circuit held its circuit judicial conference May 6–8, in Hershey, Pennsylvania, with Chief Judge Michael Chagares presiding over three successful days of educational and social programming that featured a rare appearance by Chief Justice of the United States John Roberts, Jr. Afterwards, Chief Judge Chagares said, “I was grateful to have the opportunity to connect with attorneys throughout the Third Circuit and to speak with them about what is on their minds regarding our Court operations, as well as how the bench and bar can most effectively serve the public and improve our system of justice.”

Chief Justice Roberts’s fireside chat on the conference’s first evening took place before a filled ballroom. Chief Justice Roberts vigorously defended the Supreme Court, saying that Americans misunderstood the Court’s work. “People think we’re making policy decisions,” he said, adding, “I think they view us as truly political actors, which I don’t think is an accurate understanding of what we do.”

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Third Circuit Judicial Conference Is A “Smashing Success”

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Chief Justice Roberts expressed optimism about increased funding for the Marshals Service to improve judicial security, and he criticized the rising tide of threats targeting lower-court judges. He urged that criticism of the judiciary be limited to the substance of decisions, not the judges who wrote them: “As soon as that happens, that’s not appropriate, and it can lead to very serious problems.”

This was the first time since 2009 that Chief Justice Roberts attended the Third Circuit conference. Justice Samuel Alito has attended the court’s recent circuit conferences.

The same evening, Judge Anthony Scirica became the first recipient of a new award for exemplary judicial service, which has been named in his honor. In announcing the award, Chief Judge Chagares said, “Tony Scirica is universally admired by the bench and bar as the ‘gold standard’ for judicial service. In more than forty years as a trial and appellate court judge, he has served the courts with great distinction, combining his trademark humility and compassion with a brilliant intellect and the highest ethical standards.”

Some other notable conference sessions included:

- Judge Thomas Hardiman moderated a fascinating panel on artificial intelligence and its uses—and misuses—in legal practice today.
- Chris Christie, former US Attorney and governor of New Jersey, offered lively reflections on his career in law and politics. He was interviewed by Chief Judge Chagares, who served as chief of the civil division under Christie before joining the bench.
- Judge D. Brooks Smith participated in a timely panel on judicial independence and the rule of law, moderated by Professor David Levi and also including D.C. District Court Judge John Bates and retired Seventh Circuit Judge Diane Wood.

The Third Circuit Bar Association again had the privilege of playing a key role in supporting the conference. 3CBA helped the court to plan several sessions, sponsored the opening night reception, recruited sponsors for the Thursday reception, hosted a breakfast, and organized the popular restaurant dine-around program. And 3CBA Past President David Fine deftly moderated an informative panel on how to prepare for oral argument that featured retired Judge Joseph Greenaway, Jr. of Arnold & Porter, Erin Murphy of Clement & Murphy PLLC, and Matthew Wessler of Gupta Wessler LLP. Two main themes: master your record and moot your argument.

“The circuit conference is a unique opportunity for our members to connect with judges, lawyers, and experts from across the circuit and beyond,” said Third Circuit Bar Association President-elect Nilam Sanghvi. “We’re proud and grateful to assist in making it happen.”

Over 600 people attended this year’s conference, which the court reported is the largest turnout for a Third Circuit conference since the 1990s. “I am deeply appreciative to the Third Circuit Bar Association for its invaluable role in helping to make this year’s conference a smashing success,” said Chief Judge Chagares.



Third Circuit Draws the Line on AI-Generated Legal Citations

[McCarthy v. United States Drug Enforcement Administration, 171 F.4th 245 \(3d Cir. 2026\) & Hileman v. West Penn Allegheny Health System, Inc., No. 25-1459, 2026 WL 2083796 \(3d Cir. 2026\)](#)

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In two recent opinions, the Third Circuit confronted a problem that has become disturbingly common in federal courts nationwide: attorneys submitting briefs and motions containing citations that were fabricated or distorted by artificial intelligence. Together, *McCarthy v. United States Drug Enforcement Administration* and *Hileman v. West Penn Allegheny Health System, Inc.* establish that the Court will sanction attorneys who fail to verify AI-assisted legal research, potentially for thousands of dollars—and repeat offenders face escalating consequences.

***McCarthy*: The Third Circuit’s First Precedential Word on AI**

In *McCarthy*, the Third Circuit addressed the issue head-on for the first time in a precedential opinion. The attorney in question represented a petitioner challenging an order of the Drug Enforcement Administration. In his Opening Brief, the attorney included summaries of eight DEA adjudications, relying on case overviews provided by a non-attorney who had used AI to generate them. The attorney “modified some of the [provided] language for ease of reading and then simply incorporated the same into the brief” without verifying the existence or accuracy of a single citation.

Seven of the eight summaries were riddled with inaccuracies, and one cited adjudication did not exist at all. When the opposing party’s response brief catalogued these failures, the attorney still did not check the citations. Instead, he filed a reply brief dismissing the errors as “immaterial misstatements” about “tangential details” made in “good faith”—all without ever having read the authorities. It was not until the Court ordered the attorney to produce the cited adjudications that he finally checked.

Writing for the majority, Judge Chung concluded that while the attorney’s conduct did not clearly violate Pa. R.P.C. 3.3’s duty of candor to the court—because it was unclear whether the attorney made “knowing” misrepresentations to the court—it squarely violated Pa. R.P.C. 1.1’s duty of competent representation. A competent attorney would have verified the citations before filing, especially when the research came from a non-attorney.

As for the appropriate penalty, the majority ultimately imposed only a reprimand, noting as a mitigating factor that it had “not yet addressed the failure of attorneys to use AI with appropriate guardrails.” But the court added a warning: “Had this not been our first opportunity to address the use of AI,” “it is likely that monetary sanctions would have been imposed.” The opinion made clear that “this precedent has now been set” and that future violators “may well face any of the sanctions available” under the Circuit’s Disciplinary Rules.

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Third Circuit Draws the Line on AI-Generated Legal Citations

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Judge Roth concurred in part and dissented in part, opining that a reprimand was too lenient. In Judge Roth's view, the attorney also violated Pa. R.P.C. 3.3(a)(1)'s duty of candor, because an attorney who presents legal argument must know or reasonably believe those arguments to be true. Judge Roth rejected the majority's reliance on the absence of prior AI guidance, citing numerous federal and state courts that had already sanctioned attorneys for the same conduct: "The ethical practice of the law is innate in the responsibilities of each practicing attorney. It needs no reminder."

***Hileman*: The Court Applies *McCarthy* with Sharper Teeth**

Just four months later, in *Hileman*, the Third Circuit demonstrated that *McCarthy*'s warning was not idle. In that appeal, the plaintiff-appellant's attorney filed a motion to supplement the record that contained several misquotations which resembled the type of hallucinated language that AI has been known to create. The Third Circuit asked the attorney to submit a letter addressing the issue. The attorney told the panel that he could not definitively confirm whether or not the miscites were the product of AI, as the motion had been prepared by a student law clerk whose work product the attorney failed to adequately review. Writing for the panel, Judge Bibas noted that the Court could not definitively determine whether the misquotations were "hallucinations by artificial intelligence, since they cite real cases about the same subject." But the distinction was irrelevant: "Either way, misquotations are serious, and we expect counsel to guard against them by checking citations."

The Court invoked *McCarthy*, observing that this attorney, like the attorney in *McCarthy*, had "submitted a [motion] that relied on cases given to him and summarized by a non-attorney." But unlike the *McCarthy* lawyer, the *Hileman* attorney had a history of prior sanctionable conduct, including a recent case before the Third Circuit, *Sofaly v. Portfolio Recovery Associates, LLC*, 155 F.4th 289 (3d Cir. 2025). As the panel put it: "One incident may be a mistake; two or three is a pattern." The Court subsequently ordered the attorney to personally reimburse—without using or recouping any client funds—the attorney's fees that the opposing party incurred in investigating and responding to the misquotations, resulting in a sizeable sanction of almost \$15,000.

Takeaways

Read together, *McCarthy* and *Hileman* send a clear message to practitioners in the Third Circuit. First, the duty to verify citations is non-negotiable, regardless of whether the research was generated by AI, provided by a non-attorney, or prepared by a law clerk. Second, any prior leniency afforded when the issue of fabricated citations was an issue of "first impression" in the Circuit is now spent. Third, attorneys who submit fabricated citations run a real risk of sanctions—including monetary sanctions potentially in the thousands of dollars—and when there is a history of prior sanction-worthy conduct, the risk of serious penalty is even greater. In sum, the need to implement adequate guardrails when using AI going forward is more critical than ever.

The Third Circuit's decision adds to a growing consensus of courts across the country that have now addressed the issue of AI-generated citations. As numerous cases reflect, the era of leniency for AI-generated citation failures is closing, and practitioners would be well-advised to treat every citation in their filings as their own professional representation to the court, whatever its source.



Third Circuit reinforces a court's duty under Fed. R. Crim. P. 11(b)(3) to scrutinize the factual basis of a guilty plea for violation of the Procurement Integrity Act

[U.S. v. Schuster, 170 F.4th 118 \(3d Cir. 2026\)](#)

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In *United States v. Schuster*, the Third Circuit emphasized a trial court's obligation under Fed. R. Crim. P. 11(b)(3) to scrutinize the factual basis for a guilty plea, ultimately vacating and remanding for repleading a federal employee's conviction under the Procurement Integrity Act when that was not done. The *Schuster* decision also construed Section 2102(a)(1) of the Procurement Integrity Act—a statute barring federal employees from knowingly disclosing confidential bid information—explaining that the confidential bid information disclosed must either be “submitted as part of a pending procurement” or the “same in substance” as such information.

Background

Nicole Schuster, a mechanical engineer at the Naval Foundry and Propeller Center in Philadelphia, was project lead for the Navy's procurement of a vertical turning center (VTC)—an industrial machine used to manufacture submarine propellers—designated the SU22. Four companies submitted bids containing confidential information, cost and pricing data, and proprietary information about manufacturing processes. Schuster favored Company 1 and relied on its proposal when drafting the technical specifications for the SU22. Because the other three bidders did not meet the specifications, they were all deemed “technically unacceptable,” and Company 1 was awarded the contract.

Two years later, the Navy initiated a new procurement for a different VTC, the SU25. Schuster was again selected as project lead. Although Schuster again favored Company 1 and sought a sole-source award, the Navy solicited competing bids, and both Company 1 and Company 2 submitted proposals.

Schuster then sent a Company 1 employee a WhatsApp message that included a copy of Company 2's confidential bid information from the SU22 procurement. The materials included pricing data and proprietary manufacturing information. Company 2's bid was ultimately rejected based on price, and Company 1 won the SU25 contract.

Schuster was charged with violating 41 U.S.C. §§ 2102(a) and 2105(a) of the Procurement Integrity Act. Section 2102(a)(1) prohibits a federal employee from knowingly disclosing confidential bid information submitted “before the award of a Federal agency procurement to which the information relates.” As for Section 2105(a), it imposes criminal penalties when the disclosure is made in exchange “for anything of value or to obtain or give a person a competitive advantage in the award of a Federal agency procurement.”

The government's plea memorandum characterized the SU22 and SU25 machines as “virtually identical,” but did not describe whether the confidential information from the SU22 bid was substantively the same as information in the SU25 bid.

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Third Circuit reinforces a court's duty under Fed. R. Crim. P. 11(b)(3) to scrutinize the factual basis of a guilty plea for violation of the Procurement Integrity Act

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Schuster pled guilty. The government's plea memorandum, which set forth the factual basis for the guilty plea, was incorporated by reference at the plea hearing. Schuster stipulated to the facts in the plea agreement and acknowledged that she understood the elements of the offense. The district court accepted the plea and imposed a sentence of a year and a day in prison.

The Third Circuit's Decision

On appeal, Schuster argued that the district court erred in accepting her guilty plea. She contended that disclosing bid information from an already-awarded procurement does not violate Section 2102(a). She also argued that the statute bars disclosure only when the bid information disclosed is "exactly the same" as that from a prior procurement.

The government argued that information from an earlier procurement falls within the statute when it is "related to" the pending procurement—a broader standard.

The Third Circuit, in a majority opinion written by Judge Krause and joined by Judge Scirica, rejected both arguments and adopted a middle ground. The court concluded that a defendant violates Section 2102(a) when the information from the prior procurement is the "same in substance" as the information submitted for the pending procurement.

Applying that standard to Schuster's circumstances, the court noted that the government's plea memorandum described the SU22 and SU25 *machines* as "virtually identical." But the plea memo did not describe the *bid information* Company 2 submitted for SU22 as being the "same in substance" as the information it submitted for SU25. Schuster's disclosure was therefore not equivalent to disclosing materials about the pending procurement.

As for the plea hearing, the court took the opportunity to stress that under Fed. R. Crim. P. 11(b)(3), a district court has an independent obligation to determine that there is a sufficient factual basis for the plea. That duty exists even when the parties agree on the interpretation of the statute and the defendant does not object.

Applying the judicial scrutiny that is required, the court held that the government erred in its plea memorandum. Specifically, the government failed to demonstrate a factual link between the SU22 information and Company 2's SU25 bid when it relied on the conclusory assertion that the disclosure gave Company 1 a competitive advantage.

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Third Circuit reinforces a court's duty under Fed. R. Crim. P. 11(b)(3) to scrutinize the factual basis of a guilty plea for violation of the Procurement Integrity Act

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Finally, the court held that accepting the guilty plea amounted to plain error affecting Schuster's substantial rights. But the court rejected her argument for acquittal, noting that an insufficient factual basis for a plea is trial error, not a determination that the government could not prove guilt. The court vacated the conviction and sentence and remanded for repleading.

The Dissent

In a dissenting opinion, Judge Matey agreed with the majority's construction of the statute but disagreed that the district court committed plain error. Judge Matey would have held that the confidential nature of the materials disclosed, the similarity of the two machines, and Schuster's admitted intent to favor Company 1 all supported the inference that the material disclosed related to the SU25 bid.

Practical Significance

Schuster reinforces a district court's obligation under Rule 11(b)(3) to make an independent determination that there are sufficient factual grounds to support a guilty plea.

The decision is also a reminder to prosecutors to be precise when drafting plea memoranda. Where, as in the Procurement Integrity Act, a statute requires a relationship between one transaction and another, the government should clearly identify the facts that establish the relationship.

Finally, for appellate practitioners, the decision illustrates a situation where government error in drafting a plea agreement can give rise to relief—in the form of repleading but not acquittal—under plain-error review.



Third Circuit Extends *Perdue*'s Limits on Lodestar Multipliers to Contractual Fee-Shifting [*Gelis v. BMW of North America, LLC*, 178 F.4th 810 \(3d Cir. 2026\)](#)

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In *Gelis*, the Third Circuit resolved a question left open by the Supreme Court, and by its own prior precedent: whether the stringent limits placed by the Supreme Court on lodestar multipliers in statutory fee-shifting cases under *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542 (2010), extend to contractual fee-shifting arrangements governed by federal law. Writing for a panel that included Judges Phipps and Roth, Judge Krause held that they do—vacating a \$3.7 million attorneys' fee award for the second time and remanding for further proceedings. The decision carries significant implications for practitioners litigating class action fee disputes in the Third Circuit and beyond.

The case arose from a consumer class action alleging that BMW sold vehicles equipped with defective timing chains. After the parties settled the merits, they could not agree on attorneys' fees and entered mediation, ultimately incorporating a fee arrangement into the Settlement Agreement. That Agreement provided that BMW would pay Class Counsel's "reasonable attorneys' fees" separate and apart from any class relief, with federal law governing the fee application. Class Counsel sought \$3.7 million.

In assessing the propriety of that request, the district court used the lodestar method. The lodestar method calculates reasonable attorney fees by multiplying the number of hours reasonably spent on a case by a reasonable hourly rate. That figure can then be adjusted upward or downward for certain factors known as multipliers, such as the level of risk undertaken, the complexity of the work, or an exceptional legal result, to arrive at a final fee.

Using the lodestar method, the district court calculated a baseline lodestar of approximately \$1.9 million, then applied a 1.94 multiplier to reach the requested sum. The Third Circuit vacated the award on appeal, finding the billing records too vague and the multiplier insufficiently justified, but expressly declining to decide whether *Perdue* governed contractual fee-shifting provisions. On remand, after Class Counsel supplemented the record, the district court recalculated a baseline lodestar of roughly \$2.1 million—then applied a reduced 1.75 multiplier that (perhaps not coincidentally) once again produced a fee award of exactly \$3.7 million. BMW appealed, and the Third Circuit vacated again.

The Third Circuit's decision.

On appeal, the Third Circuit's analysis was two-fold. First, the Court classified the Settlement Agreement's fee provision as a contractual fee-shifting arrangement, not an equitable common fund, because BMW bore the obligation to pay counsel's fees separate from any class recovery. That mattered because fee-shifting and common-fund cases carry different presumptive methodologies and different levels of judicial scrutiny.

Second, and more consequentially, the Court held that *Perdue*'s restrictions on lodestar multipliers—originally articulated in the statutory fee-shifting context—apply with equal force to contractual fee-shifting provisions evaluated under federal law.

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Third Circuit Extends *Perdue*'s Limits on Lodestar Multipliers to Contractual Fee-Shifting

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The Court's reasoning was straightforward: the primary rationale underlying *Perdue* is that multipliers risk double-counting factors already reflected in the baseline lodestar, inflating an award beyond what is "reasonable." That concern, the panel concluded, does not depend on whether the fee-shifting obligation originates in a statute or a contract. In neither context is fee shifting "designed as a form of economic relief to improve the financial lot of attorneys," and in both, the lodestar produces an award approximating what a paying client would be charged. The same risks of satellite litigation, perverse incentives to pursue weak claims, and windfalls apply regardless of the fee provision's source.

The Court's holding places the Third Circuit in alignment with the Sixth, Ninth, and Eleventh Circuits, each of which has reached the same conclusion. No circuit has held to the contrary, lending *Gelis* the quality of a solidifying opinion rather than a groundbreaking departure.

The panel was, however, careful to delineate the boundaries of its ruling. The decision applies only where three conditions converge: (1) fees are awarded under a contractual fee-shifting provision; (2) the contract specifies that federal law governs; and (3) the district court uses the lodestar method. The Court expressly reserved the question of whether *Perdue* applies to fee awards governed by state law, to constructive common-fund arrangements, or to equitable common-fund cases—issues the Supreme Court itself has not addressed and which remain live in the circuits.

Beyond the multiplier question, the opinion offers a pointed reminder on baseline lodestar scrutiny. The Court found that the district court had not adequately grappled with the fact that over 80% of Class Counsel's roughly 2,877 hours were billed by partners at partner rates. Invoking the memorable adage from *Ursic v. Bethlehem Mines* that "a Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn," the panel noted that specialized knowledge warranting partner-level billing should produce commensurately greater efficiency. Where it does not, the resulting hours may reflect impermissible double-dipping. The Court flagged specific concerns: 262 hours to draft three largely identical complaints, discovery hours billed almost exclusively by partners without evidence of proportionate efficiency, and 97 hours for sending three partners to a single mediation without any finding that each made distinct contributions.

For practitioners, *Gelis* carries several practical takeaways

Class counsel negotiating settlement agreements that include fee-shifting provisions governed by federal law should expect district courts to apply *Perdue*'s strong presumption that the unenhanced lodestar is reasonable. Any request for a multiplier must be supported by specific, objective evidence of truly exceptional circumstances—not impressionistic assessments of case complexity, contingency risk, or counsel's reputation. Billing practices will also face heightened scrutiny; top-heavy staffing models in which partners perform tasks that associates or paralegals could handle may invite reductions. Defense counsel, for their part, now have clear Third Circuit authority to challenge multipliers in contractual fee-shifting cases and to scrutinize staffing allocations as part of lodestar objections. Finally, the open questions the Court flagged—particularly whether *Perdue* governs constructive common funds or state-law fee provisions—signal areas of likely future litigation.



Genesis and Early Reception of the Third Circuit's Internal Operating Procedures (IOPs)

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Introduction

In 1974, the U.S. Court of Appeals for the Third Circuit became the first appellate court in the nation to reduce to writing and publish a detailed description of its internal methods, customs, and processes.¹ These "[Internal Operating Procedures](#)," or IOPs, were an inspired piece of judicial innovation at a time of mounting anxiety over appellate caseloads and perceived inefficiencies in the appellate process.

Several other appellate courts soon followed the Third Circuit's example by publishing IOPs of their own. The practice was endorsed by a landmark federal commission and by the American Bar Association (ABA). And within just eight years of the Third Circuit's innovation, Congress mandated that every U.S. Court of Appeals publish its own set of operating procedures for public review. In less than a decade, what had been groundbreaking became customary and indeed compulsory.

Now, some five decades later, the Third Circuit's role in pioneering the publication of appellate court IOPs has been largely forgotten. This column recalls that neglected aspect of the Court's history and briefly explores the circumstances surrounding the IOPs' genesis and early reception.

"Improvement by Cooperation"

Efforts to demystify the methods of appellate adjudication are nothing new. Jurists and lawyers have long collaborated in projects to shine a light on those methods. In the 1940s, for example, a committee of the ABA's Section of Judicial Administration undertook a major survey-based study that involved "preparing a questionnaire and sending it to every appellate judge in the United States."² As the resulting report explained, the goal of that study was to foster advances in appellate procedure by allowing bench and bar to understand the range of existing practices. The goal, in a phrase, was "Improvement by Cooperation."³ In publicizing the study's findings, the committee emphasized its belief that the methods of appellate adjudication "are not and should not be secret or confidential[.]"⁴

A similar spirit animated successive efforts. In the late 1950s, the Institute of Judicial Administration at New York University Law School launched another questionnaire-based study and recruited a committee of the ABA Section of Judicial Administration to produce a comprehensive final report based on the responses. When that final report appeared in 1961, its authors expressed confidence that the report's publication would enable members of the bench and bar "to look around and see what other courts are doing" and to identify fruitful areas of inquiry and even "desirable modification[s] of procedure[.]"⁵

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¹ See U.S. Court of Appeals for the Third Circuit, *Internal Operating Procedures* (eff. Jan. 1, 1974, rev. eff. March 1, 1974) (hereinafter, the "1974 IOPs").

² Laurance M. Hyde et al., *Methods of Reaching and Preparing Appellate Court Decisions: Report of a Committee to Gather Information concerning Methods of Reaching and Preparing Appellate Court Decisions* 4 (1942).

³ *Id.*

⁴ *Id.* at 3.

⁵ *Internal Operating Procedures of Appellate Courts: A Report by a Committee of the Section of Judicial Administration of the American Bar Association* ix–x (1961).



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The 1961 report bore the title, *Internal Operating Procedures of Appellate Courts*. But that phrase—“internal operating procedures”—referred generically to the unwritten and often informal “internal procedures followed by [a] court and its individual members in fulfilling the appellate function.”⁶ It did not yet refer to a written text. Much like the word “constitution,” which only by extension and in recent centuries came to denote a written document, the phrase “internal operating procedures” initially referred to an appellate court’s intangible procedures themselves, not to any printed distillation of them. No such distillation yet existed. The 1961 report itself purported only to “summarize” appellate courts’ procedures “on a comparative and statistical basis”—not to capture them in authoritative, numbered, rule-like statements that could be cited and applied.⁷

Against the backdrop of these efforts to make appellate procedures more accessible, a period of rapid change was transforming American life. That transformation produced massive growth in both state and federal litigation. Appellate courts were not spared. The federal courts of appeals, for example, saw their caseloads more than triple between 1960 and 1975, while the number of judgeships increased only modestly.⁸ By the early 1970s, “mounting sentiment among jurists, scholars, practitioners, and policy-makers” suggested that the federal judiciary was “struggling to address the growing caseloads[.]”⁹ Calls for reform proliferated.

Amidst these calls, a major federal commission was established in 1972 to address the rising challenges. That Commission, chaired by Senator Roman L. Hruska of Nebraska, included members of all three branches of government and representatives of both major parties.¹⁰ Officially named the Commission on Revision of the Federal Court Appellate System, it was and is more commonly known as the Hruska Commission.

“Dry Cleaning the Third Circuit Operation”

As the Hruska Commission got underway, change was in the air at the Third Circuit, too. Between 1966 and 1973, every one of the Court’s then-nine active judgeships turned over (with one of those judgeships being added by Congress in 1968).¹¹ With new members came new ideas. As the Court’s lately installed Chief Judge, Collins J. Seitz, remarked during a 1972 visit to Capitol Hill, “we are all so new on the [T]hird [C]ircuit that we don’t have any sacred cows.”¹²

Beyond mere openness to new ideas, the Court at this time pursued an active program of self-study and self-improvement. “[W]e are dry cleaning the [T]hird [C]ircuit operation,” Chief Judge Seitz told the Senate.¹³ This included a program to track judges’ time, to actively shepherd or “proctor[]” certain appeals, and to identify

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⁶ *Id.* at 65.

⁷ *Id.*

⁸ See Peter S. Menell & Ryan Vacca, *Revisiting and Confronting the Federal Judiciary Capacity “Crisis”: Charting a Path for Federal Judiciary Reform*, 108 Cal. L. Rev. 789, 793 (2020).

⁹ *Id.*

¹⁰ See *id.*

¹¹ See U.S. Court of Appeals for the Third Circuit, *Court of Appeals Judges for the Third Circuit*, <https://www.ca3.uscourts.gov/history/judges/all> (last visited Sept. 23, 2026).

¹² *Revision of Appellate Courts: Hearing on S.J. Res. 122 Before the Subcomm. on Improvements in Judicial Machinery of the S. Comm. on the Judiciary*, 92d Cong. 40 (1972) (statement of Hon. Collins J. Seitz).

¹³ *Id.*



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and correct inefficiencies in the Court's processes.¹⁴ To reduce delays associated with the production of transcripts, the Court began "riding hard on the reporters," with one panel going so far as to jail an unfortunate Pittsburgh court reporter who "didn't think the [C]ourt meant what it said" when it ordered him to file a transcript.¹⁵

In this context of public concern and judicial self-reflection, a plan emerged to publish in pamphlet form, for the benefit of the bar and the public, a written distillation of the Third Circuit's internal processes. A "summary description[]" of those processes had already recently been prepared under the auspices of a Federal Judicial Center (FJC) study.¹⁶ Taking the further step of publishing a complete statement of those processes was, to Chief Judge Seitz's mind, not just "a great PR idea," but a genuine means of promoting confidence in the Court's work.¹⁷

The major force behind this plan was Chief Judge Seitz himself, who in later life would list the IOPs' publication among his proudest contributions to the Court as an institution.¹⁸ But the Court's members were initially divided. At least two "had qualms about making the internal operating procedures public."¹⁹ In the end, though, the Chief's colleagues "were willing to give [him] the benefit of the doubt," and the plan proceeded.²⁰

"The Essential Processes of this Court"

When the IOPs appeared as a little red pamphlet in early 1974, an announcement in the FJC's newsletter explained what the Court hoped its new publication would accomplish. The Court's IOPs were to be "a valuable and practical aid to the Bar," detailing "how cases move from panel assignment to final disposition, including time schedules and voting procedures[.]"²¹ Hinting at the court-congestion-related anxieties of the time, the FJC announcement went on to express the Court's belief "that publication of the *Internal Operating Procedures* will reassure the Bar and the public that the Court's work is being handled expeditiously and with full concern for litigants' rights."²²

The pamphlet's introduction explained that "[t]hese 'Internal Operating Procedures' (IOPs) cover the essential processes of this Court from the distribution of the briefs to the final termination of the appeal[.]"²³ The IOPs did so with two broad objectives in mind: to promote the conscientious yet "expeditious[]" adjudication of

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¹⁴ *Id.* at 31.

¹⁵ *Id.*

¹⁶ See James E. Langner & Steven Flanders, *Comparative Report on Internal Operating Procedures of U.S. Courts of Appeals* 1 (1973).

¹⁷ *A Conversation with Judge Collins J. Seitz, Sr.*, Del. Lawyer (Fall 1998) (hereinafter *Conversation*), at 36.

¹⁸ See *id.*; Hon. Arlin M. Adams, *Collins J. Seitz*, 132 U. Pa. L. Rev. 1275, 1277 (1984).

¹⁹ *Hearings before the Commission on Revision of the Federal Court Appellate System*,

Second Phase, Pursuant to Public Law 92-489 as Amended Public Law 93-420 706 (1975) (statement of Hon. Ruggero J. Aldisert).

²⁰ *Conversation*, *supra* note 17, at 36.

²¹ Administrative Office of U.S. Courts, *Third Circuit Publishes Internal Operating Procedures*, *The Third Branch: Bulletin of the Federal Courts* (April 1974), at 1.

²² *Id.*

²³ 1974 IOPs, *supra* note 1, at v. I gratefully acknowledge Professor K. Sabeel Rahman of Cornell Law School, who assisted me in accessing a copy of this early pamphlet version of the IOPs. The text of the 1974 IOPs was also reproduced in West's *Federal Rules Decisions* reporter at 63 F.R.D. 323 (3d Cir. 1974).



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appeals, and to foster consistency in the Court's decisional law and "the highest degree of collegiality among [its] judges."²⁴ These worthy aims continue to be hallmarks of the Third Circuit's identity to the present day.²⁵

The main body of the 1974 IOPs reflected their broad scope.²⁶ Topics were divided into 19 sections, many of which contained multiple subsections.²⁷ Although the IOPs did not expressly instruct the reader on how they might be cited, it is significant that each part of the text could be pinpointed by its lettered section and numbered subsection. Internal cross-references within the IOPs modeled how a given part of the text could thus be pincited.²⁸ The Court's choice to assign letters and numbers to the various parts of the IOPs was highly consequential, in that it imbued them with the quality of citable legal authority. Unsurprisingly, citations to the IOPs began appearing in the pages of the Federal Reporter almost immediately.²⁹

"Highly Favorable Reaction"

The Third Circuit had "broke[n] new ground[.]"³⁰ Its publication of its IOPs in 1974 marked "the first time that the day-to-day mechanics of a major appellate court were disclosed to the bar, to the litigants, and to the public."³¹ Reaction was "highly favorable."³² The notion that the Court operated via "secrets within the chambers" had been dispelled, and members of the bar now had a sure guide to "how the [Court's] work is handled."³³ So positive was the response that within a year, members of the Court who had had misgivings about publishing the IOPs graciously acknowledged "that they were in error," and that publication had proven to be "a healthy thing[.]"³⁴

When the Hruska Commission released its preliminary report in 1975, its recommendations included a proposal that each federal court of appeals, in addition to promulgating local rules, should "also publish its internal operating procedures stating the criteria for denying oral argument, and describing local practices[.]"³⁵ The Commission noted that "the Third Circuit has already done as much and has been commended for doing so."³⁶

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²⁴ *Id.*

²⁵ See 3d Cir. I.O.P.s, Introduction (eff. Jan. 6, 2023), <https://www.ca3.uscourts.gov/sites/ca3/files/IOPs.pdf>.

²⁶ An official announcement in the *Pennsylvania Bar Quarterly* also hinted at the IOPs' breadth, noting that the Court had "reduced to print a complete description" of its internal operating procedures. Frederick H. Bolton, *The Secretary's Department*, 45 Pa. B. Ass'n Quarterly, 329, 341 (1974).

²⁷ See 1974 IOPs, *supra* note 1, at iii–iv (table of contents).

²⁸ See *id.* at 10, 15.

²⁹ See, e.g., *Cromaglass Corp. v. Ferm*, 500 F.2d 601, 604 n.1 (3d Cir. 1974); *United States v. Crook*, 502 F.2d 1378, 1383 (3d Cir. 1974) (Van Dusen, J., dissenting); *Haas v. Pittsburgh Nat'l Bank*, 526 F.2d 1083, 1094 n.10 (3d Cir. 1975).

³⁰ Hon. Max Rosenn, *Trends in Administration of Justice in the Federal Courts*, 39 Ohio St. L.J. 791, 802 (1978).

³¹ Adams, *supra* note 18, at 1277.

³² Rosenn, *supra* note 30, at 802; see also *Conversation*, *supra* note 17, at 36.

³³ *Conversation*, *supra* note 17, at 36.

³⁴ *Hearings before the Commission on Revision of the Federal Court Appellate System, Second Phase, Pursuant to Public Law 92-489 as Amended Public Law 93-420 706* (1975) (statement of Hon. Ruggero J. Aldisert).

³⁵ Commission on Revision of the Federal Court Appellate System, *Structure and Internal Procedures: Recommendations for Change, A Preliminary Report* 62 (1975).

³⁶ *Id.*



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Other courts soon followed the Third Circuit's lead.³⁷ And by 1977, the practice of publishing internal procedures had received not only the Hruska Commission's imprimatur, but that of an influential set of standards for appellate courts presented to the ABA's Commission on Standards of Judicial Administration.³⁸ Advocates, too, soon realized that consulting published IOPs was a "must" for effective appellate practice.³⁹

A mere eight years after the Third Circuit's innovation, publication of IOPs was made mandatory for appellate courts at the federal level. When Congress enacted the Federal Courts Improvement Act of 1982, it adopted what is now 28 U.S.C. § 2077, which provides in pertinent part that "[t]he rules for the conduct of the business of each court of appeals, including the operating procedures of such court, shall be published."⁴⁰

The Mighty Third had made its mark.

Conclusion

With the benefit of a half-century's hindsight, we can see the Third Circuit's innovation for what it was: an enduring contribution to the development of appellate judicial process in the United States. Not merely a statement of the Court's *modus operandi*, the IOPs remain today an essential resource for lawyers, judges, court staff, law clerks, and the public at large.

Practicing attorneys are especially well situated to benefit from knowing the IOPs. It's not just that we have a professional obligation to do so—though of course we do.⁴¹ It's that knowing the IOPs enables us to deliver the effective representation our clients deserve. After all, the IOPs answer nearly all the questions that the federal and local rules don't about when and how our appeals will be adjudicated. They indicate, for example, when we can expect to be notified of which judges will decide our case.⁴² They spell out which considerations inform a panel's decision whether to call a case for oral argument.⁴³ They explain what happens inside the Court when a party seeks rehearing.⁴⁴ They even demystify certain solemn aspects of courtroom practice, such as the judges' order of entry from the robing room.⁴⁵

The Third Circuit's innovation in publishing a written statement of its internal procedures is well worth appreciating. But the best homage we can pay is not just to know this history. It's to know the IOPs themselves, in their current form, and, using that knowledge, to be as helpful as possible in our dealings with our clients and the Court.

³⁷ See Robert A. Leflar, *Internal Operating Procedures of Appellate Courts* 116 (1976) (noting that "[a]n increasing number of appellate courts, especially federal ones, are following the example of the Third Circuit by issuing a complete descriptive booklet").

³⁸ See Geoffrey C. Hazard, Jr., *Standards of Judicial Administration: Appellate Courts*, 62 Am. B. Ass'n. J. 1015, 1017 (1976) (recommending "that an appellate court's rules and policies concerning preparation and decision of cases be reduced to writing and made available to the bar").

³⁹ Albert Tate, *Federal Appellate Advocacy in the 1980s*, 5 Am. J. Trial Advoc. 63, 70 (1981).

⁴⁰ 28 U.S.C. § 2077(a); see also Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, § 208(a), 96 Stat. 25, 54.

⁴¹ See 3d Cir. R.A.D.E. 2(1)(c) (listing among possible grounds for attorney discipline conduct that violates the IOPs).

⁴² 3d Cir. I.O.P. 2.5(a).

⁴³ 3d Cir. I.O.P. 2.4.

⁴⁴ 3d Cir. I.O.P. 8.1, 8.2, 8.3, 9.5, 9.6.

⁴⁵ 3d Cir. I.O.P. 3.3.



President's note

[Matthew Stiegler](#)

Philadelphia District Attorney's Office, Philadelphia, PA

Sitting in the audience listening to one of the panel presentations at the recent Third Circuit bench-bar conference in Hershey, I was reminded of one of my favorite aspects of federal appellate practice.

The panel's topic was preparing for appellate oral argument. 3CBA Past President David Fine moderated a panel featuring retired Third Circuit Judge Joseph Greenaway Jr. and two highly regarded appellate advocates, Erin Murphy and Matt Wessler. It was a terrific panel, brimming with insights and experience on how to put yourself in the best position possible to persuade judges at oral argument.

Which, if you stop to think about it, is pretty remarkable. After all, these were four lawyers at the top of their profession who've spent their careers amassing extraordinary professional insights. And there they were, up on a stage cheerfully imparting those insights to a room full of lawyers: their adversaries and competitors. It's like Philadelphia 76er LeBron James—yes, I do enjoy typing that phrase—giving a free clinic for other NBA players on how to improve their three-point shooting.

That sort of collegial generosity would be unheard-of in many other contexts, but in my experience it's part of the professional culture of federal appellate practice, at least here in the Third Circuit. We care about helping other lawyers grow and improve. We care about raising the overall standard of practice. We care about doing our part: as CLE presenters, as mentors, as judges for other lawyers' argument moots, and as colleagues simply willing to take a few minutes to talk through a thorny practice question.

To me, fostering that supportive professional culture—and benefitting from it ourselves—is a big part of the Third Circuit Bar Association's value. 3CBA institutionalizes that culture through its CLE programming, its collaboration with other bar groups, its support of the Third Circuit conference, and its publications like this newsletter. It offers us all a ready vehicle for sharing what we've learned with other practitioners while continuing to develop and grow ourselves.

When I first became involved with 3CBA, many years ago now, it was because I had an idea for CLE programs around the circuit where Third Circuit judges and advocates presented on effective advocacy. Judges and lawyers generously agreed to present, and the programs were well-attended and well-received. An idea I was excited about, but couldn't pull off on my own, became a reality thanks to 3CBA.

I'm grateful for the Third Circuit's collegial culture, and I'm grateful that being active in 3CBA gives me a way to contribute to it. I hope you are too.

/s/ Matthew Stiegler

Matthew Stiegler

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3CBA membership note

The Third Circuit Bar Association is committed to promoting excellence in federal appellate practice by attracting members from every corner of the Circuit, every type of background, and every level of experience. Membership is open to attorneys in good standing in the Court of Appeals or any District Court within the Circuit, as well as the Justice of the Supreme Court of the United States assigned to the Court of Appeals and all federal judges, magistrate judges, law clerks, and judicial staff within the Circuit. We hope that you will join us and become an active member of our Association.

Membership is a bargain at just \$60 and only \$30 for government and public interest lawyers, lawyers admitted to the bar for less than five years, and academics. (Judges, law clerks, court staff, law students, and attorneys admitted to the bar 50 years or more are exempt from dues.) This modest investment will yield significant dividends. If you are interested in improving the quality of your practice and practice before the Third Circuit generally, if you want to understand and provide input on the Court's rules of practice and procedure, if you are looking for CLE credits, or if you would like to network with other appellate practitioners, judges, and staff and enhance bench/bar relations, this is the organization for you.

To continue and expand on the good we have already accomplished, we need involved members. You can join online by submitting a [membership form](#). Please join or renew your membership in the 3CBA and get involved. Join one or more of our Committees. Suggest new program or article ideas or other initiatives. And recruit others to join you in supporting our mission. Please reach out to any of our [officers or other Board members](#) with questions.

Clerk's Office notices

Notice to all CJA Attorneys: All attorney users are required to use login.gov with multi-factor authentication to access eVoucher. Additional information and training materials can be found [here](#).

The Court of Appeals adopts format standards and procedures for the [submission of audio and video files](#).

Filing Deadlines: Pursuant to 3rd Cir. L.A.R. 26.1 and Misc. 113.3(c), documents received after **5:00 p.m.** ET on the **final day for filing** will not be considered timely. A motion to file out of time will be required unless one of the limited exceptions applies.

[Audio of Oral Arguments Live Streamed via YouTube.](#) The live stream for arguments scheduled in the Maris and Seitz Courtrooms is made available several minutes before the start of argument. Audio, in full or in part, from any proceeding may not be recorded, broadcast, posted or reproduced in any form.

New Compliance Screening for Briefs. On January 5, 2026, the Third Circuit implemented a program that checks opening, response, and reply briefs for compliance pursuant to federal and local rules. The program will run in the background once a brief is uploaded in CM/ECF using the "Check PDF Document" option and users are strongly encouraged to check their briefs using the tool. A template including all required sections for principal briefs will be provided, and its use is strongly recommended to avoid non-compliance orders. Electronically filed documents must be in PDF text format – not scanned to PDF. Detected deficiencies will not prevent users from completing an event, but correcting deficiencies before completion is strongly recommended to avoid non-compliance orders. Users can help improve the program by emailing feedback to the CM/ECF Help Desk at ecf_helpdesk@ca3.uscourts.gov.



Registration is Now Open for Appellate Judges Education Institute Summit, November 12-15, 2026 in Philadelphia

AJEI Appellate Judges Education Institute

SAVE THE DATE
2026 Summit
November 12 - 15, 2026
Loews Philadelphia Hotel | Philadelphia, PA

The Summit gathers federal and state appellate judges, attorneys and lawyers from across the country for practical, cutting-edge, and insightful educational programs.

The graphic features a large background image of the Philadelphia skyline at sunset, with the Schuylkill River in the foreground. A circular inset on the right shows a statue of a man on a pedestal in front of Independence Hall.

The Appellate Judges Education Institute (AJEI) will be hosting its 2026 Summit, open to all judges and lawyers, in the Third Circuit this year in Philadelphia, Pennsylvania. The multiday conference gathers federal and state appellate judges from across the country and invites all lawyers to join them for practical, cutting-edge, educational programming. Presenters include leading practitioners from private and government practice, outstanding law professors, and experienced appellate judges and court attorneys. The four-day format also affords numerous opportunities for bench-bar networking.

More information at https://www.judges.org/appellate_judges_edu/2026-summit/.

Beyond the Bench: Why Judicial Independence Matters for Democracy CLE is November 12, 2026 in Pittsburgh

Presented by the Allegheny County Bar Association Ad Hoc Rule of Law
and Independence of the Judiciary Committee

BEYOND THE BENCH

Why Judicial Independence Matters for Democracy

Thursday, November 12 | 4 p.m.

Joseph F. Weis, Jr. U.S. Courthouse

This program examines the crucial role of judicial independence:

- Video conversation with Supreme Court Justice Stephen Breyer
- Discussion analyzing the judiciary's role in constitutional rights
- Declining public trust and political polarization

Networking reception to follow. | [Click here](#) for more.

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Hon. D. Brooks Smith



Hon. D. Michael Fisher



Hon. Mary C. McGinley



Hon. William S. Stickman



Kenneth G. Gormley

MODERATOR:

1.5 Subst.
ACBA
CLE

This CLE – scheduled for Thursday, Nov. 12 at 4 p.m. at the Joseph F. Weis, Jr. U.S. Courthouse in Pittsburgh, Pennsylvania – will examine judicial independence and its essential role in American democracy and the rule of law. It will begin with a group viewing of a conversation featuring retired United States Supreme Court Justice Stephen Breyer and Duquesne University Chancellor Ken Gormley, exploring judicial independence, its origins in The Federalist Papers, and its function within a constitutional system.

The program will then transition to a panel discussion analyzing the judiciary's role in protecting constitutional rights, maintaining checks and balances, and ensuring the consistent application of the law. A networking reception will immediately follow the CLE.

More information and registration on Allegheny County Bar Association's website [here](#).



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