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2016 Year-End Report on the Federal Judiciary

As winter approached in late 1789, Justice David Sewall of the Massachusetts Supreme Judicial Court received unanticipated correspondence from President George Washington. Washington informed Sewall that he had been appointed and confirmed as United States District Judge for the District of Maine, then still part of Massachusetts. The matter was not open to discussion; Sewall's commission was enclosed. Writing from his home in York, Sewall noted that the appointment was "unsolicited and unexpected," and he expressed concern that his service as a state supreme court justice would not fully prepare him for the task. "In this new appointment," Sewall explained, "the Judge is to stand alone, and unassisted, and in some instances in matters of the greatest magnitude—Such as relate to the life of Man." Grateful for the privilege of national service and the honor of appointment, he hoped to vindicate the President's confidence and secure the "approbation of my fellow Citizens." "All I can promise on the occasion, is, that I will endeavour to merit them—by striving to discharge

the duties of the office with fidelity and impartiality according to the best of my abilities.”

President Washington appointed all thirteen original United States district judges in like fashion, and most responded with similar humility and trepidation. Despite their modesty, however, they were a distinguished group. John Sullivan of New Hampshire had been a general in the Revolutionary War, delegate to the Continental Congress, and—before the formation of the Union—President of New Hampshire. James Duane had served five years as Mayor of New York. William Paca had signed the Declaration of Independence and served as Maryland’s governor. David Brearley signed the Constitution for New Jersey, as Gunning Bedford, Jr., did for Delaware. William Drayton, appointed in his native South Carolina, had served more than a decade as Chief Justice of the British colony of East Florida. Francis Hopkinson of Pennsylvania, a poet and musician as well as a lawyer, designed key precursors of the Great Seal of the United States and the United States flag famously attributed to Betsy Ross. These individuals are not well known in our era, but they launched the new system of United States district courts and set the course for the important role those institutions would come to play in the new republic.

The men and women across the country who today serve as district judges are generally not well known either, but they deserve tremendous respect. While the Supreme Court is often the focus of public attention, our system of justice depends fundamentally on the skill, hard work, and dedication of those outside the limelight. This year, I would like to recognize the crucial role federal district judges play in the operation of the Third Branch and highlight some of the challenging and often overlooked facets of their service.

United States district judges are the principal trial judges of our federal system. Congress has authorized 673 district judgeships, as well as four territorial positions. The active judges receive assistance from more than 500 senior district judges, who are eligible for retirement with full pay but still continue to work—most in a part-time capacity, but many full-time—without additional compensation.

As Justice Sewall observed 237 years ago, district judges “stand alone, and unassisted.” Unlike politicians, they work largely outside of the public eye. Most Americans have some sense of their role, but that perception has surely been shaped, for better and worse, by movie and television portrayals of the American jury trial. In the typical depiction, the trial judge has a bit part, sitting passively amidst the soaring rhetoric of the

attorneys, the heroism or villainy of their clients, and the moral compass of the jurors. Real-life trials usually lack that drama—but then they are not meant to be entertainment. Rather, they are carefully structured mechanisms for resolving legal disputes through an adversarial process. In conducting trials, the district judge serves as the calm central presence to ensure fair process and justice for the litigants.

The judge is responsible for supervising the important pretrial process and conducting the trial itself. He resolves discovery disputes, manages the selection of the jury, rules on the admission of evidence, determines the proper and understandable instruction of the jury, and resolves any issues surrounding the acceptance of the verdict and entry of judgment. Each of those steps requires special knowledge, sensitivity, and skill. The judge must have mastery of the complex rules of procedure and evidence and be able to apply those rules to the nuances of a unique controversy. As the singular authority on the bench, he must respond to every detail of an unscripted proceeding, tempering firm and decisive judgment with objectivity, insight, and compassion. This is no job for impulsive, timid, or inattentive souls.

The character of a district judge is most starkly evident in a criminal trial. Most criminal charges are resolved through the plea bargaining

process, but those cases that go to trial place especially high demands on the court. The judge must move the process forward in accordance with the Speedy Trial Act, consistent with the defendant's right to constitutionally adequate representation. He must promptly decide motions and make evidentiary rulings as the trial proceeds, typically without the luxury of calm consideration and research in the quiet of chambers. The judge must carefully guide the jury on the elements of the offense and the prosecution's burden of proof. If the trial results in conviction, the judge faces the somber task of sentencing.

Most district judges agree that sentencing is their most difficult duty. The judge must confront the offender, face-to-face, and take just account of human failing. The judge must consider the perspectives of the prosecutor, the defendant, and the victim, and impose a penalty that, by design and necessity, will alter the direction of the defendant's life. In determining appropriate punishment, his discretion is confined by legislative determinations, and guided by carefully considered sentencing guidelines and a presentence report. At the end of the day, the sentence nonetheless critically reflects the judge's wisdom, experience, and educated grasp of what he observed firsthand in the courtroom. In delivering the sentence, the judge speaks as the voice of the community.

Although the district judge has a visible and vital presence in the courtroom, many more judicial responsibilities are conducted in chambers. For every trial, there are scores of cases waiting in the wings—the typical federal judge has more than 500 cases on the docket. In the face of that daunting workload, the district judge must be a jack of all trades. The judge must first be an able administrator in managing the ceaseless stream of cases and issues that pass through the court. He must be adept at juggling dozens of different matters at any given time, making sure that nothing slips through the cracks.

A district judge, however, must be more than a capable administrator. The judge must be an active and astute problem solver. Litigation is costly, and everyone benefits if disputes can be resolved efficiently with minimal expense and delay. As I explained in my 2015 Year-End Report, the Judicial Conference—the policy making body of the federal courts—has revised the Federal Rules of Civil Procedure to emphasize the judge’s role in early and effective case management. Those procedural reforms encourage district judges to meet promptly with the lawyers after the complaint is filed, confer about the needs of the case, develop a case management plan, and expedite resolution of pretrial discovery disputes. The reforms are beginning to have a positive effect because already extremely busy judges

are willing to undertake more active engagement in managing their dockets, which will pay dividends down the road. A lumberjack saves time when he takes the time to sharpen his ax. This year, we will take a step further and ask district judges to participate in pilot programs to test several promising case management techniques aimed at reducing the costs of discovery.

A district judge's skillful exercise of docket administration and case management can often narrow a case to a small number of issues truly in dispute and may even resolve the matter through settlement. In other situations, the pretrial process may reveal that the controlling issues are purely questions of law that can be resolved through summary judgment without trial. In those situations, the district judge has the responsibility—always in the first instance, and frequently in the last—“to say what the law is.” As Justice Sewall recognized, a judge must do so “with fidelity and impartiality,” without fear or favor.

District judges are the first to encounter novel issues, and they must resolve them without the aid of guiding precedent. Because they work alone, district judges do not have the benefit of collegial decision-making or the comfort of shared consensus. And because of the press of their dockets, they face far more severe time and resource constraints than their appellate brethren.

You might be asking at this point why any lawyer would want a job that requires long hours, exacting skill, and intense devotion—while promising high stress, solitary confinement, and guaranteed criticism. There are many easier and more lucrative ways for a good lawyer to earn a living. The answer lies in the rewards of public service. District judges make a difference every day, and leave a lasting legacy, by making our society more fair and just. That sense of civic duty is evident in the many ways that our district judges give voluntary service, in addition to their usual responsibilities, to the courts and their country.

Congress directs that district judges, in order of seniority, may take their turn to serve as the chief judge of their district court. A chief judge voluntarily takes on the additional responsibility of superintending the administration of the court and its professional staff. Those administrative responsibilities include all aspects of running a courthouse, including personnel issues, budget matters, and introduction of new technologies. Few individuals who became judges did so because they were anxious to have such duties. The judges who take on the title of “chief” nonetheless perform those time-intensive chores without any additional rewards and very little thanks. Their service is essential to judicial self-governance.

District judges make contributions outside their own courthouses by volunteering their services to other courts. They may lend their time and energy to overburdened sister districts, to the regional courts of appeals, or to specialized tribunals, such as the Foreign Intelligence Surveillance Court. District judges also volunteer to assist the Judicial Branch as a whole through service on the Judicial Conference. Thirteen district judges serve on the 27-member Conference, applying their experience and expertise to the improvement of the Branch. In addition, 169 district judges serve on the Conference's 25 committees and actively participate in developing policy on a broad spectrum of issues, including the judiciary's budget, security arrangements, codes of conduct, and rules of procedure.

District judges also make contributions to the judiciary's educational programs. They volunteer service to the Federal Judicial Center as board members, advisors, and instructors, providing training for new judges and continuing education for more experienced colleagues. District judges likewise volunteer service to the United States Sentencing Commission, where they participate in developing and revising sentencing guidelines.

Just four days after Congress created the Nation's first thirteen district judgeships, President Washington wrote to Edmund Randolph that he "considered the first arrangement of the judicial department as essential to

the happiness of our country and to the stability of its political system.”

Washington stated that he was anxious to select “the fittest characters to expound the laws, and dispense justice.” Over the more than two centuries since that time, the Nation’s need for its best has not diminished. Not every able individual has accepted the call and—in our imperfect world—a few who have accepted have not been up to the task. But those are rare exceptions. Since Washington made his first thirteen appointments, each American generation has produced selfless, patriotic, and brave individuals who have stepped forward to serve their country with distinction as federal district judges. Our Nation is justly proud of our current district judges and grateful for their service.

Once again, I am privileged and honored to be in a position to thank all of the judges, court staff, and judicial personnel throughout the Nation for their continued excellence and dedication.

Best wishes to all in the New Year.

Appendix

Workload of the Courts

In the 12-month period ending September 30, 2016, the number of cases filed in the Supreme Court decreased, while the number filed in the regional appellate courts and the district courts increased. Filings in the bankruptcy courts also decreased. Cases activated in the pretrial services system decreased, while the number of persons under post-conviction supervision increased.

The Supreme Court of the United States

The total number of cases filed in the Supreme Court decreased by 7.94 percent from 7,033 filings in the 2014 Term to 6,475 filings in the 2015 Term. The number of cases filed in the Court's *in forma pauperis* docket decreased by 10.24 percent from 5,488 filings in the 2014 Term to 4,926 filings in the 2015 Term. The number of cases filed in the Court's paid docket increased by 0.02 percent from 1,545 filings in the 2014 Term to 1,549 filings in the 2015 Term. During the 2015 Term, 82 cases were argued and 70 were disposed of in 62 signed opinions, compared with 75 cases argued and 75 disposed of in 66 signed opinions during the 2014 Term. The Court also issued 12 *per curiam* decisions during the 2015 Term in cases that were not argued.

The Federal Courts of Appeals

In the regional courts of appeals, filings rose 15 percent to 60,357. Appeals involving pro se litigants, which accounted for 52 percent of filings, increased 18 percent. Total civil appeals decreased two percent, criminal appeals grew one percent, appeals of administrative agency decisions fell nine percent, and bankruptcy appeals fell ten percent.

The Federal District Courts

Civil case filings in the United States district courts increased five percent to 291,851. Cases involving diversity of citizenship (i.e., disputes between citizens of different states) fell five percent. Cases with the United States as defendant increased 55 percent as a result of prisoner petitions related to the Supreme Court's decision in *Welch v. United States*, No. 15-6418 (Apr. 18, 2016), which provided a new basis for certain prisoners convicted under the Armed Career Criminal Act to challenge their sentences. Cases with the United States as plaintiff decreased 19 percent as fewer cases involving defaulted student loans and forfeiture and penalty cases were filed.

Filings for criminal defendants decreased three percent to 77,357. Defendants charged with drug crimes, accounting for 32 percent of total filings, fell three percent. Defendants charged with immigration

crimes decreased less than one percent, with the southwestern border districts receiving 82 percent of national immigration defendant filings. Defendants charged with property offenses decreased 13 percent, largely because defendants charged with fraud also fell 13 percent. Filings involving regulatory offenses, sex crimes, general offenses, and justice system offenses also declined, while filings related to firearms and explosives and violent crimes increased.

The Bankruptcy Courts

Bankruptcy petition filings decreased six percent to 805,580. Fewer petitions were filed in 71 of the 90 bankruptcy courts. Consumer petitions fell six percent, and business petitions fell two percent. Filings of petitions declined nine percent under Chapter 7 and one percent under Chapter 13. Filings increased six percent under Chapter 11.

This year's total for bankruptcy petitions is the lowest since 2007, which was the first full year after the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 took effect. From 2007 to 2010, bankruptcy filings rose steadily, but they have fallen in each of the last six years.

The Federal Probation and Pretrial Services System

A total of 137,410 persons were under post-conviction supervision on September 30, 2016, an increase of one percent over the total one year earlier. Of that number, 118,242 persons were serving terms of supervised release after leaving correctional institutions, a three percent increase from the prior year.

Cases activated in the pretrial services system, including pretrial diversion cases, fell three percent to 91,709.