



Sidebar Idaho Chapter Federal Bar Association Quarterly Newsletter

A MESSAGE FROM J. WALTER SINCLAIR, PRESIDENT



I just returned from the FBA Leadership conference and Capitol Hill visit day in Washington D.C. While there I learned an astonishing statistic: two-tenths of one

percent. That is the total amount of our nation's budget that is devoted to the Judiciary. Funding for the Federal Judiciary, a coordinate branch of our Federal government, represents less than two-tenth of one penny of a taxpayer's dollar. As Chief Justice Roberts observed, "Those fractions of a penny are what Americans pay for a Judiciary that is second to none."

Considering the tiny fraction of the overall budget committed to the Judiciary, it is with increasing frustration that I witness the harms inflicted on the judicial branch as a result of inadequate funding. Our Judiciary is facing grave threats to its ability to continue performing its Constitutionally-

mandated functions. Cases continue to be filed, in ever increasing numbers, and the courts must respond—even with the lack of adequate funding for another Article III judge in Idaho. The Constitution still affords criminal defendants the right to a speedy trial and to a court-appointed attorney, and both criminal and civil litigants the right to a jury trial regardless of whether the legislative and executive branches reach agreement on our nation's budget.

As members of the bar, we know well that the Judiciary's most important resource is its people: the judges, law clerks, court security officers, probation officers, and administrative staff are all essential to ensuring that justice continues to be served. Each time I appear in a new courtroom, I am reminded yet again that the caliber of people who serve the judicial branch is second to none. Their commitment to the rule of law and respect for everyone involved is a constant reminder to me that what they do each day is invaluable to the citizens of this country.

To its credit, the Judiciary has been engaged in aggressive cost-containment

measures across the country for over eight years. These reductions and cutbacks are occurring despite a tremendous caseload. In 2010, over 361,000 civil and criminal cases were filed in U.S. District Courts nationwide. The long term consequences of failing to provide another Article III judge in Idaho is obvious to all of us.

All of this draws into sharp focus the fact that the judicial branch is beholden to the legislative and executive branches for its funding. I am grateful for the advocacy efforts of the Federal Bar Association, which does all it can to ensure that Congress understands the importance of the Judiciary. I encourage all of you to keep this in mind as we struggle with the fiscal challenges that our country is facing.

Take a moment and write to your representative or senator. Help them understand that there are some parts of our government that need adequate funding to avoid compromising the foundations of our democracy. Stress the important of replacing Judge Lodge's position as he has selected

Senior Status. Emphasize the need for a third Article III Judge for Idaho.

Thanks for your help, we hope to see you at an FBA sponsored event in the near future.

Government Relations Update

By Bruce Moyer (photo), Counsel for Government Relations and West Allen, Chair, Government Relations Committee



Capitol Hill Day

Fifty-seven Federal Bar Association leaders converged on the nation's capital on May 19 in conjunction with FBA Capitol Hill Day, educating Congressional lawmakers about the needs and challenges facing the Federal courts. The annual advocacy event involved over 200 meetings by FBA national, circuit, chapter, section and division leaders with Washington lawmakers and staff. Capitol Hill Day participants came to Washington as representatives of 37 FBA chapters and five sections and divisions. They hailed from 26 states, along with Puerto Rico and the District of Columbia. Increasing numbers of FBA members are recognizing the value of Capitol Hill Day, with this year's event witnessing a sixty-percent increase in participation over 2015. Capitol Hill Day next year will be April 20, 2017. Mark your calendar.

FBA representatives received a warm reception and a positive response from nearly all of the Congressional offices they visited, providing the opportunity for ongoing and stronger relationships. FBA advocates in their meetings with members and staff of the United States Senate and House of Representatives focused on four policy priorities:

- Adequate funding for our federal courts, including

resources for courthouse repair and construction

- Prompt Senate consideration of federal district and appellate judicial nominees
- Establishment of additional federal judgeships, consistent with the recommendations of the Federal Judiciary
- Establishment of an Article I immigration court, transferring the adjudicatory responsibilities currently performed by the Executive Office of Immigration Review in the Department of Justice to the new court

Nearly all registrants participated in the morning briefing and afternoon debriefing sessions, and the feedback gleaned from the interactive debriefing was particularly helpful. The Article I immigration court issue once again received the greatest amount of interest and attention by lawmakers and staff and follow-up materials on the proposal were provided to CHD participants to pass along to Congressional offices that expressed interest.

FBA Policy Priorities Brief and other support materials used in conjunction with Capitol Hill Day are posted on the Capitol Hill Day page of the FBA website. They are here: <http://www.fedbar.org/Advocacy/2016-Capitol-Hill-Day-Recap.aspx>

JUDICIAL VACANCIES

Jurisdiction	Vacancies	Nominees Pending
Supreme Court	1	1
Court of Appeals	9	7
District Courts	71	42
Intern'l Trade	2	2
Federal Claims	6	5
Totals	89	57

Since last month district court vacancies increased by 3 vacancies, while pending nominees declined by 1. The highest number of vacancies in the Federal Judiciary remain in Texas with 12 vacancies, 10 of them in the district courts and the other two in the Fifth Circuit.

During Capitol Hill Day, FBA leaders from chapters in judicial districts and circuits with long-standing vacancies raised their concerns with their respective lawmakers. On May 20, West Allen and Bruce Moyer met with Maggie Whitney, Special Assistant to the President and Senior Counsel to the President, Office of the White House Counsel, to discuss the current state of judicial vacancies.

During the Senate Judiciary Committee's May 19 executive business meeting, the Committee reported out five district court nominees for floor action. Committee members also devoted discussion to the so-called Thurmond Rule and its applicability, if any, to the twenty-nine district and seven circuit nominees pending within the Judiciary Committee. Twenty-one district nominees and one circuit nominee have had hearings. The historical trends for confirmation of district nominees during post-summer recesses in presidential election years should motivate the Senate to hold floor votes on those nominees.

Since assuming control of the Senate last year, the Republican-led Senate has confirmed a total of 20 district and circuit court judges. When Democrats led the Senate during the final two years of the presidency of George W. Bush, they had confirmed 68 judges by the same point.

During the last two years, total vacancies rose from 43 to 89. Judicial emergencies nearly tripled. There are now 29 judicial emergencies, with Texas bearing the highest number of district vacancies and judicial emergencies (10) of any state. The problems originate with the reluctance of the two Texas

Senators – John Cornyn (R-TX) and Ted Cruz (R-TX) – to turn in their respective blue slips for five of their nominees to the Judiciary Committee, a step required before the Committee will hold a hearing on any nominee. The other five Texas vacancies are without nominees.

Slowness in the return of blue slips by home-state Senators also exists in other states, including Indiana, Alabama, South Carolina, Nevada, North Carolina, Pennsylvania and Kentucky. In some cases, Republican senators aren't turning in their blue slips because they say their assessment of the underlying nominee differs from their original thinking when they were recommended to the White House. Sen. Marco Rubio (R-FL) says he no longer supports his Florida Southern district nominee, Mary Barzee Flores. Sen. David Perdue (R-GA) withdrew his support for his nominee, Dax López, to a seat that has been vacant for over two years and represents a judicial emergency. In the meantime, Sen. Chuck Grassley (R-IA), who chairs the Judiciary Committee, has signaled his intent to refrain from holding any more nominations hearings after the Senate departs in mid-July for its summer recess.

Pro Bono Program

The United States Federal Court and the Idaho Chapter, FBA are hosting a Pro Bono Luncheon on Monday, July 25, 2016 from 12:00 p.m. to 1:30 p.m. in Boise in the Clearwater Conference Room on the 4th Floor of the James A. McClure Federal Building and U.S. Courthouse.

Please join Idaho's Federal Judges; Mary Hobson, the FBA Pro Bono Liaison, and Keith Bryan (shown below), the Court's



ADR Administrator for a discussion of the need for pro bono assistance in the Federal District and Bankruptcy Courts. The Judges will both address the process and respond to questions.

We encourage everyone to attend, and you do not need to be a member of the FBA to attend. Lunch will be provided compliments of the Idaho Chapter of the Federal Bar.

Please RSVP by July 22, 2016 to Nancy Hammond of Holland & Hart at njhammond@hollandhart.com

Update Regarding Nomination of Judge David Nye

David Nye, the nominee for the U.S. District Court in Idaho, went before the Senate Judiciary Committee on June 21, 2016. The committee put him on the agenda for the executive meeting on July 7. However, that meeting was postponed until July 14. Later, the July 14 meeting was cancelled. The Senate is now on recess until September 6. Hopefully, the committee will hold an executive meeting in early September to vote Judge Nye on to the full Senate for confirmation.



U.S. Senator Mike Crapo, Judge David Nye, his wife Katre, daughter-in-law Sarah, and son Jeff Nye, who works in D.C. at Kirkland & Ellis, and U.S. Senator Jim Risch

Taken in June, 2016, in Washington, D.C. at Nye's Senate confirmation hearings

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