



# Sidebar

## Idaho Chapter Federal Bar Association Quarterly Newsletter

### A MESSAGE FROM J. WALTER SINCLAIR, PRESIDENT

The Idaho Chapter of the Federal Bar Association is planning an active and hopefully educational and enjoyable schedule of events for 2016. We are planning a series of Brown Bag lunches presented by the Federal Judges and Clerks in the North, East and Boise. The first ones were in Moscow and Coeur d'Alene on February 3rd and 4th and both were a great success. Those programs addressed Proportionality as set forth in the revisions to the Federal Rules of Civil Procedure and as seen from the Bench's perspective. This same program was offered in Pocatello and Idaho Falls on March 3rd and 4th, respectively and will be held in Boise on April 19th, as well as at the Tri-State conference in the fall.

The Federal Bar Association's mission is to serve as federal practitioner and liaison with the Court. We are reinstituting our newsletters to our members, as you can see, and soon we will be including some key case decisions with analysis by some of our members. In addition, we will be sponsoring weekly and/or monthly key case decision summaries that will be available to all attorneys who are on the ECF system.

We have recruited Mary Hobson to be our Pro-Bono liaison with the Court and you will be hearing from her shortly to invite you to a luncheon at the Federal Courthouse to discuss the Pro-Bono program and how you might become involved. Several of the Federal Judges will attend to discuss the needs of the Federal Court and we hope to see you there.

We are sponsoring the Tri-State Conference (Idaho, Utah and Wyoming) this October 13-15, 2016 in Sun Valley. We already have a good start on our program and it promises to be very interesting with another presentation and discussion of Proportionality under the Federal Rule amendments, as seen by the Courts in Idaho, Utah and Wyoming. We will also be having programs dealing with Bankruptcy issues, Criminal matters and our ever popular Judges' panel with Judges from all of three States as well as Judge N. Randy Smith from the Circuit Court.

We have already scheduled a date for our Holiday Party, which will be held at the Crane Creek Country Club on December 8th. Please hold that date

on your calendar and plan on attending to network with the Court.

As we develop our programs this year, we encourage you to suggest any additional programs you would like to see us develop. To serve our membership, we need to be a responsive as possible. In addition to all of our Chapter Activities, the national will be providing hundreds of hours of CLE on various topics for your benefit, along with many other benefits. We have a liaison communicating with both the University of Idaho Law School Lawyer Advisor Committee and Concordia University School of Law.

I will close by noting that we have asked and Susie Headlee has agreed to continue to serve as our Executive Director. Susie has been with us since our inception back in 2004 and continues to be an incredible asset and driving force for our Chapter. She and I will



attend a leadership conference in May in Washington D.C. to see what other ideas we can bring back to our Chapter.

We would encourage you to please invite your colleagues to join the Idaho Chapter of the FBA, for our numbers are important to our success. And again, let us know what more we can do to serve you.

~ J. Walter Sinclair, President

## Government Relations Update

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

With the President's nomination of Judge Merrick Garland to the Supreme Court, the impasse between the



White House and the Senate majority over the vacancy left by the late Justice Scalia continues. Republican Senate leaders have made it clear that they don't intend to take up nominee or hold hearings during the remainder of this year. Their resistance hinges on the tipping-point power of the vacancy Scalia left behind, and their view that the American people, not the Senate, should decide who should make the appointment through their vote in November for the presidency. Historical precedents will be argued by both sides in the days ahead, as part the latest chapter in a partisan decades-long war over judicial nominations. If left unattended for the remainder of this Congress, a vacancy will likely remain on the Court for the majority of two of its terms.

## Judicial Funding

The federal Judiciary on February 12 transmitted its fiscal year 2017 budget request to Congress, seeking \$7.0 billion in discretionary appropriations, a 3.2 percent annual increase. Of that amount, a significant share (\$5.1 billion) is dedicated toward salaries and operating expenses of the regional

circuit courts of appeals, district and bankruptcy courts, and probation and pretrial services offices. Additional funding for probation services, defender services, federal court security and juror fees are also included in the appropriations request.

The increase in probation funding (\$6.7 million) is linked to the highest-ever probation caseload increase faced by federal probation officers, triggered by the early release of thousands of drug trafficking felons from federal prison, due to sentencing reductions calibrated by the U.S. Sentencing Commission. Six-thousand drug trafficking offenders were released early in 2015, and another eight-thousand inmates will be released early in 2016.

The Judiciary has requested a \$6 an hour above-inflation rate increase from \$131 to \$137 for Criminal Justice Act (CJA) attorneys in non-capital cases and an increase in the daily juror attendance fee from \$40 to \$50. This would mark the first jury duty rate increase since December 1990 and respond to the financial burden associated with jury duty for the approximately 40 percent of private sector workers who have no access to paid jury leave.

Reflecting Congressional a shortened election year-calendar, as well as confidence in the Judiciary's stewardship of its resources, the House and Senate appropriations committees have signaled that they do not intend to hold hearings this spring on the Judiciary's FY 2017 funding request, as they traditionally do. The only hearing that Judiciary officials are likely to testify at involved a March 1 hearing on "Saving Taxpayer Dollars by Reducing Federal Office Space Costs," convened by the House Transportation and Infrastructure Committee. Judge D. Brooks Smith, chair of the Judicial Conference's Space and Facilities Committee, testified and pointed to continuing work in cutting courthouse and office space costs. The Judiciary already has accomplished more than half of its five-year target for

reducing building space 3 percent by September 2018.

Judge Brooks also committed the Judiciary to keeping new construction projects on budget. In December 2015, Congress authorized a lump-sum appropriation of \$948 million that will pay for eight courthouse construction projects, in Nashville, Tennessee; Toledo, Ohio; Charlotte, North Carolina; Des Moines, Iowa; Greenville, South Carolina; Anniston, Alabama; Savannah, Georgia; and San Antonio, Texas. A ninth project, in Harrisburg, Pennsylvania, received partial funding. Most of the courts had been waiting 15 years or more for construction funding.

## JUDICIAL VACANCIES

Jurisdiction	Vacancies	Nominees Pending
Supreme Court	1	0
Courts of Appeal	9	5
District Courts	64	28
Internat'l Trade	4	4
Federal Claims	6	5
Totals	82	42

## Splitting the Ninth Circuit

Three legislative approaches toward realigning the Ninth Circuit have surfaced in the House and Senate over the past month. The approaches vary on how large a new Twelfth Circuit would become, or alternatively how small the Ninth Circuit would become.

Efforts to reduce the size of the Ninth Circuit have been floated for decades, but failed for various reasons. Proponents say the court is oversized and overworked. The last time the Congress took a serious look at the issue was in 2005 when opposed splitting the Circuit. The span of time since then, though, will prompt renewed FBA study of the issue and conversation among its chapters and constituents. The three legislative proposals are:

**Sen. Flake/Rep. Salmon (S. 2490, H.R. 4457).**

Would divide the Ninth Circuit into a smaller Circuit consisting of California, Guam, Hawaii, Northern Mariana Islands, Oregon, and Washington. He would create a new Twelfth Circuit consisting of Alaska, Arizona, Idaho, Montana, and Nevada.

**Sen. Daines/Rep. Simpson (S. 2477, H.R. 166).**

Would divide the Ninth Circuit into an even smaller Circuit than Flake/Salmon. It would consist only of California, Guam, Hawaii, and Northern Mariana Islands. Would create a new Twelfth Circuit consisting of Alaska, Arizona, Idaho, Montana, Nevada, Oregon and Washington.

**Sen. Sullivan/Sen. Daines (S. 2475).**

Would establish a Commission on Structural Alternatives for the Federal Courts of Appeals, similar to the commission chaired by the late Justice Byron White in the late 1990's. The Commission would study and make recommendations to Congress and the President on circuit restructuring with particular emphasis on the Ninth Circuit.

**AROUND TOWN**

at Chapter Events



## ENCRYPTION

Legislation has been introduced in Congress to establish a special commission to make recommendations on the thorny policy and legal challenges posed by encryption. Representative Michael McCaul and Senator Mark Warner have introduced companion bills to create the National Commission on Security and Technology Challenges, charged with examining and reporting on the implications of encryption on a host of issues, including national security, public safety, data security, privacy, innovation and global commerce.

The 16 members of the commission are to be appointed by Congressional leaders and the President within 30 days of the bill's enactment, and the commission's first meeting must take place within 60 days. The panel, which would have the power to hold hearings and issue subpoenas, is to draw up an interim report within six months, and a final report, with recommendations agreed to by 12 of the 16 commission members, within a year.

The legislation comes amid a legal battle in federal court (CD-CA) between the U.S. government and Apple Inc. about how to break into the encrypted smartphone belonging to one of the San Bernardino terrorists.

## Criminal Justice Reform

Rising concerns about how far a sweeping Senate criminal justice overhaul bill would go, especially during an election year, have slowed down the bill's progress and likely sealed its fate for the rest of the calendar-shortened session. While proponents continue to remain upbeat in their public statements, the chances for passage of a broad sentencing and corrections bill are slim.

The Sentencing Reduction and Corrections Act, S. 2123, passed the Senate Judiciary Committee four months ago on a 15-5 vote. Among other things, the measure would lower mandatory minimum sentences for drug trafficking offenses and broaden judicial discretion in the sentencing of traffickers. Opponents have criticized the inclusion of armed, violent criminals among those who would receive relief under the legislation, along with the breadth of discretion conferred to judges to override minimums.

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