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Introduction

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Ninth Circuit Court of Appeals

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INTRODUCTION

THE HONORABLE SIDNEY R. THOMAS

On behalf of the Ninth Circuit Court of Appeals, I thank Golden Gate University Law Review for its continued annual tradition of reviewing opinions of our Court. Not only does our Circuit have the largest volume of appellate decisions, but the most diverse. This year, we addressed serious legal issues involving immigration, free speech, the environment, elections, intellectual property, energy, privacy, emerging technologies, crime, bankruptcy, securities, antitrust, taxation, health care, communications, agriculture, education, territorial rights, religion, and sports.

The Ninth Circuit remains the most innovative and transparent circuit. We began allowing the media to record oral arguments in 1996. Since then, cameras have been allowed in innumerable Ninth Circuit appellate proceedings. Some of these cases drew great public interest and were watched by millions of viewers nationally and even internationally. In 2008, we made digital audio recordings available to the public via our court website. In 2010, we commenced video recording of all en banc oral arguments, making those video files available to the public. In 2013, we began live video streaming oral arguments of en banc cases. In 2014, the Court commenced live audio streaming of all oral arguments. In 2015, we began live video streaming of all oral arguments. Currently, we are the only circuit to live broadcast every appellate oral argument. In 2015, we began archiving all video recordings of oral arguments, and our archived videos have been viewed well over a million times. Our commitment to transparency has allowed attorneys, clients, educators, students, and the public to view our Court in action.

A large appellate case volume requires innovative case processing techniques. Through the leadership of past Chief Judges and court staff, particularly Chief Judge James R. Browning and our longtime Clerk of Court and Circuit Executive Cathy Catterson, we have developed effective and efficient methods of resolving appeals.

The Ninth Circuit Mediator's office has been a remarkable success story. Each year, our mediators resolve well over 1,000 appeals—often

exceeding the total case output of smaller circuits. When a case is settled through mediation, the parties achieve a finality that is often not possible through resolution by panel adjudication, which may result in reversal or remand for further proceedings.

The Ninth Circuit is presently the only circuit to have an Appellate Commissioner to relieve circuit judges and district judges of a large volume of properly delegable judicial tasks. The Appellate Commissioner rules on a wide variety of non-dispositive motions, and manages the selection, training, and compensation of appellate counsel appointed under the Criminal Justice Act. The Commissioner acts as special master for the court, conducting hearings and preparing orders and reports and recommendations in attorney disciplinary matters, applications for fee awards in civil appeals, and requests by criminal defendants for self-representation on appeal. All of those activities allow circuit judges to concentrate on the substance of appeals, rather than on administrative tasks.

Nearly 50% of our appeals are filed by pro se litigants. Our Pro Se Unit manages these cases, allowing the vast majority of the appeals to be presented to judges sitting on judicial screening panels. The Unit also identifies cases in which pro bono representation is appropriate. When an attorney accepts a pro se case from our pro bono program, the attorney is guaranteed oral argument, providing valuable appellate argument experience.

Because we have the collective resources to do it, the Ninth Circuit is the only circuit to profile and inventory each case when briefed. These case profiles allow us to track issues and cases. Cases involving similar questions are grouped together for oral argument to promote consistent treatment. Cases are also stayed pending resolution of dispositive issues in published opinions. This process allows us to resolve dozens of cases that were dependent on the outcome of the issue when a lead case is decided in a precedential opinion. Case and issue tracking also promote uniformity in Ninth Circuit case law.

When most people think of the Ninth Circuit, they think of the Court of Appeals. But the Court of Appeals is only a part of our Circuit. The Ninth Circuit includes 15 separate district courts, bankruptcy courts, and pretrial/probation offices. These court units are the ones that do the nuts and bolts work that directly affects the largest number of citizens. Because we have the advantage of consolidated resources, the Circuit Executive's Office provides substantial assistance to the districts in information technology, cybersecurity, space and facility planning, human resources, judicial disability, and court policy.

One of our key assets is the ability to provide quick deployment of visiting judges to districts in need. For example, when Arizona was in a judicial emergency with a skyrocketing criminal docket in 2005, we were able to quickly dispatch visiting judges from within the Circuit to solve it. Since 1999, we have made 200 visiting judge designations to Arizona, 300 to Idaho, and 100 to the Southern District of California. And 80 judges took 15 cases each to resolve 1,500 cases in California's Eastern District. Our ability to provide visiting judges from within the Circuit allows for effective case management for districts in need, as well as affording efficient use of our judicial resources.

We continue to explore ways to improve the administration of justice in the West. For example, one of our current challenges is pro se prisoner litigation. Approximately 40% of our pro se appeals are filed by pro se prisoners. Of the pro se civil cases filed in district court, 64% are prisoner pro se petitions. To find better ways of managing this caseload, and addressing the root causes underlying the controversies, we recently convened a prisoner litigation summit, bringing together judges, pro se law clerks, federal and state corrections officers, civil rights attorneys, state deputy attorney generals, and academics. The summit was an enormous success, identifying a number of measures that could be taken to reduce litigation and improve administration. State task forces were established to implement the suggestions, where appropriate for their detention facilities.

Judges from throughout the Circuit contribute to the effort to improve judicial administration. Our Fairness Committee has been studying techniques and providing advice on how judges and juries can avoid implicit bias. The Wellness Committee has produced a number of programs to prevent and cope with judicial disability. Our Space and Security Committee has concentrated on reducing our space requirements, saving the taxpayers over \$10 million a year. A special ad hoc committee is examining ways of sharing administrative resources in the bankruptcy and district courts. Our Jury Trial Improvement Committee completed two major sets of recommended jury reforms. The Courts and Communities Committee continues to promote civics education and community outreach. It organized a highly successful circuit-wide essay and video contest for high school students. Our Justice Anthony M. Kennedy Library and Learning Center in Sacramento has been a leader in our community outreach efforts.

We will continue to face significant challenges, particularly in times of tight budgets and large caseloads. However, the Circuit is committed to providing the access to justice in the West and creating an atmosphere in which judges and lawyers can do their best work.

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In the end, our product is the judicial decision, and ultimately we will be judged by how well we perform that task. I again thank Golden Gate University Law Review for its continued analysis of our opinions, an endeavor that benefits us, the bar, and the public.