

No. \_\_\_\_\_

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**In the**  
**Supreme Court of the United States**

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Edward Monet Knight,

Petitioner,

v.

United States of America,

Respondent.

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On Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Ninth Circuit

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**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

No. 21-10197

*Plaintiff-Appellee,*

D.C. No.

v.

3:19-cr-00038-  
MMD-CLB-1

EDWARD KNIGHT,

OPINION

*Defendant-Appellant.*

Appeal from the United States District Court  
for the District of Nevada  
Miranda M. Du, Chief District Judge, Presiding

Argued and Submitted November 16, 2022  
San Francisco, California

Filed January 4, 2023

Before: Sidney R. Thomas and Mark J. Bennett, Circuit  
Judges, and Robert S. Lasnik,<sup>\*</sup> District Judge.

Opinion by Judge Lasnik

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<sup>\*</sup> The Honorable Robert S. Lasnik, United States District Judge for the  
Western District of Washington, sitting by designation.

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**SUMMARY\*\***

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**Criminal Law**

The panel affirmed Edward Knight's robbery convictions in a case in which a juror participated remotely in the first two days of trial.

Knight asserted that permitting a juror to participate remotely via Zoom violated his Fifth and Sixth Amendment rights, that the error was structural and could not be waived, and that he is therefore entitled to a new trial without having to show prejudice.

The panel assumed without deciding that criminal defendants have a constitutional right to the in-person participation of jurors during their trial. Knight asserted that the alleged error is akin to depriving him of his right to a jury trial, depriving him of his right to a fair and impartial jury, depriving him of a representative jury, and/or depriving him of his right to confront witnesses. The panel wrote that none of these comparisons is apt, as there is no indication in the record—and no reason to suppose—that the remote participation of a duly empaneled juror interfered with the functioning of the jury, somehow made that juror partial or unrepresentative, or impacted the procedures used for the presentation of witnesses. The panel wrote that allowing remote juror participation does not impact the entire framework of the trial in ways that cannot be accurately measured on review. Rather, it merely creates room for the types of problems and errors identified by Knight, such as

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\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

difficulties in seeing exhibits, hearing testimony, and/or viewing witnesses. But none of those errors will necessarily arise simply because a juror is participating remotely. The panel wrote that there is no case law or record evidence to support a presumption that the remote participation of a juror will always render a trial unfair and the judgment unreliable; the alleged error simply does not fall within the limited class of structural errors that cannot be waived and which require automatic reversal.

Noting that non-structural errors can be waived, the panel wrote that the procedure the district court used to confirm that Knight's waiver was knowing, voluntary, and intelligent was sufficient. Knight conceded that he consented to remote juror participation, but argued that the district court did not obtain a valid waiver because it did not inform him of the constitutional nature and implications of waiver. The panel wrote that this argument fails in light of Knight's knowing, intentional, and voluntary abandonment of the claimed right.

The panel addressed other issues in a concurrently filed memorandum disposition.

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## COUNSEL

Wendi L. Overmyer (argued) and Aarin E. Kevorkian, Assistant Federal Public Defenders; Rene L. Valladares, Federal Public Defender; Federal Public Defender's Office, Las Vegas, Nevada; for Defendant-Appellant.

William R. Reed (argued), Peter H. Walkingshaw, and Robert L. Ellman, Assistant United States Attorneys; Jason M. Frierson, United States Attorney; Elizabeth O. White,

Appellate Chief; Office of the United States Attorney, Reno, Nevada; Daniel D. Hollingsworth, Attorney, Office of the United States Attorney, Las Vegas, Nevada; for Plaintiff-Appellee.

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## **OPINION**

LASNIK, District Judge:

In July 2019, two stores were robbed in Sparks, Nevada. After a six-day trial, Knight was convicted of the robberies and sentenced to 169 months' imprisonment followed by five years of supervised release. We consider in this opinion Knight's argument that the convictions must be vacated because the district court structurally erred by permitting a juror to participate remotely in the first two days of trial. The other issues Knight raises on appeal are addressed in a separate Memorandum Disposition filed concurrently with this Opinion.

### I.

Knight's criminal trial began on March 8, 2021, with jury selection. The jury was empaneled that day. The next morning, Juror 10 notified the court that his wife was ill. Given the possibility that Juror 10 could be infected with the COVID-19 virus, the district court conferred with the parties to determine how best to proceed, proposing three options:

One is to allow [Juror 10] to participate in the trial by Zoom. He could listen to the testimony, view the evidence by Zoom, and if by the time the jury begins deliberation he is—his wife is clear, then he can join the

deliberation; if not, then I would dismiss him at the time if he could not join the deliberation. That way, I still have two alternates for awhile [sic].

The second option is to dismiss him and have one alternate for the trial, really, before opening even starts.

The third option is to delay trial until [Juror 10] can – is, essentially, permitted to return to normal activities.

The government preferred that Juror 10 be excused from service, citing potential technological problems with remote service. Knight's counsel recognized that sharing exhibits with a remote juror would require a collaborative solution and that the juror should be admonished to not access the internet, not use his phone, and devote his full attention to the proceedings, but preferred the first option over dismissal or delay. The district court then addressed Knight directly:

THE COURT: . . . Mr. Knight, if—you can insist that all the jurors participate at the trial in person. But if you agree to have [Juror 10] watch the trial via Zoom—and of course he would have to participate with deliberations in person, but, for now, he could watch the trial via Zoom. If you consent to it, I will take that approach.

Do you agree?

DEFENDANT KNIGHT: Yes, ma'am. I agree.

THE COURT: Have you had a chance to talk to your attorney about that option before consenting?

DEFENDANT KNIGHT: Yes, ma'am.

THE COURT: I want to make sure you understand that you have the option of electing not to proceed with that option. If you object to proceeding with that option, I will not proceed with that option.

Do you understand that?

DEFENDANT KNIGHT: Yes, ma'am.

THE COURT: Knowing that, is it still your decision to consent to have [Juror 10] participate and view the trial via Zoom?

DEFENDANT KNIGHT: Yes, ma'am.

THE COURT: All right.

I find that Mr. Knight understands that he has the right to insist that [Juror 10] participate in the trial in person, and he's waived that right and consents to have [Juror 10] view the trial via Zoom for now.

At the end of the day, the district court noted for the record that she and her clerk could see Juror 10 on their computer screens and that the clerk and Juror 10 had established a procedure for him to notify the clerk if he were not able to hear or see what was going on in the courtroom.

By that point, the government had identified “five serious concerns” with proceeding with a remote juror and requested that Juror 10 be excused and replaced with one of the alternates. The government argued that if its objections were overruled, the district court should again question Knight and his counsel to confirm their consent to proceeding with a remote juror and to obtain a waiver of any right to challenge the remote juror procedure on appeal. Defense counsel reiterated that Mr. Knight fully consented to the juror’s remote participation, but he declined to waive his client’s right to attempt to vitiate that consent on appeal or to challenge a defect that might arise out of the remote participation. The district court recognized that there might be challenges raised on appeal, such as an assertion that the waiver was not knowing and voluntary or an argument that the asserted right to an in-person jury cannot be waived, but wanted Knight’s agreement that “he’s not going to challenge his own consent to have [Juror 10] participate by video.” Defense counsel offered to “make a full record that [Knight] absolutely was advised appropriately, and that he fully consents, and that his consent . . . is knowing, voluntary, and intelligent, a hundred percent.” The district court again addressed Knight directly:

THE COURT: . . . Mr. Knight, let me ask you again. You’ve heard some exchange now. I want to make sure that you know you have a right to insist that [Juror 10] participate at this trial in person.

Do you understand that?

DEFENDANT KNIGHT: Yeah. I understand what's going on.

THE COURT: And this morning you've had a chance to talk to your attorney about waiving that right and allowing [Juror 10] to participate by video, is that right?

DEFENDANT KNIGHT: Yes, ma'am.

THE COURT: Having conferred with your attorney, is it your decision to consent to have [Juror 10] . . . participate and view this trial by video?

DEFENDANT KNIGHT: Yes, ma'am.

THE COURT: All right.

I still find that Mr. Knight understands his right, and that his consent is knowing and voluntary and I will accept his consent.

With the consent of Knight and his counsel, Juror 10 participated remotely via Zoom for two days. Juror 10 was able to return to the courtroom on March 11th.

## II.

On appeal, Knight asserts that permitting a juror to participate remotely in his criminal trial violated his Fifth and Sixth Amendment rights, that the error was structural and could not be waived, and that he is therefore entitled to

a new trial without having to show prejudice. We will assume without deciding that criminal defendants have a constitutional right to the in-person participation of jurors during their trial. Nevertheless, Knight has not shown that a violation of that right constitutes reversible error in the absence of resulting prejudice.

Structural errors “infect the entire trial process,” *Brech* v. *Abrahamson*, 507 U.S. 619, 630 (1993), and “necessarily render a trial fundamentally unfair,” *Rose* v. *Clark*, 478 U.S. 570, 577 (1986)). They are also “rare.” *Washington* v. *Recuenco*, 548 U.S. 212, 218 (2006). The Supreme Court has “repeatedly recognized that the commission of a constitutional error at trial alone does not entitle a defendant to automatic reversal.” *Id.* Indeed, “if the defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any other [constitutional] errors that may have occurred” are not structural and are subject to the harmless-error analysis of Fed. R. Cr. P. 52(a). *Neder* v. *United States*, 527 U.S. 1, 8 (1999) (quoting *Rose*, 478 U.S. at 579). The limited circumstances in which structural errors have been found include a biased trial judge, *Tumey* v. *Ohio*, 273 U.S. 510 (1927), denial of counsel, *Gideon* v. *Wainwright*, 372 U.S. 335 (1963), denial of self-representation, *McKaskle* v. *Wiggins*, 465 U.S. 168 (1984), denial of public trial, *Waller* v. *Georgia*, 467 U.S. 39 (1984), race discrimination in the selection of the grand jury, *Vasquez* v. *Hillery*, 474 U.S. 254 (1986), directing entry of judgment in favor of the prosecution, *Rose*, 478 U.S. at 578, a defective reasonable-doubt instruction, *Sullivan* v. *Louisiana*, 508 U.S. 275 (1993), and failing to give oral instructions to the jury, *United States* v. *Becerra*, 939 F.3d 995 (9th Cir. 2019). Defining features of a structural error include that (1) it deprives defendants of the “basic

protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence,” *Neder*, 527 U.S. at 8-9 (internal quotation marks and citation omitted), and (2) it “def[ies] analysis by harmless error standards” because (a) the right at issue protects some interest other than avoiding erroneous convictions, (b) the effects of the error are difficult to identify or measure, and/or (c) the error is of a nature that “always results in fundamental unfairness,” *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1907–08 (2017) (internal quotation marks and citation omitted).

Knight asserts that the error alleged here, namely allowing a juror to participate in a criminal trial via Zoom, is akin to depriving him of his right to a jury trial, depriving him of his right to a fair and impartial jury, depriving him of a representative jury, and/or depriving him of his right to confront witnesses. None of these comparisons is apt. There is no indication in the record—and no reason to suppose—that the remote participation of a duly empaneled juror interfered with the functioning of the jury, somehow made that juror partial or unrepresentative, or impacted the procedures used for the presentation of witnesses. Unlike a deprivation of counsel, a biased adjudicator, or the failure to ensure that the jurors are instructed on the law, allowing remote juror participation does not impact the entire framework of the trial in ways that cannot be accurately measured on review. Rather, it merely creates room for the types of problems and errors identified by Knight, such as difficulties in seeing exhibits, hearing testimony, and/or viewing witnesses. But none of those errors will necessarily arise simply because a juror is participating remotely. Knight asks us to presume that the remote participation of a juror will always render a trial unfair and the judgment unreliable,

but there is no case law or record evidence to support such a presumption.<sup>1</sup> The alleged error simply does not fall within the limited class of structural errors that cannot be waived and which require automatic reversal.

Non-structural errors can be waived. “‘No procedural principle is more familiar to [the Supreme Court] than that a constitutional right,’ or a right of any other sort, ‘may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.’” *United States v. Olano*, 507 U.S. 725, 731 (1993) (quoting *Yakus v. United States*, 321 U.S. 414, 444 (1944)). The government argues that Knight knowingly, intentionally, and voluntarily waived any right he may have had to the in-person participation of Juror 10. We review the adequacy of a criminal defendant’s waiver of constitutional rights *de novo*. *United States v. Laney*, 881 F.3d 1100, 1106 (9th Cir. 2018).

Waiver is the “intentional relinquishment or abandonment of a known right.” *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Where a waiver would deprive the defendant of a constitutional right, courts generally require that it be a voluntary, knowing, and intelligent choice among alternative courses of action, made without coercion and with sufficient awareness of the relevant circumstances and likely consequences that would arise from the waiver. *See, e.g., Brady v. United States*, 397 U.S. 742, 748–49 (1970);

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<sup>1</sup> In fact, jurors, attorneys, and trial judges who have participated in remote trials largely commend the process, noting advantages in observing witnesses and assessing body language and demeanor. Jud. Council of the Ninth Cir., 2020 Annual Report, U.S. Cts. for the Ninth Cir. 27, [https://cdn.ca9.uscourts.gov/\\_datastore/judicial-council/publications/AnnualReport2020.pdf](https://cdn.ca9.uscourts.gov/_datastore/judicial-council/publications/AnnualReport2020.pdf).

*Parke v. Raley*, 506 U.S. 20, 29 (1992). “Whether a particular right is waivable; whether the defendant must participate personally in the waiver; whether certain procedures are required for waiver; and whether the defendant’s choice must be particularly informed or voluntary, all depend on the right at stake.” *Olano*, 507 U.S. at 733.

The procedure that the district court used in this case to confirm that the waiver was knowing, voluntary, and intelligent was sufficient. Knight was specifically informed on several occasions that he had the right to insist that all jurors be present in the courtroom and, when questioned by the district court, he indicated that he understood that he had that right. Knight was present when the various options for dealing with Juror 10’s situation were discussed, including the juror’s dismissal and replacement with an alternate. He was present as counsel identified all the things that could go wrong with remote participation. And he affirmatively indicated that he understood what was going on. Having had the opportunity to confer with counsel, Knight chose to waive the right to have all jurors participate in person and agreed to Juror 10’s remote participation.

The district court found that the waiver was knowing and voluntary. Knight concedes that he consented to remote juror participation, but argues that the district court did not obtain a valid waiver because it did not inform him of the constitutional nature and implications of waiver. The argument is unavailing. It fails in light of Knight’s knowing, intentional, and voluntary abandonment of the claimed right. The district court repeatedly advised Knight that he could insist on in-person juror participation at any time, ensured that Knight spoke with his counsel about the waiver, and fully considered concerns raised by both parties. There can

be no error if the rule on which the defendant relies has been effectively waived. *Olano*, 507 U.S. at 732–33 (“The first limitation on appellate authority under Rule 52(b) is that there indeed be an ‘error.’ Deviation from a legal rule is ‘error’ unless the rule has been waived. For example, a defendant who knowingly and voluntarily pleads guilty in conformity with the requirements of Rule 11 cannot have his conviction vacated by court of appeals on the grounds that he ought to have had a trial. Because the right to trial is waivable, and because the defendant who enters a guilty plea waives that right, his conviction without a trial is not ‘error.’”). The district court did not err when proceeding with a remote juror given Knight’s knowing, voluntary, and intelligent waiver of any right he may have had to the juror’s in-person participation.

**AFFIRMED.**

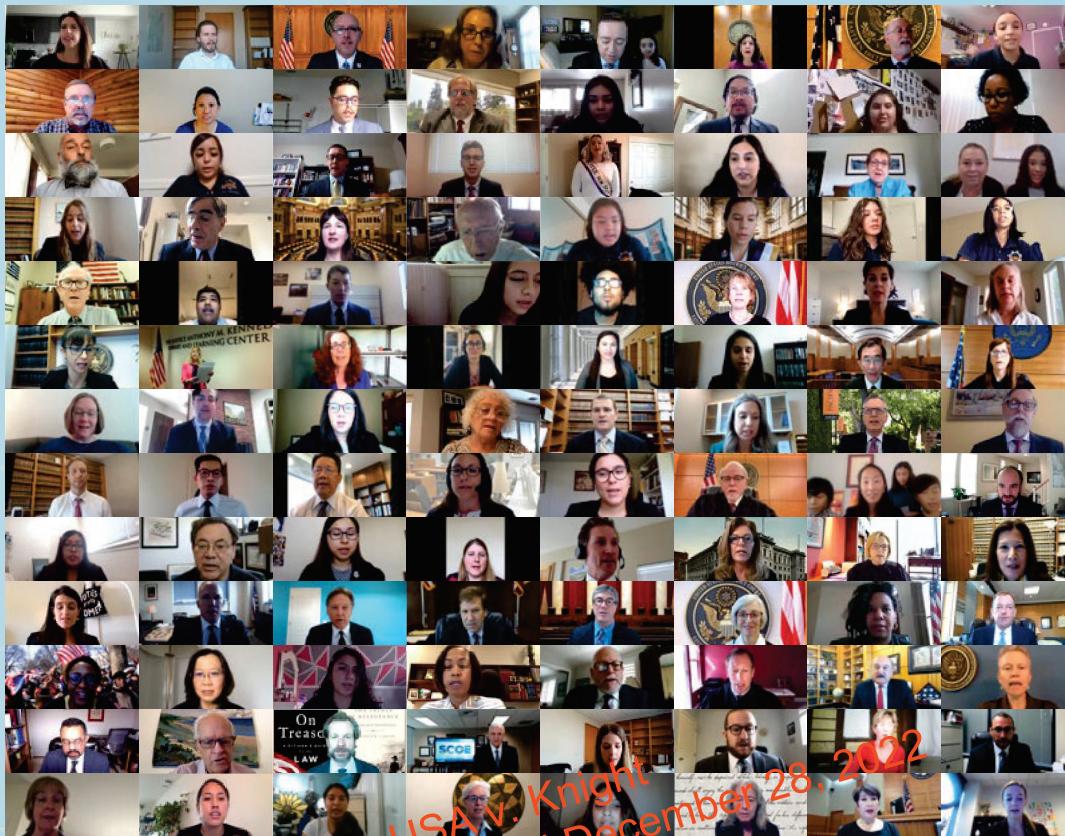
# United States Courts for the Ninth Circuit



USA v. Knight  
No. 21-10197 archived December 28, 2022

**2020**  
Annual Report

App. A, p. 14a



The image above and the covers of this report depict all of the participants in the reading of the Constitution on Constitution Day in September 2020. You can read more about this event on page 46 of this report.

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The Office of the Circuit Executive would like to acknowledge the following for their contributions to the 2020 Ninth Circuit Annual Report:

**The Honorable Sidney R. Thomas**, Chief Judge, U.S. Court of Appeals for the Ninth Circuit

**The Honorable Anthony J. Battaglia**, Senior District Judge, U.S. District Court, Southern District of California

**The Honorable Miranda M. Du**, Chief District Judge, U.S. District Court, District of Nevada

**The Honorable Marsha J. Pechman**, Senior District Judge, U.S. District Court, Western District of Washington

**Elizabeth A. Smith**, Circuit Executive, Office of the Circuit Executive, U.S. Courts for the Ninth Circuit

**Molly C. Dwyer**, Clerk of Court, U.S. Court of Appeals for the Ninth Circuit

**Kathleen J. Campbell**, Executive Officer/Clerk of Court, U.S. Bankruptcy Court, Central District of California

**Debra D. Lucas**, District Court Executive/Clerk of Court, U.S. District Court, District of Arizona

**Susan M. Spraul**, Clerk, Ninth Circuit Bankruptcy Appellate Panel

**Gina Faubion**, Chief Pretrial Services Officer, Eastern District of California

**Jonathan K. Skedeleski**, Chief Probation Officer, District of Hawaii

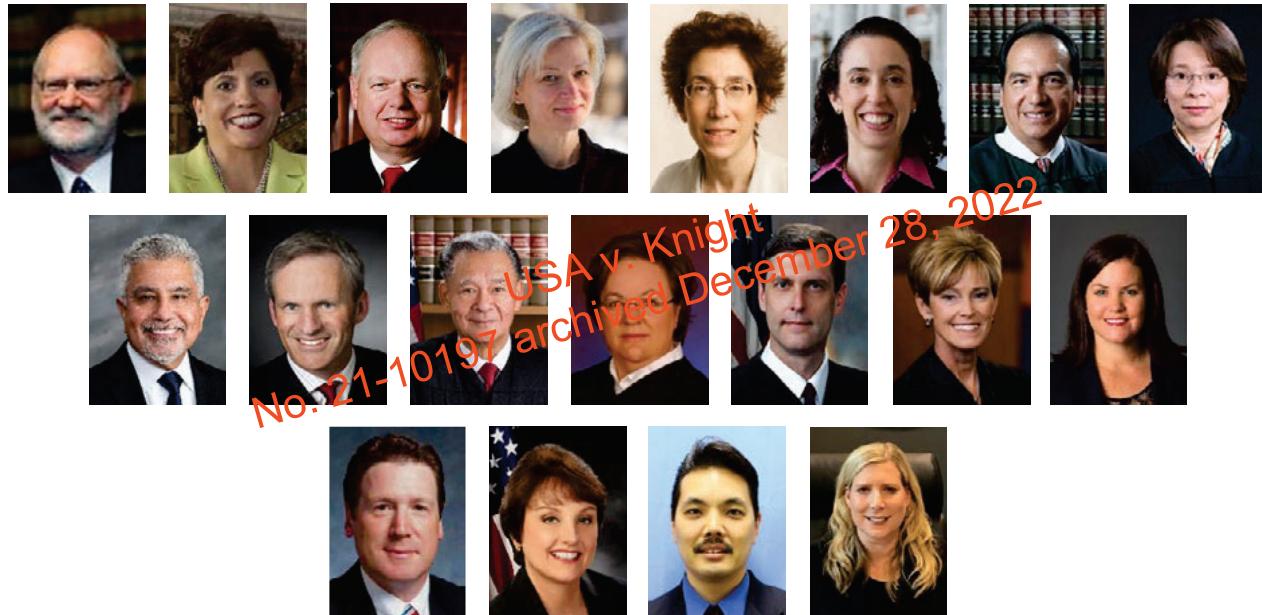
**Heather E. Williams**, Federal Public Defender, Eastern District of California

**Lisa S. Christensen**, Human Resources Specialist and Community Outreach Coordinator, Southern District of California

# The Judicial Council of the Ninth Circuit

## Mission Statement

The mission of the Judicial Council of the Ninth Circuit is to support the effective and expeditious administration of justice and the safeguarding of fairness in the administration of the courts within the circuit. To do so, it will promote the fair and prompt resolution of disputes, ensure the effective discharge of court business, prevent any form of invidious discrimination, and enhance public understanding of, and confidence in, the judiciary.



## The Judicial Council of the Ninth Circuit

Chief Circuit Judge Sidney R. Thomas, Circuit Judge Mary H. Murguia, Senior Circuit Judge N. Randy Smith, Circuit Judge Morgan Christen, Circuit Judge Sandra S. Ikuta, Circuit Judge Michelle T. Friedland, Chief District Judge Ricardo S. Martinez (WA-Western), Senior District Judge Phyllis J. Hamilton (CA-Northern), Chief District Judge Philip S. Gutierrez (CA-Central), Chief District Judge Brian Morris (MT), Senior District Judge Ronald S.W. Lew (CA-Central), District Judge Rosanna Malouf Peterson (WA-Eastern), Chief District Judge J. Michael Seabright (HI), Chief Bankruptcy Judge Brenda Moody Whinery (AZ), Magistrate Judge Stacie F. Beckerman (OR), District Clerk John P. Morrill (CA-Southern), Bankruptcy Clerk Kathleen J. Campbell (CA-Central), Chief Probation Officer Jonathan Skedeleski (HI) and Chief Pretrial Services Officer Gina Faubion (CA-Eastern).

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# Foreword

The COVID-19 pandemic presented serious challenges to court operations throughout the Ninth Circuit. However, through the determined and innovative work of our judges and staff, our courts continued to function and deliver justice. With the use of video, and the implementation of health safeguards, we were able to protect judges, employees, litigants and the public, while also upholding our constitutional responsibilities. I could not be prouder of our judges and court employees. As the Ninth Circuit continues to navigate the impact of COVID-19 on the courts, I want to assure you that the health, well-being and safety of the community is our highest priority.

On the court of appeals oral arguments continued without interruption via video. We were fortunate to have had long experience with video arguments and streaming. The first remote video arguments in our circuit were held in 1998. We became the first court to livestream all oral arguments in 2014, and we began archiving those arguments in 2015. There are now approximately 9,000 archived videos of oral arguments, which have been viewed over 4.3 million times. With this electronic experience, our court was uniquely positioned to function during the pandemic crisis, with attorneys and judges appearing for oral arguments remotely. In addition, we continued our long-

standing practice of transparency by livestreaming oral arguments and archiving all video arguments on the court's website. Our court held 1,034 fully remote arguments hearings between March 23 and December 31, including en banc hearings. One en banc case heard in March was viewed live by 3,600 viewers. The total watch count for that case was over 21,000.

In a year like no other, our court of appeals continued to be the nation's busiest federal appellate court, with 10,400 appeals commenced in fiscal year 2020—up 2.9% from FY 2019. We received 3,048 new petitions for review of decisions by the Board of Immigration Appeals—50.2%



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of all immigration appeals in the United States.

There were 59,995 new filings in our district courts, down 9.1% from the previous fiscal year. Bankruptcy filings in the circuit numbered 102,876, down 17.9%. All bankruptcy courts in the circuit reported fewer filings in FY 2020.

I want to acknowledge the contributions of the chief judges, court unit executives, and our judicial council circuit committees during these challenging times. The level of collaboration and creative problem solving, particularly as it relates to technology driven solutions, has been very

impressive. I want to extend my appreciation to all employees within the circuit for their dedication and commitment to the mission of the courts during the pandemic.

At the onset of the pandemic, I asked the Ninth Circuit Jury Trial Improvement Committee to provide recommendations on how to resume jury trials at the appropriate time. On short notice, the committee developed extensive recommendations for the resumption of jury trials using appropriate health protocols, many of which were adopted nationally. District and bankruptcy courts in the circuit implemented these recommendations, utilizing multiple audio and video conferencing technologies to conduct oral arguments, preliminary hearings, arraignments, misdemeanor sentencing and even trials, remotely. I am indebted to the committee and its chair, Senior District Judge Anthony Battaglia, for their tireless efforts.

Despite the restrictions imposed by the pandemic, we made tremendous progress in implementing our Circuit Space Management Plan, which was developed in response to the national space reduction effort. The circuit has completed the 83 projects originally included in the national plan. I am pleased to report that since the start of that program in 2013 by our Space and Security Committee, courts within the Ninth Circuit

have released more than 435,000 square feet of space as of Dec. 31, 2020, with a resulting annual rent savings of \$13.4 million.

The pandemic also presented challenges to maintaining a healthy and productive workplace. Our Committee on Workplace Environment, chaired by Ninth Circuit Judge M. Margaret McKeown, initiated a series of town hall meetings for Ninth Circuit law clerks and staff to keep people connected and informed. During the first town hall meeting, key circuit leaders—Elizabeth A. Smith, circuit executive; Molly Dwyer, clerk of court; Yohance Edwards, director of workplace relations; and Laura Apperson, director of human resources—described how different members have coped with working remotely; how the court is handling upcoming video calendars; what the circuit is doing to facilitate working from home; tips and suggested tools for managing and resources available for IT; case management and mental health. The committee also continued its dedicated work to maintain and improve workplace environments throughout the circuit.

The Ninth Circuit's Wellness Committee, chaired by District Judge Phyllis J. Hamilton, provided resources and innovative ideas to help stay well and thrive during the pandemic. The committee provided recommendations on stress and life-style management during COVID-19 restrictions.

Despite pandemic limitations posed by school closures and distance learning, the circuit's Public Information and Community Outreach Committee continued its efforts with the annual circuit-wide essay and video contest for high school students. All told, nearly 1,000 young people entered the contest. "The Right to Vote: Milestone Anniversaries" was the theme of the contest. Students in grades 9-12 in public, private and parochial schools and home-schooled students of equivalent grade status were challenged to write an essay or produce a short video with the questions presented: "In the wake of the 15th and 19th Amendments, barriers remained to prevent United States citizens from voting. Do formal or informal barriers remain today? What additional changes would you make, if any, to Americans' voting rights?"

In addition to the civics contest, a number of judges held Zoom sessions teaching students in virtual classrooms about the federal courts and the rule of law. This year did not permit us to be involved with naturalization ceremonies in ballparks. However, some of our judges did officiate in naturalization ceremonies that took place in parking lots, where our new citizens took their oaths standing next to their car or sitting in their car with their masks on, or other open public spaces where they took their oaths standing six feet apart with their masks on.

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The Magistrate Judges Executive Board continued to explore opportunities for improving magistrate judge utilization across the Ninth Circuit. They also shared information and best practices as their courts adapted to the COVID-19 pandemic. Members shared their experience with how their courts were handling video settlement conferences, arrest warrants and summonses, and Central Violations Bureau procedures, among other practices amidst the pandemic.

A number of new colleagues joined us last year. Circuit Judge Lawrence VanDyke, who was confirmed in 2019, took his oath of office in 2020. The circuit welcomed eight new district judges: District Judge Joshua M. Kindred of the District of Alaska; District Judges John C. Hinderaker and Scott H. Nash of the District of Arizona; District Judges Fernando L. Aenlle-Rocha, Stanley Blumenfeld, Jr., John W. Holcomb, and Mark C. Scarsi of the Central District of California; and District Judge Todd W. Robinson of the Southern District of California; three bankruptcy judges: Natalie M. Cox of the District of Nevada, Noah G. Hillen of the District of Idaho and Jennifer E. Niemann of the Eastern District of California; and seven magistrate judges: Michael T. Morrissey of the District of Arizona; Helena M. Barch-Kuchta of the Eastern District of California; Michael J. Bordallo of the District of Guam; Daniel E. Butcher of the Southern District

of California; Pedro V. Castillo and Patricia Donahue of the Central District of California; and Alex G. Tse of the Northern District of California.

It is my honor and privilege to pay tribute to the extraordinary 50-year judicial career of Chief Judge Emeritus J. Clifford Wallace, who still takes half of a full caseload as a senior circuit judge. Judge Wallace has had an enormous and positive impact on the administration of justice in the West, the nation and the world.

This year, Circuit Judge Johnnie B. Rawlinson was honored by the Women's Chamber of Commerce of Nevada and inducted in the Nevada Women's Hall of Fame. She was awarded the Minority Lifetime Achievement award on March 7, 2020. Circuit Judge M. Margaret McKeown was elected to the American Academy of Arts and Sciences on April 23, 2020.

The court of appeals mourned the passing of Senior Circuit Judge Raymond C. Fisher, who died on Feb. 29, 2020, at the age of 80, and the passing of Senior Circuit Judge Jerome Farris on July 23, 2020, at the age of 90. Both will be sorely missed. A complete list of judges and esteemed colleagues the court family lost in 2020 is on page 16 of this report.

Finally, I want to congratulate our judges and staff for their willingness to fulfill their responsibilities and carry on their outstanding contributions to the administration of justice

in the face of a global pandemic. I hope you find this report useful in providing information about the work of our federal courts that continued despite the impact of COVID-19. ■

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# Ninth Circuit Overview

The United States Courts for the Ninth Circuit consists of the U.S. Court of Appeals for the Ninth Circuit, the federal district and bankruptcy courts within its 15 judicial districts and associated administrative units that provide various services to the courts.

Judicial districts under the jurisdiction of the Ninth Circuit include the districts of Alaska, Arizona, Central California, Eastern California, Northern California, Southern California, Hawaii, Idaho, Montana, Nevada, Oregon, Eastern Washington, Western Washington, the U.S. Territory of Guam and the Commonwealth of the Northern Mariana Islands. The establishment of the Ninth Circuit in 1866 began the development of the federal judicial system for the western United States. It is the largest and busiest federal circuit in the U.S. today.

Judges serving on the court of appeals and district courts are known as Article III judges, a reference to the article in the Constitution establishing the federal judiciary. Nominated by the president and confirmed by the Senate, Article III judges serve lifetime appointments upon good behavior. The Ninth Circuit Court of Appeals is authorized 29 judgeships and ended 2020 without a vacancy, while the district courts of the circuit were authorized 112 judgeships, 20 of which were vacant at year's end.

Federal courts also rely on senior circuit and senior district judges to assist with their workload. These are Article III judges who are eligible to retire but have chosen to continue working with reduced caseloads. On the Ninth Circuit Court of Appeals, 19 senior circuit judges were at work for most of the year, sitting on motions and merits panels, submitting briefs, serving on circuit and national judicial committees, and performing a variety of administrative matters. In the district courts within the circuit, 71 senior judges were at work, hearing cases, presiding over procedural matters, serving on committees and conducting other business in 2020.

In addition to Article III judges, the federal bench includes Article I judges, who serve as magistrate judges in the district courts and bankruptcy judges in the bankruptcy courts. Bankruptcy judges are appointed by judges of the courts of appeals and serve terms of 14 years. Magistrate judges are appointed by the judges of each district court and hold their positions for eight years. Bankruptcy and magistrate judges may be reappointed after the court conducts a performance review and considers public comment evaluations.

In 2020, bankruptcy courts in the Ninth Circuit were authorized 68 permanent and four temporary judgeships. The district courts were authorized 106 full-time and 6 part-time magistrate judges, and one combined position of part-time magistrate judge/clerk of court. Several courts also utilized recalled bankruptcy and recalled magistrate judges.

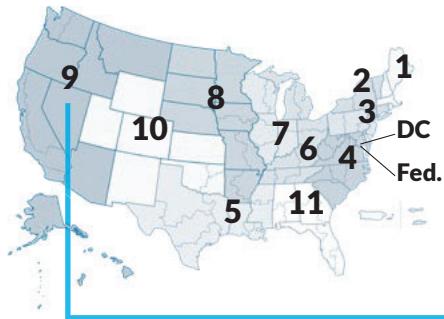
Overall, the Ninth Circuit Court of Appeals saw an increase in its caseload, while the circuit's district and bankruptcy courts had fewer caseloads in 2020. Unless otherwise noted, statistics in this report cover fiscal year 2020 ending September 30. ■

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### COURTS OF APPEALS

12 Regional Circuits + Federal Circuit



### NINTH CIRCUIT

15 Districts



- |                       |                       |                             |
|-----------------------|-----------------------|-----------------------------|
| 1 Alaska              | 6 Southern California | 11 Nevada                   |
| 2 Arizona             | 7 Guam                | 12 Oregon                   |
| 3 Central California  | 8 Hawaii              | 13 Northern Mariana Islands |
| 4 Eastern California  | 9 Idaho               | 14 Eastern Washington       |
| 5 Northern California | 10 Montana            | 15 Western Washington       |

### Ninth Circuit Article III & Article I Judges

Authorized Judgeships as of December 31, 2020

#### Circuit Judges

29

#### District Judges

112

20 Vacancies

#### Bankruptcy Judges

68

1 Temporary

#### Magistrate Judges

106 Full-time

6 Part-time

1 Combination\*

\* The District of Northern Mariana Islands is authorized a combined magistrate judge/clerk of court position.

# Judicial Council, Advisory Groups and Administration

The Judicial Council of the Ninth Circuit is the governing body for federal district and bankruptcy courts in nine western states and two Pacific island jurisdictions. The judicial council's statutory mission is to support the effective and expeditious administration of justice and the safeguarding of fairness in the administration of the courts. It has statutory authority to "make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit," [28 U.S.C. § 332(d)(1)].

The judicial council also has been delegated responsibilities by the Judicial Conference of the United States, the national governing body for the federal courts. These responsibilities include authorizing senior judge staffing levels and pay and managing the judicial misconduct complaint process.

The judicial council is chaired by the chief judge of the circuit and relies on advisory groups and committees to accomplish its governance goals. Chairs of three advisory groups attend council meetings as observers. Committee chairs submit reports to the council for each of the council meetings.

In 2020, the Judicial Council of the Ninth Circuit had three new voting members and seven new observers. New voting members are Circuit Judge Michelle T. Friedland, Chief District Judge Philip S. Gutierrez of the Central

District of California and Chief District Judge Brian Morris of the District of Montana. New observers are Chief District Judge J. Michael Seabright of the District of Hawaii; Chief Bankruptcy Judge Brenda Moody Whinery of the District of Arizona; Magistrate Judge Stacie Beckerman of the District of Oregon; District Court Clerk John Morrill of the Southern District of California; Bankruptcy Court Clerk Kathleen J. Campbell of the Central District of California; Chief Probation Officer Jonathan Skedeleski of the District of Hawaii; and Chief Pretrial Services Officer Gina Faubion of the Eastern District of California.

Under the Rules for Judicial-Contest and Judicial-Disability Proceedings, the Judicial Council of the Ninth Circuit considers petitions for review of the chief judge's orders in judicial misconduct complaints. In 2019, there were 13 petitions for review filed, all of which were resolved by the judicial council.

## Conference of Chief District Judges

The Conference of Chief District Judges advises the Judicial Council of the Ninth Circuit regarding the administration of justice in the circuit's 15 district courts. The conference, which meets twice a year, is comprised of the chief district judges of each district. Chief District Judge Phyllis J. Hamilton of the Northern District of California served as

chair of the conference in 2020. Chief District Judge J. Michael Seabright of the District of Hawaii succeeded her as chair.

## Conference of Chief Bankruptcy Judges

The Conference of Chief Bankruptcy Judges advises the Judicial Council of the Ninth Circuit on the administration of bankruptcy courts within the circuit. The conference, which also meets twice per year, consists of chief bankruptcy judges from each district, the chief bankruptcy judge of the Ninth Circuit Bankruptcy Appellate Panel and a recalled bankruptcy judge representative. Chief Bankruptcy Judge Frederick Corbit of the Eastern District of Washington chaired the conference in 2020. Chief Bankruptcy Judge Brenda Moody Whinery of the District of Arizona succeeded him as chair.

## Magistrate Judges Executive Board

The Magistrate Judges Executive Board communicates to the Judicial Council of the Ninth Circuit on behalf of the more than 120 full-time, part-time and recalled magistrate judges serving in the district courts. The 15-member board meets twice a year and holds a session with all magistrate judges at the Ninth Circuit Judicial Conference. Magistrate Judge Stacie F. Beckerman of the District of Oregon succeeded Magistrate Judge Michelle Hamilton Burns

of the District of Arizona, who has served as chair of the board since July 2018.

### Clerks of Court

Daily management of the courts rests with the chief judges and clerks and/or district executives of the court of appeals and each of the district and bankruptcy courts of the circuit. The clerks' offices process new cases and appeals, handle docketing functions, respond to procedural questions from the public and bar and ensure adequate judicial staff resources. The clerk of the court for the court of appeals also supervises the work of the Circuit Mediation Office and the Office of the Staff Attorneys, which includes the research, motions, case management and pro se litigation units. The Office of the Appellate Commissioner, also in the Office of the Clerk for the United States Court of Appeals for the Ninth Circuit, reviews Criminal Justice Act vouchers for cases the come before the court of appeals.

### Associated Court Units

Ninth Circuit courts also rely on several critical court-related agencies to ensure the fair administration of justice. The district courts maintain oversight of U.S. Probation and Pretrial Services offices. Pretrial services officers are responsible for background investigations and reports on defendants awaiting trial, while probation

## JUDICIAL COUNCIL of the NINTH CIRCUIT



officers supervise persons convicted of federal crimes after their release into the community. All but one judicial district in the circuit is served by either federal public defenders or community defenders, who represent financially eligible defendants unable to afford private counsel. Such defendants in the District of Northern Mariana Islands are represented by private attorneys provided by the District of Guam and paid through the federal Criminal Justice Act.

### Circuit Libraries

The Ninth Circuit Library System assists judges, attorneys, court staff and the public through a network of 22 law libraries housed in courthouses throughout the western states. The primary mission of court librarians is to provide research services to judges and their staff. Research librarians assist law clerks on case-related research by providing guidance and recommendations, offering training opportunities and performing direct research on more complex topics. Ninth Circuit librarians also conduct research to assist court executives and judges in the administration of local courts and on matters involving committees of the Judicial Council of the Ninth Circuit and the Judicial Conference of the U.S. Librarians also produce a range of publications and guides to inform the court community and increase the efficiency of court researchers. Library resources are made

available to the bar and public with the level of access determined by local judges.

### Office of the Circuit Executive

The Office of the Circuit Executive provides staff support to the Judicial Council of the Ninth Circuit and implements the council's administrative decisions and policies. By statute, the circuit executive is the administrative assistant to the chief judge of the circuit and secretary to the judicial council. The circuit executive and her staff assist in identifying circuit-wide needs; conducting studies; developing and implementing policies; and providing training, public information and human resources support. Circuit executive staff also coordinates building and information technology projects and advises the council on procedural and ethical matters. The Office of the Circuit Executive provides management and technical assistance to courts within the circuit upon request. It also administers the Ninth Circuit Judicial Conference.

### Office of Workplace Relations

The Office of Workplace Relations serves as a resource on workplace environment matters for the Ninth Circuit. The office implements and provides guidance on the Employment Dispute Resolution (EDR) Policy and all other related workplace policies. Office staff serves as a contact for employees who experience or witness

workplace misconduct and wish to discuss or report such workplace misconduct. The office also consults with judges, court unit executives and staff on workplace environment issues and concerns and provides support and expert advice on diversity, equity and inclusion matters. The office oversees the development and execution of training programs on workplace relations and conduct for judges and employees.

### Lawyer Representatives

Judges of the Ninth Circuit Court of Appeals and of each of the 15 district courts of the circuit appoint lawyer representatives. Lawyer representatives serve as a liaison between the federal bench and bar, fostering open communications between judges and lawyers and providing support and advice in the functioning of the courts within the circuit. Attorneys serving as lawyer representatives work closely with district, bankruptcy and magistrate judges in their home districts. They participate as members on various committees and help plan local district conferences, often serving as speakers or facilitators. Lawyer representatives also help plan the Ninth Circuit Judicial Conference, which is convened "for the purpose of considering the business of the courts and advising means of improving the administration of justice within the circuit," pursuant to 28 U.S.C. § 333. ■

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# New Judges

## Circuit Judge



Lawrence VanDyke was confirmed by the United States Senate on Dec. 11, 2019, to serve as a circuit judge for the U.S. Court of Appeals for the Ninth Circuit. He received his judicial commission on Jan. 2, 2020. Prior to his appointment to the bench, Judge VanDyke had served as deputy assistant attorney general for the U.S. Department of Justice's Environment and Natural Resources Division since 2019. Previously, he served as solicitor general for the State of Nevada, 2015-2019; as solicitor general for the State of Montana, 2013-2014; and as an assistant solicitor general for the State of Texas in 2012. Judge VanDyke engaged in private practice in Dallas, Texas, 2007-2012, and in Washington, D.C., 2005-2006. He received his B.S.E. and M.C.E.M. from Montana State University in 1997 and 2000, respectively; his B.Th. from Bear Valley Bible Institute in 2002; and his J.D. from Harvard Law School in 2005. He maintains chambers in Reno.

## District Judges



Fernando L. Aenlle-Rocha was confirmed by the United States Senate on Dec. 20, 2020, to serve as a district judge for the U.S. District Court for the Central District of California. He received his judicial commission on Dec. 22, 2020. Prior to his appointment to the federal bench, Judge Aenlle-Rocha had served as a judge of the California Superior Court, Los Angeles County, since 2017. He engaged in private practice in Los Angeles from 1999 to 2017. He served as an assistant U.S. attorney for the Central District of California and Southern District of Florida, from 1994 to 1999 and from 1990 to 1994, respectively. Prior to that, he served as a deputy district attorney for L.A. County from 1987 to 1990. Judge Aenlle-Rocha received his A.B. from Princeton University in 1987 and his J.D. from the University of California, Berkeley, School of Law, in 1986. He maintains chambers in Los Angeles.



Stanley Blumenfeld, Jr., was confirmed by the United States Senate on Sept. 15, 2020, to serve as a district judge for the U.S. District Court for the Central District of California. He received his judicial commission on Sept. 18, 2020. Prior to joining the federal bench, Judge Blumenfeld had served as a judge of the California Superior Court, Los Angeles County, since 2006. He engaged in private practice in Los Angeles from 1993 to 2006. He served in the Office of the U.S. Attorney for the Central District of California as a special assistant U.S. attorney, from 1993 to 1996, and as an assistant U.S. attorney from 1989 to 1996. Judge Blumenfeld received his B.A. from State University of New York, Binghamton, in 1984, his M.A. from New York University in 1985, and his

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J.D. from the University of California, Los Angeles, School of Law, in 1988. Following law school, he clerked for Circuit Judge Cynthia Holcomb Hall of the U.S. Court of Appeals for the Ninth Circuit from 1988 to 1989. Judge Blumenfeld maintains chambers in Los Angeles.



John C. Hinderaker was confirmed by the United States Senate on Sept. 23, 2020, to serve as a district judge for the U.S.

District Court for the District of Arizona. He received his judicial commission on Sept. 29, 2020. Prior to his appointment to the federal bench, Judge Hinderaker had served on the Arizona Superior Court, Pima County, since 2018. Previously, he engaged in private practice as an associate, then partner, at the Tucson law firm of Lewis Roca Rothgerber Christie LLP from 1998 to 2003 and from 2003 to 2018, respectively. Judge Hinderaker was a research attorney for the International Law Center for Inter-American Free Trade in Tucson in 1998. He received his B.A., with honors, in 1991 from the University of California, Santa Barbara, where he received the Golden Eagle Award for Outstanding Student-Athlete for varsity men's water polo in 1990. Judge Hinderaker was an NCAA semifinalist for men's water polo in 1990. He attended the University of Houston Law Center's Mexican Legal Studies Program in the summer of 1994 and received his J.D., magna cum laude and Order of the Coif, from the University of

Arizona, James E. Rogers College of Law, in 1996. He served as a law clerk in the U.S. District Court for the District of Arizona for District Judge John M. Roll in 1996 and for Magistrate Judge Raymond T. Terlizzi from 1996 to 1998. Judge Hinderaker maintains chambers in Tucson.



John W. Holcomb was confirmed by the United States Senate on Sept. 15, 2020, to serve as a district judge for the U.S. District Court for

the Central District of California. He received his judicial commission on Sept. 18, 2020. Before joining the federal bench, Judge Holcomb had been a partner at Greenberg Gross LLP in Costa Mesa, California, since 2009. Previously, he was a sole practitioner in Rancho Santa Margarita, California. He was an associate then partner at Knobbe, Martens, Olson & Bear, LLP, in Irvine and Newport Beach, California, from 1997 to 2001 and from 2002 to 2018, respectively. Judge Holcomb was an associate at Irell & Manella LLP, in Newport Beach, California, from 1994 to 1997. He received a four-year Navy Reserve Officer Training Corps scholarship to attend the Massachusetts Institute of Technology, where he received his B.S. in 1984. Following college, he served on active duty as a commissioned officer in the U.S. Navy from June 1984 to Aug. 1989, when he separated from active duty as a lieutenant (O-3). In 1993, Judge Holcomb received his M.B.A. and J.D., cum laude, from Harvard Business School and Harvard Law School, respectively.

Following law school, he clerked for Bankruptcy Judge Ronald Barlant of the U.S. Bankruptcy Court for the Northern District of Illinois from 1993 to 1994. He maintains chambers in Riverside.



Joshua M. Kindred was confirmed by the United States Senate on Feb. 12, 2020, to serve as a district judge for the U.S.

District Court for the District of Alaska. He received his judicial commission on Feb. 18, 2020. Prior to his appointment to the bench, Judge Kindred had been a regional solicitor and a special assistant U.S. attorney, U.S. Department of the Interior, in Anchorage since 2018. Previously, he served since 2013 as an environmental counsel for Alaska Oil and Gas Association. He served as a Violent Crimes Unit supervisor then as an assistant district attorney for the State of Alaska from 2008 to 2013. He engaged in private practice as an associate at Lane Powell PC, in Anchorage from 2007 to 2008. Judge Kindred received his B.A. from the University of Alaska, Anchorage, in 2002 and his J.D. in 2005 from Willamette University, College of Law, where he was editor-in-chief of the Willamette Law Review from 2004 to 2005. Following law school, he clerked for Chief Justice Paul J. De Muniz of the Oregon Supreme Court from 2005 to 2007. He maintains chambers in Anchorage.

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Scott H. Rash was confirmed by the United States Senate on May 19, 2020, to serve as a district judge for the U.S. District Court for

the District of Arizona. He received his judicial commission on May 27, 2020. Prior to joining the federal bench, Judge Rash had served since 2010 as a judge at Pima County Superior Court in Tucson, Arizona, where he presided over family law, civil and criminal matters. He had been co-owner of OVFP Building LLC in Tucson since 2013. Previously, Judge Rash engaged in private practice as a shareholder at Bossé Rollman, PC, (formerly known as Gabroy Rollman & Bossé PC) in Tucson from 1999 to 2010. He served as an assistant attorney general in the Arizona Attorney General's Office in Tucson from 1992 to 1999.

Judge Rash received his ~~BA~~ from the University of Arizona in 1985 and his J.D. from the University of Arizona College of Law (now James E. Rogers College of Law) in 1991. He maintains chambers in Tucson.



Todd W. Robinson was confirmed by the United States Senate on Sept. 16, 2020, to serve as a district judge for the U.S.

District Court for the Southern District of California. He received his judicial commission on Sept. 18, 2020. Prior to his appointment to the federal bench, Judge Robinson had been a senior litigation counsel since 2008 in the Office of the U.S. Attorney for the Southern District

of California, where he began working in 1997. He served as deputy chief of the General Crimes Section in 2007 and as an assistant U.S. attorney from 2005 to 2006 and from 1997 to 2003. Judge Robinson worked as an operations officer for the Central Intelligence Agency in 2004. Previously, he was a trial attorney for the U.S. Department of Justice, Narcotic and Dangerous Drug Section, from 1993 to 1997. Judge Robinson received his B.A. in 1989 from the University of California, Berkeley, where he was the captain of the varsity swimming team from 1988 to 1989. He participated in the U.S. Olympic trials for swimming in 1998. Judge Robinson received his J.D., cum laude, in 1993 from the Georgetown University Law Center, where he was an associate editor of the *Journal of Law and Policy in International Business* from 1992 to 1993. He maintains chambers in San Diego.



Mark C. Scarsi was confirmed by the United States Senate on Sept. 15, 2020, to serve as a district judge for the U.S. District Court for

the Central District of California. He received his judicial commission on Sept. 18, 2020. Before joining the federal bench, Judge Scarsi had been a partner at the Los Angeles law firm of Milbank, Tweed, Hadley & McCloy, LLP (now Milbank LLP) since 2007 and was the firm's managing partner beginning in 2013. Previously, he was an associate then partner with the law firm of O'Melveny & Myers LLP in Los Angeles from 1998 to 2003 and

from 2003 to 2007, respectively. Judge Scarsi was a summer associate then associate at Christie Parker & Hale LLP in Pasadena, California, from 1994 to 1996 and from 1996 to 1998, respectively. He had worked as an engineer since 1987 at Martin Marietta which was acquired by GE Aerospace then merged with Lockheed Martin Corporation, where he continued to work as a part-time engineer from 1993 to 1994. Judge Scarsi received his B.S. and M.S. from Syracuse University, School of Computer and Information Science, in 1987 and 1993, respectively. He received his J.D., magna cum laude and Order of the Coif, in 1996 from the Georgetown University Law Center, where he received the Leon Robbin Patent Award in 1996. He maintains chambers in Los Angeles.

## Bankruptcy Judges



Natalie M. Cox was appointed as a bankruptcy judge for the United States Bankruptcy Court for the District of Idaho

Nevada on Jan. 27, 2020. Prior to her appointment to the federal bench, Judge Cox had served as an assistant U.S. trustee in the Office of the U.S. Trustee in Nashville, Tennessee, since April 2019. She oversaw Chapter 7 and 11 cases, and supervised Chapter 7 trustees since transferring to Nashville in 2017. Prior to being promoted to that position, Judge Cox was a trial attorney beginning in 2015 in the Office of the U.S. Trustee's field office in Wilmington, Delaware, where she oversaw and litigated Chapter 11 cases. Previously, she engaged in private practice in Las Vegas as an associate then partner at Kolesar & Leatham, Chtd., from 2006 to 2008 and from 2008 to 2015, respectively, and as an associate at Jolley Urga Wirth Woodbury & Standish from 2001 to 2005. Judge Cox attended Austin Peay State University in Clarksville, Tennessee, on a full basketball scholarship, graduating with a bachelor's degree, summa cum laude, in 1997. She received her J.D., cum laude, from the University of Nevada, William S. Boyd School of Law, in 2001. She maintains chambers in Las Vegas.



Noah G. Hillen was appointed as a bankruptcy judge for the United States Bankruptcy Court for the District of Idaho

on Aug. 31, 2020. Prior to joining the federal bench, Judge Hillen served as a Chapter 7 trustee and attorney in Boise since 2014, primarily in bankruptcy and commercial law. Previously, he was an associate attorney at Moffatt Thomas Barrett Rock & Fields Chtd., in Boise from 2010 to 2013, and an associate at Hall Farley Oberrecht & Blanton, PA, in Boise from 2009 to 2010. Judge Hillen received his B.A. from the College of Idaho and his J.D. from the University of Idaho College of Law. Following law school, he clerked at Idaho's Fourth Judicial District Court for Judge Joel D. Horton, who was then elevated to the Idaho Supreme Court, where Judge Hillen continued his clerkship with Justice Horton until 2009. Judge Hillen maintains chambers in Boise.



Jennifer E. Niemann was appointed as a bankruptcy judge for the United States Bankruptcy Court for the

Eastern District of California on June 16, 2020. Before joining the federal bench, Judge Niemann had been of counsel since 2012 at Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP, in Sacramento, where she represented business Chapter 11 debtors in pre-bankruptcy consultation, filing the bankruptcy case, during the case and post-confirmation. The remainder of her practice involved representing Chapter 11 trustees and creditors. Previously, Judge Niemann worked as a long-term law clerk for Judges Thomas E. Carlson, Arthur S. Weissbrodt and James R. Grube of the U.S. Bankruptcy Court for the Northern District of California. Judge Niemann engaged in private practice at Heller Ehrman White & McAuliffe in San Francisco and Los Angeles and was a senior legal auditor at Stuart, Maue, Mitchell & James, Ltd., in St. Louis, Missouri. She received her bachelor's degree, summa cum laude and Phi Beta Kappa, from the University of Illinois, Urbana-Champaign, in 1986 and her J.D. from Harvard Law School in 1989. Judge Niemann maintains chambers in Fresno.

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## Magistrate Judges



Helena M. Barch-Kuchta was appointed as a magistrate judge for the United States District Court for the Eastern

District of California on Nov. 1, 2020. Prior to her appointment to the federal bench, Judge Barch-Kuchta had served as a staff attorney for the U.S. District Court for the Middle District of Florida since 2018 and from 2003 to 2013. Previously, she served as a trial attorney, from 2013 to 2017, in the Civil Division of the Office of Foreign Litigation for the U.S. Department of Justice's European office located in the United Kingdom, where she represented the U.S. in affirmative and defensive litigation matters throughout Europe and Turkey. She engaged in private practice, from 1990 to 1997, with K&L Gates LLP, in Washington, D.C., and in Pittsburgh, Pennsylvania, where she began her legal career as a litigator. Judge Barch-Kuchta received her B.A. from Pennsylvania State University in 1983 and her J.D. from Duquesne University School of Law in 1990. She maintains chambers in Yosemite Valley.



Michael J. Bordallo was appointed as a magistrate judge for the District Court of Guam on Feb. 14, 2020.

Prior to joining the bench, Judge Bordallo had served as a trial court judge for the Superior Court of Guam since

1998. As a Guam jurist, he chaired the Guam judiciary's Juvenile Justice Reform Focus Area on Court Language and served as co-chairperson of the Guam judiciary's subcommittees on Civil Jury Instructions and Alternative Dispute Resolution. Judge Bordallo co-chaired the 2016-2019 Strategic Plan Focus Area on Access to Courts and Delivery of Services Committee, which focused on improving pro se litigants' access to the courts, and he served on the Guam Board of Law Examiners Drafting and Grading Committee. Prior to joining the Guam judiciary, Judge Bordallo engaged in private practice for nine years and served as an assistant attorney general for Guam. He received his B.A. and J.D. from the University of Notre Dame in 1983 and 1987, respectively.



Daniel E. Butcher was appointed as a magistrate judge for the United States District Court for the Southern District of

California on May 26, 2020. Prior to his appointment, Judge Butcher was an assistant U.S. attorney for the Southern District of California. His many assignments as an assistant U.S. attorney included the Criminal Division, where he was assigned to the Major Frauds and Economic Crimes Section. He served as the district's health care fraud and kidnapping coordinator and was a deputy chief and trial team leader in the General Crimes Section. He also served in the Appellate Section, where he

litigated in the Ninth Circuit Court of Appeals and in the Civil Division, where he defended the United States and its agents and employees in civil litigation. Before joining the U.S. Attorney's Office, Judge Butcher was an associate at Latham & Watkins LLP and a law clerk to District Judge Rudi M. Brewster in the Southern District of California. He also served as a judge pro tempore for the San Diego County Superior Court and as a lawyer representative for the U.S. District Court for the Southern District of California. Judge Butcher is a master in the Louis M. Welsh American Inn of Court and an adjunct professor at the University of San Diego School of Law. He received his B.A. from the University of California, San Diego, in 1985, and his J.D. from Cornell Law School in 1989. Judge Butcher maintains chambers in San Diego.



Pedro V. Castillo was appointed as a magistrate judge for the United States District Court for the Central District of

California on Jan. 24, 2020. Prior to his appointment, he served as a deputy federal public defender for the Office of the Federal Public Defender in Los Angeles. He was a trial lawyer in that office for over 27 years, representing financially eligible defendants in all stages of their criminal proceedings, including arraignment, motions, trial and appeal. While at the FPD's office, he also served as a representative in the Central District's Substance Abuse

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Treatment and Reentry (STAR) program, a post-conviction reentry program for high-risk substance abuse offenders which provides integrated drug and alcohol treatment services. Judge Castillo also served as a representative in the Central District's Conviction and Sentence Alternatives (CASA) program, a post-guilty plea diversion program that offers a creative blend of treatment, sanction alternatives and incentives to effectively address offender behavior, rehabilitation and the safety of the community. A native of Mexico, Judge Castillo grew up in Boyle Heights neighborhood of Los Angeles. He received his B.A. from Stanford University in 1988 and his J.D. from the University of Arizona College of Law in 1991. Judge Castillo maintains chambers in Los Angeles.



Patricia Donahue was appointed as a magistrate judge for the United States District Court for the Central District of

California on May 4, 2020. Prior to her appointment, she served as an assistant U.S. attorney in Los Angeles for 29 years. At the U.S. Attorney's Office, she held a number of positions, including chief of Trials, Integrity & Professionalism, chief of the National Security Division, chief of the Violent and Organized Crime Section and chief of General Crimes. She handled a wide variety of cases involving human trafficking, child sexual exploitation, corruption, civil rights violations, murder,

assaults in prison, arson, stalking, narcotics trafficking and firearms violations. Judge Donahue was also an adjunct professor at Loyola Law School teaching appellate advocacy. Before joining the U.S. Attorney's Office, she engaged in private practice at Jeffer Mangels Butler & Mitchell LLP, where she worked on multi-district litigation in the U.S. District Court for the District of Puerto Rico. Judge Donahue received her undergraduate degree from Stanford University and her law degree from the University of California, Los Angeles, School of Law. She maintains chambers in Los Angeles.



Michael T. Morrissey was appointed as a magistrate judge for the United States District Court for the District of Arizona on Jan. 23, 2020. Prior to joining the bench, Judge Morrissey was an assistant U.S. attorney for the District of Arizona, serving as a supervisor in the district's National Security Section and as section chief of the Appellate Section, in addition to trial groups. From 2013 until his appointment in 2020, Judge Morrissey was in private practice in Phoenix with a focus on white collar criminal defense. Judge Morrissey received his B.A. and J.D. from the University of Virginia in 1983 and 1987, respectively. He maintains chambers in Phoenix.



Alex G. Tse was appointed as a magistrate judge for the United States District Court for the Northern District of California on

Jan. 28, 2020. Prior to joining the bench, Judge Tse served as chief of the Civil Division of the U.S. Attorney's Office for the Northern District of California, where he served for nearly 20 years including as interim U.S. attorney and as first assistant U.S. attorney. Previously, he served as an assistant chief city attorney for the City and County of San Francisco after leaving the U.S. Attorney's Office, where he became deputy chief of the Civil Division in 2001. Before that, Judge Tse served as a line assistant U.S. attorney in the Civil Division in 1994. He began his career in private practice in 1990. Judge Tse received a Director's Award for Superior Performance from the Executive Office of the U.S. Attorneys in 2017 and a special commendation from the Civil Division of the U.S. Department of Justice in 2016. Judge Tse received his undergraduate degree from the University of California, Berkeley, and his law degree from the U.C. Hastings College of the Law. He maintains chambers in San Francisco. ■

## Senior Judges



District Judge Lawrence J. O'Neill was confirmed by the United States Senate to serve as a district judge for the U.S.

District Court for the Eastern District of California on Feb. 1, 2007, and received his judicial commission on the following day. He served as chief judge of his court from 2016 to 2019. Prior to his appointment, Judge O'Neill had served as a magistrate judge for the U.S. District Court for the Eastern District of California since 1999. Before joining the federal bench, he served as a judge of California Superior Court, Fresno County, from 1990 to 1999. He was an adjunct professor at San Joaquin College of Law from 1986 to 1992. Judge O'Neill engaged in private practice in Fresno from 1979 to 1990. He worked as police officer in San Leandro, California, from 1973 to 1976. Judge O'Neill received his B.A. from the University of California, Berkeley, in 1973, his M.P.A. from Golden Gate University in 1976 and his J.D. from UC Hastings College of the Law in 1979. Following law school, he clerked for Judge Robert F. Kane of the California Court of Appeal, First District, in 1979. Judge O'Neill assumed inactive senior status on Feb. 2, 2020.



James V. Selna was confirmed by the United States Senate to serve as a district judge for the U.S. District Court for the Central

District of California on March 27, 2003, and received his judicial commission on the same day. He assumed senior status on March 3, 2020. Prior to his appointment to the federal bench, Judge Selna served as a California Superior Court judge in Orange County from 1998 to 2003. He was a partner at O'Melveny & Myers in Los Angeles, from 1978 to 1998, and an associate at the firm from 1970 to 1977. Judge Selna served in the U.S. Army Reserve from 1967 to 1978. He received his A.B. from Stanford University in 1967 and his J.D. from Stanford Law School in 1970. He maintains chambers in Los Angeles.



Benjamin H. Settle was confirmed by the United States Senate to serve as a district judge for the U.S.

District Court for the Western District of Washington on June 28, 2007, and received his judicial commission on July 2, 2007. He assumed senior status on Jan. 1, 2020. Prior to his appointment, Judge Settle was a founder and partner of the law firm of Settle & Johnson, PLLC, for 30 years in Shelton, Washington. The firm engaged in a general practice with emphasis on civil litigation, business, municipal and real property law. While with the firm, he served as Shelton city attorney and general counsel for Mason General Hospital, Mason County Public Utility and Transit District, and the Shelton School District. He was a Mason County Superior Court judge pro tem and was appointed as an arbitrator or mediator in numerous cases. He served as a captain in the U.S. Army Judge Advocate General Corps from 1973 to 1976, as a prosecutor in Fort Bragg, North Carolina, and defense counsel in Fort Lewis, Washington. Judge Settle received his B.A. from Claremont McKenna College in 1969 and his J.D. from Willamette University, College of Law, in 1972. He maintains chambers in Tacoma.

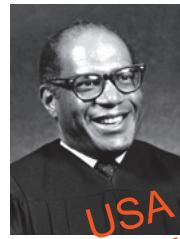
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## In Memoriam



Senior District Judge William B. Enright, 94, of the United States District Court for the Southern District of California, died on March 7, 2020. Nominated by President Richard M. Nixon, Judge Enright was confirmed by the U.S. Senate and received his judicial commission in 1972 and assumed senior status in 1990. Prior to his appointment, Judge Enright engaged in private practice in San Diego from 1954 to 1972. Previously, he served as a deputy district attorney in San Diego from 1951 to 1954. Judge Enright was a founding member of the Louis Welsh American Inn of Court, San Diego's first Inn. He served as trustee for the American Inns of Court Foundation from 1985 to 1992. In 1987, he was presented with the Chairman's Award, which is bestowed upon a "member of an American Inn of Court who, at the local, state or national level has provided distinguished, exceptional and significant leadership to the American Inns of Court movement." In recognition of his devoted service to the American Inns of Court program, prominent judges and lawyers joined together in 1991 to charter a new Inn of Court in San Diego in honor of Judge Enright. "The Hon. William B. Enright American Inn of Court" is now the largest American Inn of Court in San Diego County. Two other awards also carry his name: California Inns of Court's "William B. Enright Award for Professionalism" and the American Inns of Court's "William B. Enright

Ethics and Civility Award." Judge Enright received his A.B. from Dartmouth College in 1947 and his LL.B. from Loyola Law School in 1950. He served in the U.S. Naval Reserve from 1943 to 1946 and was a law specialist for the U.S. Naval Reserve from 1947 to 1962. Judge Enright is survived by his son, Judge Kevin Enright of the San Diego Superior Court, and daughters, Kimberly and Kerry, as well as eight grandchildren. He was preceded in death by his wife, Bette.



Senior Circuit Judge Jerome Farris, 90, of the United States Court of Appeals for the Ninth Circuit died on July 23, 2020. Nominated by President Jimmy Carter, Judge Farris was confirmed by the U.S. Senate and received his judicial commission in 1979. He assumed senior status in 1995. Prior to his appointment to the federal bench, Judge Farris served as a judge of the Court of Appeals for the State of Washington from 1969 to 1979. Previously, he engaged in private practice in Seattle from 1958 to 1969. He served in the U.S. Army Signal Corps from 1952 to 1953. Judge Farris received his B.S. from Morehouse College in 1951, his M.S.W. from Atlanta University (now Clark Atlanta University) in 1955 and his J.D. from the University of Washington School of Law in 1958. Judge Farris is survived by two daughters, Juli and Janelle, and he was preceded in death by his wife, Jean.



Senior Circuit Judge Raymond C. Fisher, 80, of the United States Court of Appeals for the Ninth Circuit died on Feb. 29, 2020. He was confirmed by the Senate on Oct. 5, 1999, and received his judicial commission on Oct. 12, 1999. Judge Fisher assumed senior status on March 31, 2013. Prior to his appointment to the bench, Judge Fisher had served as an associate attorney general for the U.S. Department of Justice since 1997. He served as president of the California Police Commission in Los Angeles from 1995 to 1997; as deputy general counsel for the Independent Commission on the Los Angeles Police Department in 1990; and as member of the L.A. City Civil Service Commission from 1984 to 1989. Judge Fisher received his B.A. from the University of California, Santa Barbara, in 1961 and his LL.B. from Stanford Law School in 1966. Following law school, he clerked for Judge J. Skelly Wright of the U.S. Court of Appeals for the D.C. Circuit, from 1966 to 1967, and for Associate Justice William J. Brennan, Jr., of the Supreme Court of the United States, from 1967 to 1968. Judge Fisher is survived by his wife, Nancy; his son, Jeff; his daughter, Amy; and his four grandchildren.

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Senior District Judge Lloyd D. George, 90, of the United States District Court for the District of Nevada died on Oct. 7, 2020. He

was confirmed by the Senate on April 30, 1984, and received his judicial commission on May 3, 1984. Judge George served as chief judge of his court from 1992 to 1997 and assumed senior status on Dec. 1, 1997. Previously, Judge George was a judge on the U.S. Bankruptcy Appellate Panel for the Ninth Circuit from 1980 to 1984 and as a bankruptcy judge for the District of Nevada from 1974 to 1984. He was a member of the Judicial Conference of the U.S. from 1997 to 1999 and was a board member of the Federal Judicial Center from 1979 to 1983. Judge George engaged in private practice in Las Vegas from 1961 to 1974 and served as justice of the peace in Clark County, Nevada, from 1962 to 1969. Judge George received his B.S. from Brigham Young University in 1955. Following college, he served in the U.S. Air Force from 1955 to 1958. He received his J.D. from the University of California, Berkeley, School of Law, in 1961. Judge Lloyd is survived by his wife LaPrele, four children, 12 grandchildren and 10 great-grandchildren.



District Judge Alfred Laureta, 96, of the United States District Court for the District of Northern Mariana Islands

died on Nov. 16, 2020. Nominated by President Jimmy Carter, Judge Laureta was confirmed by the U.S. Senate and became the first person of Filipino descent to serve as a federal judge and became the first district judge to serve in the District of Northern Mariana Islands, where he presided until 1988. Judge Laureta also was the first person of Filipino descent to be appointed in Hawaii as a gubernatorial cabinet officer and as a state court judge in Hawaii's First Circuit Court in 1964. Previously, he was appointed by Governor John A. Burns in 1963 as director of the Department of Labor for the State of Hawaii, where he worked for four years. He graduated from the University of Hawaii at Manoa and received his law degree from Fordham University School of Law. Judge Laureta is survived by his wife, Evelyn, and his children, Lisa, Gregory, Michael and Pamela.



Magistrate Judge John F. Moulds III, 82, of the United States District Court for the Eastern District of California died on

May 29, 2020. He was appointed as a magistrate judge for the Eastern District of California in 1986 and served on recalled status until 2014. Prior to his appointment to the bench, Judge Moulds engaged in private practice as a partner at Isenberg, Moulds & Hemmer and was one of the founders of Blackmon, Isenberg & Moulds from 1969 to 1985. He worked briefly for Sacramento Legal Aid. He was a staff attorney, then a directing attorney for California Rural Legal Assistance in Marysville, California. Judge Moulds received his B.A., with honors, from California State University, Sacramento, in 1960 and his J.D. from the University of California, Berkeley, Boalt Hall School of Law (now Berkeley Law). While in law school, he served as legal editor for the California Continuing Education of the Bar and was a member of the Law Students' Civil Rights Research Council. Judge Moulds is survived by his wife, Betty; his son, Don; his daughter-in law, Kate; his son, Gerald, and two grandchildren.

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## In Memoriam continued



Bankruptcy  
Judge Richard  
Neiter, 82, of the  
United States  
Bankruptcy  
Court for the  
Central District  
of California, died

on Jan. 10, 2020. Judge Neiter was appointed as a bankruptcy judge for the Central District in 2006 and served in that capacity until Sept. 10, 2016, when he retired from the bench. Prior to his appointment to the bench, Judge Neiter practiced bankruptcy law for more than 40 years. He engaged in private practice at the Los Angeles law firm of Stutman, Treister & Glatt since his admission to the State Bar of California in 1963. Judge Neiter received his B.S. from the University of California at Los Angeles in 1959 and his J.D. in 1962 from the University of Southern California Law School, where he was a member of the board of editors for the Southern California Law Review. Judge Neiter is survived by his wife, Lois, their children, Mark and Deborah, and Mark and Deborah's spouses and their grandchildren.



Senior District  
Judge James A.  
Redden, 91, of  
the United States  
District Court for  
the District of  
Oregon died on  
March 31, 2020.

He was confirmed by the Senate on Feb. 20, 1980, and received his judicial commission on the same day. He served as chief judge of his court, from 1990 to 1995, and assumed senior status on March 13, 1995. Prior to his appointment to the federal bench, Judge Redden served as the attorney general for the State of Oregon, from 1977 to 1980, and as the state's treasurer from 1973 to 1976. He served as the chairman of the Public Employee Relations Board from 1969 to 1972. Judge Redden was a state representative for Oregon, from 1963 to 1969, and a minority leader, from 1967 to 1969. He engaged in private practice in Medford, Oregon, from 1956 to 1972, and in Springfield, Massachusetts, from 1954 to 1955. Judge Redden received his LL.B. from Boston College Law School in 1954. He served in the U.S. Army from 1946 to 1948. Judge Redden was preceded in death by his wife, Joan Redden, who passed away in 2018. Judge Redden is survived by his two sons, James A. Redden, III, and William Francis Redden.



Senior District  
Judge Jack D.  
Shanstrom, 87, of  
the United States  
District Court for  
the District of  
Montana died on  
Jan. 13, 2020. He

was confirmed by the Senate on May 11, 1990, and received his judicial commission on May 14, 1990. He served as chief judge of his court from 1996 to 2001, and assumed senior status due to certified disability on Jan. 30, 2001. Prior to his appointment, he served as a U.S. magistrate judge for the District of Montana from 1983 to 1990. Before joining the federal bench, Judge Shanstrom served as a judge of the Montana District Court, Sixth Judicial District, from 1965 to 1982. He worked in Montana as a county attorney for Park County, from 1960 to 1965, and as an assistant city attorney in Livingston, where he engaged in private practice from 1960 to 1964. Judge Shanstrom received his B.A. and B.S. from the University of Montana in 1956 and 1957, respectively, and his LL.B. from the University of Montana School of Law in 1957. Following law school, he served in the U.S. Air Force as first lieutenant and judge advocate from 1957 to 1960. Judge Shanstrom is survived by his wife, Audrey, his children, Scott and Susan, and three grandchildren.

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## In Memoriam: Senior Circuit Judge Jerome Farris

The Ninth Circuit mourned the passing of Senior Circuit Judge Jerome Farris, who died peacefully at home on July 23, 2020, at the age of 90, after over four decades on the bench.

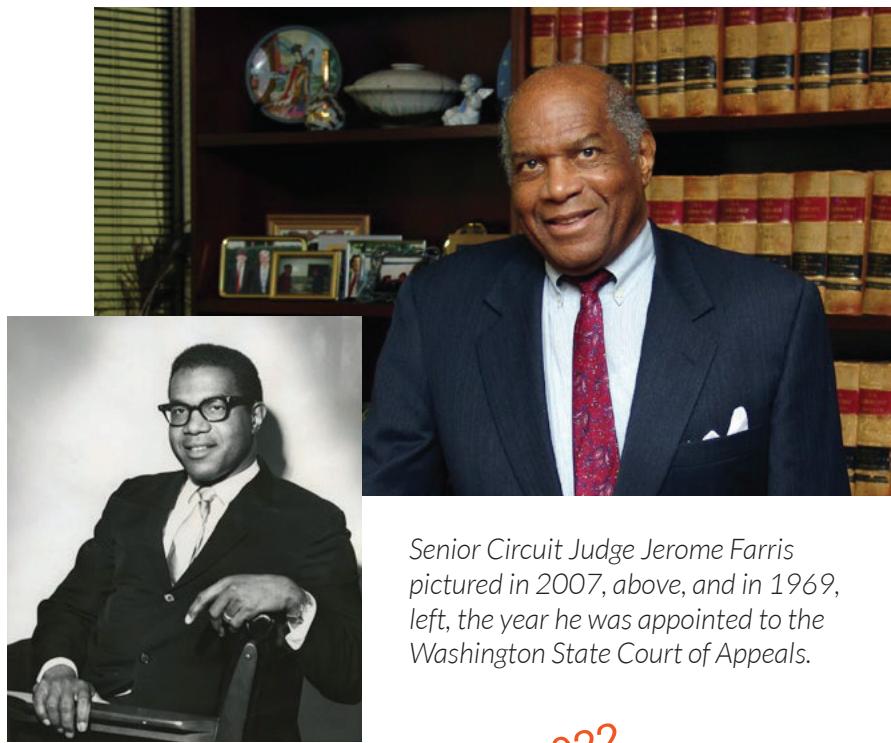
"He was truly one of the most interesting and compelling persons most of us have ever known. Judge Farris was an extraordinary judge and human being. He truly was a force of nature, and he was unfailingly generous to his colleagues and many friends," Ninth Circuit Chief Judge Sidney R. Thomas noted.

"Everyone who knew Judge Farris referred to him as 'his/her good friend, Jerry Farris,'" said Chief Judge Emeritus J. Clifford Wallace.

Senior Circuit Judge Dorothy W. Nelson said "I've lost one of the most remarkable judges this Circuit ever had. His generosity knew no bounds."

As Chief Judge Emerita Mary M. Schroeder put it, "Remarkable is an understatement. As a compassionate human being, Jerry was a hundred years ahead of his time."

Judge Farris was born in Birmingham, Alabama, on March 4, 1930. He earned a Bachelor of Science degree with department honors in mathematics at Morehouse College. After graduating from Morehouse, he served in the United States Army Signal Corps. He then earned a Master of Social Work degree at Clark Atlanta University. He received his Juris Doctor degree at the University of Washington, where he was a member of the Law



Senior Circuit Judge Jerome Farris pictured in 2007, above, and in 1969, left, the year he was appointed to the Washington State Court of Appeals.

Review, a member of the Order of the Coif and was elected president of the law school student body. Judge Farris worked as a juvenile probation officer while earning his law degree.

As his successor, Circuit Judge M. Margaret McKeown, observed, "Jerry was an icon in the Pacific Northwest legal community."

After graduating from law school, Judge Farris worked for the law firm of Weyer, Roderick, Schroeter and Sterne. He later started his own law firm with Leonard Schroeter. In 1969, he was appointed as a judge on the newly created Washington State Court of Appeals for Division I.

Judge Farris was unanimously elected as the first presiding chief judge of the Court of Appeals in the 1977-1978 term and served as chief judge of Division I from

1977 to 1978. He served on that court until his appointment to the Ninth Circuit Court of Appeals by President Jimmy Carter on July 12, 1979. He assumed senior status on March 4, 1995.

Judge Farris served as a regent of the University of Washington in 1985. He was a trustee of the Seattle-King County Bar Association and former chairman of the Washington Council of the National Council on Crime and Delinquency. He was a member of the University of Washington Law School Foundation, the Governor's Conference on Library and Information Science, the Seattle Youth Commission, the King County Mental Health-Mental Retardation Board and a delegate to the White House Conference on Children and Youth. He served on the boards of the Seattle Urban League, Seattle Opportunities Industrialization Center and

United Way. Morehouse College awarded him an honorary degree in 1978.

Upon his death, tributes to Judge Farris came quickly from around the circuit. Circuit Judge Diarmuid O'Scannlain recounted: "For us, Jerry was a role model for the greatness of our country. Born into poverty, son of a sharecropper in the inhospitable South, he was keenly aware of his race and circumstance but never allowed it to be a barrier to his pursuit of the American Dream. And not just pursuit, but success, extraordinary economic and professional success, done with dignity and grace. His legacy is an inspiration for all Americans, especially in these turbulent times."

As Circuit Judge Susan Gruber noted, "The qualities that endeared him to me most were his unfailing equanimity, his old-fashioned courtesy, his civility toward colleagues and lawyers, his lovely smile and his good cheer."

Senior Circuit Judge Stephen Trott recalled that when he joined the Court, then-Circuit Judge Anthony Kennedy advised him to get to know Judge Farris because he was one of "the most interesting people I would ever get to know."

Circuit Judge Johnnie B. Rawlinson summed it up well: "This is indeed a sad day for the court. Many of us benefited from Judge Farris's wise counsel over the years. And he was, without question, one of

the most generous individuals to ever walk this earth. As the first African-American judge to serve on this court, he left a legacy in which we can all take pride. His passing leaves a gigantic hole in the fabric of our court family. He will be sorely missed."

Judge Farris is survived by two daughters, Juli and Janelle, and a sister, Marian Farris Hatch. He was preceded in death by his wife, Jean Shy Farris. Judge Farris completed his oral history for the Ninth Circuit Historical Society early in 2020, and it can be found here: <https://www.njchs.org/trailblazer-judge-farris/>. ■

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## In Memoriam: Senior Circuit Judge Raymond C. Fisher

The Ninth Circuit mourned the passing of Senior Circuit Judge Raymond C. Fisher, who died on Feb. 29, 2020, at the age of 80, after a long and remarkable career.

“Judge Fisher had a truly extraordinary career, as an attorney, a judge and a contributor to his community,” said Ninth Circuit Chief Judge Sidney R. Thomas. “He was a model of judicial temperament and collegiality. He was a close friend and colleague, who will be greatly missed.”

“Ray was a wonderful friend, who served his country in many ways and was courageous to the end,” said Chief Judge Emerita Mary M. Schroeder.

Judge Fisher was born in Oakland, California, in 1939. The family moved to Washington, D.C., and returned to California in 1946 when Judge Fisher’s father accepted a professorship at the University of California, Los Angeles.

Following military service, Judge Fisher graduated from the University of California, Santa Barbara in 1961, with a B.A. in political science and received his LL.B. in 1966 from Stanford Law School, where he was president of the Law Review and awarded the Order of the Coif. Following law school, he clerked for Circuit Judge J. Skelly Wright of the U.S. Court of Appeals for the D.C. Circuit and then for Associate Justice William J. Brennan, Jr., of the U.S. Supreme Court.

He returned to Los Angeles and practiced law for 30 years, first at Tuttle & Taylor, and later at Heller Ehrman White & McAuliffe.

and Environment and Natural Resources divisions and other programs. He received the Randolph Award for Outstanding Service to the Department of Justice in 1999.

Nominated by President Clinton, Judge Fisher was confirmed by the Senate on October 5, 1999, and received his judicial commission a week later. He maintained chambers in Pasadena, California, and assumed senior status on March 31, 2013.

During his 20 years on the bench, Judge Fisher authored approximately 400 judicial opinions. He was a member of the American Law Institute and a fellow of the American College of Trial Lawyers. He was a board member and former chair of the Western Justice Center, which operates creative programs to teach students, teachers and members of the community ways to resolve conflict peacefully.

Judge Fisher was a member of the Judicial Branch Committee of the United States Judicial Conference from 2005 to 2019 and was co-chair of its Subcommittee on Civic Engagement & Education. He was a longtime member of the Ninth Circuit’s Public Information and Community Outreach Committee.

A strong believer in civic education, he was an advisory board member and former president of the Constitutional Rights Foundation, which awarded him its Bill of Rights Award in 1994. He also served on the boards of the Legal Aid Foundation of Los Angeles and the Brennan Center for Justice, which awarded



Senior Circuit Judge  
Raymond C. Fisher

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Judge Fisher was a member of the Los Angeles City Civil Service Commission from 1984 to 1989. In the wake of the Rodney King riots, he was named deputy general counsel to the Independent Commission on the Los Angeles Police Department—the Christopher Commission—in 1990. He was widely recognized for his instrumental role in shaping the package of reforms developed by the commission. He then served as president of the L.A. Police Commission from 1995 to 1997. In 1999, Judge Fisher was named “Outstanding Alumnus” by UCSB.

In 1997, President William J. Clinton appointed Judge Fisher as the associate attorney general, the third-ranking official of the Department of Justice. He oversaw the work of the Civil, Civil Rights, Antitrust, Tax

him its Joseph A. Ball Award for Outstanding Advocacy in 2000.

In a newspaper profile in 2001, Judge Fisher was aptly described as the “poster child for judicial temperament” for his even-handed treatment of advocates while on the bench. As Circuit Judge Richard Paez said, “When Judge Fisher joined the court, he brought with him invaluable government service as associate attorney general, extraordinary legal talents and deep experience from handling complex litigation in private practice. Judge Fisher was guided by the rule of law, but he applied it with a compassionate touch. He never lost sight of those who were less fortunate.”

Chief Judge Thomas said, “It seems just a short time ago when I attended his investiture, where he was lauded by many legal luminaries. But that was 20 years ago. He was a great friend to me over those two decades, and with every judge on our Court. Most of us last saw him a month previous to his passing at a court meeting, where he greeted us warmly, with a characteristic twinkle in his eye. As Judge Paez said, ‘As a colleague and friend, he was kind and generous with his time. We will miss his extraordinary talents and genuine collegiality.’ We will indeed.”

Judge Fisher is survived by his wife of 59 years, Nancy; his son, Jeff (Perri); his daughter, Amy Ahlers (James); his four grandchildren; his former daughter-in-law, Rose Fisher; and his sister, Debbie Fisher. ■

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## Tough Year Brings Challenges; Courts Rise to Meet Them

There is no denying 2020 was a trying year. By the same token it was a year of firsts and one of justice prevailing, thus of progress.

The first quarter of the year was remarkable for nearly all Ninth Circuit employees being sent home to set up home offices for the duration as the world came under siege from the COVID-19 virus. The prevailing effects of the virus remain at the forefront of most people's concerns, and they remain a serious concern for the courts, thus for all citizens.

Across the Ninth Circuit, the commitment and adaptability of the courts to get the job done is manifest. Judges held proceedings with everyone participating remotely and also with everyone in person, using plexiglas partitions, constant cleaning and spacing of personnel to remain safe. Along with the critical impact of COVID-19 on the courts came other challenges, foremost among them was deepening concern over judges' security.

Threats turned to reality when a New Jersey federal judge's son was killed and husband critically wounded by a disgruntled lawyer. In addition, a Ninth Circuit judge was cornered in his chambers by an intruder; thankfully, no injuries were sustained in that incident. Other judges had personal information exposed by those unhappy with decisions. Bills were introduced in the House and the Senate to increase security, but no action was taken by the time Congress adjourned for the year. Courthouse security came under closer scrutiny following attacks, notably in Portland, Oregon, where federal officers battled with protesters.

Finally, in the security realm, a major hack, referred to as the SolarWinds breach, was discovered to have penetrated

government computers, including the federal courts to an extent unknown at the end of calendar year 2020. On the plus side, Congress is aware of the issues surrounding judge and courthouse security, and there are hopes for relief on both fronts in 2021.

To address security needs, the Ninth Circuit brought an emergency management and security specialist on board who has been working diligently to rectify physical security issues. The circuit has also benefited from the advice of its circuit information technology security director who has detailed the process for judges to remove their personal information from the internet, reducing the chances of being found by possible assailants.

As the year wore on with no long-term COVID-19 containment in sight, the Ninth Circuit canceled official in-person gatherings, including the Ninth Circuit Judicial Conference, but started planning other court and committee meetings as virtual events, starting with the fundamental work of the courts. Many judges began holding a wide variety of proceedings using audio and/or video connections. Results have been largely praised and cases continued to be resolved, though there are substantial backlogs due to both the slower handling of cases and the continued shortage of judges due to lack of congressional action. Though most judges have restricted proceedings to hearings and other nonjury activities, full jury civil trials were successfully held by two judges in Washington's Western District in 2020. The Ninth Circuit also held what were probably the first federal en banc hearings remotely, using video streaming, one more wheel of justice that kept turning in spite of the pandemic.

Pretrial and probation offices were hit especially hard by the virus as officers



were heavily restricted in how they could meet with offenders and lawyers to ensure public safety and in-custody rights. Federal public defenders faced the same challenges—difficulty in just communicating with those who need their help the most in order to maintain constitutionally-mandated representation. Both groups persevered through video and audio contact and anticipate returning to more face-to-face meetings as the pandemic comes under control.

Outside the courtroom, scores participated in online orientations for new law clerks, and dozens more joined committee meetings from the safety of their homes or chambers, via video connections. Judges and others also attended webinars within the circuit to stay in touch with decisions and catch up with colleagues and friends.

Beyond official meetings, the circuit managed two civics events of note. The California's Eastern District sponsored a Constitution Day Reading session that drew in over 100 participants, each reading a favorite extract from the U.S. Constitution. In addition, nearly 1,000 students participated in the annual Ninth Circuit Civics Contest. COVID-19 restrictions meant first-place winners received cash in lieu of the usual trip to the circuit's annual conference, which has been postponed until 2022.

Staffing has naturally been affected by the inability of people to meet, but the Ninth Circuit has filled a number of critical roles with experts in their fields, again using video technology to connect with individuals.

In a time when groups can't meet safely, the circuit turned to surveys to gauge the concerns and opinions on various elements affected by requirements for social distancing. Clerk of Court Molly Dwyer, of the Ninth Circuit Court of Appeals, sent a survey in August 2020 on the pluses and minuses of remote oral arguments to about 300 lawyers and found that while the process was generally working great, people still look forward to holding proceedings in person. Chief district judges were surveyed by the Public Information, Conference and Education Unit of the Office of the Circuit Executive to determine how judges felt about possibly holding the annual circuit conference, and results mandated against such a gathering. The Ad Hoc Committee on Cameras in the Courtroom surveyed all chief district, chief bankruptcy judges and chief magistrate judges in December 2020 to determine how exactly remote proceedings were being held, and what the strengths and weaknesses of various aspects of remote proceedings are.

Results of the surveys were encouraging in most respects. Judges and lawyers alike are finding online remote proceedings effective, opening the door to future use of the technology to lower court costs and save time for everyone from jurors to expensive expert witnesses. Judges held nearly every type of proceeding remotely except criminal jury trials and grand jury selection.

The year closed with news of vaccines that have allowed the courts to begin resuming in-person trials. The wheels of justice turned steadily during this unique year, with judges, court staff and members of the bar who worked together and provided the services the public needs despite the challenges posed by COVID-19.

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## Jury Trials During the COVID-19 Pandemic

One of the early “victims” of the COVID-19 pandemic was the jury trial. Courts shut down jury trials concurrently with the community shut down and stay at home orders issued by state and local officials. To address the situation, Congress passed the Coronavirus Aid, Relief and Economic Security Act, or CARES Act, which handled Speedy Trial Act concerns in criminal cases and allowed for the use of video hearings for critical matters. Chief Judge Sidney R. Thomas declared a judicial emergency in the Ninth Circuit suspending jury trials.

From this beginning it was clear that the right to a jury trial, the bedrock of our American democracy, needed to be back up and running as soon as possible. On May 1, 2020, Chief Judge Thomas directed the Jury Trial Improvement Committee, or JTIC, to formulate a plan for reopening trials. The “Recommendations on Resuming Jury Trials and Grand Jury Proceedings” was in place

by May 27, 2020, and distributed throughout the Ninth Circuit.

The recommendations were written recognizing that each of the 15 districts in the circuit are different, and that no one size fits all model could be created. So, the recommendations identified key considerations to be made in developing a localized plan to reasonably ensure health and safety in returning to jury trials while the pandemic impacted the community at large.

The plan emphasized the paramount purpose of health and safety and the critical nature of the need to provide jury trials, while recognizing that community restrictions would vary over time.

Trials began under the Ninth Circuit recommendations in communities where health circumstances, judicial resources and available space would allow. Critical factors included:

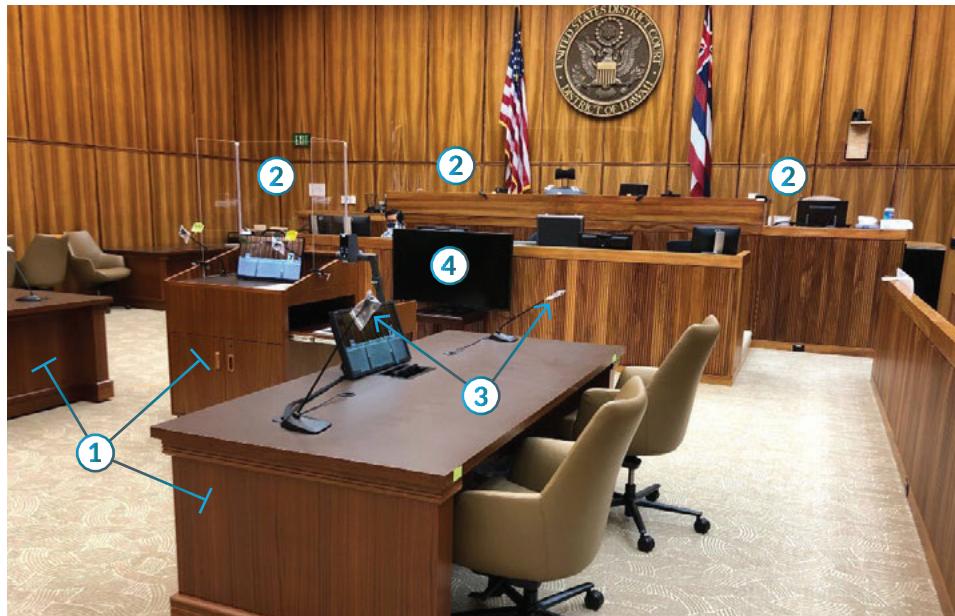
1. Local, state and federal restrictions on community, commercial and personal activity;
2. Health screening requirements and necessary personal protection devices and protocols (e.g., 6-foot distancing of people);
3. Space availability in existing facilities with capacity limits and 6-foot social distancing needs.

Utilizing health care professionals, courts came up with plans to operate in novel but safe ways. Attention to air filtration systems, path of travel and room occupancy limits played a role in when, how and how many trials could commence.

One common practice employed by many was to survey or screen jurors in advance for active COVID-19 infections or high-risk factors. Considering these individuals for a deferment until

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The U.S. District Court in Hawaii implemented COVID-19 safety precautions for jury trials in the Aha Kanawai Courtroom in Honolulu using (1) socially distanced seating, (2) clear acrylic panels for podium and bench, (3) covers on microphones and (4) monitors to show jurors participating remotely.



a later date avoided bringing the sick and most vulnerable to the courthouse. While recognizing that juror “fear” or “discomfort” should not serve as an excuse, it was recommended that those truly at risk to themselves and others should be granted a deferment. Any challenge to the fair cross section requirement of the Jury Act could be avoided by giving counsel the opportunity to object to the deferment or excuse of jurors before trial.

With a clear limit to available operations, most courts made a concerted effort to prioritize cases for trial. Limits on the number of trials per day or per week or per building were imposed to comport with the occupancy restrictions imposed by the local government and the CDC. To sit a criminal jury, typically 40 people are brought forward for voir dire. To ensure 40 arrive, jury administrators summon far more, considering the relatively high no show rates. Summoning 75 to 100 would not be unusual. Seating that many people at 6-foot distances takes a very large room. So does the space to voir dire the 40 targeted to sit for selection, if you are to do it in one session, as opposed to subgroups. With these dynamics, starting more than one case per day would be difficult to fathom. Another consideration was getting multiple juries properly distanced in hallways, break and lunch areas on a given floor or building.

The Southern District of California instituted a one-day jury selection policy and one trial per floor in its buildings to achieve a safe

environment. This minimization was helpful given that elevator cars in the district were limited to two riders at a time!

The restrictions of space and social distancing also limited the number of parties per side that could proceed to trial. While a single defendant trial was feasible, multiple defendants and the additional lawyers required made the case too “big” to “fit” and infeasible to maintain the required social distancing.

An important additional issue that courts still face is the backlog of trial ready cases. If the number of trials that are feasible under health, space and safety requirements are limited, how are they prioritized? In the Southern District of California, single defendant cases became the first order of business, with the highest priority to in-custody defendant cases. Handling short trials first allowed more trials overall given the restrictions on space. This means of course, that multiple defendant cases and extended jury trials have been pushed back, and civil jury trials fall to the end of the list.

It should be noted that bench trials in criminal and civil cases were able to go forward smoothly. Without the space issues of assembling a venire, handling jury selection and addressing the spacing of jurors in the courthouse, they were easier to set.

Trying cases under the novel circumstances brought on by the pandemic have required courts to address a variety of issues including the Sixth Amendment rights to confrontation of

witnesses with masks on, the ability to discern jury demeanor during voir dire and the identification of the defendant in court. Face shields, clear masks and plexiglass panels became common fixtures to address some of these issues. Other logistical problems included the provision of a safe space for counsel and their client to confer, as well as problems of in-custody defendants getting to court with quarantines and other movement restrictions, and restrictions and limitations by the detention facility on visitation.

The U.S. Marshals Service are great problem solvers, and in conjunction with the Federal Bureau of Prisons, found ways to overcome the logistics of prisoner transfer to court for trial and solutions to consultation and pretrial preparation. Dedicating a cell for singular use by an in-trial defendant, separate from the general population, solved the problem. If two cells are available for this purpose, one can be used by an in-trial defendant and the other by a defendant preparing to start the next trial. Perfect, no, but it got things going again.

The courts in the community have been very resilient in dealing with these issues. While uncomfortable on many levels, juries continue to report for jury duty and courts continue to handle trials. Hopefully, continuing in an expanded format as the pandemic ebbs, with adherence to safety practices, vaccinations and community support, we will see an end to the burdens placed on trying jury cases. ■

## Justice Goes High Tech in Western District of Washington

During the COVID-19 pandemic, courthouses in the Western District of Washington became mausoleums. Civil jury trials abruptly stopped, forecasting backlogs of cases that would take years to unjam. Faced with this bleak outlook, the district looked for a way to save civil jury trials through an entirely remote process. The district marshalled their staff and formed a committee composed of IT personnel, jury administrators, law clerks, courtroom deputies, court reporters and magistrate judges.

First, the district court surveyed 600 potential jurors from their jury service list. Jurors were asked whether anyone would willingly serve on an in-person jury. Over 50% reported that they would not, even with social distancing. Second, research was completed on the available technology platforms to conduct trials remotely. The committee landed on ZoomGov as a reliable platform that jurors and attorneys could easily master. For exhibits, Box.com was selected. The district committed to training jurors and providing iPads as needed to address concerns that the technology would skew the jury pool due to costs or juror age.

The committee then got down to brass tacks. Every step of a civil jury trial from the issuance of a summons to the return of a verdict was mapped to a remote process. An order template was drafted to help parties prepare for a remote trial.

Like any good plan, it needed to be tested. A mock jury trial was conducted. The court debriefed the jurors and lawyers to assess what worked and what did not. Based on that feedback, the committee created two handbooks: one for attorneys and one for judges and staff. These handbooks were then sent for testing to see if a lawyer or staff member could follow the instructions successfully from start to finish. The court and staff handbook is available on request and the attorney handbook is available on the court's website: <https://www.wawd.uscourts.gov/sites/wawd/files/VirtualTrialHandbookforAttorneys.pdf>.

Before starting the real trials, research on whether remote civil jury trials are impermissible was done. The court found no such authority and hewed to the adage that what is not prohibited is allowed. Several judges have pushed ahead in the face of objections believing that individual litigants cannot frustrate the court's obligations to provide due process for everyone on the court's docket.

The district has completed five remote civil jury trials. After each trial, the district debriefs jurors, who consistently praise the process and note their relief in not having to travel to the courthouse or appear in person in the midst of the pandemic. Anecdotally, the court noted an increase in participation and fewer requests to be excused.

Juror age or economic status do not appear to have factored into juror participation.

The attorneys participating in remote trials largely commend the process. They also report favorable cost savings relative to in-person trials. Lawyers are now accepting the process without objection. The judges report that the ZoomGov platform allows them to see the witness up close and to assess body language and demeanor. Unlike an in-person trial, the judge can actually see the face of a witness. The district has shared its work by sponsoring a nationwide seminar for federal judges and staff. Video of the event can be found at: <https://youtube.com/playlist?list=PLQQODreSvdKFx1KZBxh2AN1WBKZKpKyZ>.

Remote civil jury trials are likely to continue well after the pandemic subsides. While it may not be for every case, many trials or parts of a trial (such as voir dire or expert testimony) can be easily conducted remotely with cost savings to the parties and court. And while the process lacks some of the majesty of the court, it is efficient, engaging and personal.

The federal judiciary has had to use creativity to keep the wheels of justice turning. The courts should be pleased the public is willing to participate in the Third Branch's work by opening their homes and enthusiastically responding to the call. ■

## Courthouse Display Illustrates Value and History of Courtroom Sketch Artists



District Judge Janis L. Sammartino and Senior District Judge Larry Alan Burns, center, pictured with sketch artists, from left, Vicki Ellen Behringer, Krentz Johnson, Bill Robles and Jerry Lemenu. Johnson curated the "Portraits of Justice" exhibit pictured at top.

Long before the advent of cameras, courtroom sketch artists brought the drama and pathos of the courtroom to the public via highly expressive drawings of the key players. "Portraits of Justice," a courtroom sketch art exhibit intended to increase public awareness of the courts, was unveiled Jan. 23, 2020, and graces four floors of the Edward J. Schwartz United States Courthouse in San Diego.

The exhibit, part of The Southern District of California's Learning Center, a multi-prong effort to present and promote civics education, is two years in the making and provides a look into past courtrooms via an art that is dying out, replaced by cameras and live video streams.

"Freehand sketches by talented artists like these show us not just the basic settings – but what the courtroom looked like, where the defendants and prosecutors stood, how the judge surveyed his or her domain," said Paul Krueger, a one-time senior TV producer in San Diego.

At their best, courtroom artists give viewers and readers a sense of the drama that unfolds in those rarefied proceedings. Facial expressions display fear, defiance, anger, sadness, remorse; they transmit the

palpable tension of cross examination and convey the suspense and shock of verdicts and sentencing."

Exhibit visitors step into the story of a busy, hectic, constantly changing media form that helped the public view and understand who the principal characters were in local stories and the national criminal justice process.

"Portraits of Justice" visually and textually displays the history of courtroom sketch art, major contributors to the art, displays national and local art, and provides a view into some of the biggest local and national cases as they appeared before the courts. Old telephone alcoves formerly used by reporters to quickly call in their stories were the perfect location to display the images that accompanied many of those stories. Local sketch artist Krentz Johnson curated the exhibit, collecting sketch artists and public images.

Some of the cases exhibited on the second floor of the courthouse include the Inquisition of Galileo and the Salem Witch Trials. Viewers are introduced to other cases through history, as well. The exhibit includes more than just artwork. Sketch artist Betty Wells donated her artist's apron, which held all her paints as she quickly sketched images in court. Other exhibits include

explanations about paints, pencils and methods sketch artists used to capture the court or other social images they saw, and a display on sketch art history including copper images from the 11<sup>th</sup> Century to printmaking in the 16<sup>th</sup> Century to today's digital publications. There is even an Emmy Award donated by JW August, who received it in 2014 for Journalistic Enterprise for courtroom coverage.

Sketch artist Mona Shafer Edwards described her method, "My best sketches are my fastest, the ones in which I capture a brief, emotionally intense moment and lay it down in minutes. I never know how much time I'll have, so I have to get the image on paper as quickly as possible: three minutes is usually my goal," she said.

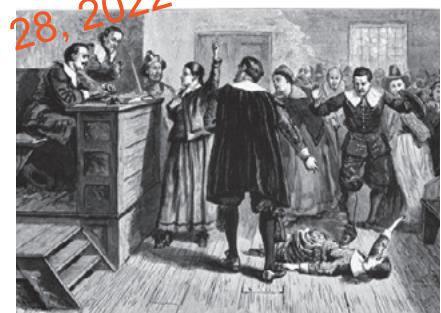
The third floor of the courthouse displays U.S. Supreme Court cases and those covered by mainstream media including images that went "viral," like the infamous "Deflategate" sketch of Tom Brady by Jane Rosenberg. The fourth floor of the courthouse exhibit focuses on the judges of the Southern District of California, while the fifth-floor features high profile national cases, including sketch art from the 9/11 terrorist cases in New York, and the O.J. Simpson and Michael Jackson trials in Los Angeles.

The exhibit opened with Chief District Judge Larry Alan Burns, Southern District of California, welcoming judges, court staff, public, members of the media and some of the sketch artists whose work was featured in the



exhibit. District Judge Janet L. Sammartino, Southern District of California, chair of the District Community Outreach Committee and chair of the Ninth Circuit Public Information and Community Outreach Committee, introduced Johnson to discuss the exhibit and introduced the visiting artists. The artists answered questions about their work, interesting cases they did sketch art for and how they felt about the profession. Judge Sammartino concluded the presentation and a reception followed, allowing time for guests to view the exhibit.

The Southern District of California hopes the exhibit educates the public on courtroom sketch art, a medium rapidly being replaced by quick and digital images. The exhibit can be viewed during public hours. ■



Images that were part of the exhibit included a black and white etching of the Salem Witch Trials by F.C.C. Darley (date unknown), and, above, a more contemporary courtroom sketch by Vicki Ellen Behring of the 1997 oral arguments in San Francisco of a case regarding Air Force employee exposure to toxic waste at Area 51, a highly classified U.S. Air Force military installation in Southern Nevada.

# Criminal Defendants and their Counsel, the Criminal Justice Act and the First Step Act

Representing criminal defendants in the Ninth Circuit, both charged and sentenced, looked more different in 2020 than the courts, defense counsel and certainly their clients could ever have imagined. As COVID-19 spread through communities, jails and prisons, laws surrounding release and detention, speedy trial, attorney-client relationships and privilege, and compassionate release gained particular attention and significance.

As the pandemic's dangers became more evident, many courts and federal public defender offices closed to the public and staff alike, running on skeleton crews and telework. IT support staff became miracle workers, seemingly transforming offices overnight to enable everyone to work from home. FPD offices worked tirelessly to establish video and audio communications with in-custody clients, many times providing prison facilities with safely configured iPads and tablets to allow defender and CJA counsel, investigators and even experts to video-teleconference with detained clients.

Zoom became the safest means to meet and has now expanded the criminal defense practice vision to add an ability to practice distancing while still realizing the vital and irreplaceable importance of in-person attorney-client contact.

As some courts re-opened, the goals of FPD offices were to equally protect staff and clients from virus exposure and protect each client's constitutional rights,

sometimes insisting that in-person hearings and trials happen.

## First Step Act

The First Step Act passed, and portions became immediately effective in December 2018. Its major congressional goals addressed good time credits and lowering possible sentences for poorly defined and applied sentencing enhancements.

The First Step Act clarified the congressional intent of 54 days good time credit per year. For decades, the Federal Bureau of Prisons interpreted the phrase to award the 54 days only after (beyond) a year was served, meaning inmates served more time before release with credit. Congress explained credit up to 54 days is earned for each year of the court's imposed sentence, untying credits from the actual time imprisoned.

Under Section 401, Congress offered sentencing reforms to limiting sentencing enhancements for crimes surrounding drug sales, manufacturing and distribution, and for when a gun may be involved. A "serious drug felony" prior is now more narrowly defined to serving sentences for more than 12 months only when the defendant was released within 15 years of the instant charged crime. A "serious violent felony" is also more narrowly applied to serving sentences for more than 12 months for crimes equivalent to federal jurisdiction assault crimes under 18 U.S.C. § 113 or for offenses under § 3559(c)(2)'s defined crimes qualifying for the

federal detention presumption.

Section 402 expanded "safety valve" application, going from being applicable only to a defendant in Criminal History Category I to a defendant not having more than (a) 4 criminal history points made up of only 2-point prior convictions, (b) one prior 3-point conviction or (c) one prior 2-point violent offense as the sentencing guidelines defined.

## First Step Act Motions: Additional Crack Cocaine Reductions and Compassionate Release Representation

For possible First Step Act litigation and review, most Ninth Circuit districts created General Orders to automatically appoint federal public defenders or CJA counsel (in conflict situations) to review and file applicable motions or petitions. These pleadings focused on two areas of the act: Section 404 for further reviews of the Fair Sentencing Act of 2010 and crack disparity sentences, and Section 603 entitled the Federal Prisoner Reentry Initiative Reauthorization allowing for appointed counsel in compassionate release applications and district court motions.

While most crack-related petitions have been resolved, the act seemed prescient this year with the advent of the COVID-19 pandemic. Global warnings to reduce possible infection – masks, frequent handwashing and social distancing of a 6-foot radius – are difficult to implement in prisons, facilities designed to hold

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sentenced inmates sometimes beyond their intended capacities. Given the lack of social distancing, facilities provided masks, and sometimes no warm water, soap or hand sanitizer, it was frightening how COVID-19 exploded early in prisons during the pandemic. Reports poured soon to Federal Defender Offices of huge COVID-19 outbreaks in California prisons in Elkton, Oakdale, Terminal Island and Lompoc. As time passed, more prisons became hot spots. Since reliability and frequency of testing were questionable, it may be impossible to get accurate BOP inmate infection numbers.

As of December 31, 2020:

Federal Bureau of Prisons Population and COVID-19 Infections					
BOP Inmate Population <sup>1</sup>	Total COVID-19+	Inmate Deaths/ COVID-19+	BOP Staff	Total COVID-19+	Staff Deaths/ COVID-19+
138,628	31,065	155	36,000	4,009	2
% of total	22.4%	0.49%		11.1%	0.05%
U.S. General Population					
330,697,224	15,758,661	294,056			
4.7%	1.8%				

BOP has been working to vaccinate staff and inmates.

While the Attorney General had BOP release about 7,479 inmates (about 5%) to home confinement, the COVID-19 pandemic became the primary impetus for First Step Act compassionate release applications. FPD offices tried to compile lists of district defendants still in BOP custody and, after painstakingly finding out which

prisons housed them, massive informational mailings went to their district's defendants. Letters flooded into FPD offices asking for help with home confinement and compassionate release, BOP applications and subsequent district court motions after denials.

So many clients had been in prison for decades, many having lengthy sentences still left to serve. Not surprisingly, clients were aging and aged, suffering from illnesses brought by years of poverty and minimal health care before their imprisonment. These were the "vulnerable" – those the Centers for Disease Control and Prevention (CDC) defined as the most

lawyers and judges alike on possible impacts of COVID-19. FPD offices have opened hundreds of compassionate release cases.

BOP and district judges have granted compassionate release in few cases, but sometimes, reducing sentences not just by months, but years. And the inmate requests keep coming.

Another First Step Act addition is Section 101 – Risk and Needs Assessment System, which created Subchapter D, 18 U.S.C. § 3631 – 3635, conferring on the Attorney General and BOP \$75,000,000 to create an "evidence-based recidivism reduction program" within 210 days of passage:

- any scientifically-based and peer-reviewed study and
- programs allowing inmates "earned time credits" added to any good time credits.

Deadline extensions followed.

BOP may award these First Step Act "earned time credits" for participation in a faith-based program, treatment or regimen (Section 106), though BOP must still offer nonfaith-based programs which can also garner earned time credits. Further, an inmate (depending upon their crime or conviction) can garner "earned time credits" and additional privileges (e.g., increased commissary and email limits) "for successful participation and completion of evidence-based recidivism reduction programming."

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<sup>1</sup>In BOP-managed facilities plus community-based facilities.

susceptible to getting COVID-19 and to not surviving it or surviving it with greater infirmity post-infection.

Federal defenders and CJA lawyers reviewed for possible applications hundreds of client cases, looking at presentence reports and prison and medical records, formulating proposed release plans after contacting families. Epidemiologists and medical specialists educated

These time credits can be up to 10 days credit for every 30 days of program participation “or productive activities,” with an additional five days per 30 days for minimum or low-risk offenders. Inmates and wardens can be expected to disagree whether some inmates qualify for reductions and that litigation to extend to our courts.

The First Step Act excludes any inmates convicted of 68 specified federal crimes from earned time credit benefits under the evidence-based recidivism reduction programming. 18 U.S.C. § 3632(d) (4)(D).

### Criminal Justice Act Next Steps

In fall 2020, the House passed the Criminal Justice Act of 2020, but the Senate did not address its passage before that congressional term expired. The CJA of 2020 expanded judges’ ability to order the U.S. Marshals to arrange and pay for an out-of-custody defendant’s round trip to attend their court hearings (18 U.S.C. § 4285 currently specifies orders to travel to court). The CJA of 2020 also specifically gave magistrate judges jurisdiction to review their own final orders and judgments through writ and similar motion applications.

Finally, March 2020 saw the Federal Judicial Center begin studying the Report of the Ad Hoc Committee to Review the Criminal Justice Act Program (Cardone Report) implemented interim recommendations <https://www.fjc.gov/content/348307/cardone-recommendation-study-overview>. Called by some “the study of the Study,” the FJC will review the effectiveness of the AO-approved interim measures are to CJA-related: (1) committee and office structural changes, (2) compensation and staffing, (3) standards for practice and training, (4) capital case representations, (5) information technology, (6) litigation support and interpreters, and (7) pursuing legislative amendments.

The Ninth Circuit supports and encourages the creation of CJA supervisory attorney positions in several district FPD offices. The Cardone Report recommended these positions “to manage the selection, appointment, retention, and removal of panel attorneys.” With supervision CJA lawyers will be provided support, resources and advocacy. They also will help the bench, many times giving a first glance review of CJA vouchers and lessening the time judges must devote to their statutory

review before payment. Because of staffing limitations, not every district’s FPD office has been able to create a CJA supervisory attorney position.

FPD offices and CJA lawyers alike hope the FJC’s study will recognize that CJA needs further legislation to increase hourly court-appointed lawyer rates and to add locality pay increases for CJA panel lawyers. In many jurisdictions, the current rate covers overhead and support staff.

The Administrative Office of the U.S. Courts put off some Cardone interim proposals if and until it considers Cardone’s final recommendation of independence of the federal indigent defense functions from the AO. Congress would need to legislate any such change. ■

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## Community Outreach – A Year in Transition

As with court operations, 2020 was a transitional year for community outreach with civic education coordinators working tirelessly to stay connected to their various publics, in particular with schools accustomed to coming to the courts for field trips. This year, civic education coordinators began meeting monthly to share resources and celebrate the great work they do with their courts.

Kari Kelso, Ph.D., public education and community outreach administrator for the Ninth Circuit, held conference calls with civic education coordinators to discuss program planning for 2021. They also brainstormed on how to expand the courts' outreach databases and how much they look forward to resuming field trips virtually and in-person. Although many courts' civic programs decreased as teachers and school districts grappled with how best to serve their students during the COVID-19 pandemic, all districts participated in the 2020 Ninth Circuit Civics Contest.

Here are some of the Ninth Circuit's community outreach highlights:

The Eastern District of California held Open Doors to Federal Court program for their Bakersfield courthouse before the shutdown. Seven high schools and one university participated. Held at one of the high schools, students spent the morning hearing from professionals ranging from law enforcement to attorneys, and visitors included a trained drug-sniffing K-9 and its handler. After lunch, the students observed a mock trial, with Chief Magistrate



Judge Jennifer L. Thurston presiding, followed by participation in jury deliberations.

The 108th Annual Law Day Yosemite was held on May 8, 2020, by video due to the pandemic. Magistrate Judge Jeremy D. Peterson was master of ceremonies. The event included an essay contest for grammar school students. The theme, "The 100th Anniversary of the 19th Amendment," focused on the right to vote regardless of gender.

In a livestreamed event, the Eastern District celebrated Constitution Day with a reading of the United States Constitution. As an exercise in understanding where we come from, the original document was read, while noting where it has been amended. More information about the event and the recorded livestream is available on the district court's website at <http://www.caed.uscourts.gov/caednew/index>.



Photo collage, above, shows "Constitution Selfies" that were submitted by court employees to promote the livestreamed Constitution Day event and participants of Open Doors to Federal Court program held in Bakersfield, California.

[cfm/education/constitution-day/](http://community.ca9.uscourts.gov/). Members of the court were asked to take a constitutional selfie, all of which were put into a collage by their court librarian and can be viewed on the Public Information and Community Outreach (PICO) committee website at <http://community.ca9.uscourts.gov/>. In coordination with the district court, Operation Protect and Defend had judges speak to students in Fresno and Sacramento.

District Judge John A. Kronstadt from the Central District of California led several high school moot court programs in association with the Constitutional Rights Foundation (CRF) during the year. Moot court activities included District Judge André Birotte Jr. and Magistrate Judge Autumn D. Spaeth. As a long-time board member of the CRF, Judge Kronstadt continues to provide civic education leadership ensuring support of these valuable educational programs, which are made available for civic coordinators to use with visiting schools throughout the Ninth Circuit and beyond. CRF resources have been invaluable to the many school districts our coordinators reach out to teach them about the federal court system.

Judge Birotte hosted summer externs from the district attorney's office, law students from the University of California at Irvine, Pepperdine University and the University of Southern California, and held a "meet the court" presentation with middle school students from Winward School and another for high school students.

Judge Kronstadt gave a presentation to Fordham University School of Law students, and Chief District Judge Philip S. Gutierrez hosted USC and the University of California, Los Angles, students regarding the Clerkship Diversity Initiative. Magistrate Judge Alka Sagar visited a group of high school students and discussed criminal justice issues. Before the shutdown, District Judge George H. Wu, District Judge Dolly M. Gee, Magistrate Judge Rozella A. Oliver and retired Judge S. James Otero participated in the Korean Judges Observation Program in an all-day visit to the court. For the participating Korean judges, the program was a high point of their studies in America. Many of our courts offer similar programs for visiting international judges and students.

Earlier in the year, the fairy tale mock trial of Goldilocks for elementary students was conducted for 150 students from two schools. Other programs included one organized by Bankruptcy Judge Sandra R. Klein

in which three Girl Scout troops worked to earn Justice patches, and a Ninth Circuit Civics Contest kick-off Law Day event for another 70 high school students.

The celebration for civics contest winners looked very different this year. The Central District of California demonstrated creativity by sending balloon bouquets along with mailed award certificates to winners. Approximately 80 attendees, comprising winning students, their families and friends, instructors, judges, lawyers and others enjoyed the celebration. In



Chief District Judge Philip S. Gutierrez talks to students during the Central District's mentoring lunch program focused on Law Day.



Bankruptcy Judge Sandra R. Klein inside her courtroom with the Girl Scouts, who participated in Central District's Justice Patch program.



Genna Gams, third-place civics contest essay winner in Central District, pictured with her certificate and balloon gram. Gams advanced as one of the finalists in the 2020 Ninth Circuit Civics Contest.

November, the district's Federal Courthouse Exploration Day continued virtually.

The Southern District of California continued its participation in the Ninth Circuit's Civics Contest, though many schools switched to virtual learning. District Judge Janis L. Sammartino, chair of the PICO Committee and chair of the Outreach Committee for the Southern District of California, honored the district contest winners in a virtual ceremony

and congratulated them on their essay and video entries. District Judge Cathy Ann Bencivengo and Magistrate Judge Jill L. Burkhardt of the Submission Review Committee also spoke and commented on their experiences reviewing the essays and videos and how they felt about the topic. Through ongoing outreach to schools, two essay winners from the Southern District won first and third places at the circuit level

Along with the civics contest, the district partnered with the San Diego County Office of Education to participate in virtual public service career panels. These panels included judges and court staff. Panel presentations were recorded and provided to teachers in the county as they taught about the public service sector. In 2020, a new exhibit was unveiled in the Edward J. Schwartz United States Courthouse in San Diego, "Portraits of Justice," a courtroom sketch art exhibit intended to increase public awareness of the courts. The exhibit, part of The Southern District of California's Learning

Center, a multi-prong effort to present and promote civics education, was two years in the making and provides a look into past courtrooms via an artform that is rarely used, replaced by cameras and video livestreams. See page 28 to read more about the exhibit.

The District of Oregon welcomed a class of eighth-grade Advancement Via Individual Determination (AVID) students from Kelly Middle School to the Wayne Lyman Morse U.S. Courthouse in Eugene. The two-hour program began with courthouse tour, including a discussion about the artwork around the courthouse and a review of one of the courtrooms. After the students had an opportunity to familiarize themselves with the courtroom, court staff discussed the role of the courts as one of the three branches of government, the distinctions between state and federal court and civil and criminal cases, and how typical cases are processed from filing of a complaint to filing an appeal. The students then participated in fill-in-the blank questions and word search exercises. The highlight of the program was a visit with District Judge Michael J. McShane, who remarked on the importance of jury service and on his career leading to his appointment to the bench. Students had an opportunity to ask Judge McShane questions following his presentation. Before the court entered modified operations, students from Monroe Middle School participated in half-day mock trials at the Morse Courthouse. With the assistance of their teacher, the students prepared for the mock trials in advance. The trials were presided



Eight-grade Advancement Via Individual Determination (AVID) students from Kelly Middle School, with their teacher, inside one of the courtrooms of the Wayne Lyman Morse U.S. Courthouse in Eugene, Oregon.



Following social distancing guidelines, the District Court of Guam, led by Chief District Judge Frances Tydingco-Gatewood, pictured left, held naturalization ceremonies at the court's parking lot. District court and U.S. Probation Office staff also donated baskets of hygiene necessities to confined youth in the Department of Youth Affairs.

over by local legal practitioners, who provided feedback to the students at the conclusion of the activity.

### Guam Civic Outreach Spotlight

The District Court of Guam, in partnership with the Academy of Our Lady of Guam and iCivics, launched an inaugural iCivics elective course for academy students in fall 2020. The partnership between the district court, the academy and iCivics marks the first partnership of its kind between an island school, the court and the iCivics organization. Through this partnership, the students will have the opportunity to observe court proceedings, shadow court professionals and gain knowledge about the interactions between the court and other federal agencies. Students will also witness the court's unique role in the naturalization of candidates for U.S. citizenship, learning the pathway to citizenship and the responsibilities U.S. citizenship entails. This direct experience with the federal judiciary will be complemented by

games formulated by the iCivics program.

Like many of courts, Guam's naturalization ceremonies took on a new look. Veterans Day and Thanksgiving Day naturalization ceremonies were held in the court's parking lot following social distancing guidelines. Other educational and community events included hosting a Ninth Circuit Civics Contest awards ceremony and a mock trial with Guam Police Department's new criminalists. Activities also included outreach to multiple local news outlets where Chief District Judge Frances Tydingco-Gatewood and Magistrate Judge Michael J. Bordallo shared success stories from the District Court of Guam's Drug Offender Re-Entry Program accompanied by a recent graduate, a reformed model citizen and the program's therapist. Outreach was not just for K-12 youth in public and private schools but also with the Department of Youth Affairs' confined youth. In addition to presenting the court's civic education programs, hundreds

of hygiene necessities, such as deodorant, shampoo, bodywash, toothpaste, toothbrushes, lotion and shower baskets were personally donated to the youth by the District Court of Guam and U.S. Probation Office staff.

In late February, the District Court for the Northern Mariana Islands hosted the NMI Judiciary's annual mock trial event. Six teams representing both private and public schools from the islands of Saipan and Tinian competed. The event was the last civic event held at the Horiguchi Building before the COVID-19 lockdown and safety procedures were implemented across the island in early March. The district court looks forward to hosting future mock trial competitions in its new courthouse.

In 2020, the District Court for the NMI swore in 89 new U.S. citizens in four in-person ceremonies that celebrated Martin Luther King Jr. Day, Washington's birthday and two special virtual ceremonies held at the new courthouse. ■

## Ninth Circuit Continues Its Efforts to Ensure a Healthy and Positive Workplace

As it has for many, 2020 brought significant changes and growth for the Office of Workplace Relations. While the office works remotely, its availability as a resource for all Ninth Circuit employees has continued. Since its establishment in January 2019, the Office of Workplace Relations has led the Ninth Circuit's efforts to ensure a healthy, positive and productive workplace for all employees.

To better serve all 6,000 employees in the 63 court units of the Ninth Circuit, which includes district and bankruptcy courts, probation and pretrial services offices, and federal public defender offices in the nine western states and two territories, the office added Paula Raffaelli in June 2020 as deputy director of workplace relations. Prior to joining the office, Raffaelli was deputy Title IX officer in the Office for the Prevention of Harassment and Discrimination at the University of California, Berkeley. She returns to the Ninth Circuit, where she was previously a staff attorney and a law clerk for Ninth Circuit Judge Morgan Christen.

The Ninth Circuit has been a leader in improving the workplace environment in the judiciary. The circuit's revised Employment Dispute Resolution (EDR) Policy, implemented in 2019, expanded the options for resolution to include informal advice, assisted resolution and formal complaint. Additionally, it added bullying as a form of misconduct. The revised national Model EDR Plan was adopted by the Judicial Conference of the United States in September 2019. This revised Model EDR Plan was heavily based on the Ninth Circuit's own revised EDR Policy and similarly expanded the options for resolution and added abusive conduct as a prohibited form of misconduct for all courts across the judiciary. To align itself with the National Model EDR Plan, the Ninth Circuit updated its EDR Policy in 2020. The office assisted



*In 2020, the Ninth Circuit's Office of Workplace Relations welcomed Paula Raffaelli as the deputy director of workplace relations, left, and Amrita Mallik as the circuit's first diversity, equity and inclusion officer.*

*in the collection and review of local court modifications for their local EDR policies prior to approval by the Judicial Council of the Ninth Circuit. This updated Ninth Circuit EDR Policy has been in effect since October 2020.*

*Following the updated Ninth Circuit EDR Policy's requirement to provide annual training to employees and judges to ensure they are aware of their rights, obligations and options, the Office of Workplace Relations has increased its efforts to develop and provide training to court units. While staff had prioritized in-person outreach over the past two years to familiarize the circuit with the newly-created office, it had been unable to offer in-person trainings and presentations for employees due to the COVID-19 pandemic. Instead, the office adjusted and offered virtual, often interactive, presentations about the EDR Policy, best practices for prevention of workplace disputes and misconduct, prohibited misconduct and other workplace-related topics. The*



*Bystander intervention, along with other important tools to assist in the recognition and resolution of workplace issues, is covered in the online "EDR Basics" training for employees.*

office also developed an online EDR training for circuit employees, which includes an additional module addressing the unique responsibilities of managers and supervisors. The office is currently developing a similar online training for judges who review the EDR Policy and how it interacts with the Code of Conduct for U.S. Judges and the Judicial Conduct and Disability Procedures. Going forward, the office is continuing its development of targeted trainings on specific workplace topics such as abusive conduct and bystander intervention.

To further increase its efforts to maintain an exemplary workplace, and in conjunction with the Strategic Plan for the Federal Judiciary update in fall 2020, the Office of Workplace Relations added Amrita Mallik, as the Ninth Circuit's first diversity, equity and inclusion officer. Prior to joining the office in November 2020, Mallik served as the first campus climate program officer at the University of Hawaii at Manoa and before

that, a senior trial attorney at the Equal Employment Opportunity Commission. Mallik will provide support and expert advice on workplace diversity, equity and inclusion (DEI) matters, and she will help develop DEI-related programs and initiatives.

Despite the challenges from the global pandemic, the Office of Workplace Relations has been and continues to be committed to serving all Ninth Circuit employees. The office continues to monitor the workplace environment and develop new initiatives that will provide employees with a safe and healthy workplace. The office has been looking to creative and virtual methods to connect with individuals and groups seeking assistance on workplace issues and concerns. While the work progresses, the Office of Workplace Relations remains dedicated to ensuring the Ninth Circuit is a workplace of respect, civility, fairness and inclusion. ■

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## Congress Weighs Judge and Courthouse Security Bills

The July 19, 2020, shooting of Daniel Anderl, who died, and his father, Mark Anderl, who was seriously wounded at the home they share with mother and wife Esther Salas, United States district judge for the District of New Jersey, prompted a renewed effort to safeguard the judiciary. The bipartisan effort to increase security for judges and other courthouse workers was embodied in identical bills before the House and Senate but died in committee when the 116<sup>th</sup> Congress session ended. The family members were shot by a disgruntled attorney who, a day later, took his own life.

The bills included provisions for curtailing the selling of personal information, restricting family information, providing for enhanced security at courthouses and upgrading alarm systems at judges' homes. The bills allow judges to sue violators.

In late November, New Jersey enacted "Daniel's Law," establishing criminal and civil penalties for publishing home addresses or phone numbers of judges and prosecutors.

The September 2020 ebulletin for the Federal Magistrates Judges Association (FMJA) has two articles on judges' security, one by Magistrate Judge Deborah M. Smith of the District of Alaska and Magistrate Judge Douglas Arpert of the District of New Jersey and the other by Amy Bennett, circuit information technology security director for the Ninth Circuit Office of the Circuit Executive.

Bennett recommends a series of steps can be taken to reduce one's

online profile and provides specific websites and instructions to help with these steps.

"In early 2018, several judges received horrible messages via the mail at their homes and had their personal information maliciously posted on the internet (posting that information is called "doxing")" said Bennett. "No one government security entity could address the physical and online threats or provide assistance in understanding and reducing the risk. Every entity acknowledged the problem and provided information and advice but did not want to take on a comprehensive risk management program," she said.

Bennett is offering a 75-minute virtual class to court units on protecting personal information. The class covers the high-level flow of personal information from primary sources to criminals, what criminals can do with personal information, step-by-step recommendations for reducing the risk of criminals obtaining and abusing personal information and handouts written with minimal jargon and acronyms so that people can understand and follow instructions.

As for the future, "My team is continuing to work with a pilot district to proactively search for threats against the courts and staff using publicly available tools and information," said Bennett. "That's helping us understand the local leadership's priorities and concerns and letting us share what information and technological capabilities are available. The Ninth Circuit librarians have also

been conducting proactive daily public searches for threats. They have been extremely generous in sharing their procedures and successes with my team and the AO."

Bennett noted the three most important steps individuals can take to help protect themselves. "The number one thing judges and other appointed officials can do to protect themselves is check the state statutes for redacting personally identifiable information from government databases. The second thing is to monitor and protect personally identifiable information by implementing a credit freeze, implementing fraud alerts, signing up for the Office of Personnel Management identify theft protection, which applies to federal employees who were employed in 2014 or before and making every password unique and complex. The third thing is to remove information from the sites that legally collect and sell it (data aggregators)."

As far as the legislation that stalled, "the bills before Congress (were) much-needed protection for judges," said Bennett. "A single case can put a previously unknown judge in an international and often unfriendly spotlight. The internet offers the power of information, mass communications and of anonymity. It's unfortunate that the data aggregators haven't proactively removed the records of public officials voluntarily. Just because something is legal doesn't mean it's right. Technology has created extreme risk for our judges and other public officials. We need to use technology and pass laws to protect them." ■

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## Pacific Islands Committee Delivers Live Trainings During the COVID-19 Pandemic

The mission of the Pacific Islands Committee is to help improve the administration of justice in the U.S. territories of Guam and American Samoa, the Commonwealth of the Northern Mariana Islands, the Republics of Palau and the Marshall Islands and the Federated States of Micronesia. Working almost exclusively with the state-level courts of these jurisdictions, the committee develops and presents a variety of judicial education and court professional training programs through grants from the United States Department of the Interior. The committee also collaborates with the Pacific Judicial Council, an organization of judicial officers from several island nations.

The funding for training in the Federated States of Micronesia and the Republic of the Marshall Islands was established by the Compact of Free Association (2003) and funded through 2023 “to promote the development of the people of the Trust Territory toward self-government or independence as appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the peoples concerned.” A companion technical assistance grant has been offered to provide judicial training in Palau, American Samoa, Northern Mariana Islands and Guam.

The Pacific Islands Committee assists in the development and delivery of live training throughout the territories and freely associated states of Micronesia, Palau and the Marshall Islands. The coronavirus pandemic had a major impact on the regions as the governments of American Samoa, Micronesia, Palau and the Marshall Islands were quick to close their borders. The border closings initially were temporary, but the closures eventually were extended throughout the end of 2020. Many of the islands in this region have limited access to high-speed internet, so the move to virtual training has been slow. There was some concern that the technological challenges might not easily be overcome as the pandemic-related border closures extended. The Pacific Islands Committee education specialist began to conduct education committee meetings with the island jurisdictions in May 2020 to attempt to get the court leadership on board with the technology. Though there were some glitches initially, most of the island jurisdictions were able to participate.

Once the use of virtual meeting technology was accepted, the Pacific Islands Committee collaborated with the local jurisdiction to bring several nationally recognized presenters

who otherwise would have been unavailable due to the time it takes to travel to this region. Trainings included an eight-part series on scientific evidence, court interpreter training, hearings via Zoom webinar and a four-part webinar series on cannabis and impaired driving which was a very popular presentation attended by more than 200 participants.

In some ways, the pandemic offered the Pacific Islands Committee an opportunity to test out a new approach to delivering training as we embark on the final years of the training grants. The committee will apply these lessons learned as it continues to balance on-going training needs with the uncertainties of when live training can resume. ■

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## Ninth Circuit Technology Experts, Court Executives and Judges Participate in First Virtual IT Conference

For over 30 years, the Ninth Circuit's Office of the Circuit Executive has hosted an in-person IT Conference for information technology staff, court unit executives and judges in the circuit. Due to the risk and uncertainty posed by COVID-19, an in-person IT conference was not feasible. Instead, the Ninth Circuit IT Committee organized the circuit's first virtual IT conference which began on August 4.

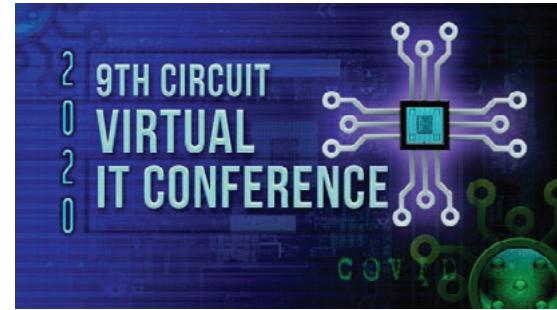
To accommodate IT staff residing in multiple time zones throughout the Ninth Circuit and to avoid Zoom fatigue, two 90-minute sessions per week on Tuesdays and Thursdays were held over a period of four weeks. Each day, between 120 and 200 people from throughout the Ninth Circuit, the Administrative Office of the U.S. Courts, and other circuits attended the virtual sessions which began at 2:00 p.m. PDT in order to accommodate the Pacific islands and colleagues from the Administrative Office of the U.S. Courts and other circuits. During his opening remarks, Chief Judge Sidney R. Thomas reflected on having attended 24 Technology Users Group (TUG) conferences (now IT Conference).

This year's first digital IT Conference in many ways, may be one of the most important conferences because of the challenges of managing through a pandemic. Chief Judge Thomas acknowledged all of the judiciary's IT professionals for the role they have played in continuing operations. He said that the U.S. Court of Appeals for the Ninth Circuit has been videotaping oral

arguments since 1997 and that he was on the first panel. Chief Judge Thomas said that the Ninth Circuit did not miss a beat, switching directly to video conferencing oral arguments. He explained that the district courts faced more serious issues and now are starting to strategize on how to hold jury trials safely and effectively. Overall, Chief Judge Thomas believes the system has worked well and that the pandemic has created opportunities to reinvent how the courts manage the administration of justice.

Circuit Executive Elizabeth A. Smith praised all the IT professionals and expressed everyone's gratitude for keeping the wheels of justice turning. She also suggested that the virtual IT Conference may provide a model for future IT communications events. She was not suggesting that virtual conferences could substitute for live meetings but that IT professionals might take advantage of the tools to communicate more frequently at a national or circuit-wide level.

"IT Support During the Pandemic" was the first presentation which provided a review of the challenges IT managers faced supporting remote users and court/office operations. IT directors David Glab of the U.S. Bankruptcy Court for the District of Arizona, Mary



Ninth Circuit Chief Judge Sidney R. Thomas welcomes in video to the circuit's first virtual IT Conference.

McKenna of the U.S. District Court for the Western District of Washington, Sergio Pinto of the U.S. District Court for the Southern District of California and Buz Rico of the U.S. District Court for the Northern District of California; Eric Selje, IT security officer, U.S. District Court for the Western District of Wisconsin; and Ben Medina, IT supervisor, U.S. District Court for the Central District of California, presented and provided their predictions of IT challenges moving forward and an overview of how courts/offices are providing technical support and using teleconferencing solutions. In addition, they presented a video clip of judges and clerks describing the challenges they faced in their respective courts. Senior District Judge Morrison C. England, Jr., and Magistrate Judge Stanley



Ben Medina, IT Supervisor, Central District of California; Buz Rico, IT Director, Northern District of California; Dave Glab, IT Director, District of Arizona; Eric Selje, IT Director, Western District of Wisconsin; Mary McKenna, IT Director, Western District of Washington; and Sergio Pinto, IT Director, Southern District of California, speak about changes in court technology operations and support during the COVID-19 pandemic.

Boone of the Eastern District of California, District Judge Gloria M. Navarro of the District of Nevada and District Judge B. Lynn Winmill of the District of Idaho all described the various challenges they overcame in adjusting to the new “pandemic normal.” Rico also provided participants with ideas about how his court has used Zoom for conferencing and court events.

The second week included presentations on local initiatives from IT managers Erik Grubbs, of the District of Hawaii, and Mark Masselli, of the U.S. Probation and Pretrial Services Office for

the District of Idaho. Grubbs presented on rules established by the Hawaii District Court concerning how social distancing was handled in the courtroom. Masselli’s presentation showed how his court used the cloud service company Box.com to store and manage the data of the U.S. Probation and Pretrial Services Office in his district.

Week three was a collection of presentations from the Administrative Office of the U.S. Courts that included updates on NextGen and PACTS 360 and an overview of Microsoft Office 365.

The final week was dedicated to IT security. Bankruptcy Clerk Mary Schott, of the District of Nevada and chair of the Ninth Circuit’s IT Security Committee, provided an overview of the committee’s work to support circuit-wide stakeholders. Amy Bennett, Ninth Circuit information security director, hosted the remaining security sessions and provided a serious review of the security scorecard, security assessments, mobile device management and endpoint protection. Her presentation concluded with an update on the 5-Year Independent IT Security Assessments including the updated schedule, the new virtual assessment model and trends in the Ninth Circuit and throughout the judiciary.

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The people who helped make the conference possible included judges, clerks, IT managers and IT staff from the Ninth Circuit’s Office of the Circuit Executive and the Administrative Office of the U.S. Courts. The Ninth Circuit acknowledged Cary Casola of the AO’s Office of Public Affairs, Video Production Services Unit, for the assistance his team provided in hosting and recording the conference sessions. In total, over 30 people from the Ninth Circuit and the AO participated in the production of this conference. The conference was hosted in both Microsoft Teams and Zoom platforms, demonstrating that these tools can be used by all circuits in creative ways to enhance communication during these difficult and isolating times.

## New Law Clerks Orientation Goes Virtual

In this year of firsts, the United States Court of Appeals for the Ninth Circuit held its first virtual New Law Clerks Orientation in September to help law clerks manage their duties and better understand the court.

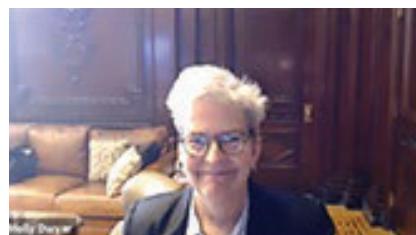
Chief Judge Sidney R. Thomas addressed the group of about 140, noting that due to the death of Justice Ruth Bader Ginsburg, Justice Elena Kagan was unable to speak to the clerks as planned. Instead, a special panel with Ninth Circuit Judges M. Margaret McKeown, Paul J. Watford and John B. Owens shared their remembrances of Justice Ginsburg.

Senior Circuit Judge Jay Bybee, the “orientation czar,” then covered basic functions of the clerk job and talked about perceptions of the Ninth Circuit.

The afternoon session started with a “How the Courts Work” video from Molly Dwyer, clerk of the court for the Ninth Circuit, and Susan Gelmis, chief deputy clerk. Dwyer noted COVID-19 restrictions, mentioning the court has survived earthquakes, floods and deaths, and would take the latest challenge in stride, too.

Dwyer told clerks they may be asked to come to chambers or may work remotely, not seeing their judge in person unless restrictions are lifted. “But even if you don’t, at some points in your life you will be able to tell an excellent story about the time you clerked for a judge that you never saw, other than Zoom,” she said.

Dwyer went on to provide statistics, types of cases clerks will see and the volume of work in the



Ninth Circuit Chief Judge Sidney R. Thomas, top, made remarks at the beginning of the New Law Clerks Orientation, along with Clerk of Court Molly Dwyer, middle, and Senior Circuit Judge Jay S. Bybee, above.

Ninth, noting the clerks can gloat about how much more work they have than their friends in other circuits.

Gelmis then summarized critical calendaring information and spoke to adjusted court operations. “With remote hearings these days, we sort of have it down,” she said. “Our courtroom deputies take care of giving all the information to counsel, and our AV team, which is amazing, will reach out to the panel to give them whatever links they need. The judges, at this point, are much more comfortable with it than they were six months ago.”

Gelmis addressed the nuts and bolts of communicating results to her

office and offered assistance with everything from brief bundles to CM/ECF questions. “Even if I’m not the right person, I usually know how to get the right answer,” she said.

The remainder of the afternoon was occupied in hearing of some of the nuances of the Ninth’s en banc process from Paul Keller, supervisory staff attorney, who assists Chief Judge Thomas as en banc coordinator.

On day two of the orientation, clerks were introduced via video to key members of the Office of the Circuit Executive, including Elizabeth A. Smith, circuit executive, and others. In the afternoon, Lisa Fitzgerald, senior staff attorney, presented legal topics via video.

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On day three, Chief Judge Thomas and Senior Circuit Judge N. Randy Smith discussed the environment in chambers moderated by Circuit Judge Morgan Christen. In the afternoon, focus switched to “Wisdom from the Trial Court: A Conversation with Northern District Judges,” which included Chief District Judge Phyllis J. Hamilton, Senior District Judge Jeffrey White and Magistrate Judge Sallie Kim, moderated by Circuit Judge Richard A. Paez.

Day four covered workplace relations with Judge McKeown and Yohance Edwards, director of workplace relations for the Ninth Circuit. Judge McKeown joined Circuit Judge Mary H. Murguia to address ethics and the code of conduct for the federal judiciary. The orientation wrapped up on a fun note with Judge Bybee’s Ninth Circuit Trivia Contest. ■

## Ninth Circuit Holds First Virtual En Banc Sessions

Many courts, including the United States Supreme Court, have been hearing arguments via audio connections, but the U.S. Court of Appeals for the Ninth Circuit broke new ground when it held its first ever virtual en banc hearings September 22-24.

The 11-judge hearings, with Chief Judge Sidney R. Thomas presiding, are posted on the Ninth Circuit's YouTube Channel. One case, George Young, Jr. v. State of Hawaii, Case No. 12-17808, heard on Sept. 24, dealt with Hawaii's laws on open carry guns. In less than 24 hours, the video had been viewed over 300 times. Other cases had 166 and 244 views. A few days later, these videos had been seen by 959, 249 and 326 viewers, respectively.

Chief Judge Thomas, long a proponent of allowing video argument in appropriate cases, said "To preserve the health and safety of the court, court staff, attorneys and the public ... we have continued to hear virtual oral arguments and have successfully done so in well over 500 cases."

Attorney Neal Katyal, presenting for the State of Hawaii, thought the virtual hearing was effective, overall. "I thought the format allowed the judges to ask their questions," Katyal said, "and there wasn't a lot of cross-talk because the Chief Judge effectively played 'traffic cop.' It felt very orderly and allowed both my opponent and me to answer the questions to the best of our ability."

Alan Beck, who represented the appellant, Young, in the same case, was a little less enthusiastic about



*En banc panel, first three rows, hears oral arguments in George Young, Jr. v. State of Hawaii, Case No. 12-17808, an appeal from the district court's dismissal of Young's civil rights action challenging, under the Second Amendment provisions, Hawaii law pertaining to the issuance of permits to carry a concealed or unconcealed weapon.*

the virtual en banc session. "It was more convenient than had it been in person due to not having to travel," he noted. He'd still consider participating in virtual en banc hearings after the COVID-19 crisis has passed, but "I prefer being in court in person. I feel like I am a better advocate when physically in front of the judges ... but the hearing still served its purpose and all the points were made," Beck noted.

Circuit Judge Kim McLane Wardlaw was on the panel that heard the Hawaii v. Young case: "Virtual hearings are effective but no substitute for in-person hearings," she said. "In the time of COVID-19, it is necessary to have virtual hearings, otherwise there would be no hearings at all. When COVID-19 is eliminated, providing there are no other impediments, I would prefer in-person arguments."

*USA v. Knight* Clerk Molly Dwyer, of the Ninth Circuit Court of Appeals, weighed in on the technical end of the virtual hearings in the Ninth Circuit, noting that they will occur in other circuits, if they have not already begun. "Testing everyone's connections up front is the biggest challenge, but we do that for all arguments, not just en bancs," she said. "I watched all of them and I thought they went smoothly. Our entire audio-visual staff have been the superheroes throughout this pandemic. We couldn't have managed without them."

One of those superheroes, Kwame Copeland, courtroom technology manager for the Ninth Circuit Court of Appeals, noted "One thing that was remarkably useful was a new feature that allows the host to manually drag and drop the video windows to change the order they appear on the screen. If you look at our

videos, you will see the three rows of judges arranged the way they would be on the bench.”

Copeland noted that although setting up the technology had its challenging moments, it is still much easier to set up a virtual en banc hearing than to “have a large group of people travel to San Francisco from around the United States and meet in a big room for an hour, and then have a subset of that group meet in another room for an hour or two.”

Chief Judge Thomas noted there is no legal impediment to conducting oral arguments by video. “We have allowed parties, with the court’s permission, to appear by video for decades,” he said. “Judges have also appeared by video for argument when circumstances made personal appearance difficult or impossible. Most judges prefer in-person argument because it has an interactive dynamic that enhances the argument. That said, virtual argument is an entirely acceptable substitute, even in en banc cases.”

The Ninth Circuit has conducted a survey of lawyers who appeared virtually before three judge panels, and the results were overwhelmingly positive. “We may make some changes with three-judge panels to allow greater virtual flexibility. Once it is safe to return to the courtrooms, we plan to resume in person en banc hearings,” said Chief Judge Thomas. ■

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## Ninth Circuit Participates in Constitution Day Reading Led by Eastern District of California

Over 100 readers from the United States Courts for the Ninth Circuit brought the Constitution into the limelight on Sept. 17, 2020, when each read aloud a portion of that great document as scores watched a live YouTube feed.



*Chief District Judge Kimberly J. Mueller of the Eastern District of California kicked off the reading of the Constitution that was livestreamed on Constitution Day 2020.*

"Judges and lawyers take a solemn oath to protect and defend the Constitution," said Chief District Judge Kimberly J. Mueller, of the Eastern District of California, who arranged for the readings. "For our system of justice to work, we need everyone to understand this and trust that we are faithfully following the Constitution. Reading the Constitution out loud, in community, reminds us of our solemn obligation and celebrates this foundational document's permanence and resilience."

Judge Mueller was inspired to set up the reading by Supreme Court Justice Anthony Kennedy (Ret.), who grew up in Sacramento and encourages everyone to read the Constitution through, annually. Her goals are: to celebrate the Constitution's foundational importance, inspire the participants

and "have some fun with it as well!" she said.

Itzayana Perez, a senior at the Criminal Justice Academy at Grant Union High School who hopes to follow a career in medicine, read for the event.

"The reason I decided to read the Constitution along with others is the fact that it allows me to gain more knowledge; by having multiple readers it allows a deeper understanding of the rights myself and others have, along with bettering my understanding of the government structure. The Constitution is a way of ensuring I am a citizen who has rights and freedom."

Brian Landsberg, law professor at the University of the Pacific McGeorge School of Law in Sacramento, read a portion of Section 1 of the 14th Amendment, which deals with the rights of citizens. Professor Landsberg noted the Constitution "is the basis for our government and the rule of law in the United States. During a period of national polarization, the Constitution may serve as a basis for unity," he said.

"The Constitution is an amazing example of the framers' ingenuity and care in creating our unique form of government," said Kevin Johnson, dean of U.C. Davis School of Law. "Public education about the document and its complexities is a worthy endeavor." Johnson read Article II, Section 2, "which pertains to powers of the President, including informing Congress of the State of the Union, and to 'receive Ambassadors and other public Ministers,' and 'take Care that the Laws be faithfully executed.'

"I decided to participate for many reasons," said Elizabeth Olsen, a policy consultant with the California Senate Office of Research and president of the Woman Lawyers of Sacramento, "one being my patriotism and belief that the Constitution provides inalienable rights, freedoms and protections to all of our citizens. This being the centennial of the Women's Right to Vote made it an extra special year."

Olsen read the 19th Amendment which, in 1920, gave women the right to vote. "As a woman, the 19th Amendment holds a great deal of meaning to me. And leading an organization devoted to the advancement of women in the legal profession and improving the status of women in our society, in the year 2020, which also happens to be the 100th anniversary of the ratification of the 19th Amendment, adds additional meaning," she said.

Mario Fox, director of the Criminal Justice Academy at Grant Union High School had a number of his students participate in the readings. "To take a phrase from Dr. Martin Luther King Jr., I have always held that the Constitution is a promissory note that guarantees all U.S. citizens the unalienable rights of life, liberty and the pursuit of happiness," he said.

"With this foundation, I believe that students will come to understand and appreciate fully that, although we may not always be perfect, the United States is still the greatest country in the world and this is due largely to our Constitution," he finished. ■

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## Chief Judge Emeritus J. Clifford Wallace Celebrates 50 Years on the Bench

Chief Judge Emeritus J. Clifford Wallace, of the United States Court of Appeals for the Ninth Circuit, who still takes half of a full caseload as a senior circuit judge, has had – and continues to have – an extraordinary 50-year judicial career.

Judge Wallace was born in 1928 in San Diego and attended San Diego State College (now California State University, San Diego), graduating with honors and distinction in 1952, majoring in economics and minoring in political science. He went on to law school at the University of California, Berkeley, where he was a member of the board of editors of the California Law Review before graduating in 1955.

Upon passing the California Bar, Judge Wallace specialized in civil trials and eventually made partner. Fifteen years after he started his legal career, he received his commission as a U.S. district judge for the Southern District of California, initiating his 50-plus-year run as a federal judge. He was elevated to the U.S. Court of Appeals for the Ninth Circuit in 1972 and was chief judge of the Ninth Circuit from 1991 to 1996, when he took senior status.

Judge Wallace has been a contender for a Supreme Court position several times and was instrumental in establishing the American Inns of Court. He received the 2016 American Inns of Court A. Sherman Christensen Award “for distinguished, exceptional, and significant leadership to the American Inns of Court movement.” The award was presented at a U.S. Supreme Court celebration hosted by Supreme Court Justice Sonia Sotomayor.



Chief Judge Emeritus J. Clifford Wallace, right, speaking with a delegation of judges from Botswana in 2012 in San Francisco.

Supreme Court Justice Anthony M. Kennedy (Ret.) presented Judge Wallace with the 2005 Edward J. Devitt Award which honors judges whose careers have been exemplary, noting it was an honor and a pleasure to congratulate him “for 50 years of such distinguished dedicated service to the judiciary of the United States and to the rule of law. He brought the rule of law, the idea of justice, the ideal of the dignity of judicial service halfway around the world. There has been no judge, in my experience, in this country or any other country that has done as much as he has,” said Justice Kennedy.

Chief Judge, and longtime friend of Judge Wallace, Sidney R. Thomas noted, “I have worked closely with Judge Wallace on matters of judicial administration from the time I first joined the Court. He has been a mentor and a close friend. He has had an enormous and positive impact on the administration of justice in the West. The breadth of his accomplishments in the field of judicial administration—both in the United States and abroad—is simply astonishing.”

Listed in 14 who's who lists, Judge Wallace is an untiring contributor

to the advancement of the rule of law and administration of justice, but his former law clerks, a number of who are now judges in their own right, honor him as a most compassionate man.

Senior District Judge David Campbell, of the U.S. District Court for the District of Arizona, clerked for Judge Wallace in 1979-80 and, even after 40 years, remembers “clerked for the judge was a thoroughly pleasant experience. Although he was very efficient and focused on getting the work done, his office was a delightful place to work, with great staff who enjoyed their time together. I am a trial judge, rather than an appellate judge,” said Judge Campbell, “but I have tried to follow his model of getting the work done efficiently in a collegial environment of cooperation and collaboration.”

Judge Joan P. Weber, of the San Diego Superior Court, clerked for Judge Wallace in 1980-81 and noted it “was a memorable year for Judge Wallace and for me. Judge Wallace was one of the three finalists for an opening on the U.S. Supreme Court that year. He went

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back to D.C. to be interviewed by the Department of Justice and the White House, and all the clerks helped him get ready for those interviews. President Reagan ultimately selected Justice Sandra Day O'Connor for the seat, but we were all so proud of Judge Wallace."

"He has helped so many countries develop their legal systems. He has spread the rule of law to multiple continents. I have always tried to follow his lead and get involved in my community and with organizations like the ABA, the American Law Institute and the National Association of Women Judges," added Weber.

Judge James C. Dever III, now U.S. district judge for the Eastern District of North Carolina, clerked for Judge Wallace in 1987-88. "Judge Wallace is one of the finest human beings that I have ever met," said Judge Dever. "He is an extraordinary husband, father, citizen and federal judge. I remember the extraordinary care with which he treated each case and the kindness and respect that he showed to everyone. I have often benefited from Judge Wallace's wise counsel since my clerkship ended."

In the early 1980s, Judge Wallace received a special assignment from Chief Justice Burger to prepare a study on the future of the judiciary. His recommendations were included in legislation resulting in the Three-Branch Federal Court Study Committee (December 1988 to April 1990, Judge Joseph Weis, chair).

One of the highlights of his stellar career was Judge Wallace's chief judgeship of the Ninth Circuit from Feb. 1, 1991 until March 1, 1996. As chief judge, he developed innovative

procedures for coping with the needs of a large circuit, assisted with the first successful federal Gender Fairness Task Force and organized a second Task Force on Racial, Religious and Ethnic Fairness.

Cathy Catterson, former clerk of the court for the Ninth Circuit, met Judge Wallace in 1977 while working in Washington, D.C., for a U.S. Judicial Conference Committee. "After my clerkship with the committee finished, Judge Wallace encouraged me to apply for jobs in the Ninth Circuit," she said. Catterson began working for the court in 1979 and became clerk of court in 1985. Six years later, Judge Wallace became chief judge.

"What stands out about Judge Wallace in all of his permutations," said Catterson, who retired in 2017, "is his absolute dedication to improving the administration of justice to make the courts work better for the people who used them and for the people who worked at them."

Among his many accolades, Judge Wallace can point to a number of affiliations with some of the finest universities in the U.S. and co-chaired a Boy Scouts of America BSA committee to develop scouting in Black and Hispanic San Diego communities. Participation in his church, The Church of Jesus Christ of Latter-day Saints, has been an important factor in Judge Wallace's personal life, and he has held numerous positions within the church.

Perhaps Judge Wallace's greatest legacy is his contribution to the advancement of the rule of law and the administration of justice throughout the world. He has been

using his vacations for nearly 40 years to work directly with judiciaries in over 70 countries on every continent. He developed the concept of the Conference of Chief Justices of Asia and the Pacific and has been a participant in those conferences for more than 40 years. He is deeply gratified to have worked directly with over 70 judiciaries worldwide in assisting them in improving their judiciaries so that the rule of law governs their countries.

Another top accomplishment in which he takes great satisfaction is his work to develop a structure within the Judicial Conference of the United States to have more effective processes by which the Judicial Conference can communicate and assist Congress on issues important to the judiciary.

"There is something that I learned that has made me very content with my judicial life in the case decisions and even more importantly with my work in structural development – judicial administration," said Judge Wallace. "When we leave this mortal existence, we will not be long remembered. But our work, if done for the right reason, will hopefully have a positive influence on future generations. The best advice given to me, by Harold B. Lee (a leader in his church), was, 'There is no end in the amount of good you can do if you do not care who gets the credit.'

Finally, Judge Wallace has some advice for today's law school graduates. "I suggest you remember the words of former Justice Potter Stewart when he retired from the Supreme Court: "I would like to be remembered as a good lawyer who did his best."

## Awards and Recognitions

### Ninth Circuit Court of Appeals

Circuit Judge M. Margaret McKeown, elected to the American Academy of Arts and Sciences, an honorary society that celebrates the excellence of its members and an independent research center that brings together leaders from across disciplines, professions and perspectives to address significant challenges in society.

Circuit Judge Johnnie B. Rawlinson, Minority Lifetime Achievement Award Inductee, The Women's Chamber of Commerce of Nevada®, and Justice Miriam Shearing Award, which "recognizes local female attorneys for their accomplishments and contributions to the advancement of women in the Nevada legal community," Southern Nevada Association of Women Attorneys Foundation.

Senior Circuit Judge J. Clifford Wallace, honored for his "participation in the 34<sup>th</sup> Annual Iranian Medical Society Nowrooz Celebration" and in recognition of his dedicated public service, Iranian Medical Society.

### District of Arizona

Bankruptcy Judge Daniel P. Collins, elected as a fellow of the American College of Bankruptcy. "Nominees for Fellows are extended an invitation to join based on a record of achievement in the insolvency process by professionals who have distinguished themselves in their practice and in their contribution to the insolvency field."

### Central District of California

Part-time Magistrate Judge Louise A. LaMothe, Joan Dempsey Klein Distinguished Jurist Award, California Women Lawyers. The award "honors a Southern California judge each year, recognizing excellence as a jurist and longstanding vigorous service and inspiration to the women lawyers of California."

### Southern District of California

Chief Bankruptcy Judge Margaret M. Mann, Community Service Award, National Conference of Bankruptcy Judges, and President's Exceptional Service Award shared with Bankruptcy Judge Mary Jo Heston of Western District of Washington for their efforts in organizing a community outreach program, National Conference of Bankruptcy Judges.

### District of Idaho

Magistrate Judge Candy W. Dale, Best Article Award for "On the Bench and Before the Bar: Diversity as a Core Value" co-authored with Judge Dale's law clerk, Anne Henderson, Idaho State Bar.

### District of Oregon

Magistrate Judge John V. Acosta, Frohnmayer Award for Public Service, award "recognize a graduate, faculty member or friend of Oregon Law whose public service brings honor to the school," University of Oregon School of Law.

### Western District of Washington

Bankruptcy Judge Mary Jo Heston, President's Exceptional Service Award shared with Chief Bankruptcy Judge Margaret M. Mann of the Southern District of California for their efforts in organizing a community outreach program, National Conference of Bankruptcy Judges. ■

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## Administrative Changes



Brian R. Farren was appointed as the chief United States probation officer for the District of Montana on Jan. 4, 2020. He has

served 22 years in the District of Montana, beginning his career as a student intern in 1996. During his tenure, Farren has worked as a pretrial services officer, presentence writer and as a post-conviction supervision officer. He also has worked as a location monitoring/DATS specialist and a safety instructor for the district. Prior to becoming chief, Farren also served in the leadership roles of team leader, supervisor and deputy chief. Farren is currently located in the Billings divisional office.



Keith G. Holland was appointed clerk of court by the judges of the United States District Court for the Eastern District of

California on Jan. 3, 2020. Prior to his appointment as clerk, Holland served as the chief deputy clerk from 2013 to 2020. Holland began his tenure with the Eastern District over 30 years ago on Nov. 5, 1990, when he worked as the docket clerk to District Judge David F. Levi. Since that time, Holland has served in a variety of positions including docketing work leader, court services supervisor, operations supervisor, ICMS administrator and operations manager. Holland received his Bachelor of Arts from the University of California at Davis

and his Juris Doctorate from the University of the Pacific's McGeorge School of Law.



Dan Kilgore was appointed chief United States probation officer for the Southern District of California on Jan. 6, 2020. Kilgore came to the district with over 28 years of service in the federal judiciary. He began his career as a U.S. probation officer in the Southern District of Ohio in 1991, promoted to specialist in 1993 and supervisory USPO in 2005. In 2008, he accepted a detail position with the Federal Law Enforcement Training Center at their campus in Charleston, South Carolina, where he was involved in the training of newly hired probation officers and fireman instructors from districts around the country. In 2010, Kilgore was selected as a probation administrator by the Administrative Office of the United States Courts and remained at the training academy where, in addition to continued instruction of officers and safety instructors, he led office reviews of 13 districts and was involved in the early roll out of various AO initiatives. In 2015, he was selected as the chief U.S. probation officer in the Western District of Tennessee. Kilgore holds a B.A. in criminal justice from Bowling Green State University and an M.S. in administration from Central Michigan University.



Deb Lucas is the first woman appointed district court executive/clerk of court for the United States District Court for the District of

Arizona on Aug. 5, 2020. Lucas has a long history of service to the federal judiciary, spanning 35 years. She began her career in the District of Nevada in 1985 and transferred to the District of Arizona in 1991. Her dedication to the court and work ethic earned her many promotions over her tenure, and she rose to several management positions in her career, including being named the court reporter and court interpreter manager, operations manager and chief deputy. Prior to her appointment, Lucas served as the court's interim district court executive/clerk of court beginning on Jan. 20, 2020.



Jamie L. McGrady was appointed federal public defender for the District of Alaska on Jan. 24, 2020. Prior to her appointment, McGrady had served as an assistant federal public defender for the District of Alaska for the past seven years and as interim FPD for nearly a month prior to her appointment as FPD. Previously, McGrady was a Westlaw attorney consultant, and from 2003 to 2008, she served as an assistant public defender for the State of Alaska. She is a long-time board member of Alaskan Against the Death Penalty and a board member of Anchorage Association of

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Women Lawyers. McGrady received her B.A. in English from Allegheny College and her law degree from the University of New Mexico School of Law.



Monique D. Neal was appointed chief U.S. probation and pretrial services officer for the Western District of Washington on

Sept. 26, 2020. She has served 20 years in the Western District of Washington, beginning her career as an officer in 2000. As an officer, she worked in all the disciplines within the organization including, pretrial, presentence investigations and post-conviction supervision. She worked as a location monitoring specialist from 2011 to 2013, a supervising probation and pretrial services officer from 2013 to 2016, and as deputy chief probation and pretrial services officer from 2016 to 2020. Prior to becoming chief, Neal served four years on the executive team for the Drug Reentry Alternative Model (DREAM) program, a post-plea/pre-adjudication drug court program. While serving on the DREAM executive team, Neal was responsible for staffing prospective participants for admission into the program, supporting and assisting clients participating in the program and reviewing and implementing program changes. Neal also developed the district's Narcan Program, implementing a policy and training program for all staff regarding the use of Narcan in the office and requiring all officers to carry Narcan in the community to help combat the opioid epidemic in Western Washington.



Cuauhtémoc Ortega was appointed as the federal public defender for the Central District of California on Oct. 15, 2020. In 2010, he joined the FPD Office in Central District—the largest FPD organization in the country covering several of California's most populous counties, including Los Angeles County, Orange County and Riverside County. Previously, he worked at Munger, Tolles and Olson LLP in Los Angeles following his clerkship with District Judge Alicemarie H. Stotler of the United States District Court for the Central District of Calif. Ortega received his Bachelor of Arts in political science in 2003 from the University of California, Los Angeles, where he worked for the Daily Bruin and served as its editor-in-chief from 2002 to 2003. After UCLA, Ortega interned at The New York Times then attended Columbia Law School, where he served as the executive articles editor of the Columbia Law Review. He graduated from Columbia Law School in 2007.



Michelle Rynne was appointed the district court clerk for the United States District Court for the District of Hawaii on July 6, 2020. Before joining the District of Hawaii, Rynne worked for 23 years with the District of Massachusetts, the last seven years as chief deputy clerk. She received her bachelor's degree in business administration

and a master's degree in business administration from Suffolk University in Boston, Massachusetts.



Michael Williams was appointed the bankruptcy court clerk for the United States Bankruptcy Court for the Southern District of California in June 2020. Williams has served the U.S. Courts since 1991. Previously, Williams served as clerk of the Bankruptcy Court for the Northern District of Oklahoma for over 18 years. He also has served as chief deputy clerk in Little Rock, Arkansas; human resources specialist in Richmond, Virginia, and started with the federal courts in Houston as an HR assistant. Williams graduated with a master's degree in public administration from Brigham Young University in 1990 after receiving a bachelor's degree from Arizona State University in 1988. ■

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## Ninth Circuit Fairness Committee Examines Compassionate Release

The Ninth Circuit Fairness Committee<sup>1</sup> is charged with making recommendations to the Judicial Council of the Ninth Circuit on fairness issues in the administration of justice by examining and identifying areas within the criminal justice system with potential racial, gender, ethnic, religious and similar disparities; proposing practices, procedures and policies to address and mitigate those disparities; examining ways to address bias within the justice system; and examining methods of promoting diversity of judicial officers, court executives and court staff involved with the judicial decision-making process.

As the federal judiciary faced unprecedented challenges during the early months of the pandemic, the Ninth Circuit Fairness Committee decided to embark on a project in May 2020 to study in real time how judges were addressing the sudden swell in compassionate release motions under 18 U.S.C. § 3582(c)(1)(A) (i) based on the “extraordinary and compelling reasons” presented by the COVID-19 pandemic. This project grew out

of the committee’s continuing examination of reported disparities in sentencing<sup>2</sup> and the causes of such disparities. The committee was particularly interested in whether racial disparities, found in its research into data from the Ninth Circuit Court of Appeals, would manifest in compassionate releases. With the cooperation of the districts within the Ninth Circuit, the committee collected data on COVID-19 compassionate release rulings based on COVID-19 issued between April and December 2020. The committee is particularly appreciative of the contributions from Karin D. Martin, Ph.D., and Isaac Sederbaum, M.P.A.<sup>3</sup>, who analyzed the data to help determine whether the results showed disparities and, if so, the factors which accounted for those disparities. The preliminary key findings are presented below.

First, a brief note about the methodology used. The analysis uses “multilevel mixed-effects logistic regression,” which accounts for the fact that each district judge hears multiple cases and each district includes multiple judges.

Failing to do so could impair the ability to accurately detect statistical significance. The main outcome of interest is whether a motion for compassionate release due to COVID-19 was granted or denied.

Second, it is important to note that a major limitation of this project was the availability of compassionate release data. While most districts provided data, some districts have not included data for the entire study period due primarily to time constraints. The dataset covers 14 out of 15 districts in the Ninth Circuit, which includes 147 judges and 1,307 cases filed between April and December 2020. The average number of cases per district was 93.4, with 12.3% of petitions being granted overall. Hence, the key findings presented are preliminary based on April – December 2020 data acquired.

This project examines the legal and extralegal factors that influence the granting of compassionate release motions. Unless otherwise noted, all findings are statistically significant. Key findings for legal factors include:

### Preliminary Analysis of Compassionate Release Decisions in the Ninth Circuit Court of Appeals

#### • Summary of Factor Influence on Petition Success

	Increased Odds of Petition Success	Decreased Odds of Petition Success	No or Very Small Impact
Legal Factors		<b>Government Opposition</b> Fraud Conviction (Weapons Conviction)	Sex-Related Offense Conviction Violent Offense Conviction Imposed Sentence Remainder of Sentence
Extralegal Factors	<b>Known Health Risk Factors</b> <b>Race:</b> Black Age: Older <b>Gender:</b> Women		Potential Health Risk Factors Race: Asian, Latino, Other

Items in blue have especially large impact on odds of success/failure.

- Government opposition significantly decreases the odds that a compassionate release motion was granted.
- Fraud and weapons convictions reduce the odds of success—if the odds are that 6 out of 20 people with a drug conviction were granted release, then the odds for a person with a fraud conviction are 3 in 20 and the odds are 4 in 20 (marginally statistically significant) for those with a weapons conviction.
- The length of the imposed sentence and remaining sentence very slightly increased and decreased the odds of a successful motion, respectively.

The committee acknowledges not every potentially influential factor could be considered. These factors would include, for instance, the level of COVID-19 infection at the institution where the petitioner resided, performance of the petitioner during post-conviction incarceration, assessment of current risk to public safety and the appropriateness of available release conditions and supports. Nonetheless, the committee believes that based on available information, useful indicators could be revealed.

Key findings for extralegal factors include:

- Black petitioners have much higher odds of success (2.8 times larger), and this effect appears to be driven by possible health risk factors, time served and disparate impact of COVID-19 which appear to

- correlate with higher release rates of Black petitioners.
- Latino petitioners do not have higher odds of success even though more have health risk factors and are older on average.
- Women were more likely to have their motions granted.
- Age influences the likelihood of a motion being granted, with the odds of success increasing with each additional year in age.

The committee has asked the researchers to look more closely at the differences between Black

and white petitioners. One trend that has emerged upon closer examination is that disparities appear to manifest in groups with a large number of health conditions: Black petitioners with a large number of health conditions are granted relief at higher rates than whites. As to those with fewer health conditions, there is no apparent disparity. The committee intends to explore further the relationships between release rates by race and length of sentences and types of convictions. National data suggest that Black people are disproportionately impacted by higher offense levels in drug cases. As to other

### • Decision Summary by District

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District	Total Number of Cases	% Gov. Endorsed	% Granted
AK	115	6.5%	18.2%
AZ	125	6.4%	12.0%
C. Calif.	168	6.6%	18.6%
E. Calif.	353	2.9%	15.4%
N. Calif.	45	2.4%	33.3%
S. Calif.	20	50.0%	95.5%
Guam	8	12.5%	57.1%
Hawaii	176	1.7%	15.4%
Idaho	97	4.1%	19.0%
N. Mariana Islands	2	0.0%	50.0%
Nevada	180	7.5%	26.9%
Oregon	112	23.2%	55.9%
E. Wash.	86	1.2%	25.4%
W. Wash.	194	3.5%	23.7%
<b>Total</b>	<b>1,681</b>	<b>6.2%</b>	<b>23.3%</b>

factors, perhaps unsurprisingly, health conditions that are on the Centers for Disease Control and Prevention's list of factors known to increase risk of severe illness from COVID-19 significantly increased the odds of a successful motion. Initial analysis shows that the odds of a motion being granted doubled when the petitioner had underlying health conditions on the list of known risk factors. Health conditions on the CDC's list of factors that may potentially increase risk did not significantly influence outcomes. ■

<sup>1</sup>Members of the Ninth Circuit Fairness Committee who worked on this project include: Rhonda Langford Taylor, Chief U.S. Probation and Pretrial Services Officer, District of Alaska; Robert S. Lasnik, Senior District Judge, Western District of Washington; Edward M. Chen, District Judge, Northern District of California; and Miranda M. Du, Chief District Judge, District of Nevada.

<sup>2</sup>See U.S. Sentencing Commission, Demographic Differences in Sentencing: An Update to the 2012 Booker Report (2017) (presenting key findings that sentencing length continues to be associated with demographic factors).

<sup>3</sup>The committee is grateful to Dr. Martin and Mr. Sederbaum for providing their expertise as a public service to the Ninth Circuit Court of Appeals. Dr. Martin is an assistant professor at the Daniel J. Evans School of Public Policy & Governance and an adjunct assistant professor in sociology at the University of Washington. Mr. Sederbaum is a Ph.D. student at the Daniel J. Evans School of Public Policy & Governance, University of Washington. Arnold Ventures provided some financial support for Dr. Martin's research.

### ● Petitioner Characteristics by District – Extralegal Factors

District	Avg. Age	% White	% Black	% Latino	% Asian	% Other	% Male
AK	42.3	45.2%	31.3%	7.0%	2.6%	13.9%	91.3%
AZ	45.9	29.6%	19.2%	35.2%	0.6%	15.2%	81.6%
C. Calif.	53.3	30.7%	29.5%	28.5%	9.6%	0.6%	89.2%
E. Calif.	38.5	39.1%	28.3%	26.3%	5.7%	2.6%	91.5%
N. Calif.	48.7	66.7%	24.4%	0.0%	8.9%	0.0%	95.6%
S. Calif.	49.3	70.0%	15.0%	15.0%	0.0%	0.0%	90.0%
Guam*	45.6	0.0%	12.5%	0.0%	0.0%	0.0%	87.5%
Hawaii*	48.8	28.4%	5.7%	0.6%	31.8%	1.14%	84.7%
Idaho	49.3	72.2%	1.0%	23.7%	0.0%	3.1%	88.7%
N. Mariana Islands*	37.5	0.0%	50.0%	0.0%	0.0%	0.0%	100%
NV	47.4	51.1%	37.2%	7.2%	2.8%	1.7%	92.8%
OR	50.7	80.2%	18.9%	0.0%	0.0%	0.9%	89.3%
E. Wash.	46.9	79.1%	18.6%	0.0%	1.2%	1.16%	84.9%
W. Wash.	47.9	44.8%	35.9%	10.9%	5.2%	3.1%	94.8%
<b>Total</b>	<b>46.2</b>	<b>46.4%</b>	<b>23.9%</b>	<b>15.2%</b>	<b>7.0%</b>	<b>7.5%</b>	<b>95.6%</b>

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## Sentence Mitigation Beneficiaries Spend Holidays at Home Instead of in Prison

There are a number of sentence mitigation programs in the Ninth Circuit that kept individuals out of jail thanks to the commitment of federal defenders, pretrial and probation officers, and their own hard work.

### RISE – District of Nevada

Fanny Salas had been arrested, charged with distribution of a controlled substance, and pled to a deal that put her in the Recovery, Inspiration, Support and Excellence, or RISE program, instituted by the United States District Court for the District of Nevada.

RISE is a post-plea/pre-adjudication program started in 2019 wherein the participant enters a negotiated guilty plea and his/her sentencing is held in abeyance while completing a substance use disorder program. If successful, the participant has his charges dismissed. The program has seven currently enrolled and two graduates, including Salas.

Salas' participation meant she served no jail time and, upon completion of the program, the charges against her were dropped. "The program gave me a second chance in my life to actually be able to do something with myself," she said.

Magistrate Judge Nancy Koppe of the Nevada District, who handles RISE cases with her colleague, District Judge Jennifer Dorsey, noted, "The research suggests that, for these defendants, an intensive program that focuses on substance-abuse treatment and career and life skills could change their lives for the better and take them out of the

criminal system permanently. The Court has observed the positive changes in the participants' self-esteem, confidence, and life choices as the participants proceed through the program and recovery."

### DREAM – Western District of Washington

Two years ago, in December 2018, Monique Green was arrested and pled to conspiracy to distribute controlled substances. Like RISE, the Drug Reentry Alternative Model, or DREAM, is a post-plea/pre-adjudication program. Successful completion leads to dismissal of charges. Out of 75 accepted into the program, 63 have graduated. There are four people currently enrolled.

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"DREAM was really awesome," said Green, "When I graduated from DREAM, the judge asked if we wanted a copy of the indictment to rip up, or did we want him to rip it up for us. That's basically what happens to your indictment, it gets ripped up, it's gone."

District Judge Richard A. Jones, of the Western District of Washington, is currently the designated DREAM judge. Prior to joining the federal judiciary, he was a judge for the King County Superior Court, Washington, where he often sat as a sentencing judge in drug court.

"In Superior Court we would often have scheduled 12-15 sentences per day," said Judge Jones. "Many... for people who had been convicted for small quantities of drugs. Many of these people whose lives had been destroyed: families lost, employment lost, no hope of the

future was purely because of drug dependence."

Corey Endo, assistant federal defender in Washington's Western District, often sees situations that could be handled with mitigation processes rather than jail time. "There are many people who would be excellent candidates for the DREAM program (or similar programs), but who do not meet one of the criteria," she said. "I think it is the rare case in which custody is a necessary component of sentencing and most people involved in the criminal legal system would benefit from a therapeutic model," said Endo. "These programs ... are less expensive than incarceration.

### CASA – Central District of California

Marin Pedraza participated in the Conviction and Sentencing Alternative, or CASA, program after being charged with distribution of methamphetamine. CASA is a post-guilty plea diversion program offering sanction alternatives and incentives to address offender behavior, rehabilitation and community safety.

"Instead of them sending me to prison, they said they would put me in this program," said Pedraza. "It allowed me to stay outside. I was able to keep and maintain my job that I have now, and just be on the right track."

Pedraza would "definitely" recommend the program to others. "I'm just blessed that I was able to be accepted and graduated from this program." ■

## Space and Facilities Unit Projects on Track Despite COVID-19 Challenges

The Space and Facilities Unit within the Office of the Circuit Executive for the Ninth Circuit helps manage space and facilities projects undertaken by federal courts throughout the western United States and Pacific Islands, assisting in feasibility studies, design development, contracting, construction management and occupancy planning. Over the last year, COVID-19 has had a significant impact on the work of this office. While many projects continued through design and construction without substantial interruptions, other projects incurred significant delays for a variety of COVID-19 related reasons. The pandemic forced the office to quickly adopt new work strategies to keep up with the work.

Online Zoom gatherings replaced face-to-face design meetings, and virtual site visits replaced the real thing. While most of these innovations were successful and will continue to be used in the future, it was found that some tasks, such as the careful evaluation of construction quality and acoustic performance are not easily handled via remote means and benefit from on-site representation. In addition to project management-related effects, the COVID-19 pandemic also generated a host of building operations concerns and the office worked closely with the General Services Administration and the Space and Security Committee to provide guidance to courts on recommendations for cleaning, social distancing and personal protective equipment, and changes to building operations to help limit the spread of COVID-19. Lastly, the COVID-19 pandemic deferred plans for some circuit-wide space training and long-range planning sessions and led many court units to pause on new plans for tenant alteration projects until the long-term effects of changes to workplace and telework strategies could be better understood.

The Space and Facilities Unit also expanded this last year with the hiring of

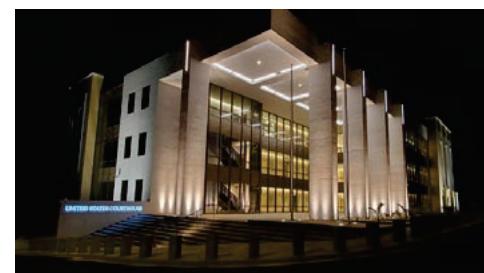
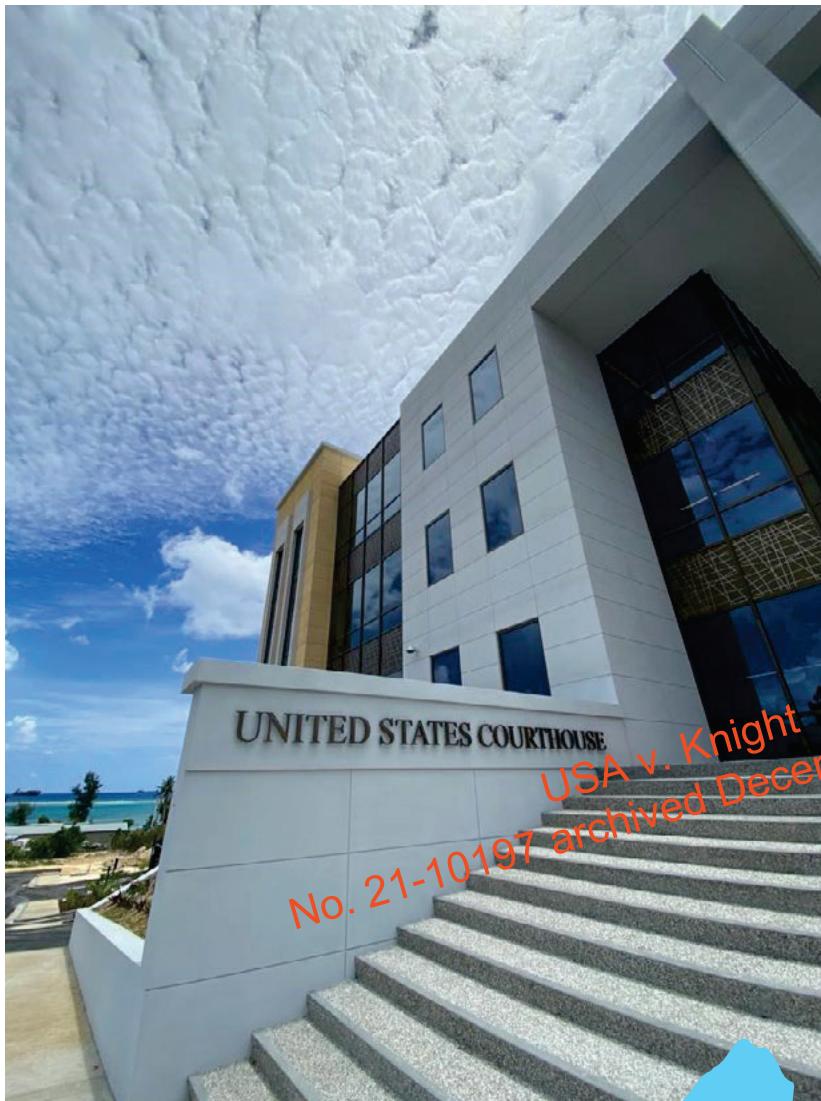
an emergency preparedness and security officer (EPSO) in September. This is a new position which will enable the space and facilities staff to provide greater support to court units on emergency planning and security matters. Over the past few months, the new EPSO, Eric Christensen, has focused on responding to security incidents around the circuit and streamlining communications with the United States Marshals Service and other security partners. He has also assisted with assessing recommendations for facility security committees and has helped in coordinating responses to emergency events around the circuit. In the coming year, there will be a continued focus on security matters, as well as a roll out of training and support materials to assist courts with emergency planning.

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A number of important space projects were completed in 2020, including a new courthouse in Saipan for the U.S. District Court for the District of the Northern Mariana Islands. The three-story, 35,696-square-foot courthouse includes a courtroom, chambers for two judges and a jury assembly room. It also houses offices for U.S. Probation, the U.S. attorney, the U.S. Marshals Service and the Federal Protective Service. Construction of the courthouse was substantially completed in June 2020, and the courts moved from their former home in the Horiguchi Building to the new courthouse in July. As the initial planning for this new facility began 15 years ago, completion of the project was a major accomplishment for the court, circuit and GSA team.

Another major focus over the last year has been the design and construction of new chambers for the 10 new circuit judges confirmed in 2018 and 2019. Chambers projects were completed in Honolulu, Idaho Falls and Phoenix in 2020, and work continues on other new or renovated chambers in existing courthouses and in new leased locations across the circuit,





United States  
Courthouse

District of the Northern  
Mariana Islands  
Saipan



**Building Details:**

Gross Square Footage: 35,696  
Completion Date: June 2020

including Seattle; Carlsbad, San Diego, San Francisco and Pasadena, California; Portland, Oregon; and Reno, Nevada.

Other projects in progress in 2020 include a project for two new district judge chambers and one new district courtroom in the Evo A. DeConcini U.S. Courthouse in Tucson, Arizona, and a major expansion project at the James M. Carter and Judith N. Keep U.S. Courthouse in San Diego to provide four new magistrate judge chambers and two district courtrooms, as well as space for the clerk's office. Another significant project under design in 2020 was a realignment of the Ninth Circuit Library in Phoenix. The circuit library will be greatly reduced in size, and the vacated space renovated as a shared chambers for senior circuit judges and a visiting chambers will facilitate holding of regular circuit court proceedings in Phoenix.

The circuit continues to work closely with districts across the circuit on a number of lease renewals and renovations in leased spaces. These included a significant renovation and space reduction project for the U.S. Bankruptcy Court for the Northern District of California in Oakland. In addition to work in the courtrooms, chambers and staff spaces, this project also included security upgrades and led to the release of space that was subsequently taken by the new Federal Public Defender National Litigation Group. Other locations with leasing actions included the U.S. Bankruptcy Court in Woodland Hills, Calif., and U.S. probation offices in Inglewood, Whittier, and West Covina in Calif., Bend, Ore., and Everett,

Washington. New leases for Federal Public Defender offices are being sought in Anchorage, Alaska, Phoenix and Reno.

In 2020, the Ninth Circuit continued to pursue space-saving projects that will significantly reduce the rent paid to GSA, which acts as the landlord for federal buildings. The projects completed in 2020 included the following:

- Renovation of the ground floor space in the Edward J. Schwartz U.S. Courthouse in San Diego to accommodate Grand Jury Suites relocated from the Schwartz Federal Office Building.
- Relocation of a U.S. Probation Office from leased space in San Bernardino to Riverside.
- Relocation of the Los Angeles U.S. Probation Office from the old U.S. Courthouse at 312 North Spring Street to the 300 North Los Angeles Street Federal Building.
- Realignment of the U.S. Bankruptcy Clerk's Office in Eugene, Ore., releasing approximately half the original space.
- Release of the U.S. District Court non-resident facility in Ketchikan, Alaska.

With the completion of these projects, the circuit has completed the 83 projects originally included as part of the Circuit Space Management Plan developed in response to the national Space Reduction effort. Since the start of that program in 2013, courts within the Ninth Circuit have released more than 435,000 square feet of space as of December 31, 2020, with a resulting annual rent savings of \$13.4M.

Over the last year, the circuit also continued multiyear planning efforts for new courthouses and major renovation projects. Among the most significant milestones was the addition of Anchorage to the judiciary's national courthouse construction priority list, which is a critical step in one day securing congressional funding for the project.

In addition, funding has been sought for a major renovation project for the Tacoma Union Station U.S. Courthouse in Washington state to address structural concerns and aging building systems. Work also continues on the development of a renovation project for the Richard H. Chambers U.S. Court of Appeals building in Pasadena to address similar issues. In addition, the circuit continues to support GSA's efforts to obtain funding to replace the exterior cladding of the William Kenzo Nakamura U.S. Courthouse.

Also, in 2020, the circuit worked with the districts of Arizona and Oregon to develop the requirements for new leased courthouses in Flagstaff and Medford, respectively. There are significant security concerns at both locations. Additionally, in Flagstaff the existing facility is not large enough to accommodate major criminal proceedings, forcing many to be relocated to Phoenix. In Medford, the existing historic James A. Redden U.S. Courthouse has significant structural deficiencies and aging building systems that when combined with the security concerns, result in a new facility being the preferred long-term housing solution. ■

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## Physical Security Efforts Gather Momentum

Threats and inappropriate communications to federal judges have nearly doubled over the last five years to over 4,200 incidents in fiscal year 2020 according to the United States Marshals Service.

While Congress ponders bills aimed at increasing cyber and physical security for judges, the Ninth Circuit is leading the way with both types of security officers on staff. Physical security in and around courthouses is being scrutinized and improved by Eric Christensen, hired in September, the only emergency preparedness and security officer in the federal judiciary.



Eric  
Christensen,  
Emergency  
Preparedness  
and Security  
Officer

"Our security picture is really a three-legged stool," said Christensen. "We rely on the U.S. Marshals Service (USMS) doing their part, the Federal Protective Service (FPS) providing another leg and the General Services Administration (GSA) the third leg. If one of those organizations isn't doing what they need to do, we fall over."

On the property security side, “the hot topic that we are dealing with is, number one, the security of our facilities and the age of the hardware that we have at each facility,” said Christensen. “We have over 150 buildings in the circuit.”

Since USMS handles security inside the buildings and FPS covers the outside, “two of the most complex pieces are getting FPS and USMS to share information,” Christensen said. “If people know the house next door got burglarized, they’re going to make sure their house is a little bit better prepared ... and that is beauty of sharing information in the law enforcement world.”

Surveillance equipment aside, Christensen is also focused on the human element, like making sure the mailroom workers know how to spot suspicious packages. "That is all part of physical security," he said.

The second part of Christensen's title, emergency preparedness, covers the critical element of protecting people rather than facilities. "The biggest thing we can do to protect our employees is to ensure they know what to do in a time of disaster or emergency," said Christensen. Knowing the procedure for each kind of emergency can make all the difference as to whether or not you are injured in one of these events."

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In an emergency, "the federal building across the street from us will be trying to manage their emergency and the elementary school down the street will be trying to manage their emergency, and there is a finite number of responders," said Christensen. "Now that might mean that Bill has to learn how to dig somebody out of rubble or do some kind of search and rescue kind of operation and Eric has to learn how to do basic first aid and CPR."

To sum up, Christensen's short-term goals are first to clear up building security issues and second to improve communications between security service providers. "Our administrators are learning what security is about as well," he said. They want to be sure that they're making good decisions as we move along. If we can build a good communication system where we exchange information both up and down through the system, we'll be much better off." The second short-term goal is, "emergency management training for our employees, making sure they know what to do in a time of disaster."

Christensen's long-term goals include improving the way security issues are managed within the circuit. "My hope is that in the long term we have a process where we can prioritize where security improvements need to be made and get those security improvements made as a circuit."

Ideally, Christensen would like to install a system now often used in schools where each classroom has a public address terminal with small printer attached. "We have to install systems where the guards can hit one button and tell us all what is going on right away," Christensen said. "There is no time to call people: you want to hit a button, run up and get the bad guy. But by hitting that button, you let the rest of us know what is going on."

"We have to start at home base, first, get that fixed, then start worrying about the other places. We can fix these things without a lot of money," said Christensen.

## Court of Appeals Filings and Case Terminations Increase as Pending Cases Decline

The United States Court of Appeals for the Ninth Circuit continued to improve its case processing times and reduce its pending caseload despite challenges posed by the COVID-19 pandemic in fiscal year 2020. The improvements were the result of a reduction in pending cases despite an upturn in new filings.

New appeals filed with the Ninth Circuit numbered 10,400 in FY 2020, up 2.9% from the prior fiscal year. Appellate filings nationwide numbered 48,190, down 0.6% overall. Seven of the 12 geographic circuits reported declines ranging from 0.5 to 17.9%. The Ninth Circuit continued to be the nation's busiest federal appellate court, accounting for 21.6% of all new appeals nationally.

The Ninth Circuit disposed of 10,504 cases in FY 2020, up 2.9%, paralleling the increase in new filings. Six of the 12 geographic circuits reported reductions in terminations. The court's pending caseload was reduced by 0.9% to 11,164 cases from 11,268.

### Breakdown of New Appeals

Of the new filings, about 30.9% of all new appeals in the Ninth Circuit involved immigration and other agency matters, while 44.1% of new

filings were pro se cases (those involving at least one self-represented litigant).

Ninth Circuit district courts, which serve as trial courts in the federal judicial system, accounted for 59.7% of new filings in FY 2020. The district courts generated 6,211 new appeals, down 1.4% from the prior fiscal year. Of the total, 5,170 were civil appeals and 1,041 were criminal appeals. Prisoner petitions involving habeas corpus, capital habeas corpus, civil rights, prison conditions and other matters accounted for 36.8% of all new civil appeals from the district courts.

Among the 15 district courts of the circuit, the four California courts produced 52.9% of new civil appeals and 51.6% of new criminal appeals. The Central District of California, the busiest court in the circuit, generated 1,340 civil and criminal appeals, down 4.8% from the prior fiscal year.

*USA v. Knight  
No. 21-10197 archived December 28, 2022*

### • Appellate Caseload Profile

Caseload Measure	2019	2020	Change 2019-20
Filings	10,106	10,400	2.9%
Terminations	10,210	10,504	2.9%
<sup>1</sup> Pending Cases	11,268	11,164	-0.9%

<sup>1</sup>2019 total pending cases revised.

### • Ninth Circuit Court of Appeals En Banc Ballots

Year	Petitions Filed for Rehearing En Banc	En Banc Ballots Sent	Grants of Rehearing En Banc Following a Vote	Denials of Rehearing En Banc Following a Vote
2020	820	29	7	22
2019	817	24	14	10
2018	955	17	8	9
2017	874	22	11	11
2016	810	33	19	14



WORK OF THE COURTS

Of the 1,041 new criminal appeals, 27.5% were related to drug offenses, and 12.2% were immigration offenses. The court reported 286 drug offenses and 127 immigration offenses. The court received 133 appeals involving property offenses, 85% of them related to fraud. The court received 154 appeals for offenses involving firearms and explosives, of which 42 were alleged to have committed during a violent or drug-trafficking offense. Also reported were 111 appeals involving sex offenses and 81 for violent offenses.

Appeals of decisions by the Board of Immigration Appeals, or BIA, and other executive branch agencies continue to make up a substantial portion of the court's caseload. Appeals of agency decisions increased by 11.9% to 3,210 cases in FY 2020. The BIA accounted for 95% of agency appeals and 29.3 of the court's total new filings. The Ninth Circuit had 50.2% of the total BIA appeals filed nationally in FY 2020.

Original proceedings and miscellaneous applications commenced in FY 2020 numbered 819, up from 775 the prior

fiscal year. The bulk of original proceedings cases involved second or successive habeas corpus petitions, 455, and mandamus appeals, 182.

### Terminations and Pending Cases

The Ninth Circuit terminated 10,504 cases in FY 2020, up 2.9% from the prior year. The total includes 5,424 civil and 1,208 criminal appeals originating in the district courts and 2,888 appeals of agency decisions.

Of the total case terminations, 7,033 cases, or 67%, were decided

### • Filings, Terminations and Pending Cases by Nature of Proceeding

Type of Appeal	2019 Filings	2020 Filings	Change 2019-20	% of Circuit Total	2019 Terminations	2020 Terminations	Change 2019-20	2019 Pending	2020 Pending	Change 2019-20
					2019 Terminations	2020 Terminations				
<b>Civil</b>										
U.S. Prisoner Petitions	442	454	2.7%	4.4%	631	445	-29.5%	398	408	2.5%
Private Prisoner Petitions	1,809	1,904	5.3%	18.3%	1,652	1,842	11.5%	1,227	1,288	5.0%
Other U.S. Civil	628	652	3.8%	6.3%	597	615	3.0%	667	704	5.5%
Other Private Civil	2,289	2,160	-5.6%	20.8%	2,187	2,522	15.3%	2,333	1,972	-15.5%
<b>Criminal</b>	<b>1,133</b>	<b>1,041</b>	<b>-8.1%</b>	<b>10.0%</b>	<b>1,288</b>	<b>1,208</b>	<b>-6.2%</b>	<b>1,236</b>	<b>1,069</b>	<b>-13.5%</b>
<b>Other</b>										
Bankruptcy	161	160	-0.6%	1.5%	159	197	23.9%	174	136	-21.8%
Administrative Agency Appeals	2,869	3,210	11.9%	30.9%	2,702	2,888	6.9%	5,089	5,409	6.3%
Original Proceedings and Miscellaneous Applications	775	819	5.7%	7.9%	994	787	-20.8%	146	178	21.9%
<b>Circuit Total</b>	<b>10,106</b>	<b>10,400</b>	<b>2.9%</b>		<b>10,210</b>	<b>10,504</b>	<b>2.9%</b>	<b>11,270</b>	<b>11,164</b>	<b>-0.9%</b>
<b>National Appellate Total</b>	<b>48,486</b>	<b>48,190</b>	<b>-0.6%</b>		<b>47,889</b>	<b>48,300</b>	<b>0.9%</b>	<b>38,837</b>	<b>38,731</b>	<b>-0.3%</b>
<b>Ninth Circuit as % of National Total</b>	<b>20.8%</b>	<b>21.6%</b>	<b>0.7%</b>		<b>21.3%</b>	<b>21.7%</b>	<b>0.4%</b>	<b>29.0%</b>	<b>28.8%</b>	<b>-0.2%</b>

Note: This table does not include data for the U.S. Court of Appeals for the Federal Circuit. Beginning in March 2014, data include miscellaneous cases not included previously.

- Sources of Appeals, Original Proceedings and Miscellaneous Applications Commenced

District	2020 Commenced	2020 % of Total
Alaska	95	0.9%
Arizona	794	7.6%
C. Calif.	1,363	13.1%
E. Calif.	636	6.1%
N. Calif.	781	7.5%
S. Calif.	390	3.8%
Guam	10	0.1%
Hawaii	169	1.6%
Idaho	151	1.5%
Montana	208	2.0%
Nevada	661	6.4%
Northern Mariana Islands	6	0.1%
Oregon	337	3.2%
E. Wash.	135	1.3%
W. Wash.	475	4.6%
Bankruptcy	160	1.5%
Administrative Agencies, Total	3,210	30.9%
IRS	41	0.4%
NLRB	33	0.3%
BIA	3,048	29.3%
Other Administrative Agencies	88	0.8%
Original Proceedings & Miscellaneous Applications	819	7.9%
Circuit Total	10,400	

on the merits, while 3,471 were terminated on procedural grounds. In addition, 353 cases were terminated on the merits through consolidation. Of the merit decisions, 1,269 came after oral argument, down 8.4%, and 5,411 after submission on the briefs, up 3.7% from the prior year. Excluding consolidated cases, decisions in cases terminated on the merits included 1,597 prisoner cases, 828 criminal cases and 1,650 administrative agency appeals.

In FY 2020, cases terminated on the merits that were affirmed or enforced, which includes appeals affirmed in part and reversed in part, numbered 4,430; 632 reversed, 59 remanded and 776 dismissed. The court's overall reversal rate was 9.9%, compared to a national average of 8.8%. The reversal rate was 18.8% for criminal cases; 14.6% for civil cases involving the federal government and 13.7 for non-government civil cases; and 5.5% for administrative agency cases. Percent reversed are not computed for original proceedings because of their difference from appeals, nor are original proceedings included in the percentage of total appeals reversed.

In FY 2020, judicial panels produced 407 published opinions, two of them unsigned, and 6,234 unpublished opinions.

The court's pending caseload was slightly reduced in FY 2020. Pending cases numbered 11,164, down .9% from FY 2019. Of the pending caseload in FY 2020, 48.5% involved administrative appeals; 23.9% government and non-government civil matters; 15.2% prisoner petitions; and 10% criminal matters. Of the pending caseload, 36% had been pending less than six months, 23.4% pending six to less than 12 months and 40.6% pending for more than 12 months.

### Median Time Intervals

Median time intervals measure how long it takes for cases decided on the merits to proceed through the appellate process. In the Ninth Circuit in FY 2020, the median time interval from filing of a notice of appeal to final disposition was 12.5 months, up from 10.8 months in FY 2019 and 11.7 months in FY 2018. The time interval from the filing of a case in a lower court to a final disposition was 32.0 months, down from 33.2 months in FY 2019. The national median time intervals in FY 2020 were 9.1 months from notice of appeal to final disposition by a circuit court of appeals and 30.4 months from the filing of a case in a lower court to final disposition by a circuit court.

Once an appeal was fully briefed, Ninth Circuit judges decide all types of cases fairly quickly. In FY 2020 the median

time interval for panel decisions was 1.7 months, up from 1.2 months in FY 2019, for a case in which oral argument was held, and remained at about six days for cases submitted on briefs.

### Pro Se Filings and Terminations

Pro se appeals involve at least one party who is not represented by counsel. In FY 2020, new appeals by pro se litigants numbered 4,590, up 2.2% from the prior fiscal year. Pro se litigants accounted for 44.1% of all

appeals opened during FY 2020. Pro se appeals involving federal and state prisoner petitions numbered 1,920. Pro se appeals involving agency appeals numbered 891 making up 19.4% of all new pro se filings.

The court terminated 4,354 pro se appeals in FY 2020, up .3% from the prior year. Of that number, 2,734 were terminated on the merits after oral argument, submissions on the briefs or by consolidation. Prisoner petitions and agency appeals made

up the bulk of the terminations.

### En Banc Cases

En banc courts, which consist of 11 judges rather than three, are convened quarterly to resolve intra-circuit conflicts of law or other legal questions of exceptional importance. In 2020, some en banc cases were heard using video connections to avoid transmission of the COVID-19 virus. During the fiscal year, the court received 820 petitions seeking en banc review, up just three from 2019. Active judges of the court voted on 29 en banc requests, granting en banc review in seven, half as many as 2019.

During the calendar year, nine en banc courts were convened. Oral arguments were heard in four – three virtually, one in-person – and five were submitted on briefs.

### Death Penalty Cases

The court ended calendar year 2020 with 71 pending death penalty appeals resulting from crimes in four states: California, 35 cases; Arizona, 21; Nevada 13; and Idaho, 2. Within the circuit, another 728 death penalty cases were pending in federal trial courts and state supreme courts. There were 942 prisoners on death row. Since 1976, there have been 75 executions by states within the circuit.

### Contributions by Active, Senior and Visiting Judges

The court ended FY 2020 with 29 active circuit judges and 17 senior circuit judges. Of the 6,680 written opinions, excluding consolidations, issued by the court in FY 2020, 58.5% were authored by active circuit judges, 33.7% by senior judges and 7.8% by visiting judges sitting by designation. ■

### • Median Time Intervals in Months for Cases Terminated on the Merits

By Stage of Appeal	Number of Months			
	Ninth Circuit		National	
	2019	2020	2019	2020
<sup>1</sup> From Filing of Notice of Appeal or Docket Date to Filing of Appellee's Last Brief	9.0	9.2	5.6	5.7
From Filing of Appellee's Last Brief to Oral Argument or Submission on Briefs	9.3	11.0	4.1	4.2
From Oral Argument to Last Opinion or Final Order	1.2	1.7	2.2	2.3
From Submission on Briefs to Last Opinion or Final Order	0.2	0.2	0.4	0.4
<sup>1</sup> From Filing of Notice of Appeal or Docket Date to Last Opinion or Final Order	10.8	12.5	8.8	9.1
From Filing in Lower Court to Last Opinion or Final Order in Appeals Court	33.2	32.0	29.3	30.4

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Note: This table does not include data for the U.S. Court of Appeals for the Federal Circuit. Beginning in March 2014, data include miscellaneous applications not included previously. Cases terminated include appeals, original proceedings and miscellaneous applications.

<sup>1</sup>Docket date is used when computing the median time intervals for original proceedings, miscellaneous applications and appeals from administrative agencies.

## District Courts See Slight Decline in Total Filings

United States district courts serve as the trial courts in the federal judicial system and have jurisdiction to consider civil and criminal matters and other types of cases. A district court operates in each of the 94 judicial districts in the nation.

The combined caseload for the 15 district courts within the Ninth Circuit decreased slightly in fiscal year 2020. Total new civil and criminal filings numbered 59,995, down 9.1% from FY 2019. Total cases terminated was 63,810, up 4% while total pending cases were down 5.8% to 63,921. The circuit accounted for 11.3% of all filings nationwide, which totaled 530,465, up 42.3% from 372,906 total filings in FY 2019.

The effects of the COVID-19 virus were felt throughout the federal judiciary. Criminal cases were delayed when incarcerated and other accused were unable to meet with their lawyers due to social distancing needs. In addition, most districts in the Ninth Circuit greatly limited in-person hearings. Jury selection was problematic until technology was mastered to allow for it and concerns about both juries' ability to see evidence and attorneys to see jurors' reactions, all resulted in a reluctance to hold criminal trials. Civil trials were adapted to remote proceedings fairly quickly and criminal trials were held in some courts, almost always with a remote access component.

### Criminal Caseload and Defendants

District courts in the Ninth Circuit reported a substantial decrease in criminal filings, down 22.5%

with 11,962 cases. Criminal cases terminated during the year numbered 11,912, down 20%. The courts' combined pending criminal caseload was 14,654, down 0.6%.

All 15 district courts in the nine western states comprising the Ninth Circuit reported fewer criminal filings in FY 2019. Overall, criminal filings were down 24.6%. The biggest decrease percentagewise was in the District of the Northern Marianas Island down 37.5%, dropping from 16 to 10 filings.

The Central District of California was down 28.8%. "The drop in criminal case filings in the Central District is related directly to the fact that grand juries were suspended for many months last year due to COVID-19," said Kit Gray, district court executive and clerk of the court for the Central District of California.

The Eastern District of California was down 22%; the District of Guam was down 34.6, a drop of 18 cases; the District of Hawaii was down 22.9%; closely followed by the Eastern District of Washington, down 25.5%. The District of Arizona, down 28.2% from 5,350 to 3,839.

The Southern District of California reported the greatest number of criminal filings at 4,186, down 17.8% from 5,092 in FY 2019.

The Ninth Circuit accounted for 20% of the new criminal filings nationally, which numbered 59,884, down 20.2% from FY 2019.

In the Ninth Circuit, the total number of defendants involved in

criminal cases was 13,862, down 24.6% from FY 2019. The majority of the defendants, 13,086, were charged with felony offenses. Defendants charged with drug offenses numbered 4,647. They accounted for 33.5% of total criminal defendants in the circuit. Of the total drug offenses, 160 involved marijuana and 4,487 involved all other drug offenses.

Criminal defendants charged with immigration offenses numbered 5,239, down sharply by 32.2% in FY 2020. Immigration offenses accounted for 37.5% of all criminal defendants. Of the total, 4,025 defendants were charged with improper reentry into the United States.

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The Southern District of California had the largest numbers of defendants, 4,738, of whom 4,267 were charged with immigration and drug offenses, 90% of the total. The district reported 1,770 defendants charged with immigration offenses, down 41.8% from FY 2019.

Defendants charged with drug offenses in the Southern District of California increased by 19.4% to 2,497 cases. The Southern District of California had 33.8% of all defendants in the circuit charged with immigration offenses and 53.7% of all defendants with drug offenses in the circuit.

Ninth Circuit district courts reported 980 defendants charged with property offenses, down 33.6%. Under this category, defendants charged with fraud were most numerous, totaling 788, followed by burglary, larceny or theft, 123; embezzlement, 33;

● U.S. District Courts - Criminal Defendants Commenced (Excluding Transfers)  
by Offense and District

	AK	AZ	CAC	CAE	CAN	CAS	GU	HI	ID	MT	NV	NMI	OR	WAE	WAW	2019	2020	2019-20
<b>Violent Offenses</b>																		
Homicide	0	22	5	0	2	1	0	0	0	7	1	0	0	3	1	60	42	-30.0%
Robbery	3	5	7	0	3	4	0	4	6	0	8	0	16	0	0	84	56	-33.3%
Assault	2	58	12	1	3	18	0	0	8	31	3	0	23	9	12	266	180	-32.3%
Other	2	19	20	8	9	8	0	6	1	2	6	0	13	10	4	148	108	-27.0%
<b>Property Offenses</b>																		
Burglary, Larceny &	1	5	39	8	11	6	3	3	10	4	8	0	13	6	6	166	123	-25.9%
Embezzlement	2	3	16	1	2	2	0	1	0	2	0	0	3	0	1	48	33	-31.3%
Fraud	11	26	213	39	60	209	8	23	17	15	48	11	44	14	50	1,209	788	-34.8%
Forgery & Counterfeiting	0	1	0	0	1	2	0	0	9	0	0	0	2	10	1	35	26	-25.7%
Other	0	0	0	0	0	0	0	1	0	0	3	0	6	0	0	19	10	-47.4%
<b>Drug Offenses</b>																		
Marijuana	3	75	14	14	23	17	0	0	5	2	0	0	6	1	0	231	160	-30.7%
All Other Drugs	53	346	345	161	212	2,480	17	68	11	142	111	10	152	113	166	4,839	4,487	-7.3%
Firearms and Explosives Offenses	71	54	161	82	106	53	4	25	45	123	111	0	99	29	50	1,249	1,010	-19.1%
Sex Offenses	16	60	50	29	23	40	1	6	42	32	19	0	38	18	36	459	410	-10.7%
Justice System Offenses	1	12	9	3	8	45	0	4	3	0	8	0	4	7	0	136	104	-23.5%
<b>Immigration Offenses</b>																		
Improper Reentry by Alien	0	2,628	89	24	12	1,021	0	5	47	8	35	0	71	66	19	5,549	4,025	-27.5%
Other	0	443	5	0	1	749	7	1	0	5	0	1	0	1	1	2,174	1,214	-44.2%
General Offenses	4	15	38	4	22	17	0	4	4	3	7	0	38	2	23	213	181	-15.0%
Regulatory Offenses	3	17	10	0	8	66	1	9	1	0	3	0	5	0	6	198	129	-34.8%
All Offenses Total	172	3,789	1,033	374	506	4,738	38	160	319	376	371	12	533	289	376	17,083	13,086	-23.4%

● U.S. District Courts: Weighted and Unweighted Filings Per Authorized Judgeship

District	Authorized Judgeships	Weighted Filings Per Judgeship						Unweighted Filings Per Judgeship			
		Civil	Criminal	Supervision Hearings	2020 Total	2019 Total	Change 2019-20	Civil	Criminal	Supervision Hearings	2020 Total
Alaska	3	113	88	0.1	201	229	-13.9%	123	59	0.7	183
Arizona	13	217	190	8.3	415	800	-48.1%	261	313	102.6	676
C. Calif.	28	643	57	1.6	702	681	3.1%	572	40	19.6	632
E. Calif.	6	604	91	3.0	698	730	-4.4%	705	67	34.2	806
N. Calif.	14	551	58	3.1	612	599	2.2%	511	38	38.1	587
S. Calif.	13	196	421	7.5	625	634	-1.4%	196	366	93.1	655
Hawaii	4	145	65	3.1	213	240	-11.3%	144	40	37.5	221
Idaho	2	261	219	5.4	485	538	-9.9%	296	162	64.5	523
Montana	3	202	191	10.7	403	380	6.1%	211	127	83.7	421
Nevada	7	388	78	3.2	469	467	0.4%	424	56	29.9	510
Oregon	6	304	130	5.6	440	449	-2.0%	365	99	69.7	534
E. Wash.	4	158	94	10.4	263	298	-11.7%	222	74	125.5	421
W. Wash.	7	380	88	2.5	470	462	1.7%	447	84	27.9	559
Circuit Total	110	4,162	1,770	643	5,996	6,507	-7.9%	4,477	1,525	727.0	6,728
Circuit Mean	-	320	136	5.0	461	501	-7.9%	344	117	55.9	518
Circuit Median	-	261	91	3.2	469	467	0.4%	296	74	38.1	534
National Mean	-	688	133	3.6	549	549	0.0%	898	108	37.0	1,043
National Total	673	554	124	3.1	535	535	0.0%	676	109	32.6	818

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Note: Case weights are based on the 2015 district court case weighting system approved by the Judicial Conference of the United States for use after December 2015. Data for the territorial courts are not included. This table excludes civil cases arising by reopening, remand or transfer to the district by the order of the Judicial Panel on Multidistrict Litigation. This table includes defendants in all criminal cases filed as felonies or Class A misdemeanors but includes only those defendants in criminal cases filed as petty offenses that were assigned to district judges rather than magistrate judges. Remands and reopens for criminal defendants are excluded. This table includes trials conducted by district and appellate judges only; all trials conducted by magistrate judges are excluded. Sentencing hearings are excluded. Due to rounding, subtotals may not equal totals.

forgery and counterfeiting, 26; and 10 for other property offenses.

In the Ninth Circuit, defendants charged with firearms and explosives offenses numbered 1,010. Total number of defendants charged with violent offenses, which includes homicide, robbery, assault and other violent offenses, was 386 down 30.8% in FY 2020.

Total pending criminal caseload numbered 14,654, down 0.6% from FY 2019. Six of the 15 district courts in the circuit reported a drop in criminal caseload.

### Civil Caseload

During FY 2020, Ninth Circuit district courts reported fewer new civil filings but terminated more cases ending the year with lower pending caseloads. New civil filings dropped by 5% to 48,033. Case terminations numbered 51,898 up 11.7% from FY 2019. Pending caseload was 49,267 down 7.3%. Civil matters accounted for 80.1% of total caseloads in the district courts.

New private civil cases numbered 39,495 and accounted for 82.2% of all new civil filings in the Ninth Circuit. Major categories of new private civil filings were civil rights, 10,033 cases; personal injury, 9,701; prisoner petitions, 8,127; contracts cases, 4,996; intellectual property, 2,217 and labor matters, 1,959.

The U.S. was a party to 8,538 new civil filings, accounting for 17.8% of the total new civil caseload in Ninth Circuit district courts. Among the matters involving the government, Social Security cases were most numerous, 4,635 or 54.3% of the total U.S. civil cases in the

### U.S. District Courts - Total Criminal and Civil Cases Filed, Terminated and Pending

Caseload Measure	2019	2020	2019-20
<b>Civil Filings</b>	50,538	48,033	-5.0%
Criminal Filings	15,439	11,962	-22.5%
<b>Total Filings</b>	65,977	59,995	-9.1%
Civil Terminations	46,443	51,898	11.7%
<b>Criminal Terminations</b>	14,889	11,912	-20.0%
<b>Total Terminations</b>	61,332	63,810	4.0%
<sup>1</sup> Pending Civil Cases	53,132	49,267	-7.3%
Pending Criminal Cases	14,749	14,654	-0.6%
<b><sup>1</sup>Total Pending Cases</b>	67,881	63,921	-5.8%
<b><sup>1</sup>Civil Case Termination</b>	13.73	11.39	-17.0%
Index (in months)			
Criminal Case Termination	11.89	14.76	24.1%
Index (in months)			
<sup>1</sup> Overall Case Termination	13.28	12.00	-9.6%
Index			
Median Time Intervals in Months from Filing to Disposition			
Civil Cases	7.2	8.6	19.4%
Criminal Defendants	5.6	6.2	10.7%
Civil Cases National Average	10.8	8.9	-17.6%
Criminal Defendants National Average	6.7	7.0	4.5%

Note: Median time interval from filing to disposition of civil cases terminated excludes land condemnations, prisoner petitions, deportation reviews, recovery of overpayments and enforcement of judgments. Includes cases filed in previous years as consolidated cases that thereafter were severed into individual cases. For fiscal years prior to 2001, the data included recovery of overpayments and enforcement of judgments. Median computed only for 10 or more cases. Median time interval from filing to disposition for criminal defendants includes defendants in all cases filed as felonies or Class A misdemeanors but includes only those defendants in cases filed as petty offenses that were assigned to district judges rather than magistrate judges. Median computed only for 10 or more defendants. Beginning March 2012, the median time interval is computed from the proceeding date for a defendant (e.g., the date an indictment or information was filed) to the date on which the defendant was found not guilty or was sentenced. Previously, the median time interval was computed beginning with the defendant's filing date. Therefore, data for March 2012 and thereafter are not comparable data for previous periods.

Ninth Circuit. Prisoner petitions followed with 1,682 cases or 19.7%. Other categories were tort actions, 425 cases; civil rights, 268 cases; and forfeitures and penalties, 139 cases.

Prisoner petitions totaled 9,548 or 19.9% of all new U.S. civil filings. About 83.7% or 7,992 of all prisoner petitions were initially filed pro se. The federal trial courts in Arizona and California had the most prisoner petitions.

New civil filings increased in 10 of the 15 district courts of the Ninth Circuit. The District of Arizona saw a 48.3% increase in 2019, and in 2020 a 57.7% drop of 4,762 new civil filings to 3,490. The sharp decline in civil filings in the District of Arizona was a result of a huge multidistrict litigation (MDL) case that closed,” said Debra Lucas, district executive and clerk of court for the District of Arizona.

In the Central District of California, “there was a significant increase in Social Security appeals and ADA case filings. Social Security appeals cases rose 50% from 814 in 2019 to 1,212 in 2020; ADA cases rose 26% from 3,629 in 2019 to 4,581 in 2020,” said Gray.

The District of Guam saw the largest percentage drop, 71.1%, but numbers were relatively low—152 in 2019 to 44 in 2020. The Central District of California, which ranked first in number of civil cases filed in the circuit and third in the nation, reported 16,461 cases, an increase of 947, or 6.1% from FY 2019.

### Case Processing Times

Civil case processing times in the district courts of the Ninth Circuit were up to an average of 8.6 months from the prior fiscal year but somewhat better than the national median time of 8.9. That 8.9% increase is more than matched by a caseload increase of 16.6%.

Many criminal cases are disposed of either through a guilty plea or dismissal of the charges. In the Ninth Circuit, the median time from filing to disposition was 6.0 months for pleas and 8.1 months for dismissals. Median times for criminal defendants who went to trial improved in FY 2020 to 9.4 months from 10.2 months in FY 2019 for a bench trial before a judge but increased for jury trials from 16.9 months in 2019 to 19.6 months in 2020. The median time for all dispositions was 6.2 months. ■

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## Bankruptcy Courts See Strong Downturn in Filings Across the Board

All bankruptcy courts in the Ninth Circuit experienced a drop in new filings in 2020 ranging from 2.5% to 51.8%, mirroring a nationwide trend. An expected increase in bankruptcy cases due to the economic impact of the COVID-19 virus did not materialize.

New bankruptcy filings in the circuit numbered 102,876, down 17.9% from the prior year when filings were 125,347. Filings nationwide were down sharply, 21.1% to 612,561 from 776,674 in FY 2019.

The Central District of California, which ranks first in bankruptcy filings nationwide and in the circuit, had the largest numerical drop, going from 37,911 in FY 2019, to 31,042 in FY 2020, down 6,869 cases.

“Despite pandemic predictions, our bankruptcy filings decreased approximately 18% from FY 2019 to FY 2020,” according to an analysis supplied by the U.S. Bankruptcy Court for the Central District of California.

“This may be attributable to national and local initiatives such as the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (Tenant, Homeowner, and Landlord Act),” the report added. “The one-time cash payments, increased unemployment benefits, and small business loans appear to have kept people afloat so that filing bankruptcy could be avoided or delayed.

“The Tenant, Homeowner, and Landlord Act places specific limits on a landlord’s ability to evict a tenant and a mortgagor’s ability to foreclose on a homeowner. Additionally, Gov. Newsom issued \$600 stimulus payments to California residents who met the requirements. As threatened loss of a home or business is a common precipitating factor for bankruptcy filings, these laws have given people an opportunity to either find new employment or delay filing while they see if they can recover,” the report continued.

Filings were down, but there were still over 31,000 new cases in 2020 and, despite COVID-19 restrictions, the Court was determined to provide access to justice to all litigants and implemented procedures and initiatives to continue to keep cases flowing.

Other bankruptcy courts in the circuit have taken similar measures to provide services to all litigants. “I know my colleagues have done many similar things,” said Kathleen J. Campbell, executive officer/clerk of court, U.S. Bankruptcy Court for the Central District of California. “We

### • Ninth Circuit Bankruptcy Courts

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District	2019 Total Filings	2020 Total Filings	Change 2019-20
Alaska	426	337	-20.9%
Arizona	16,950	14,519	-14.3%
C. Calif.	37,911	31,042	-18.1%
E. Calif.	15,123	12,279	-18.8%
N. Calif.	8,234	6,586	-20.0%
S. Calif.	7,995	7,002	-12.4%
Guam	170	82	-51.8%
Hawaii	1,650	1,609	-2.5%
Idaho	3,746	3,006	-19.8%
Montana	1,347	994	-26.2%
Nevada	9,962	8,309	-16.6%
<sup>1</sup> N. Mariana Is.	4	1	-
Oregon	8,986	7,374	-17.9%
E. Wash.	3,500	2,584	-26.2%
W. Wash.	9,343	7,152	-23.5%
<b>Circuit Total</b>	<b>125,347</b>	<b>102,876</b>	<b>-17.9%</b>

<sup>1</sup>Percent change not computed when fewer than 10 cases reported for the previous period.

worked together throughout the pandemic to share ideas and best practices ... and all continued to serve the public and provide access to justice."

Measures taken in the Central District included telephonic appearances immediately after the court's first closure in March 2020, and the court quickly implemented

video appearances via Zoom.gov. Video appearances required new equipment, new procedures for litigant check-in and development of training materials for judges, court staff, attorneys and the general public. In a nine-month span in 2020, the court hosted 2,172 meetings for a total of 1,352,693 minutes involving over 23,000 participants.

Other adaptations include new means for electronic exhibit submissions, and software was adopted by some for review of exhibits and related case information. The court extended deadlines, allowed flexibility on filing fee payments and took many other steps to ease the impact of COVID-19 on all concerned.

Of the 15 judicial districts in the Ninth Circuit, 13 are served by a bankruptcy court—district judges preside over bankruptcy cases in the Districts of Guam and the Northern Mariana Islands.

The districts of Guam and the Northern Marianas Islands had the largest drop-offs percentagewise, with Northern Marianas Islands showing a drop of 75%, but that was a reduction from four new cases in FY 2019 to only one in FY 2020, while Guam had a 51.8% drop, going from 170 new cases to 82, a drop of 88 filings.

The Eastern District of Washington and the District of Montana had the next largest decreases, handling 26.2% fewer new filings in FY 2020, a reduction of from 3,500 to 2,584, or 916 cases, and 1,347 to 994, or 353 cases, respectively. The Western District of Washington followed with a drop of 23.5%, going from 9,343 to 7,152 new filings. New filings in the Alaska District dropped from 426 to 337, or 20.9%, followed by the Northern District of California at 20%, which went from 8,234 to 6,586, or 1,648 cases.

Idaho saw a reduction of 19.8%, 740 cases, or 3,746 to 3,006

### • Business and Nonbusiness Bankruptcy Cases Commenced by Chapter of the U.S. Bankruptcy Code

<sup>2</sup> Predominant Nature of Debt	2019	2020	Change 2019-20
Business Filings			
Chapter 7	3,191	2,886	-9.6%
Chapter 11	692	761	10.0%
Chapter 12	65	59	-9.2%
Chapter 13	376	239	-36.4%
Nonbusiness Filings			
Chapter 7	93,003	80,523	-13.4%
Chapter 11	385	274	-28.8%
Chapter 13	27,632	18,122	-34.4%
<sup>2</sup> Total	125,344	102,864	-17.9%
Terminations	128,218	117,248	-8.6%
<sup>1</sup> Pending Cases	115,828	101,448	-12.4%

Note: Due to differences among districts in reporting intra-district transfers, the total provided above for cases pending at the end of the last reporting period may not equal the number obtained by adding totals for cases pending at the end of the prior period plus cases filed during the current period, then subtracting cases terminated during the current period. The United States territorial courts assume the jurisdiction of the U.S. bankruptcy courts within their respective territories, which do not have separate bankruptcy courts.

<sup>1</sup>2019 pending cases revised

<sup>2</sup>The following filings are not reflected in the total business and nonbusiness bankruptcy cases commenced for fiscal years 2019 and 2020:

**Fiscal Year 2019:** Northern Calif. (Chapter 15=3)

**Fiscal Year 2020:** Central Calif. (Chapter 15=2), Northern Calif. (Chapter 15=1), Hawaii (Chapter 15=2), Idaho (Chapter 9=1), Oregon (Chapter 15=6)

new filings in FY 2020, Eastern District of California had a drop of 18.8%, logging the second highest numerical drop of 2,844 fewer filings, from 15,123 in FY 2019 to 12,279 in FY 2020. New bankruptcy filings in Oregon were down 17.9% from 8,986 to 7,374 in FY 2020, a reduction of 1,612 cases.

Nevada District filings dropped 16.6%, from 9,962 to 8,309, or 1,653 fewer cases, followed by Arizona, down 14.3%, a reduction of 2,431 cases from 16,950 in FY 2019 to 14,519 in FY 2020. The Southern District of California had a 12.4% drop in cases, from 7,995 to 7,002, or 993 fewer new filings. Hawaii saw a meager 2.5% drop from 1,650 to 1,609, or 41 cases.

New bankruptcy filings by nonbusiness filers were down across the board in the Ninth Circuit in fiscal year 2020. Total nationwide nonbusiness filings, which involves individual debtors, numbered 590,170 or 96.3% of all new bankruptcy filings in the U.S. Total nonbusiness filings in the circuit were down by 18.3 to 98,919 new filings, accounting for 96.2% of all new filings in the circuit.

New business and nonbusiness Chapter 7 filings were most numerous in the Ninth Circuit, where filings numbered 83,409 or 20.2% of all Chapter 7 filings in the nation and 81.1% of all new filings in the circuit.

Chapter 13 filings, which allow individuals with regular income to develop a plan to repay all or part of their debts, numbered 191,396 nationally. In the Ninth Circuit, new Chapter 13 filings totaled 18,361

or 17.8% of all bankruptcy filings in the circuit. Chapters 11 and 15 filings made up the remainder.

### Pro Se Bankruptcy Filings

Bankruptcy cases filed by parties who do not have legal counsel are pro se filers, whose cases result in frequent dismissals because they often are not familiar or lack understanding of the law and legal procedures. In general, pro se filers require more staff time to process their cases.

Bankruptcy filings by pro se debtors in the Ninth Circuit decreased sharply by 34.2% to 10,905 in fiscal year 2020. Pro se filers accounted for 10.6% of all bankruptcy filings in the circuit in FY 2020. The Central District of California had the most new bankruptcy cases in the nation at 31,042 and also reported the highest number of pro se bankruptcy cases nationwide with 3,523 new filings, accounting for 32.3% of all pro se bankruptcy filings in the circuit.

The District of Arizona ranked fourth nationwide with 2,293 pro se filings, down 27.2% from the prior fiscal year. Filings in the Eastern District of California were down by 30.1% to 1,579 and the District of Nevada was down 37.4% to 706 cases. Decreases were reported in all other districts except Guam, which went from one filing in 2019 to four in 2020.

### Termination and Pending Cases

In the Ninth Circuit, bankruptcy cases terminated totaled 117,248, or 16.3 % of the 721,251 bankruptcy cases closed nationwide in fiscal year 2020.

The Central District of California terminated 35,252 cases or 30% of all cases closed in the circuit. The District of Arizona had 15,667 cases closed or 13.4%; the Eastern District of California had 13,705 cases closed or 11.7%; the Western District of Washington had 8,976 cases closed or 7.7%; and the Northern District of California had 8,255 cases closed or 7%. The districts of Alaska, Southern California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon and Eastern Washington made up the remaining 35,393 cases terminated in the circuit.

Pending cases in the circuit were reduced to 101,448 or by 12.4% in fiscal year 2020 compared to 2019. The Central District of California had 22,668 pending cases, down 15.7%; the District of Arizona with 18,347 cases, down 5.9%; the Northern District of California with 10,930 cases, down 13.3%; and the Eastern District of California with 10,772 cases, down 11.7%. Total pending cases nationwide numbered 906,738, down 10.7% from FY 2019.

### Reappointments

In 2020, judges of the United States Court of Appeals for the Ninth Circuit reappointed three bankruptcy judges to a second 14-year term. Judges reappointed were Victoria S. Kaufman of the Central District of California on May 2, Roger Efremsky of the Northern District of California on August 1 and Mike Nakagawa of the District of Nevada on September 1. ■

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## BAP Sees Jump in Pro Se Caseload While Navigating Pandemic

The Bankruptcy Appellate Panel operates under authority of the Judicial Council of the Ninth Circuit to hear appeals from the bankruptcy courts of the circuit. All district courts within the Ninth Circuit have issued general orders providing for the automatic referral of bankruptcy appeals to the BAP. However, if any party files a timely election, the appeal is transferred to the appropriate district court according to the consent rule.

Six bankruptcy judges from the circuit are appointed to serve seven-year terms on the BAP; each BAP judge may be reappointed to an additional three-year term. In their appellate capacity, BAP judges are precluded from hearing matters arising from the districts in which they are designated to hear bankruptcy cases.

### New Filings

For the fiscal year ending September 30, 2020, 597 new bankruptcy appeals were filed, an increase of 6% when compared to

FY 2019. The BAP handled 47% of all bankruptcy appeals, and the district courts handled 53%.

### Dispositions

The BAP disposed of 362 appeals, a 3% increase from FY 2019. Of those, 126 appeals were merits terminations. Oral argument was held in 100 appeals, and 26 appeals were submitted on briefs. The BAP published 16 opinions, 13% of merits decisions. The reversal rate was 7%. The percentage of cases either reversed or remanded was 16%. The median time for an appeal decided on the merits was nine months. Of the remaining 236 closed cases, two were terminated by consolidation and 57 were transferred to the district courts after appellee elections or in the interest of justice. The balance of 177 closed appeals were terminated on procedural grounds, such as lack of prosecution, lack of jurisdiction, or voluntary dismissal. The BAP ended FY 2020 with 128 appeals pending.

down 15% compared to FYE 2019.

### Pro Se Appeals

After a decade of pro se filings accounting for between 45% to 55% of new appeals, BAP pro se filings increased to 60% of new appeals in FY 2020, a 9% increase from FY 2019. By fiscal year end, the BAP pro se caseload had increased from 48% to 56% of pending appeals.

### Appeals to the Ninth Circuit

Appeals from a bankruptcy decision of either the BAP or a district court may be filed with the court of appeals for second-level appellate review. In FY 2020, 160 second-level appeals were filed, an increase of 4% compared to FY 2019. Of these, 75 were appeals from decisions by the BAP and 85 were from decisions by the district courts. Thus, of the 362 appeals that were disposed of by the BAP, roughly 79% were

### • Ninth Circuit Bankruptcy Appeal Filings

Year	Bankruptcy Appeals Total	Raw Bankruptcy Appeals Received by BAP <sup>1</sup>	Net Bankruptcy Appeals BAP <sup>2</sup>	Net Bankruptcy Appeals District Court <sup>3</sup>	Election Rate <sup>4</sup>	Percentage of Appeals Heard by BAP
FY 2018	623	374	301	322	52%	48%
FY 2019	564	330	272	292	52%	48%
FY 2020	597	339	282	315	53%	47%

<sup>1</sup>Number of new appellate filings received and opened as new case files at the BAP Clerk's Office. This figure includes some appeals where an appellee files an election and the appeal thereafter is transferred to district court. (Where a timely election is made by an appellant, the bankruptcy court generally bypasses the BAP and refers the appeal directly to the district court.)

<sup>2</sup>The number of raw bankruptcy appeals received by BAP less the number of appeals transferred from BAP to district court by election or other transfer.

<sup>3</sup>Includes the number of all bankruptcy appeals received by district court either referred directly from the bankruptcy court or transferred from the BAP.

<sup>4</sup>Percentage of bankruptcy appeals where one or more parties timely elected to have their appeal heard in district court.

fully resolved, with only 21% seeking second-level review.

## IMPACT OF THE COVID-19 PANDEMIC ON BAP OPERATIONS

### Oral Arguments

The BAP began the year traveling for oral arguments, with sittings in Las Vegas, Pasadena, Phoenix, and San Francisco. When the

COVID-19 pandemic abruptly halted travel in March 2020, the BAP heard its March calendar by telephone. The BAP conducted oral arguments via Zoom video for the remainder of the year. The Ninth Circuit Court of Appeals assisted with the video and live-streamed BAP oral arguments, enabling widespread access to the proceedings.

of California Bankruptcy Court. The three-part program, held in conjunction with the BAP's June oral argument week, was offered to all bankruptcy court externs and law clerks throughout the Ninth Circuit. Approximately 60 people participated.

The program began with a Zoom presentation of general appellate law principles as well as issues unique to bankruptcy appeals and bankruptcy appellate panels. All BAP judges participated in this session which was moderated by a bankruptcy judge from the Central District of California. Materials covering bankruptcy appellate law were provided as well as summaries of the cases to be argued that week.

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Participants were then encouraged to watch one or both BAP oral argument sessions via live-stream.

Post-arguments, participants were divided into smaller Zoom discussion groups. At least two BAP judges participated in each group. Participating externs and law clerks had an opportunity to ask questions about the topics covered in the pre-argument presentation as well as to discuss effective appellate oral argument and briefing techniques.

The feedback was uniformly positive, receiving interest from the national bankruptcy community. Additional offerings of the program are planned. ■

### • New Bankruptcy Appeal Filings

District	Bankruptcy Appellate Panel	District Court <sup>1</sup>	2020 Total
Alaska	3	8	11
Arizona	24	18	42
C. Calif.	126	122	248
E. Calif.	22	12	34
N. Calif.	47	45	92
S. Calif.	7	44	51
Hawaii	6	11	17
Idaho	4	5	9
Montana	2	3	5
Nevada	24	14	38
Oregon	8	15	23
E. Wash.	3	4	7
W. Wash.	6	14	20
<b>Total</b>	<b>282 (47%)</b>	<b>315 (53%)</b>	<b>597</b>

<sup>1</sup>The numbers for bankruptcy appeals to the district courts are taken directly from a statistical caseload table prepared by the Administrative Office of the United States Courts. The numbers for bankruptcy appeals to the BAP are calculated based on data from AOUSC tables and on data from the BAP's CM/ECF docketing system. The district court numbers include all appeals in which a timely election was made to have the appeal heard in the district court (both appellant and appellee elections) as well as other cases transferred in the interest of justice. The BAP numbers exclude all such appeals.

### Operations

The BAP continued operations during the pandemic shut down, maintaining a minimal staff at the courthouse to process and scan mail and answer the many telephone calls the BAP receives. The remainder of BAP staff worked remotely continuing to process bankruptcy appeals. BAP staff maintained daily contact via email and telephone calls. Periodic court meetings were held via Zoom. BAP judges and law clerks utilized Zoom for case discussions.

### Bankruptcy Appeals 101 Program

In response to the elimination of in-person educational opportunities for court staff and externs, the BAP developed and presented a Bankruptcy Appeals 101 program in collaboration with and with technical support from the Education Committee of the Central District

## Magistrate Judges Persevere During COVID-19

In fiscal year 2020, there were 106 full-time magistrate judges and six part-time magistrate judges, and one magistrate judge/clerk of court, along with 19 recalled magistrate judges, who served eight district courts of the Ninth Circuit. Despite the challenges posed by COVID-19, magistrate judges throughout the Ninth Circuit continued to hold court remotely, greeting defendants, defense lawyers and prosecutors on their screen monitors. All told, Ninth Circuit magistrate judges disposed a total of 252,941 civil and criminal matters in FY 2020.

Appointed under Article I of the United States Constitution, magistrate judges are selected by the district judges of their judicial district. They are appointed to an eight-year term, may be reappointed and may serve as recalled magistrate judges. The Judicial Conference of the U.S., the judicial councils of the circuits and the director of the Administrative Office of the U.S. Courts determine the number of magistrate judge positions based on recommendations made by the respective district courts.

Magistrate judges make substantial contributions to the work of the federal trial courts involving a variety of judicial matters. Their work includes issuing search and arrest warrants, conducting settlement conferences in civil cases, handling petty offenses and taking felony pleas. Magistrate judges conduct preliminary proceedings, decide trial jurisdiction matters, review prisoner petitions and perform other duties. They may preside over civil trials with consent of the parties.

The largest category of matters presided over by magistrate judges is felony preliminary proceedings, which include complaints, initial appearances, search warrants, arraignments, detention hearings, arrest warrants, preliminary hearings, summonses, bail reviews, forfeitures, Nebbia hearings, attorney appointments and material witness hearings. Magistrate judges disposed of 108,943 felony preliminary proceedings, down 16.1% from FY 2019.

Additional duties related to criminal matters disposed of in FY 2020 numbered 48,144, down 2.3%. Non-dispositive and dispositive motions, pretrial conferences, probation and supervised release revocation hearings, guilty plea and evidentiary proceedings, motion hearings, reentry/drug court proceedings, writs and mental competency proceedings fall under this category. Non-dispositive motions total was 25,572, up 16.6% from 21,236, while dispositive motions total was 236, down 30.4%, from 339 in FY 2020.

Additional duties involving civil matters were up 2.4% from 50,722 to 51,951. This category includes non-dispositive motions/grants of in forma pauperis, or IFP, status, other pretrial conferences, settlement conferences/mediations, other civil dispositive motions, evidentiary proceedings, social security appeals, special master references, summary jury/other ADR/early neutral evaluations, motion hearings and fee applications.

Class A misdemeanors and petty offenses cases disposed of by magistrate judges decreased dramatically by 53.5% from 42,724

to 19,882. Petty offenses were down 54% from 41,668 to 19,184, while Class A misdemeanors were down 33.9%, from 1,056 to 698 in FY 2020.

Civil consent cases, in which a magistrate judge presides at the consent of the parties, were down 7.1% from 5,211 to 4,841. A majority of cases under this category were disposed of without trial.

Prisoner petitions were up 2.4% from 6,884 to 7,052. The bulk of the work under this category involves civil rights prisoner petitions, up 0.2%. State habeas prisoner petitions increased by 6.8% in FY 2020.

### New Magistrate Judges and Governance

Seven new full-time magistrate judges were appointed in 2020. Magistrate judges appointed were Michael T. Morrissey of the District of Arizona; Pedro V. Castillo and Patricia Donahue of the Central District of California; Helena M. Barch-Kuchta of the Eastern District of California; Alex G. Tse of the Northern District of California; Daniel E. Butcher of the Southern District of California; and Michael J. Bordallo of the District of Guam.

### Education Program

Since the cancellation of the 2020 Ninth Circuit Judicial Conference due to the COVID-19 pandemic, the educational program for magistrate judges usually planned by the Magistrate Judges Education Committee has been on hold. The committee looks forward to working in person and planning an educational program in the future. ■

- Matters Disposed of by Ninth Circuit Magistrate Judges

Activity	2019	2020	Percent Change 2019-20
<b>Total Matters</b>	<b>300,712</b>	<b>252,941</b>	<b>-15.9%</b>
Felony Preliminary Proceedings	129,782	108,943	-16.1%
Search Warrants	21,385	25,036	17.1%
Arrest Warrants	9,246	7,408	-19.9%
Summons	1,149	1,116	-2.9%
Complaints	25,222	15,855	-37.1%
Initial Appearances	24,552	21,048	-14.3%
Preliminary Hearings	7,913	6,476	-18.2%
Arraignments	16,877	12,709	-24.7%
Detention Hearings	15,594	13,035	-16.4%
Bail Reviews/Forfeitures/Nebbia Hearings	2,247	2,245	-0.1%
<sup>1</sup> Other	5,597	4,015	-28.3%
Trial Jurisdiction Defendants	42,724	19,882	-53.5%
Class A Misdemeanor	1,056	698	-33.9%
Petty Offense	41,668	19,184	-54.0%
Civil Consent Cases	5,211	4,841	-7.1%
Without Trial	5,165	4,818	-6.7%
Jury Trial	34	16	-52.9%
Bench Trial	12	7	-41.7%
Additional Duties			
Criminal	49,265	48,144	-2.3%
Non-Dispositive Motions	21,927	25,572	16.6%
Dispositive Motions	339	238	-30.4%
Evidentiary Proceedings	119	107	-10.1%
Pretrial Conferences	12,074	9,812	-18.7%
Probation and Supervised Release Revocation Hearings	1,897	1,708	-10.0%
Guilty Plea Proceedings	9,405	7,382	-21.5%
<sup>2</sup> Other	3,504	3,327	-5.1%
Civil	50,722	51,951	2.4%
Settlement Conferences/Mediations	2,994	3,129	4.5%
Other Pretrial Conferences	4,131	4,495	8.8%
<sup>3</sup> Non-Dispositive Motions/Grants of IFP Status	37,421	38,791	3.7%
Other Civil Dispositive Motions	2,625	2,758	5.1%
Evidentiary Proceedings	114	68	-40.4%
Social Security Appeals	586	333	-43.2%
Special Master References	0	0	-
<sup>4</sup> Other	2,851	2,377	-16.6%
Prisoner Petitions	6,884	7,052	2.4%
State Habeas	2,197	2,347	6.8%
Federal Habeas	348	357	2.6%
Civil Rights	4,324	4,331	0.2%
Evidentiary Proceedings	15	17	13.3%
Miscellaneous Matters	16,124	12,128	-24.8%

<sup>1</sup>Includes attorney appointment hearings and material witness hearings.

<sup>2</sup>Includes mental competency proceedings, motion hearings, reentry/drug court proceedings and writs.

<sup>3</sup>In 2013, magistrate judge workload statistics were produced using a new software program that recalculated the statistics for 2013 and for previous years. In some categories, the statistics provided in the report differ from the ones displayed in those categories in previous reports. Non-dispositive motions/grants of IFP status category includes prisoner cases, social security cases and other civil cases.

<sup>4</sup>Includes summary jury/other ADR/early neutral evaluations, motion hearings and fee applications.

## Federal Defenders Carry Out Their Constitutional Duties During Pandemic

As the risks posed by COVID-19 became more evident, federal public defender offices like the federal courts closed their doors to the public, but the pandemic did not impede federal defenders from performing their duties as they continued to work remotely or as part of a skeleton crew.

The Office of the Federal Public Defender was created by Congress to fulfill the constitutional requirement that financially eligible individuals be guaranteed the right to representation by counsel. Criminal defendants facing prosecution in federal courts are provided with legal representation at no cost.

Congress provides funds to the Defender Services Division of the Administrative Office of the United States Courts for this purpose.

FPD Heather E. Williams, of the Eastern District of California, noted that IT staff became "miracle workers," who worked tirelessly to ensure that office staff have the necessary equipment they need in order to work remotely. While fulfilling their constitutional duties, FPD offices throughout the circuit worked to not only protect their clients from COVID-19 exposure but also of the offices' staff who continued their work serving many

clients. "Zoom became the safest means" to connect with clients, according to Williams.

Federal public defender offices, which are staffed by federal judiciary employees, and community defender organizations, which are nonprofit organizations staffed by nongovernment employees, provide a consistently high level of representation. Federal public defender representations include criminal defense and appeals, court-directed prisoner and witness representations, bail/pre-sentencing, supervised release, and probation and parole revocation hearings.

By statute, judges of the courts of appeals select and appoint the federal public defender for a renewable four-year term. In the Ninth Circuit, FPD applicants are evaluated by both a local screening committee and the court's Standing Committee on Federal Public Defenders, applying Equal Opportunity guidelines. The court makes its initial appointment after a nationwide recruitment and the use of its local screening committee. An incumbent federal public defender may be reappointed if the court concludes that he

or she is performing in a highly satisfactory manner based upon a broad survey and performance evaluation process. Community defenders are appointed by members of the board of directors in their organization, and their performance are reviewed periodically.

Federal defenders and community defenders in the Ninth Circuit opened 27,940 cases, down 23.4% in fiscal year 2020. Total cases opened nationwide numbered 113,686, a 30% decrease in FY 2020.

Federal defenders and community defenders in seven districts reported higher caseloads in FY 2020. Numerically, the FPD Office in the District of Oregon had the highest increase, up 38.8% from 1,821 to 2,528 cases. FPD offices that reported an increase in new cases in FY 2020 include the District of Alaska, up 25% from 352 to 440 cases; Eastern District of California, up 0.6% from 1,260 to 1,267; District of Hawaii, up 50.5% from 366 to 551 cases; District of Idaho, up 14.7% from 382 to 438 cases; District of Nevada, up by 131 cases from 1,032; Eastern District of Washington, up by 62 cases from 1,002 cases.

### • Ninth Circuit Federal Defender Organizations: Cases Opened, Closed and Pending

Cases	2016	2017	2018	2019	2020	Change 2019-20
Opened	31,897	26,727	34,641	36,468	27,940	-23.4%
Closed	28,092	28,689	36,755	34,603	24,809	-28.3%
Pending	15,383	13,380	11,261	13,093	16,151	23.4%

FPD offices and community defender organizations that reported fewer new cases in fiscal year 2020 include the District of Arizona, down 53.7% from 10,828 to 5,011; Central District of California, down 13.4% from 3,515 to 3,044; Northern District of California, down 6.1% from 2,057 to 1,932; Southern District of California, down 25.6% from 11,458 to 8,525; District of Guam, down 40.4% from 208 to

124; District of Montana, down by 11.9% from 834 to 735; and Western District of Washington, down by 17.4% from 1,353 to 1,118.

Federal defenders and community defenders in the circuit closed 24,809 cases, down 28.3%, while pending cases were up 23.4% from 13,093 to 16,151 cases in FY 2020. Cases closed nationwide totaled 108,921, down 28.6%,

while pending caseload nationwide also increased with 64,226 cases, up 7.5% in FY 2020.

Federal defenders in 12 districts reported closing fewer cases in FY 2020. Numerically, the FPD Office in the District of Arizona had the largest drop in closings, down 56.4% from 11,004 to 4,799. District of Alaska closed 4.6% fewer cases, dropping from 323 to 308; Central District of

#### • Federal Defender Organizations: Summary of Representations by District

District	Opened 2019	Opened 2020	Change 2019-20	Closed 2019	Closed 2020	Change 2019-20	Pending 2020
Alaska	352	440	25.0%	323	308	-4.6%	394
Arizona	10,828	5,011	-53.7%	11,004	4,799	-56.4%	1,737
C. Calif.	3,515	3,044	-13.4%	3,315	2,513	-24.2%	3,099
E. Calif.	1,260	1,267	0.6%	1,247	1,117	-10.4%	844
N. Calif.	2,057	1,932	-6.1%	1,913	1,327	-30.6%	1,237
<sup>1</sup> S. Calif.	11,458	8,525	-25.6%	9,983	8,938	-10.5%	2,859
Guam	208	124	-40.4%	215	112	-47.9%	66
Hawaii	366	551	50.5%	359	458	27.6%	259
<sup>1</sup> Idaho	382	438	14.7%	369	379	2.7%	279
<sup>1</sup> Montana	834	735	-11.9%	817	725	-11.3%	290
Nevada	1,032	1,163	12.7%	915	639	-30.2%	1,695
Oregon	1,821	2,528	38.8%	1,924	1,566	-18.6%	2,244
<sup>1</sup> E. Wash.	1,002	1,064	6.2%	946	924	-2.3%	558
W. Wash.	1,353	1,118	-17.4%	1,273	1,004	-21.1%	590
<b>Circuit Total</b>	<b>36,468</b>	<b>27,940</b>	<b>-23.4%</b>	<b>34,603</b>	<b>24,809</b>	<b>-28.3%</b>	<b>16,151</b>
<b>National Total</b>	<b>162,362</b>	<b>113,686</b>	<b>-30.0%</b>	<b>152,545</b>	<b>108,921</b>	<b>-28.6%</b>	<b>64,226</b>
<b>Circuit Total as % of National Total</b>	<b>22.5%</b>	<b>24.6%</b>	<b>2.1%</b>	<b>22.7%</b>	<b>22.8%</b>	<b>0.1%</b>	<b>25.1%</b>

<sup>1</sup>Community Defender Organizations

Note: Eastern Washington and Idaho are combined into one organization, and Northern Mariana Islands is not served by a defender organization. Other representations include court-directed prisoner, bail/presentment, witness, probation revocation and parole revocation representations.

California dropped 24.2%, from 3,315 to 2,513; Eastern District of California was down 10.4% from 1,247 to 1,117; Northern District of California was down 30.6% from 1,913 to 1,327; Southern District of California was down 10.5% from 9,983 to 8,938; District of Guam was down 47.9% from 215 to 112; District of Montana was down 11.3% from 817 to 725 cases; District of Nevada was down 30.2% from 915 to 639; District of Oregon was down 18.6% from 1,924 to 1,566; Eastern District of Washington was down 2.3%, from 946 to 924 cases; and Western District of Washington was down 21.1% from 1,273 to 1,004 cases.

The District of Hawaii was one of only two districts showing an increase in cases closed, up 27.6% from 359 to 458 cases. The District of Idaho showed an increase in closed cases of 2.7% from 369 to 379.

### Transitions

Judges of the United States Court of Appeals for the Ninth Circuit appointed two new federal public defenders and reappointed one FPD in 2020. Jamie L. McGrady was appointed FPD for the District of Alaska on January 24, and Cuauhtémoc Ortega was appointed FPD for the Central District of California on October 15. FPD Jon M. Sands for the District of Arizona was reappointed effective September 1.

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## Probation Offices Face COVID-19 Challenges

During fiscal year 2020, the COVID-19 pandemic significantly affected United States probation offices throughout the Ninth Circuit. Given the mission to protect the community, probation offices continued to operate during the pandemic by implementing health and safety measures to meet local and national guidelines and restrictions. Interestingly, in March 2020, the Western District of Washington became the first COVID-19 “hot spot” in the country. As a result, Chief U.S. Probation and Pretrial Services Officer Connie Smith, who retired in September 2020, conducted weekly calls with other districts and the Administrative Office of the U.S. Courts to share her district’s experience with the virus. These weekly calls were very helpful, especially during the early stages of the pandemic as districts started developing procedures to reduce the spread of the virus, ensure everyone’s safety, while meeting the mission of the office.

The impact of the pandemic on each probation office depended on the spread and infection rate within each district. As noted by the Eastern District of California U.S. Probation Office, California was particularly hard hit by the pandemic and was often one of the states with the highest number of deaths and new cases. Their office and the District of Arizona U.S. Probation Office reported that several employees contracted the virus, with some who required hospitalization. No death of probation staff was reported; however, several districts reported that several employees lost family members, friends and members of their community to the virus,

which underscored the severity of the pandemic.

To address the pandemic, a majority of the probation offices in the Ninth Circuit either closed or limited the number of staff and visitors in the office. In addition, U.S. probation offices tailored their operations to ensure everyone’s safety, accommodate childcare issues for staff and to abide by local COVID-19 restrictions. Specifically, using personal protective equipment (PPE), flexible work schedules, telework and virtual meetings were implemented. Moreover, probation officers became proficient working remotely and utilizing Zoom and other teleconferencing applications to complete their work.

Hawaii shared that their offices limited in-person contact to only those who were at higher risk of reoffending and implemented virtual home inspection for lower risk cases. The Northern District of California reported that the unemployment rate for individuals under supervision increased by 10% during the pandemic. However, their district implemented a workforce/education committee to address this issue, which included the implementation of a virtual education center.

Although presentence investigations declined during the pandemic, several districts experienced an increase in post-conviction cases due to

### • Persons Under Post-Conviction Supervision

Persons Under Supervision	2019	2020	Change 2019-2020
<sup>1</sup> From Courts	2,999	2,763	-7.9%
<sup>2</sup> From Institutions	19,652	20,104	2.3%
<b>Total</b>	<b>22,651</b>	<b>22,867</b>	<b>1.0%</b>

<sup>1</sup>Includes conditional release, probation and the former categories known as judge probation and magistrate judge probation.

<sup>2</sup>Includes parole, special parole, mandatory release and military parole.

The closure of courthouses or limited court hearings resulted in a significant decline in presentence reports in fiscal year 2020. For presentence referrals, telephonic or virtual presentence interviews, rather than in-person, became the accepted practice. With respect to supervision of individuals under supervision, probation offices implemented virtual supervision measures in lieu of in-person contact. For example, the District of Arizona and the District of

compassionate release and Federal Location Monitoring (FLM) referrals.

In summary, COVID-19 greatly altered the way U.S. probation offices in the Ninth Circuit functioned and operated. Despite the challenges, probation officers were innovative, resilient and adaptable, which allowed them to complete their mission under difficult circumstances.

## Presentence Reports

Probation officers investigate relevant facts about defendants; assess those facts for the purposes of sentencing; apply the appropriate guidelines, statutes and policy statements; and provide clear, concise, and objective reports that will assist the sentencing judges in determining appropriate sentences.

Standard guideline presentence reports are generally prepared in felony and Class A misdemeanor cases for which the U.S. Sentencing

Commission has promulgated a guideline.

In the Ninth Circuit, probation officers completed 11,403 presentence investigations in fiscal year 2020, a 15.4% decrease from the prior fiscal year. The reduction in presentence reports can be attributed to the COVID-19 pandemic because of the numerous courthouse closures or limited court hearings. Despite the COVID-19 challenges, the Ninth Circuit prepared 11,142 presentence guideline and

nonguideline reports in fiscal year 2020, which accounted for 18.3% of the national total of 60,752 submitted guideline and non-guideline presentence reports.

## Persons Under Post-Conviction Supervision

Probation officers supervise persons who are conditionally released to the community by the U.S. district courts or paroling authorities on probation, parole or supervised release in accordance with evidence-based practices. The desired outcomes of supervision

### • Persons Under Post-Conviction Supervision by District

District	From Courts		Referred by Institutions			Persons Under Supervision, 2019	Persons Under Supervision, 2022	Change 2019-20
	<sup>1</sup> Probation	Supervised Release	<sup>2</sup> Parole	<sup>3</sup> BOP Custody				
Alaska	26	317	2	0		307	345	12.4%
Arizona	771	3,102	12	0		3,878	3,885	0.2%
C. Calif.	596	4,803	23	1		5,360	5,423	1.2%
E. Calif.	163	1,679	15	24		1,898	1,881	-0.9%
N. Calif.	239	1,548	2	4		1,832	1,793	-2.1%
<sup>1</sup> S. Calif.	279	3,109	13	0		3,262	3,401	4.3%
Guam	23	98	0	4		137	125	-8.8%
Hawaii	37	429	5	20		522	491	-5.9%
<sup>1</sup> Idaho	91	511	1	4		623	607	-2.6%
<sup>1</sup> Montana	81	795	3	9		848	888	4.7%
Nevada	145	1,035	9	1		1,158	1,190	2.8%
N. Mariana Is.	0	15	0	0		16	15	-6.3%
Oregon	153	928	9	7		1,054	1,097	4.1%
<sup>1</sup> E. Wash.	62	599	3	0		660	664	0.6%
W. Wash.	97	942	23	0		1,096	1,062	-3.1%
<b>Circuit Total</b>	<b>2,763</b>	<b>19,910</b>	<b>120</b>	<b>74</b>		<b>22,651</b>	<b>22,867</b>	<b>1.0%</b>

<sup>1</sup>Includes conditional release, probation and the former categories known as judge probation and magistrate judge probation.

<sup>2</sup>Includes parole, special parole, mandatory release and military parole.

<sup>3</sup>BOP accounts for Bureau of Prisons Federal Location Monitoring and Elderly Home Confinement (effective January 26, 2020).

are the execution of the sentence, reduction of reoffending and protection of the community from offenses committed by persons under supervision during the period of supervision and beyond.

The period of supervision is an opportunity for persons under supervision to develop the skills and motivation to become and remain lawful, eventually without the oversight and support of the justice system. Therefore, the goal for each person under supervision is lawful self-management. Probation officers manage and reduce the risks posed by those under supervision through monitoring, restrictions and interventions.

To assist persons under supervision in complying with conditions of supervision and lawful self-management, probation officers deliver or refer persons for the following services: substance abuse treatment; mental health treatment; sex offender treatment; medical care; employment assistance; vocational training; literacy and training programs; and cognitive behavioral interventions.

Probation officers in the Ninth Circuit were supervising 22,867 persons at the end of FY 2020, up 1% from the prior fiscal year. One of the factors that may have contributed to the slight increase was the release of compassionate release and home confinement cases from the U.S. Bureau of Prisons. The circuit accounted for 18% of the national total of 126,970 persons under supervision at the end of FY 2020.

Among the persons under supervision in the Ninth Circuit, 2,761 were on probation, 19,912 were on supervised release, 119 were on parole and 75 adhered to the Bureau of Prisons custody standards in FY 2020.

### **Revocations And Early Terminations**

Ninth Circuit cases that were revoked and closed after post-conviction supervision totaled 2,970 in FY 2020, down 16.3% from the prior fiscal year. Of these revocations, 147 were probation sentences, 2,813 were supervised release terms, nine were parole cases and one adhered to the Bureau of Prisons custody standards. The Ninth Circuit accounted for 21.7% of the 13,712 cases revoked nationally, up 1.2% from the previous fiscal year.

In FY 2020, there were 1,620 cases terminated early in the Ninth Circuit compared to the 9,455 cases terminated early nationally.

### **Civics Engagement and Outreach**

Due to the pandemic, probation offices had to suspend or curtail their civic engagement and outreach. Despite the challenges, the District of Alaska raised funds to help the victims of Hurricane Laura, which severely damaged the Louisiana and Texas Gulf Coast area on Aug. 27, 2020. ■

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## Pretrial Services Offices Experience Impact of COVID-19

Fiscal year 2020 was very challenging, and the COVID-19 pandemic significantly affected pretrial services offices throughout the Ninth Circuit. Pretrial services offices continued to operate during the pandemic by implementing health and safety measures to meet local and national guidelines and restrictions. Offices throughout the circuit had to quickly adapt as the spread and infection rate varied within each district. During the fiscal year, some offices reported employees contracting COVID-19. There were no known deaths of pretrial staff reported; however, there were employees who lost family members, friends and members of their community to the virus.

meetings were implemented in lieu of in person contact. It was evident that pretrial services officers and staff became proficient working remotely and utilizing Zoom, and other virtual and teleconferencing applications to complete their daily duties. Due to the pandemic, pretrial supervision changes in some of the districts included but were not limited to virtual home visits; telephonic and virtual interviews; virtual and telephonic court hearings; temporary policy modifications; telemedicine for clients in lieu of in person counseling sessions; adjustments to client testing; and adjustments to location monitoring installations and supervision.

the officers particularly in pretrial investigations and supervision. The District of Alaska reported 60% of their pretrial investigation workload was due to requested bail review hearings, and the district also reported a 6.5% increase in the pretrial release rates; the majority of those defendants being released on location monitoring. Additionally, several other pretrial services offices reported substantial increases in new arrests and in defendants being released on location monitoring which led to more workload challenges for the officers.

Coping with the many challenges brought on by the pandemic, the pretrial services officers and staff were resilient, creative and committed. They continued to perform and fulfill the pretrial services mission for the benefit of their clients and the administration of justice.

### • Pretrial Services Cases Activated in Ninth Circuit Courts

Caseload Measure	2019	2020	Change 2019-20
Reports	32,077	21,049	-34.4%
Interviews	9,452	8,024	-15.1%
Cases Activated	32,846	21,367	-34.9%

At the beginning of the pandemic, pretrial services offices in the Ninth Circuit either closed their offices and/or limited the number of staff and visitors in the offices. It was a struggle to balance wellness and safety of staff with the duty to protect the public. For example, operations were modified to ensure everyone's safety, accommodate childcare issues for staff and to abide by local COVID-19 restrictions. Specifically, the use of personal protective equipment (PPE), flexible work schedules, telework and virtual and telephonic

The pandemic also impacted the pretrial clients' wellness and treatment needs in FY 2020. Specifically, the District of Northern California reported that some of their clients with substance abuse and/or mental health issues relapsed which led to a higher rate of treatment failures.

Although pretrial case activations decreased by 34.9% in FY 2020, several pretrial services offices reported a significant workload increase due to the pandemic. Several offices reported that the pandemic affected the workload of

### Defendants Under Pretrial Supervision

Working with individuals who are presumed innocent until proven guilty, United States pretrial services officers within the federal judiciary carry out the important work of balancing the civil liberties of persons under supervision with protecting the community.

Pretrial services officers assist the court by investigating defendants charged with federal crimes, recommending whether to release or detain them, and supervise those individuals who are released to the community while pending the outcome of their case. Using the least restrictive supervision strategies and interventions,

pretrial services officers monitor defendant compliance with court ordered conditions of release, attempt to minimize the likelihood of re-arrest and increase the likelihood defendants make all required court appearances.

Pretrial services officers also conduct pretrial diversion investigations and prepare written reports about a diversion candidate's suitability for the Office of the U.S. Attorney's Pretrial Diversion Program. Officers are responsible for supervision of diverted individuals who are deemed appropriate and accepted into the program.

### Case Activations

In fiscal year 2020, pretrial services offices in the Ninth Circuit reported 21,367 new case activations, down 34.9%, while new case activations nationwide was 80,242, down by 25.8% from FY 2019. The Ninth Circuit continues to rank first nationally in cases activated, accounting for 26.6% of total new cases.

### Pretrial Bail Reports and Supervision

During fiscal year 2020, pretrial services officers in the Ninth Circuit conducted 8,024 pretrial bail interviews, representing 37.6% of all cases activated. They prepared 20,779 written pre-bail reports and 270 post-bail reports during FY 2020. Bail reports were prepared in 98.5% of the cases activated.

Excluding immigration cases, officers made recommendations for initial pretrial release to the courts in 58.4% of cases. Assistant

U.S. attorneys in the circuit recommended pretrial release in 44.7% of cases in FY 2020.

During the fiscal year, 5,546 defendants were received for supervision, down 8.4% from 6,053 in FY 2019. Of these individuals, 3,937 were received for regular supervision; 1,558 were supervised on a courtesy basis from another district or circuit; and 51 were pretrial diversion cases, which include courtesy supervision of diversion cases.

### Detention Summary

The Ninth Circuit detained 22,042 defendants in fiscal year 2020, a 22.5% decrease from FY 2019. Defendants detained in the circuit represented 20.9% of all defendants detained nationally. During the fiscal year, 74.8% of all defendants received in the circuit were detained and never released. Excluding immigration cases, 56.6% of defendants were detained and never released. Excluding all illegal alien cases, the circuit had a release rate of 56%. Defendants in the circuit were detained an average of 241 days. The U.S.-Mexico border courts in the districts of Arizona and Southern District of California continued to report the highest number of defendants detained. The District of Arizona detained 8,457 defendants, down 26.1% from FY 2019, while the Southern District of California detained 6,296 defendants, a 23.8% reduction from the prior fiscal year. The Ninth Circuit accounted for 16.8% of total days that defendants were incarcerated nationally.

### Violations

Of the 11,861 cases in release status in FY 2020, cases with violations numbered 1,996, up 2.8% from FY 2019. They included 48 violations due to felony re-arrests, 55 violations resulting from misdemeanor re-arrests and 252 for failure to appear. There were 1,864 technical violations for noncompliance with court ordered conditions of release, such as positive urine tests for illegal substances, violation of location monitoring conditions, possession of contraband and failure to report to a supervising officer.

### Evidence-Based Practices for Pretrial Services

Evidence-based practices are those that have been found through research to enhance overall desired outcomes. The desired outcomes of the pretrial services functions are to reasonably assure defendants do not pose either a risk of non-appearance or danger to the community. Pretrial services offices have incorporated the Pretrial Services Risk Assessment (PTRA) into its business practices. Another evidence-based practice that continues to be implemented is Staff Training Aimed at Reducing Re-Arrest, or STARR.

### Specialty Courts and Pre-entry Programs

In FY 2020, pretrial services offices in the Ninth Circuit continued to be involved in innovative specialty courts and pre-entry programs. However, due to the pandemic, some courts had to improvise and offer telephonic and/or virtual hearings for the specialty courts, and some pre-

entry programs were postponed. The specialty courts provide rehabilitative services to higher risk defendants while giving them a chance to have their cases dismissed or sentences reduced upon successful completion of supervision. The pre-entry educational programs are designed to educate defendants and their family members about

Bureau of Prisons services and general rules to help reduce the level of stress and anxiety of going to prison.

the pandemic, pretrial services offices had to suspend or curtail community outreach and/or civic engagement. ■

### Civics Engagement and Community Outreach

Pretrial services offices in the Ninth Circuit periodically participate in community outreach and civic engagement. Due to

#### ● Pretrial Workload

District	Defendant Contact		Written Reports		No Reports Made	Total Cases Activated 2019	Total Cases Activated 2020	Change 2019-20
	Interviewed	<sup>1</sup> Not Interviewed	<sup>2</sup> Prebail	Postbail				
Alaska	34	132	165	0	1	188	166	-11.7%
Arizona	1,518	7,804	9,248	8	66	16,929	9,322	-44.9%
C. Calif.	1,239	199	1,427	6	5	2,036	1,438	-29.4%
E. Calif.	260	199	447	8	4	629	459	-27.0%
N. Calif.	486	207	521	188	6	825	693	-16.0%
<sup>1</sup> S. Calif.	2,643	3,598	6,087	33	121	8,671	6,241	-28.0%
Guam	32	5	36	0	1	63	37	-41.3%
Hawaii	206	32	226	3	9	233	238	2.1%
<sup>1</sup> Idaho	160	178	328	1	9	428	338	-21.0%
<sup>1</sup> Montana	256	105	351	6	4	434	361	-16.8%
Nevada	351	135	481	1	4	584	486	-16.8%
N. Mariana Is.	17	0	16	1	0	16	17	6.3%
Oregon	469	245	665	10	39	572	714	24.8%
<sup>1</sup> E. Wash.	103	206	267	2	40	430	309	-28.1%
W. Wash.	250	298	514	25	9	808	548	-32.2%
<b>Circuit Total</b>	<b>8,024</b>	<b>13,343</b>	<b>20,779</b>	<b>270</b>	<b>318</b>	<b>32,846</b>	<b>21,367</b>	<b>-34.9%</b>
<b>National Total</b>	<b>46,988</b>	<b>33,254</b>	<b>74,924</b>	<b>1,799</b>	<b>3,519</b>	<b>99,494</b>	<b>80,242</b>	<b>-19.3%</b>
<b>Circuit % of National</b>	<b>17.1%</b>	<b>40.1%</b>	<b>27.7%</b>	<b>15.0%</b>	<b>9.0%</b>	<b>33.0%</b>	<b>26.6%</b>	<b>-6.4%</b>

Note: This table includes data for the District of Columbia and includes transfers received.

<sup>1</sup>Includes cases in which interviews were refused, includes defendants not available for interview and includes transfer-received cases in which defendants were interviewed in other districts.

<sup>2</sup>Includes prebail reports both with recommendations and without and includes types of reports categorized in previous periods as "other reports."

## ● Juror Utilization

District	Grand Juries Impaneled, 2020	Petit Juries Selected, 2020	Petit Juror Utilization Rate		
			2019	2020	1Percent Not Selected or Challenged Change 2019-20
Alaska	3	5	32.3	53.6	21.3
Arizona	8	42	28.4	30.6	2.2
C. Calif.	22	53	50.5	62.3	11.8
E. Calif.	7	18	35.8	42.9	7.1
N. Calif.	7	24	57.0	60.7	3.7
S. Calif.	6	39	41.4	43.6	2.2
Guam	1	2	70.9	63.3	-7.6
Hawaii	4	6	56.4	38.4	-18.0
Idaho	4	8	23.0	39.7	16.7
Montana	5	26	30.2	30.4	0.2
Nevada	4	12	23.9	39.0	15.1
N. Mariana Is.	1	3	6.8	61.2	54.4
Oregon	8	9	30.2	30.7	0.5
E. Wash.	4	5	37.0	28.0	-9.0
W. Wash.	3	16	28.3	25.6	-2.7
Circuit Total	87	168	***	***	
Circuit Average	5.8	17.9	36.8	43.3	6.5
National Total	651	3,718	***	***	
National Average	6.9	39.6	38.6	39.8	1.2

Note: This table includes data on jury selection days only. Data on juror service after the selection day are not included. Due to rounding, percentages may not total 100%.

<sup>1</sup>Includes jurors who completed pre-screening questionnaires or were in the courtroom during the conducting of voir dire but were not selected or challenged. Includes other jurors not selected or challenged who were not called to the courtroom or otherwise did not participate in the actual voir dire.

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- Interpreter Usage by District Courts

Language	AK	AZ	CAC	CAE	CAN	CAS	GU	HI	ID	MT	NV	NMI	OR	WAE	WAW	2019 Total	2020 Total	Change 2019-20
Arabic	0	7	29	2	8	3	0	0	2	0	0	0	0	0	2	60	53	-11.7%
Armenian	0	0	41	6	2	30	0	0	0	0	0	0	0	0	0	106	79	-25.5%
Cantonese	0	1	13	3	47	7	0	15	0	0	0	0	1	0	5	136	92	-32.4%
Farsi	0	0	11	1	1	7	0	0	0	0	0	0	0	0	0	17	20	17.6%
Japanese	0	0	4	0	0	0	1	0	0	0	0	0	0	0	0	7	5	-28.6%
Korean	3	0	18	1	2	0	4	3	0	0	0	0	0	0	1	116	32	-72.4%
Mandarin	4	26	100	42	71	145	8	11	0	0	10	0	8	0	3	455	428	-5.9%
Navajo (Certified)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	-
Navajo (Non-Certified)	0	16	0	0	0	0	0	0	0	0	0	0	0	0	0	34	16	-52.9%
Russian	0	8	6	7	36	3	0	0	0	0	0	0	0	1	4	89	65	-27.0%
Sign (American)	0	6	3	13	5	2	0	0	0	0	0	0	4	1	86	34	-60.5%	
Sign (Mexican)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	-
Spanish Staff	0	30,583	1,066	1,060	341	19,641	0	0	0	0	376	0	469	115	0	56,572	53,658	-5.2%
Spanish (Certified)	13	7,373	496	586	766	588	12	13	217	15	148	0	75	392	444	9,934	11,138	12.1%
Spanish (Non-Certified)	0	0	0	0	0	0	2	20	62	42	20	0	12	0	0	210	158	-24.8%
Tagalog	16	0	5	0	8	1	0	0	0	0	0	0	0	0	0	14	30	114.3%
Vietnamese	0	0	23	6	15	12	0	0	0	0	5	0	0	0	8	109	69	-36.7%
All Others	6	290	39	31	39	445	9	7	1	7	18	0	8	7	32	844	939	11.3%
Total	42	38,310	1,854	1,758	1,348	20,884	36	69	282	64	577	0	577	516	499	68,789	66,816	-2.9%

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## District Caseloads

### • Alaska

Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	605	536	-11.4%	179
Terminations	631	446	-29.3%	149
<sup>1</sup> Pending	643	731	13.7%	244
Bankruptcy Court				
Filings	426	337	-20.9%	169
Terminations	441	385	-12.7%	193
Pending	330	282	-14.5%	141

<sup>1</sup>2019 total pending cases revised.

### Authorized Judgeships

<sup>2</sup> District	3
Bankruptcy	2
Magistrate	
Full-time	2
Part-time	2

### Authorized places of holding court:

Anchorage, Fairbanks, Juneau, Ketchikan, Nome
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### • Arizona

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Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	13,602	7,329	-46.1%	564
Terminations	10,154	14,259	40.4%	1,097
<sup>1</sup> Pending	13,844	6,891	-50.2%	530
Bankruptcy Court				
Filings	16,950	14,519	-14.3%	2,074
Terminations	16,021	15,667	-2.2%	2,238
<sup>1</sup> Pending	19,496	18,347	-5.9%	2,621

<sup>1</sup>2019 total pending cases revised.

<sup>2</sup>Modesto applies only to the bankruptcy court.

<sup>3</sup>Yosemite applies only to the district court.

### Authorized Judgeships

<sup>2</sup> District	13
Bankruptcy	7
Magistrate	
Full-time	14
Part-time	1

### Authorized places of holding court:

<sup>3</sup> Bullhead City, Flagstaff, Phoenix, Prescott, Tucson, Yuma
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### • Central District of California

Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	16,652	17,271	3.7%	617
Terminations	16,243	16,723	3.0%	597
<sup>1</sup> Pending	13,727	14,206	3.5%	507
Bankruptcy Court				
Filings	37,911	31,042	-18.1%	1,478
Terminations	38,239	35,252	-7.8%	1,679
<sup>1</sup> Pending	26,880	22,668	-15.7%	1,079

<sup>1</sup>2019 total pending cases revised.

<sup>2</sup>Includes one authorized temporary judgeship.

<sup>3</sup>San Fernando Valley and Santa Barbara apply only to the bankruptcy court.

### Authorized Judgeships

<sup>2</sup> District	28
Bankruptcy	21
Magistrate	
Full-time	24
Part-time	1

### Authorized places of holding court:

<sup>2</sup>Los Angeles, Riverside, Santa Ana, <sup>3</sup>San Fernando Valley, Santa Barbara

### • Eastern District of California

Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	4,608	4,620	0.3%	770
Terminations	4,771	4,198	-12.0%	700
<sup>1</sup> Pending	7,244	7,661	5.8%	1,277
Bankruptcy Court				
Filings	15,123	12,279	-18.8%	2,047
Terminations	15,450	13,705	-11.3%	2,284
<sup>1</sup> Pending	12,198	10,772	-11.7%	1,795

<sup>1</sup>2019 total pending cases revised.

<sup>2</sup>Modesto applies only to the bankruptcy court.

<sup>3</sup>Yosemite applies only to the district court.

### Authorized Judgeships

<sup>1</sup> District	6
Bankruptcy	6
Magistrate	
Full-time	12
Part-time	0

### Authorized places of holding court:

Bakersfield, Fresno, <sup>2</sup>Modesto, Redding, Sacramento, <sup>3</sup>Yosemite

### • Northern District of California

Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	8,408	9,366	11.4%	669
Terminations	7,250	8,457	16.6%	604
<sup>1</sup> Pending	11,040	11,966	8.4%	855
Bankruptcy Court				
Filings	8,234	6,586	-20.0%	732
Terminations	10,387	8,255	-20.5%	917
<sup>1</sup> Pending	12,601	10,930	-13.3%	1,214

<sup>1</sup>2019 total pending cases revised.

<sup>2</sup>Eureka applies only to the district court.

<sup>3</sup>Santa Rosa applies only to the bankruptcy court.

### Authorized Judgeships

District	14
Bankruptcy	9
Magistrate	
Full-time	12
Part-time	0

### Authorized places of holding court:

<sup>2</sup>Eureka, Oakland, San Francisco, San Jose, Santa Rosa

### • Southern District of California

Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	7,852	6,959	-11.4%	535
Terminations	7,710	6,381	-17.2%	491
<sup>1</sup> Pending	5,371	5,893	9.7%	453
Bankruptcy Court				
Filings	7,995	7,002	-12.4%	1,751
Terminations	8,298	7,842	-5.5%	1,961
<sup>1</sup> Pending	6,059	5,219	-13.9%	1,305

<sup>1</sup>2019 total pending cases revised.

<sup>2</sup>El Centro applies only to the district court.

### Authorized Judgeships

<sup>1</sup> District	13
Bankruptcy	4
Magistrate	
Full-time	12
Part-time	0

### Authorized places of holding court:

<sup>2</sup>El Centro, San Diego

## ● Guam

Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	204	78	-61.8%	78
Terminations	101	79	-21.8%	79
Pending	374	377	0.8%	377
Bankruptcy Court				
Filings	170	82	-51.8%	385
Terminations	174	97	-44.3%	271
<sup>1</sup> Pending	139	124	-10.8%	327

Note: The chief district judge in Guam also handles all bankruptcy cases.

## Authorized Judgeships

District	1
Bankruptcy	0
Magistrate	
Full-time	1
Part-time	0

## Authorized places of holding court:

Hagatna

## ● Hawaii

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Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	850	726	-14.6%	182
Terminations	784	765	-2.4%	191
Pending	951	909	-4.4%	227
Bankruptcy Court				
Filings	1,650	1,609	-2.5%	1,609
Terminations	1,760	1,618	-8.1%	1,618
Pending	1,933	1,924	-0.5%	1,924

<sup>1</sup>Includes one temporary judgeship.

## Authorized Judgeships

<sup>1</sup> District	4
Bankruptcy	1
Magistrate	
Full-time	3
Part-time	0

## Authorized places of holding court:

Honolulu

## ● Idaho

Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	922	889	-3.6%	445
Terminations	889	831	-6.5%	416
Pending	1,038	1,092	5.2%	546
Bankruptcy Court				
Filings	3,746	3,006	-19.8%	1,503
Terminations	3,652	3,672	0.5%	1,836
<sup>1</sup> Pending	2,955	2,289	-22.5%	1,145

<sup>1</sup>2019 total pending cases revised.

## Authorized Judgeships

District	2
Bankruptcy	2
Magistrate	
Full-time	2
Part-time	0

## Authorized places of holding court:

Boise, Coeur d'Alene, Pocatello
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## ● Montana

Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	910	981	7.8%	327
Terminations	919	873	-5.0%	291
<sup>1</sup> Pending	974	1,085	11.4%	362
Bankruptcy Court				
Filings	1,347	994	-26.2%	994
Terminations	1,220	1,215	-0.4%	1,215
<sup>1</sup> Pending	1,598	1,372	-14.1%	1,372

<sup>1</sup>2019 total pending cases revised.

<sup>2</sup>Helena applies only to the district court.

## Authorized Judgeships

District	3
Bankruptcy	1
Magistrate	
Full-time	3
Part-time	0

## Authorized places of holding court:

Billings, Butte, Great Falls, Helena, Missoula
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### • Nevada

Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	3,312	3,410	3.0%	487
Terminations	3,926	3,588	-8.6%	513
<sup>1</sup> Pending	4,883	4,721	-3.3%	674
Bankruptcy Court				
Filings	9,962	8,309	-16.6%	2,077
Terminations	9,865	9,167	-7.1%	2,292
Pending	7,735	6,877	-11.1%	1,719

<sup>1</sup>2019 total pending cases revised.

<sup>2</sup>Includes one authorized temporary judgeship.

### Authorized Judgeships

District	7
<sup>2</sup> Bankruptcy	4
Magistrate	
Full-time	7
Part-time	0

### Authorized places of holding court:

Las Vegas, Reno

### • Northern Mariana Islands

Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	40	44	10.0%	44
Terminations	42	30	-28.6%	30
Pending	63	77	22.2%	77
Bankruptcy Court				
Filings	4	1	-	0
Terminations	4	2	-	1
Pending	4	3	-	1

Note: The chief district judge in Northern Mariana Islands also handles all bankruptcy cases.

<sup>1</sup>Percent change not computed when fewer than 10 cases reported for the previous period.

<sup>2</sup>Heather Kennedy holds the combined position of magistrate judge/clerk of court.

### Authorized Judgeships

District	1
Bankruptcy	0
Magistrate	
Full-time	0
Part-time	0
Combination	1

### Authorized places of holding court:

Saipan

### • Oregon

Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	2,608	2,727	4.6%	455
Terminations	2,580	2,348	-9.0%	391
<sup>1</sup> Pending	3,053	3,415	11.9%	569
Bankruptcy Court				
Filings	8,986	7,374	-17.9%	1,475
Terminations	9,107	8,224	-9.7%	1,645
<sup>1</sup> Pending	9,050	8,201	-9.4%	1,640

<sup>1</sup>2019 total pending cases revised.

<sup>2</sup>Medford applies only to the district court.

### Authorized Judgeships

District	6
Bankruptcy	5
Magistrate	
Full-time	6
Part-time	1

### Authorized places of holding court:

Eugene, <sup>2</sup>Medford, Pendleton, Portland

### • Eastern District of Washington

Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	1,552	1,404	-9.5%	351
Terminations	1,517	1,465	-3.4%	366
<sup>1</sup> Pending	1,170	1,112	-5.0%	278
Bankruptcy Court				
Filings	3,500	2,584	-26.2%	1,292
Terminations	3,474	3,171	-8.7%	1,586
Pending	3,840	3,253	-15.3%	1,627

<sup>1</sup>2019 total pending cases revised.

<sup>2</sup>Richland applies only to the district court.

### Authorized Judgeships

District	4
Bankruptcy	2
Magistrate	
Full-time	2
Part-time	0

### Authorized places of holding court:

Richland, Spokane, Yakima

• Western District of Washington

Caseload Measure	2019	2020	Change 2019-20	Per Judgeship Unweighted 2020
District Court				
Filings	3,852	3,655	-5.1%	522
Terminations	3,815	3,367	-11.7%	481
<sup>1</sup> Pending	3,470	3,785	9.1%	541
Bankruptcy Court				
Filings	9,343	7,152	-23.5%	1,430
Terminations	10,126	8,976	-11.4%	1,795
<sup>1</sup> Pending	11,010	9,187	-16.6%	1,837

<sup>1</sup>2019 total pending cases revised.

<sup>2</sup>Bellingham applies only to the district court.

<sup>3</sup>Everett and Port Orchard apply only to the bankruptcy court.

Authorized Judgeships

District	7
Bankruptcy	5
Magistrate	
Full-time	6
Part-time	1

Authorized places of holding court:

<sup>2</sup>Bellingham, <sup>3</sup>Everett, <sup>3</sup>Port Orchard, Seattle, Tacoma, Vancouver

USA v. Knight  
No. 21-10197 archived December 28, 2022



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**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
v.  
EDWARD KNIGHT,  
Defendant-Appellant.

No. 21-10197  
D.C. No.  
3:19-cr-00038-MMD-CLB-1

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Miranda M. Du, Chief District Judge, Presiding

Argued and Submitted November 16, 2022  
San Francisco, California

Before: S.R. THOMAS and BENNETT, Circuit Judges, and LASNIK, \*\* District Judge.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Robert S. Lasnik, United States District Judge for the Western District of Washington, sitting by designation.

In July 2019, two stores were robbed in Sparks, Nevada. After a six-day trial, Edward Knight was convicted of the robberies and sentenced to 169 months' imprisonment followed by five years of supervised release. Knight timely appealed, identifying jury problems, evidentiary errors, and failures of proof. He asks that his convictions be vacated and this matter remanded for a new trial. We address Knight's arguments regarding remote juror participation in a separate Opinion and consider the remaining arguments here.

## I.

Knight argues that the District of Nevada's jury-selection procedures result in jury pools that do not fairly or reasonably reflect the jury-eligible population and therefore deprived him of his rights under the Fifth Amendment, Sixth Amendment, and the Jury-selection and Service Act ("JSSA"). Knight also argues that the demographic data collected and disclosed by the District of Nevada was so incomplete as to violate the JSSA and his due-process rights. "We review 'independently and non-deferentially a challenge to the composition of grand and petit juries' under both the Constitution and the Jury-selection Act." *United States v. Hernandez-Estrada*, 749 F.3d 1154, 1158 (9th Cir. 2014) (en banc) (citation omitted).

### A.

We use a three-part test for determining whether a defendant has established a *prima facie* violation of the Sixth Amendment and JSSA requirement that juries be drawn from a fair cross-section of the population.

[T]he defendant must show (1) that the group alleged to be excluded is a “distinctive” group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

*Duren v. Missouri*, 439 U.S. 357, 364 (1979). In order to satisfy the second prong of the *Duren* test—that the representation of distinctive groups on the jury wheels from which Knight’s grand and petit juries were chosen was not fair and reasonable—Knight relies exclusively on his expert’s conclusion that the observed underrepresentations were not the result of random factors. When questioned at oral argument regarding the alleged equivalence between “not fair” and “not random,” counsel acknowledged that there was a gap in the evidence and requested that the matter be remanded for a hearing so that the record could be better developed.

Knight’s appeal is based on the assertion that the jury-selection process of the District of Nevada violates constitutional and statutory requirements, and he seeks an order from this Court invalidating the process and vacating his conviction. He has essentially conceded that the existing record does not support his claim or the relief requested, however. In the absence of evidence showing that invalidation is

warranted, we affirm the district court’s Sixth Amendment and JSSA determinations.<sup>1</sup>

B.

In order to show that a jury-selection process violates the Fifth Amendment’s Equal Protection Clause, Knight must show (1) “a recognizable, distinct class, singled out for different treatment under the laws, as written or as applied”; (2) “the degree of underrepresentation . . . by comparing the proportion of the group in the total population to the proportion called to serve as [] jurors, over a significant period of time”; and (3) that the disparity is substantial enough to give rise to an inference of discriminatory intent. *Castaneda v. Partida*, 430 U.S. 482, 495 (1977); *see Hernandez-Estrada*, 749 F.3d at 1166. Simply showing a disproportionate impact on a protected group is not sufficient. *Castaneda*, 430 U.S. at 493. Discriminatory intent is “the most crucial factor in an equal protection case.” *United States v. Esquivel*, 88 F.3d 722, 727 (9th Cir. 1996). An expert opinion of non-randomness, standing alone, is insufficient to establish discriminatory intent.

C.

Knight asserts that the District of Nevada’s failure to collect and disclose data on certain distinct groups, such as Middle Easterners, precluded him from assessing

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<sup>1</sup> The district court correctly concluded that Knight’s JSSA objection to the grand jury venire was not timely raised.

the jury-selection plan and therefore violated the JSSA and his right to due process. Knight was given full access to the district's jury lists and to all of the data that the district court collects regarding those jurors. He has not provided any authority for the proposition that the district was required to collect more or additional data.

## II.

Knight argues that the jury was erroneously prejudiced by the district court's admission of (A) testimony regarding Knight's "prior booking photo," (B) lay opinion testimony regarding the similarities between the PJ's Discount Liquor and Rainbow Market robberies, and (C) Knight's phone records. We assume for purposes of this appeal that the evidence and testimony to which Knight objects was inadmissible but find that "it is more probable than not that the erroneous admission of the evidence did not affect the jury's verdict" given the other evidence in the record. *United States v. Charley*, 1 F.4th 637, 651 (9th Cir. 2021) (quoting *United States v. Hill*, 953 F.2d 452, 458 (9th Cir. 1991)). Because any error was harmless, it must be disregarded on appeal. Fed. R. Crim. P. 52(a).

## III.

Knight argues that the district court's instructions to the jury were erroneous in that they (A) did not specify that the firearm he used, carried, or brandished during the robberies had to be a *real* firearm and (B) instructed the jury that Hobbs Act robbery is a crime of violence under 18 U.S.C. § 924(c)(3). Knight failed to raise

these objections below, so we review for plain error. Fed. R. Crim. P. 52(b). We review *de novo* whether jury instructions correctly state the law. *United States v. Miller*, 952 F.3d 1095, 1101 (9th Cir. 2020).

Even if we assume that the failure to instruct the jury that the firearm must be real was erroneous, the omitted element was undisputed and any error was therefore harmless. *United States v. Smith*, 282 F.3d 758, 767 (9th Cir. 2002) (citing *United States v. Warren*, 984 F.2d 325, 327 (9th Cir. 1993)) (stating that an element is undisputed where the testimony was uncontested). The district court's instruction that Hobbs Act robbery is a crime of violence was not error. *See United States v. Dominguez*, 954 F.3d 1251, 1261 (9th Cir. 2020), *cert. granted, judgment vacated*, 142 S. Ct. 2857 (2022), *and reinstated in part by* 48 F.4th 1040 (9th Cir. 2022) (“We reaffirm that Hobbs Act robbery is a crime of violence under 18 U.S.C. § 924(c)(3)(A).”).<sup>2</sup>

#### IV.

“In some cases, although no single trial error examined in isolation is sufficiently prejudicial to warrant reversal, the cumulative effect of multiple errors may still prejudice a defendant.” *United States v. Frederick*, 78 F.3d 1370, 1381 (9th Cir. 1996). Having considered “the overall effect of all the errors in the context of

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<sup>2</sup> Knight’s argument that his convictions rest on a non-qualifying predicate offense because Hobbs Act robbery is not a crime of violence under § 924(c)’s elements clause similarly fails.

the evidence introduced at trial against the defendant,” *id.*, 78 F.3d at 1381, we find that the district court’s errors, actual and presumed, do not cumulatively render the trial fundamentally unfair.

## V.

The district court rejected Knight’s argument that the evidence against him was insufficient to support the convictions. We review challenges to the sufficiency of the evidence de novo. *United States v. Benamor*, 937 F.3d 1182, 1186 (9th Cir. 2019). After viewing the evidence in the light most favorable to the prosecution, there is ample evidence to support the jury’s findings regarding the essential elements of the crimes charged beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Knight’s insufficiency arguments boil down to an insistence on direct evidence and the discounting of the circumstantial evidence against him. “Time and time again, we have said that circumstantial evidence is not inherently less probative than direct evidence.” *United States v. Miranda-Uriarte*, 649 F.2d 1345, 1352 (9th Cir. 1981) (citations omitted). The government was not required to put on direct evidence that Knight was the robber or that his firearm was real when the circumstantial evidence admitted at trial supports the jury’s findings on those issues.

## VI.

Knight challenges two of the special conditions of supervised release imposed by the district court. The parties agree that the substance-abuse-treatment condition in the written judgment (Special Condition Two) fails to conform to the district court's oral pronouncement. Given the relatively minor nature of the error, we will strike from the judgment the instruction that Knight bear financial responsibility for the substance-abuse-treatment program and affirm the judgment and sentence as amended. *See, e.g., United States v. Peters*, 470 F.3d 907, 909 (9th Cir. 2006) (per curiam); *Royal Indem. Co. v. Olmstead*, 193 F.2d 451, 456 (9th Cir. 1951).

With regards to Special Condition Twelve, Knight argues that the language is unconstitutionally vague and overbroad. We review challenges to the constitutionality of conditions of supervised release de novo. *United States v. Ochoa*, 932 F.3d 866, 868-69 (9th Cir. 2019). The language tracks a standard condition of supervised release promulgated by the United States Sentencing Commission, and its constitutionality has been upheld by the Ninth Circuit. *See* U.S.S.G. § 5D1.3(c)(12) (setting forth the same condition without specifying that the “risk” is the “specific risk posed by your criminal record”); *United States v. Magdirila*, 962 F.3d 1152, 1159 (9th Cir. 2020) (explaining that U.S.S.G. § 5D1.3(c)(12) is read as limited to the specific risks posed by the defendant’s criminal record to avoid vagueness); *United States v. Gibson*, 998 F.3d 415, 423 (9th Cir. 2021) (“Standard

Condition 12 is constitutional and may be imposed in appropriate cases.”). The imposition of Standard Condition Twelve is therefore affirmed.

**AFFIRMED** as amended.

## UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA

v.

EDWARD MONET KNIGHT

## JUDGMENT IN A CRIMINAL CASE

Case Number: 3:19-CR-38-MMD-CLB

USM Number: 55683-048

Christopher Frey

Defendant's Attorney

## THE DEFENDANT:

- pleaded guilty to count(s) \_\_\_\_\_
- pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.
- was found guilty on count(s) 1, 2, 3 and 4 of the indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC §1951	Interference with Commerce by Robbery	7/8/2019	1, 3
18 USC §924(c)(1)(A)(ii)	Use of a Firearm During and in Relation to a Crime of Violence	7/8/2019	2, 4

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) \_\_\_\_\_ to \_\_\_\_\_
- Count(s) \_\_\_\_\_ is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

6/25/2021

Date of Imposition of Judgment

Signature of Judge

MIRANDA M. DU, CHIEF U.S. DISTRICT JUDGE

Name and Title of Judge

6/28/2021

Date

DEFENDANT: EDWARD MONET KNIGHT  
CASE NUMBER: 3:19-CR-38-MMD-CLB

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:  
169 MONTHS (30 days as to Count 1, 30 days as to Count 3, Count 3 to be to be served concurrently with Count 1; 84 months as to Count 2, to be served consecutively to Counts 1, 3 and 4; 84 months as to Count 4, to be served consecutively to Counts 1, 2 and 3.)

- The court makes the following recommendations to the Bureau of Prisons:  
that the Defendant be designated to FCI Tucson or FCI Sheridan or any facility that will provide programming and treatment for Defendant.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:  
 at \_\_\_\_\_  a.m.     p.m.    on \_\_\_\_\_.  
 as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:  
 before 2 p.m. on \_\_\_\_\_.  
 as notified by the United States Marshal.  
 as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: EDWARD MONET KNIGHT  
CASE NUMBER: 3:19-CR-38-MMD-CLB**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of:

3 years as to Counts 1 and 3; 5 years as to Counts 2 and 4; All to be served concurrently.

**MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court, not to exceed 104 tests annually.  
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5.  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7.  You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: EDWARD MONET KNIGHT  
CASE NUMBER: 3:19-CR-38-MMD-CLB**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the specific risks posed by your criminal record and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the specific risks posed by your criminal record.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

**U.S. Probation Office Use Only**

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: EDWARD MONET KNIGHT  
CASE NUMBER: 3:19-CR-38-MMD-CLB

### **SPECIAL CONDITIONS OF SUPERVISION**

1. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030 (e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

2. You must participate in an outpatient substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). You must pay the costs of the program, based upon your ability to pay.

3. You must not use or possess alcohol.

4. You must provide the probation officer access to any requested financial information and authorize the release of any financial information. The probation office will share financial information with the U.S. Attorney's Office.

DEFENDANT: EDWARD MONET KNIGHT

CASE NUMBER: 3:19-CR-38-MMD-CLB

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<b>TOTALS</b>	<b><u>Assessment</u></b>	<b><u>Restitution</u></b>	<b><u>Fine</u></b>	<b><u>AVAA Assessment*</u></b>	<b><u>JVTA Assessment**</u></b>
	\$ 400.00	\$ 2,209.69	\$ 0.00	\$	\$

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<b>Name of Payee</b>	<b><u>Total Loss***</u></b>	<b><u>Restitution Ordered</u></b>	<b><u>Priority or Percentage</u></b>
PJ's Discount Liquor, 1293 Baring Blvd.	\$2,200.00	\$2,200.00	
Sparks, NV 89434			
Rainbow Market, 1225 Commerce Way,	\$9.69	\$9.69	
Sparks, NV 89431			
<b>TOTALS</b>	<b>\$ 2,209.69</b>	<b>\$ 2,209.69</b>	

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

\*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: EDWARD MONET KNIGHT  
CASE NUMBER: 3:19-CR-38-MMD-CLB

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payment of \$ 2,609.69 due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance with  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:  
 Any unpaid balance shall be paid at a monthly rate no less than 10% of any income earned during incarcerations and/or gross income while on supervision, subject to adjustment based upon ability to pay.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
---	--------------	-----------------------------	--

- The defendant shall pay the cost of prosecution.  
 The defendant shall pay the following court cost(s):  
 The defendant shall forfeit the defendant's interest in the following property to the United States:  
 the item(s) listed in the final order of forfeiture, attached.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 UNITED STATES OF AMERICA,  
9 Plaintiff,  
10 v.  
11 EDWARD MONET KNIGHT,  
12 Defendant.

3:19-CR-038-MMD-CLB  
**Final Order of Forfeiture**

13 The United States District Court for the District of Nevada entered a Preliminary  
14 Order of Forfeiture pursuant to Fed. R. Crim. P. 32.2(b)(1), (b)(2), and (b)(5); 18 U.S.C. §  
15 924(d)(1) with 28 U.S.C. § 2461(c); and 18 U.S.C. § 924(d)(1), (2)(C), and (3)(A) with 28  
16 U.S.C. § 2461(c) based upon the jury verdict finding Edward Monet Knight guilty of the  
17 criminal offenses, forfeiting specific property set forth in the Forfeiture Allegations of the  
18 Criminal Indictment and shown by the United States to have the requisite nexus to the  
19 offenses to which Edward Monet Knight was found guilty. Criminal Indictment, ECF No.  
20 14; Minutes of Jury Trial, ECF No. 163; Verdict Form, ECF No. 166; Preliminary Order of  
21 Forfeiture, ECF No. 174.

22 This Court finds that on the government's motion, the Court may at any time enter  
23 an order of forfeiture or amend an existing order of forfeiture to include subsequently  
24 located property or substitute property pursuant to Fed. R. Crim. P. 32.2(e) and  
25 32.2(b)(2)(C).

26 This Court finds the United States published the notice of forfeiture in accordance  
27 with the law via the official government internet forfeiture site, [www.forfeiture.gov](http://www.forfeiture.gov),  
28 consecutively from March 23, 2021, through April 21, 2021, notifying all potential third

1 parties of their right to petition the Court. Notice of Filing Proof of Publication Exhibits,  
2 ECF No. 177-1, p. 5.

3 This Court finds no petition was filed herein by or on behalf of any person or entity  
4 and the time for filing such petitions and claims has expired.

5 This Court finds no petitions are pending regarding the property named herein and  
6 the time has expired for presenting such petitions.

7 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that  
8 all possessory rights, ownership rights, and all rights, titles, and interests in the property  
9 hereinafter described are condemned, forfeited, and vested in the United States of America  
10 pursuant to Fed. R. Crim. P. 32.2(b)(4)(A) and (b)(4)(B); Fed. R. Crim. P. 32.2(c)(2); 18  
11 U.S.C. § 924(d)(1) with 28 U.S.C. § 2461(c); 18 U.S.C. § 924(d)(1), (2)(C), and (3)(A) with  
12 28 U.S.C. § 2461(c); and 21 U.S.C. § 853(n)(7) and shall be disposed of according to law:

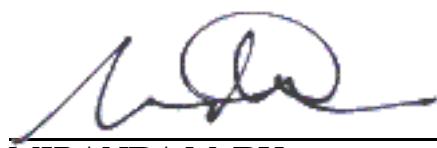
- 13       1. Silver and black Smith & Wesson Sigma handgun (SN: PDW0433) and  
14       2. Any and all ammunition

15 (all of which constitutes property).

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all  
17 forfeited funds, including but not limited to, currency, currency equivalents, certificates of  
18 deposit, as well as any income derived as a result of the government's management of any  
19 property forfeited herein, and the proceeds from the sale of any forfeited property shall be  
20 disposed of according to law.

21 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk send  
22 copies of this Order to all counsel of record.

23 DATED June 2, 2021.

24  
25   
26 MIRANDA M. DU  
27 UNITED STATES DISTRICT JUDGE  
28

4 UNITED STATES OF : No. 3:19-cr-038-MMD-CLB  
5 AMERICA, :  
6 Plaintiff, : March 15, 2021  
7 -vs- : United States District Court  
8 EDWARD MONET KNIGHT, : 400 S. Virginia Street  
9 Defendant. : Reno, Nevada 89501  
10 : **DAY 6**  
11 :

**TRANSCRIPT OF JURY TRIAL PROCEEDINGS**

## A P P E A R A N C E S:

13 FOR THE GOVERNMENT: Megan Rachow  
14 Penelope Brady  
Assist. United States Attorneys  
Reno, Nevada

16 FOR THE DEFENDANT: Christopher Frey  
17 Andrew Wong  
Assist. Federal Public Defenders  
Reno, Nevada

20 Proceedings recorded by mechanical stenography produced  
by computer-aided transcript

1 incorporated herein by reference, all in violation of  
2 Title 18 United States Code, Section 924(c)(1)(A)(iii).

3 Defendant is charged in Count One of the  
4 Indictment with robbery, in violation of Section 1951  
5 of Title 18 of the United States Code. In order for  
6 the defendant to be found guilty of that charge, the  
7 government must prove each of the following elements  
8 beyond a reasonable doubt:

9 First, the defendant knowingly obtained  
10 money or property from or in the presence of the  
11 victim;

12 Second, the defendant did so by means of  
13 robbery;

14 Third, the defendant believed that the  
15 victim parted with the money or property because of  
16 the robbery; and

17 Fourth, the robbery affected interstate  
18 commerce.

19 For both Counts One and Three, robbery means  
20 the unlawful taking or obtaining of personal property  
21 from the person, or in the presence of another, against  
22 his will, by means of actual or threatened force or  
23 violence or fear of injury, immediate or future, to his  
24 person or property, or to property in his custody or  
25 possession.

1                   The defendant is charged in Count Two of  
2 the Indictment with using, carrying, and brandishing  
3 a firearm during and in relation to interference with  
4 Commerce by robbery, a crime of violence, in violation  
5 of Section 924(c) of Title 18 of the United States  
6 Code.

7                   In order for the defendant to be found  
8 guilty of that charge, the government must prove each  
9 of the following elements beyond a reasonable doubt:

10                  First, the defendant committed the crime  
11 of interference with commerce by robbery as charged in  
12 Count One of the Indictment, which I instruct you is a  
13 crime of violence; and

14                  Second, the defendant knowingly used,  
15 carried, or brandished a firearm during and in relation  
16 to that crime.

17                  For Count Two, a defendant used a firearm if  
18 he actively employed the firearm during and in relation  
19 to interference with Commerce by robbery. A defendant  
20 carried a firearm if he knowingly possessed it and held,  
21 moved, conveyed or transported in some manner on his  
22 person or in a vehicle.

23                  A defendant brandished a firearm if he  
24 displayed all or part of the firearm, or otherwise made  
25 the presence of the firearm known to another person in

1 order to intimidate that person, regardless of whether  
2 the firearm was directly visible to that person.

3 A defendant used, carried, or brandished  
4 a firearm during and in relation to the crime if the  
5 firearm facilitated or played a role in the crime.

6 The defendant is charged in Counts One and  
7 Three of the Indictment with robbery, in violation of  
8 Section 1951 of Title 18 of the United States Code.

9 In order for the defendant to be found guilty of that  
10 charge, the government must prove each of the following  
11 elements beyond a reasonable doubt:

12 First, the defendant knowingly obtained  
13 money or property from or in the presence of the  
14 victim;

15 Second, the defendant did so by means of  
16 robbery;

17 Third, the defendant believed the victim  
18 parted with money or property because of the robbery;

19 Fourth, the robbery affected interstate  
20 commerce.

21 For both Counts One and Three, robbery means  
22 the unlawful taking or obtaining of personal property  
23 from the person, or in the presence of another, against  
24 his will by means of actual or threatened force, or  
25 violence or fear of injury, immediate or future, to

1 his person or property, or to property in his possession  
2 or custody.

3                   The defendant is charged in Count Four  
4 of the Indictment with using, carrying, and brandishing  
5 a firearm during and in relation to interference with  
6 commerce by robbery, the crime of violence, in violation  
7 of -- in violation of Section 924(c) of Title 18 of the  
8 United States Code.

9                   In order for the defendant to be found  
10 guilty of that charge, the government must prove each of  
11 the following elements beyond a reasonable doubt:

12                   First, the defendant committed the crime  
13 of interference with commerce by robbery as charged  
14 in Count Three of the Indictment, which I instruct you  
15 is a crime of violence; and

16                   Second, the defendant knowingly used,  
17 carried, or brandished a firearm during and in relation  
18 to that crime.

19                   For Count Four, a defendant used a firearm  
20 if he actively employed the firearm during and in  
21 relation to interference with commerce by robbery.

22                   A defendant carried a firearm if he  
23 knowingly possessed it and held, moved, conveyed or  
24 transported in some manner on his person or in a  
25 vehicle.

1                   A defendant brandish a firearm if he  
2 displayed all or part of the firearm, or otherwise made  
3 the presence of the firearm known to another person, in  
4 order to intimidate that person, regardless of whether  
5 the firearm was directly visible to that person.

6                   A defendant used, carried, or brandished  
7 a firearm during and in relation to a crime if the  
8 firearm facilitated or played a role in the crime.

9                   To convict the defendant of interstate  
10 commerce by robbery, the government must prove the  
11 defendant's conduct affected or could have affected  
12 interstate commerce. Conduct affects interstate  
13 commerce if it in any way involves, interferes with,  
14 changes, or alters the movement or transportation or  
15 flow of goods, merchandise, money, or other property  
16 in commerce between or among the states or between the  
17 United States and a foreign country. The effect can be  
18 minimal.

19                   It is not necessary for the government to  
20 prove that the defendant knew or intended that his  
21 conduct would affect commerce. It must prove only that  
22 the natural consequence of his conduct affected commerce  
23 in some way. Also, you do not have to find that there  
24 was an actual effect on commerce. The government must  
25 show only that the natural result of the offense would

1 be to cause an effect on commerce -- on interstate  
2 commerce, to any degree, however minimal or slight.

11                   Although it is necessary for the government  
12                   to prove beyond a reasonable doubt that the offense was  
13                   committed on a date reasonably near the dates alleged in  
14                   the Indictment, it is not necessary for the government  
15                   to prove the offense was committed precisely on the date  
16                   charged.

17 An act is done knowingly if the defendant  
18 is aware of the act and does not act or fail to act  
19 through ignorance, mistake, or accident.

20 You may consider evidence of the defendant's  
21 words, acts or omissions, along with all the other  
22 evidence, in deciding whether the defendant acted  
23 knowingly.

1 person possesses at any given time may not ordinarily  
2 be proved directly because there's no way of directly  
3 scrutinizing the workings of the human mind. In  
4 determining the issue of what a person knew or what  
5 a person intended at a particular time, you may consider  
6 any statements made, or acts by that person, and all  
7 other facts and circumstances received in evidence which  
8 may aid in your determination of that person's knowledge  
9 or intent.

10 You may infer, but you are certainly not  
11 required to infer, that a person intends the natural and  
12 probable consequence of acts knowingly done or knowingly  
13 omitted. It is entirely up to you, however, to decide  
14 what facts to find from the evidence received during  
15 this trial.

16 Race may affect the accuracy of a  
17 cross-racial identification. A cross-racial  
18 identification is when a member of one race attempts  
19 to identify a member of another race.

20 The government has the burden of proving  
21 identity beyond a reasonable doubt. If you are not  
22 convinced beyond a reasonable doubt that the defendant  
23 was the person who committed the crime, you must find  
24 the defendant not guilty.

25 When you begin your deliberations, elect one

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

12 A P P E A R A N C E S :

13 FOR THE GOVERNMENT: Megan Rachow  
14 Penelope Brady  
Assist. United States Attorneys  
Reno, Nevada

16 FOR THE DEFENDANT: Christopher Frey  
17 Andrew Wong  
Assist. Federal Public Defenders  
Reno, Nevada

20 Proceedings recorded by mechanical stenography produced  
by computer-aided transcript

1 Reno, Nevada, Tuesday, March 9, 2021, 10:30 a.m.

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3

4 (Outside the presence of the jury.)

5 THE COURT: Good morning. Please be seated.

6 I asked counsel to appear for a phone  
7 conference and I realized that there were issues with  
8 the phone system in the courtroom, but the reason I  
9 wanted to convene earlier is Peggy received a call  
10 from juror number 10, Mr. Jacob Connell, indicating  
11 that his wife was asked to go home from work this  
12 morning because she had symptoms that consist of, I  
13 think a cough, a headache, wasn't feeling well; so, she  
14 was sent home and was told she should not return to work  
15 until two days after she's symptom free.

16 So, I am now left with trying to decide how  
17 to address this issue. I feel pretty -- I'm comfortable  
18 with the process we went through yesterday to ensure  
19 that everyone is protected, but let's assume for the  
20 moment that Mr. Connell -- that his wife has COVID, that  
21 somehow he's also infected, but asymptomatic. I  
22 still feel pretty comfortable with the process we have  
23 in place in terms of social distancing and the mask.  
24 That's the reason why we placed people six feet apart  
25 and required they wear a mask, to ensure if one of the

1 individuals has COVID, it doesn't require everyone to  
2 go into quarantine.

3 So, I'm comfortable that we can proceed.

4 The only question I have is to how to proceed -- whether  
5 or not I -- well, I don't -- I have three options as I  
6 see it. One is to allow Mr. Connell to participate in  
7 the trial by Zoom. He could listen to the testimony,  
8 view the evidence by Zoom, and if by the time the jury  
9 begins deliberation he is -- his wife is clear, then he  
10 can join the deliberation; if not, then I would dismiss  
11 him at the time if he could not join the deliberation.  
12 That way, I still have two alternates for awhile.

13 The second option is to dismiss him and have  
14 one alternate for the trial, really, before opening even  
15 starts.

16 The third option is to delay trial until  
17 Mr. Connell can -- is, essentially, permitted to return  
18 to normal activities. So, those are the three options.

19 I want to hear counsels' thoughts.

20 Ms. Rachow.

21 MS. RACHOW: Your Honor, the government  
22 would think that the best option would be to simply  
23 excuse Mr. Connell from jury service at this time.  
24 As we're all well aware, there are certain technology  
25 issues that we've all been having on the Zoom. I'm

1 not sure what his Zoom capabilities are. I don't  
2 know how --

3 THE COURT: He's a digital content creator  
4 is what he identified on the questionnaire. I'm  
5 assuming he shouldn't have any issue with participating  
6 by Zoom, and would have the equipment and technology to  
7 do it. If he doesn't have the equipment, then I would  
8 ensure that he gets the equipment.

9 MS. RACHOW: The one thing the government  
10 would be concerned about would be his ability to view  
11 the exhibits because I'm not tech savvy and I have no  
12 idea how that works.

13 I don't think having him -- I'm pretty sure  
14 the government and the defense will be on the same page  
15 that we don't want to delay the trial any further, so  
16 our recommendation would be that we dismiss him at this  
17 time.

18 THE COURT: Mr. Frey.

19 MR. FREY: Your Honor, the defense's  
20 position would be that, although novel having him  
21 serve by Zoom, maybe the best solution to this problem,  
22 it would allow us to go forward with no interruption  
23 to the trial. There is one technical issue that I  
24 would acknowledge exists, and that's sharing exhibits  
25 by Zoom, but I believe that the government does have a

1 litigation specialist here in the courtroom that could  
2 likely collaborate with your clerk to ensure that the  
3 exhibits were transmitted to Mr. Connell in a way  
4 that didn't interrupt the trial.

5 We've all been on Zoom for about a year  
6 now and I think we've become very familiar with how it  
7 operates. He's a young man. You're right. He does  
8 have a profession that implies that he's very familiar  
9 with technology, so I think it would work. So short  
10 of dismissing him, Your Honor, I would opt for option  
11 number one. Have him serve by Zoom, with a strong  
12 admonition that if he's at home hearing evidence,  
13 that he not access the internet, not use his phone, and  
14 that he devote his full attention to the proceedings.

15 THE COURT: I mean, there are other  
16 districts that have had jury trials by Zoom. The  
17 Western District of Washington is one example. I  
18 think the Eastern District of Texas has had a trial  
19 by Zoom. A criminal trial -- I mean, a patent for  
20 sure, but maybe a criminal trial too.

21 I feel comfortable, as long as I have  
22 Mr. Knight's consent for Mr. Connell to participate  
23 by Zoom. The exhibits, as far as I am concerned, is  
24 just a matter of arranging it so that Mr. Connell has  
25 the exhibits.

1                   THE CLERK: I can share the exhibits on  
2 Zoom.

3                   THE COURT: Mr. Frey.

4                   MR. FREY: Mr. Knight consents to having  
5 Mr. Connell serve by Zoom.

6                   THE COURT: So I don't know that I'm  
7 required to have Mr. Knight's consent, certainly I  
8 would like for Mr. Knight's consent.

9                   Mr. Knight, if -- you can insist that all  
10 the jurors participate at the trial in person. But if  
11 you agree to have Mr. Connell, who is juror number 10,  
12 watch the trial via Zoom -- and of course he would have  
13 to participate with deliberations in person, but, for  
14 now, he could watch the trial via Zoom. If you consent  
15 to it, I will take that approach.

16                   Do you agree?

17                   DEFENDANT KNIGHT: Yes, ma'am. I agree.

18                   THE COURT: Have you had a chance to talk  
19 to your attorney about that option before consenting?

20                   DEFENDANT KNIGHT: Yes, ma'am.

21                   THE COURT: I want to make sure you  
22 understand that you have the option of electing not  
23 to proceed with that option. If you object to  
24 proceeding with that option, I will not proceed with  
25 that option.

1                   Do you understand that?

2                   DEFENDANT KNIGHT: Yes, ma'am.

3                   THE COURT: Knowing that, is it still your  
4 decision to consent to have Mr. Connell participate and  
5 view the trial via Zoom?

6                   DEFENDANT KNIGHT: Yes, ma'am.

7                   THE COURT: All right.

8                   I find that Mr. Knight understands that he  
9 has the right to insist that Mr. Connell participate  
10 in the trial in person, and he's waived that right and  
11 consents to have Mr. Connell view the trial via Zoom  
12 for now. Of course when it comes to deliberations,  
13 Mr. Connell would have to participate in deliberations  
14 in person.

15                  All right. So I'm going to take a break so  
16 we can contact Mr. Connell and arrange for the Zoom set  
17 up. With respect to the exhibits, we share exhibits all  
18 the time on Zoom, so whatever exhibit that is shown,  
19 that can be shown on the screen to Mr. Connell on Zoom,  
20 just like -- it would be the same way as if he's sitting  
21 in this courtroom viewing the exhibits with the jurors.  
22 He doesn't get to handle them because none of the  
23 jurors do until the exhibits are submitted to them  
24 for deliberation. So, I don't want to send him --  
25 e-mail him a copy of anything in advance. He would

1 just be viewing the exhibits like the other jurors in  
2 the courtroom.

3 I will -- once we get this set up, I'm  
4 going to give him the admonition individually before I  
5 bring in the other jurors, so he understands that he --  
6 the requirement is that he view the trial as if he's  
7 participating here in person. And then I will bring  
8 the jurors in and I will inform them of that decision  
9 and then we will start the trial.

10 So let's take a recess so that Miss Clerk  
11 can contact Mr. Connell to make sure we get this set  
12 up.

13 MS. RACHOW: Your Honor, one final thing.  
14 Because of the hookup and the audio, is there any way  
15 that litigation specialist could sit up here?

16 THE COURT: To assist with the -- during  
17 what part of the trial?

18 MS. RACHOW: Well, for the government's  
19 case in chief.

20 The concern is with the audio hookup,  
21 we're not able to have her -- and the six feet social  
22 distancing -- we're not able to have her hookup further  
23 away than right about here.

24 THE COURT: Yes. That's fine.

25 MS. RACHOW: Okay.

1                   THE COURT: All right. Let's take a  
2 break so we can contact Mr. Connell and set up Zoom.  
3 Thank you.

4                   Does Mr. Knight require a break before we  
5 begin? If he does, let's take it now.

6                   MR. FREY: No. We're okay, Your Honor.

7                   THE COURT: All right.

8                   (Recess taken.)

9                   (Hearing outside the presence of the jury  
10 with Juror Connell, counsel, the defendant, and the  
11 Court as follows:)

12                  THE COURT: All right. Please be seated.

13                  All right. I understand that we have set up  
14 for juror number 10 to participate on Zoom.

15                  Is that correct, Miss Clerk?

16                  THE CLERK: Yes, Your Honor.

17                  THE COURT: I am going to just make sure  
18 that we can see juror number 10 on Zoom.

19                  There we are.

20                  THE CLERK: Mr. Connell?

21                  There you go.

22                  THE COURT: All right. Good morning,  
23 Mr. Connell. Thank you for accommodating us to permit  
24 you to participate at this trial by Zoom. I am going to  
25 bring in the other jurors and give you all instructions,

1 preliminary instructions for the trial. I want to ask  
2 you, in particular, though, to keep in mind that while  
3 you are watching the trial on the video, you should  
4 treat it as if you are in the courtroom, which means  
5 that you should pay attention -- thank you for taking  
6 off your hat -- you should pay attention and not have  
7 any distraction in the background.

8                   When we take a break, we'll allow you  
9 to take a break as well. But while the trial is  
10 proceeding, you should consider it as if you were in  
11 the courtroom.

12                   I'm going to give all the jurors  
13 instructions reminding them, again, not to do any  
14 independent research, not to discuss this case with  
15 anyone, so I want to make sure you keep in mind the  
16 same instructions that I give to the other jurors.  
17 It applies equally to you.

18                   I will now bring in the other jurors and  
19 explain the reason why you're participating by Zoom  
20 and explain that you contacted Miss Clerk this morning  
21 to inform that your wife has some symptoms that raises  
22 concern for me to just require you not to come into the  
23 courthouse.

24                   All right. So, I will bring in the other  
25 jurors and we will begin.

1                   In the presence of the jury.)

2                   THE COURT: Please be seated.

3                   All right. Good morning, everyone.

4                   First of all, I apologize for the delayed  
5 start. There was some technical issues that we had to  
6 resolve.

7                   Before I give you the preliminary  
8 instructions, I want to explain why one of you,  
9 Mr. Connell, is watching the trial on the video.  
10 Mr. Connell's spouse -- well, Mr. Connell informed  
11 the Court this morning that his spouse was sent home  
12 from work because she has some cold symptoms. In an  
13 abundance of caution, I've asked him to remain at home  
14 to watch the trial on the video, so this is the reason  
15 why you don't seem him here, but he's watching the trial  
16 on video. I don't -- because of all the measures that  
17 we've taken to ensure that we protect everyone from  
18 the spread of COVID, including social distancing and  
19 requiring everyone to wear a face mask, I feel pretty  
20 comfortable that we can all proceed with the trial  
21 this way. So I'm going to start with giving you some  
22 preliminary instructions, and then the attorneys will --  
23 the trial will begin with opening statements.

24                   Ladies and gentlemen, you are now the  
25 jury in this case and I want to take a few minutes

\* \* \*

1 at the office.

2 (Outside the presence of the jury.)

3 THE COURT: Please be seated.

4 I just wanted to know, for the record that  
5 -- and that's something I should have noted when we  
6 started late this morning -- that the juror who is  
7 participating on Zoom, Mr. Connell, he and Miss Clerk  
8 established a procedure for him to notify her if he's  
9 not able to hear or see into the courtroom, and it  
10 seemed like that process is working well.

11 THE CLERK: It is.

12 THE COURT: I'm able to observe him most of  
13 the time. I can see him on the screen. And we have  
14 my law clerk observing him as well to make sure he's  
15 paying attention.

16 We'll start at 8:30 tomorrow.

17 MS. RACHOW: Your Honor, I'm sorry. If we  
18 could just have a moment for few housekeeping matters.

19 We did speak with the Appellate Division  
20 about the juror appearing via Zoom, and if I could  
21 please just make a record.

22 THE COURT: Yes.

23 MS. RACHOW: The government objects to  
24 proceeding with a remote juror and we do move that he  
25 be excused and replaced with one of the alternates. We

1 have five serious concerns. One, that the limitations  
2 of the technology will hamper the remote juror's ability  
3 to hear and see the evidence and exhibits.

4 Two, that potential disruptions in the  
5 remote juror's connection could keep him from seeing  
6 part of the evidence.

7 Yesterday, we had a Ninth Circuit argument  
8 where we loss the VTC connection for seven minutes.  
9 And when we were finally able to reconnect, the Ninth  
10 Circuit judge had to recap the questioning, which,  
11 obviously, would be a problem if we were to have some  
12 sort of technology issue.

13 Third, that the juror's possible health  
14 issue may not be resolved by the time of deliberation,  
15 raising the possibility of remote jury deliberation.

16 Fourth, that it's our understanding that  
17 the Western District of Washington has not had any  
18 criminal trials since March of 2020. They have had  
19 some Zoom civil trials. Civil trials do not raise the  
20 same potential constitutional issues and concerns as  
21 the criminal trials.

22 And, that if the defendant is convicted,  
23 especially if he's convicted by a jury with a remote  
24 juror deliberating, he may raise constitutional or  
25 structural challenges to this procedure on appeal and,

1 in particular, with the structural challenge he may  
2 contend that his consent is insufficient to cure or  
3 excuse the error.

4 If the Court does overrule the government's  
5 objection, we would respectfully request that the Court  
6 re-canvass both the defendant and his counsel on the  
7 record and obtain their unambiguous consent that the  
8 trial proceed with the remote juror, and to any right  
9 to challenge this procedure on appeal.

10 MR. FREY: I don't agree with that at  
11 all, Your Honor.

12 The canvass that you did of me and  
13 Mr. Knight is already sufficient. I don't think the  
14 Court needs to go any further.

15 The connectivity issue is a non-issue.  
16 We haven't experienced it. He seems to be, you know,  
17 okay with connecting. He can see the evidence. He  
18 can follow along with the testimony. So, those concerns  
19 are really, you know, not something that I think are of  
20 any substance.

21 This is a proceeding that Mr. Knight fully  
22 consents to. He does not want to remain detained. He  
23 wants his trial. This is an adequate and reasonable  
24 accommodation by the Court and we thank the Court  
25 for doing so.

1                   I appreciate the record. It's also  
2 untimely. I think that the trial is underway and  
3 we should take this case to a verdict.

4                   THE COURT: Well, I can always reconsider  
5 it and dismiss Mr. Connell, but let me address the  
6 objection.

7                   First of all, I think to ensure the  
8 record is extremely clear, earlier today, Mr. Frey  
9 indicated that his client would consent to have  
10 Mr. Connell participate remotely, by viewing the  
11 trial on the video.

12                  Mr. Knight also represented to the Court  
13 that he waived any -- that he consented to have Mr. --  
14 juror number 10, Mr. Connell, participate on Zoom. I  
15 don't think there's any harm in seeking that further  
16 confirmation, so I want to make sure the record is  
17 clear.

18                  Mr. Frey, your client -- you and your client  
19 both -- after having the opportunity to confer, that  
20 your client consents to have Mr. Connell participate  
21 in the trial by video, and that he waives any right to  
22 challenge that participation by video.

23                  Do you agree with that? And then I'll ask  
24 your client.

25                  MR. FREY: Your Honor, I agree with you

1 obtaining the consent again, if the Court needs to  
2 confirm and for the record -- and for the sake of the  
3 record. The fact of the matter is, Your Honor, I  
4 don't think that there's -- that consent needs to be  
5 contingent upon him waiving his right to challenge the  
6 proceedings. I'm not saying that he will if he's  
7 convicted. But, that doesn't seem to be -- I mean,  
8 there's consent, just like when you consent to waive  
9 the right to appeal, Your Honor. If the defendant,  
10 nevertheless, wants to challenge that and have that  
11 argument resolved unfavorably against him on appeal,  
12 it's his right to attempt to vitiate his own consent,  
13 I guess, if that's his election. But, I don't think  
14 you necessarily have to have Mr. Knight say I will  
15 not challenge these future proceedings because of some  
16 defect that arises because of remote participation by  
17 Mr. Connell. I don't think that's a necessary predicate  
18 to him consenting to these proceedings going forward  
19 with a remote juror.

20 So, I don't see the connection that the  
21 government is trying to assert; which is, insulate  
22 the proceedings entirely from appellate review by  
23 having Mr. Knight give up an argument that may not be  
24 meritorious, in the least, on appeal. And so I don't  
25 see that that is a predicate or a precondition to

1 proceeding, Your Honor, at all. I'm happy to be  
2 canvassed again --

3 THE COURT: Well, there's -- certainly  
4 consent would imply that he's not going to challenge  
5 the proceeding by arguing that a juror was allowed to  
6 participate in the trial by video.

7 MR. FREY: That's right. Just like --

8 THE COURT: But, hang on.

9 MR. FREY: Yes.

10 THE COURT: It doesn't mean that there are  
11 not other ways to challenge a proceeding, including  
12 arguing that maybe, perhaps, a waiver was not knowing  
13 and voluntary, challenging the -- that it's a right  
14 that cannot be waived. So, there's certainly challenges  
15 that would, under certain circumstances, Mr. Knight may  
16 raise.

17 I just want to make sure the record is clear  
18 that by consenting, he's at least agreeing that he's not  
19 going to challenge his own consent to have Mr. Connell  
20 participate by video.

21 MR. FREY: I think that we can go ahead  
22 and we could make a full record that he absolutely  
23 was advised appropriately, and that he fully consents,  
24 and that his consent, as you can confirm, is knowing,  
25 voluntary, and intelligent, a hundred percent.

1                   THE COURT: All right.

2                   Mr. Knight, let me ask you again. You've  
3 heard some exchange now. I want to make sure that you  
4 know you have a right to insist that Mr. Connell, juror  
5 number 10, participate at this trial in person.

6                   Do you understand that?

7                   DEFENDANT KNIGHT: Yeah. I understand  
8 what's going on.

9                   THE COURT: And this morning you've had a  
10 chance to talk to your attorney about waiving that right  
11 and allowing Mr. Connell to participate by video, is  
12 that right?

13                   DEFENDANT KNIGHT: Yes, ma'am.

14                   THE COURT: Having conferred with your  
15 attorney, is it your decision to consent to have juror  
16 number 10, Mr. Connell, participate and view this trial  
17 by video?

18                   DEFENDANT KNIGHT: Yes, ma'am.

19                   THE COURT: All right.

20                   I still find that Mr. Knight understands  
21 his right, and that his consent is knowing and  
22 voluntarily and I will accept his consent. So,  
23 that's the first issue with the consent.

24                   There were several objections raised  
25 relating to the juror participating in deliberation

1       remotely. I do not intend for Mr. Connell to  
2       participate in the deliberation remotely. If, by  
3       the time the case is submitted to the jury, and  
4       Mr. Connell is not in a position where he can return  
5       to the courthouse to participate in person, then I  
6       will dismiss him.

7                   Therefore, to the extent there's any  
8       objection that raises concern about a juror  
9       participating remotely, those objections are really  
10      moot and unnecessary.

11                  The first objection, I think -- well, one  
12      of the objections relates to concerns about technology  
13      and whether or not Mr. Connell -- whether it would be  
14      disruptive for him to view the trial on Zoom. I noted  
15      for the record, just now, that Miss Clerk established  
16      a way to communicate with Mr. Connell to alert her if  
17      he's not able to hear or see either the witness or  
18      what's presented on the screen as evidence.

19                  So far, there's only one communication  
20      earlier during -- where there was a pause when he  
21      indicated that his battery was running out and he  
22      replaced the battery. So, I view that as a sufficient  
23      procedure for Mr. Connell to alert Miss Clerk should  
24      any technology issue occur that interferes with his  
25      viewing and his participation remotely to this trial.

1                   I also have added the additional measure  
2 of having another person in the courtroom. Today it's  
3 my law clerk. Tomorrow it may not be my law clerk.  
4 But, having another staff member monitor the screen  
5 to ensure that they can see Mr. Connell on the screen,  
6 that he's paying attention, just as if he's sitting  
7 here in the courtroom -- I also, periodically, try to  
8 do the same -- I think these procedures are adequate.  
9 Therefore, all the objections are overruled.

10                  MS. RACHOW: Thank you, Your Honor.

11                  And just to be clear about Mr. Fry's  
12 argument that Mr. Knight understands that even if  
13 the Court had been inclined to grant the government's  
14 objection, it would not delay the trial. It just would  
15 have meant that one of the alternates would have been  
16 seated. So this is not an option for Mr. Knight that  
17 he either agrees to having the juror appear remotely,  
18 or he has to continue his trial. It's -- that's just  
19 not an issue.

20                  Ms. Brady's appointment is actually at 3:15  
21 tomorrow --

22                  THE COURT: Oh, I forgot about the  
23 appointment.

24                  MS. RACHOW: I believe she has to be  
25 there --

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDWARD MONET KNIGHT,

Defendant.

Case No. 3:19-cr-00038-MMD-CLB

ORDER

**I. SUMMARY**

Defendant Edward Monet Knight is charged with four counts: Counts One and Three involve interference with commerce by robbery in violation of 18 U.S.C. § 1951 (“Hobbs Act robbery”); and Counts Two and Four involve use of a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(ii). (ECF No. 14.) Before the Court is Knight’s motion to dismiss Counts Two and Four, contending that because Hobbs Act robbery as charged in Counts One and Three is not a crime of violence, Counts Two and Four fail to state a claim. (ECF No. 34 (“Motion”).) The Government’s response cites to a Ninth Circuit Court of Appeals’ decision<sup>1</sup> issued after the Motion was filed where the court found that Hobbs Act robbery is a crime of violence. (ECF No. 43 at 2.) The Court agrees with the Government and will deny the Motion.

**II. BACKGROUND**

The Indictment charges Knight in Count One with robbery of PJ’s Discount Liquor in Sparks, Nevada on or about July 7, 2019. (ECF No. 14 at 1.) Count Three involved robbery of Rainbow Market also in Sparks, Nevada on or about July 8, 2019. (*Id.* at 2.)

<sup>1</sup>*United States v. Dominguez*, 954 F.3d 1251 (9th Cir. 2020).

Counts Two and Four in turn charge Knight with use of a firearm during and in relation to the crime of violence charged in Counts One and Three, respectively. (*Id.* at 2-3.)

### **III. DISCUSSION**

Defendant argues that the predicate offense for Counts Two and Four—a crime of violence—cannot be satisfied because Hobbs Act robbery under § 924(c)(3)(A) does not qualify as a crime of violence. (ECF No. 34 at 3-7.) Defendant acknowledges that *Dominguez* involves this very issue, but a ruling had not been issued at the time of the Motion.<sup>2</sup> On April 7, 2020, the Ninth Circuit issued its decision in *Dominguez*, resolving the issue against the position Defendant advances here. In *Dominguez*, the court found that Hobbs Act robbery qualifies as a crime of violence for purposes of § 924(c)(3)(A)'s elements clause. *Dominguez*, 954 F.3d at 1260. Because this resolves the legal challenge to the predicate offense for Counts Two and Four upon which the Motion is based, the Court denies the Motion.

### **IV. CONCLUSION**

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the Motion before the Court.

It is therefore ordered that Defendant's motion to dismiss Counts Two and Four (ECF No. 34) is denied.

DATED THIS 5<sup>th</sup> day of May 2020.



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MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE

<sup>2</sup>Defendant relies on a district court in this circuit who held that Hobbs Act robbery is not a crime of violence. (ECF No. 34 at 5 citing *United States v. Chea*, Case No. 4:98-cr-0-40003-CW, 2019 WL 5061085 (N.D. Cal. Oct. 2, 2019).) This Court reached the opposite conclusion in *United States v. Barrows*, 2:13-cr-185-MMD-VCF (D. Nev. July 25, 2016), in adopting the magistrate judge's recommendation to find that Hobbs Act robbery under § 924(c)(3)(A) qualifies as a crime of violence.

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7 *Representing the United States of America*

8 **UNITED STATES DISTRICT COURT**  
 9 **DISTRICT OF NEVADA**

3:19-CR-0038-MMD-CBC

10 United States of America,

11 Plaintiff,

12 v.

13 Edward Monet Knight,

14 Defendant.

15 **INDICTMENT FOR VIOLATIONS OF:**

16 Title 18, United States Code, Section  
 17 1951, Interference with Commerce by  
 18 Robbery (Counts One and Three)

19 Title 18, United States Code, Section  
 20 924(c)(1)(A)(ii)—Use of a Firearm During  
 21 and in Relation to a Crime of Violence  
 22 (Counts Two and Four)

23 **THE GRAND JURY CHARGES THAT:**

24 **COUNT ONE**

25 (Interference with Commerce by Robbery)

26 On or about July 7, 2019, in the State and Federal District of Nevada, EDWARD

27 MONET KNIGHT, defendant herein, did unlawfully obstruct, delay and affect commerce,

28 as that term is defined in Title 18, United States Code, Section 1951, by robbery, in that

29 defendant did unlawfully take and obtain money, from an employee of PJ's Discount

30 Liquor, located at 1293 Baring Boulevard, Sparks, Nevada, against his will, by means of

1 actual and threatened force and violence; all in violation of Title 18, United States Code,  
2 Section 1951.

3 COUNT TWO

4 (Use of a Firearm During and in Relation to a Crime of Violence)

5 On or about July 7, 2019, in the State and Federal District of Nevada, EDWARD  
6 MONET KNIGHT, defendant herein, did knowingly brandish, carry, and use a black and  
7 silver firearm, during and in relation to the crime of violence charged in Count One of this  
8 Indictment, which count is incorporated herein by reference; all in violation of Title 18,  
9 United States Code, Section 924(c)(1)(A)(ii).

10 COUNT THREE

11 (Interference with Commerce by Robbery)

12 On or about July 8, 2019, in the State and Federal District of Nevada, EDWARD  
13 MONET KNIGHT, defendant herein, did unlawfully obstruct, delay and affect commerce,  
14 as that term is defined in Title 18, United States Code, Section 1951, by robbery, in that  
15 defendant did unlawfully take and obtain money, from an employee of the Rainbow  
16 Market, located at 1225 Commerce Way, Sparks, Nevada, against her will, by means of  
17 actual and threatened force and violence; all in violation of Title 18, United States Code,  
18 Section 1951.

19 COUNT FOUR

20 (Use of a Firearm During and in Relation to a Crime of Violence)

21 On or about July 8, 2019, in the State and Federal District of Nevada, EDWARD  
22 MONET KNIGHT, defendant herein, did knowingly brandish, carry, and use a black and  
23 silver firearm, during and in relation to the crime of violence charged in Count Three of this  
24

1 Indictment, which count is incorporated herein by reference; all in violation of Title 18,  
2 United States Code, Section 924(c)(1)(A)(ii).

3 **FORFEITURE ALLEGATION ONE**

4 (Interference with Commerce by Robbery)

5 1. The allegations contained in Counts One and Three of this Indictment are hereby  
6 realleged and incorporated herein by reference for the purpose of alleging forfeiture pursuant  
7 to 18 U.S.C. § 981(a)(1)(C) with 28 U.S.C. § 2461(c).

8 2. Upon conviction of any of the felony offenses charged in Counts One and Three  
9 of this Indictment,

10 **EDWARD MONET KNIGHT,**

11 defendant herein, shall forfeit to the United States of America, any property, real or  
12 personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C.  
13 § 1951, a specified unlawful activity as defined in 18 U.S.C. §§ 1956(c)(7)(A) and 1961(1)(B),  
14 or a conspiracy to commit such offense:

15 1. an in personam criminal forfeiture money judgment including, but not limited to, at  
16 least \$2,200 and

17 2. an in personam criminal forfeiture money judgment including, but not limited to, at  
18 least \$366.69

19 (all of which constitutes property).

20 3. If any property being subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C)  
21 with 28 U.S.C. § 2461(c), as a result of any act or omission of the defendant -

22 a. cannot be located upon the exercise of due diligence;

23 b. has been transferred or sold to, or deposited with, a third party;

24 c. has been placed beyond the jurisdiction of the court;

- 1                   d. has been substantially diminished in value; or  
2                   e. has been commingled with other property which cannot be divided without  
3                   difficulty;

4                   it is the intent of the United States of America, pursuant to 21 U.S.C. § 853(p), to seek  
5                   forfeiture of any other property of the defendant for the property listed above.

6                   All pursuant to 18 U.S.C. § 981(a)(1)(C) with 28 U.S.C. § 2461(c); 18 U.S.C. § 1951;  
7                   and 21 U.S.C. § 853(p).

8                   **FORFEITURE ALLEGATION TWO**

9                   (Interference with Commerce by Robbery and  
10                   Use of a Firearm During and in Relation to a Crime of Violence)

11                   1. The allegations of Counts One through Four of this Indictment are hereby  
12                   realleged and incorporated herein by reference for the purpose of alleging forfeiture pursuant  
13                   to 18 U.S.C. § 924(d)(1) with 28 U.S.C. § 2461(c).

14                   2. Upon conviction of any of the felony offenses charged in Counts One through  
15                   Four of this Indictment,

16                   **EDWARD MONET KNIGHT,**

17                   defendant herein, shall forfeit to the United States of America, any firearm or ammunition  
18                   involved in or used in any knowing violation of 18 U.S.C. § 924(c)(1)(A)(ii), or any violation  
19                   of any other criminal law of the United States, 18 U.S.C. § 1951:

- 20                   1. Silver and black Smith & Wesson Sigma handgun (SN: PDW0433) and  
21                   2. Any and all ammunition.

22                   All pursuant to 18 U.S.C. § 924(c)(1)(A)(ii); 18 U.S.C. § 924(d)(1) with 28 U.S.C. §  
23                   2461(c); 18 U.S.C. § 1951.

## **FORFEITURE ALLEGATION THREE**

**(Interference with Commerce by Robbery and  
Use of a Firearm During and in Relation to a Crime of Violence)**

1. The allegations of Counts One through Four of this Indictment are hereby realleged and incorporated herein by reference for the purpose of alleging forfeiture pursuant to 18 U.S.C. § 924(d)(1), (2)(C), and (3)(A) with 28 U.S.C. § 2461(c).

2. Upon conviction of any of the felony offenses charged in Counts One through Four of this Indictment,

## EDWARD MONET KNIGHT,

defendant herein, shall forfeit to the United States of America, any firearm or ammunition intended to be used in any crime of violence, 18 U.S.C. §§ 924(c)(1)(A)(ii) and 1951:

1. Silver and black Smith & Wesson Sigma handgun (SN: PDW0433) and
2. Any and all ammunition.

All pursuant to 18 U.S.C. § 924(c)(1)(A)(ii); 18 U.S.C. § 924(d)(1), (2)(C), and (3)(A) with 28 U.S.C. § 2461(c); and 18 U.S.C. § 1951.

A TRUE BILL:

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**FOREPERSON OF THE GRAND JURY**

---

**NICHOLAS A. TRUTANICH**  
United States Attorney

**MEGAN RACHOW**  
Assistant United States Attorney