

**EMBARGOED until 6 p.m. E.S.T.
December 31, 2014 (No wires, TV,
radio, Internet, or other formats
before 6 p.m. E.S.T.)**

For further information, contact the
Public Information Office
202-479-3211

2014 Year-End Report on the Federal Judiciary

On November 10, 1893, the *Washington Post* identified an emerging technology that was reshaping American society: Pneumatics! The miracle of compressed air had led to the creation of new contraptions, including pneumatic tube systems that relied on air compressors to transport cylindrical containers hundreds of feet within buildings. Pneumatic tube systems had found favor in banks and department stores, enabling clerks to transmit documents rapidly from one office to another. Noting this and other applications of pneumatics, the *Washington Post* lightheartedly proclaimed, “The present era is likely to be known to history as the pneumatic age.”

News of this dawning era was slow to reach the Supreme Court. It was not until 1931 that the Marshal of the Court proposed installing a pneumatic tube system in the Courtroom for the benefit of the press. Architect Cass Gilbert incorporated that technology into the design of the

Court's current building, concealing the gray metal tubes behind mahogany desks and beneath the marble floor.

When the Court opened the doors of its new Courtroom in 1935, it also revised its procedure for issuing decisions. Under the new "hand-down" protocol, immediately before a Justice announced a decision in the Courtroom, the Clerk of the Court directed messengers to hand copies to a small group of journalists stationed in front of the bench. The journalists then dispatched the copies through the pneumatic tubes to their colleagues in the press booths one floor below, saving the messengers dozens of steps and precious minutes in communicating the news of Court actions.

For thirty-six years, virtually all of the Court's decisions reached the press through those portals. A notable exception was the Court's 1954 decision in *Brown v. Board of Education*. Chief Justice Warren made a point of delaying delivery of his short opinion until he had read it in full in open Court. But not even things gray can stay, and the venerable steel hardware ultimately outlived its usefulness. In 1968, John P. MacKenzie, the Supreme Court reporter for the *Washington Post*, described the Court's process of transmitting decisions as "perhaps the most primitive . . . in the entire communications industry." The Court's pneumatic age ended in 1971, when Chief Justice Burger authorized the removal of the pneumatic

tube system at the same time that he introduced the Court's familiar curved bench.

The *Washington Post's* celebration of the marvels of pneumatics, followed by the Supreme Court's belated embrace and overdue abandonment of a pneumatic conveyance system, illustrates two tenets about technology and the courts, one obvious and the other less so. First, the ceaseless growth of knowledge in a free society produces novel and beneficial innovations that are nonetheless bound for obsolescence from the moment they launch. No one should be surprised that the same surge of creativity that pushed courts from quills to hot-metal type will inevitably propel them past laser printers and HTML files as new technologies continue to emerge. Second, and perhaps less evidently, the courts will often choose to be late to the harvest of American ingenuity. Courts are simply different in important respects when it comes to adopting technology, including information technology. While courts routinely consider evidence and issue decisions concerning the latest technological advances, they have proceeded cautiously when it comes to adopting new technologies in certain aspects of their own operations. In this year-end report, I would like to describe progress the courts have made in taking advantage of information

technology, recognizing that the courts will always be prudent whenever it comes to embracing the “next big thing.”

Article III of the Constitution specifies the distinctive role of the federal courts, which sets the judiciary apart from other private and public institutions. Article III invests the federal courts with a strictly limited power, and responsibility, to decide prescribed categories of “cases” and “controversies.” Under our constitutional scheme, the courts are neutral arbiters of concrete disputes that rely on parties with genuine grievances to initiate the process and frame the issues for decision. The courts’ passive and circumscribed role directly affects how courts deploy information technology. The courts understandably focus on those innovations that, first and foremost, advance their primary goal of fairly and efficiently adjudicating cases through the application of law.

As one example, the courts have integrated computer-assisted legal research into their case resolution process. Judges and clerks once spent countless hours in the law library, poring through law books and indices just to *find* the law. They now have access to extensive legal databases and can quickly locate relevant authority through search commands on desktop computers, tablets, and mobile devices. The federal judiciary has likewise modernized courtrooms to take advantage of technological innovations in

exchanging information and ideas. Attorneys can rely on computer-assisted graphics, video, and other technological aids to introduce evidence and facilitate communications with judges and juries. But perhaps most important, the courts have deployed new technologies to automate the filing, acceptance, and retrieval of the vast inflow of litigation documents that reach the courts every day. Throughout the country, clerks' offices have revolutionized case docketing and administration through electronic case filing and case management—known within the federal courts as “CM/ECF.”

True, in today's high-tech world, the idea of CM/ECF may seem to some mundane. In the realm of computer science, electronic case filing cannot rival the dazzling design technologies that empower engineers, or even the vivid gaming technologies that entice adolescents and the young-at-heart. Nevertheless, CM/ECF is vitally important to the cause of justice because it can make the courts more accessible, and more affordable, to a diverse body of litigants, drawn from every corner of society, who often enter the courthouse reluctantly, apprehensively, and only as a last resort.

As members of the legal profession know, the basic concept of CM/ECF is simply stated: A litigant, through a lawyer or as a self-represented party, can file documents using the Internet by logging onto

the system, entering basic information about the case, uploading the document for filing, and submitting it to the court. But the nationwide implementation of CM/ECF—which has restructured operations of the entire federal court system—was no modest feat. The federal judiciary began design of the architecture in the 1990s and began implementation in 2001. CM/ECF currently contains, in aggregate, more than one billion retrievable documents spread among the 13 courts of appeals, 94 district courts, 90 bankruptcy courts, and other specialized tribunals. More than 600,000 attorneys have filed case documents using CM/ECF, and they currently file electronically more than 2.5 million documents each month.

But this system is not limited to attorneys. By logging onto the Public Access to Court Electronic Records (PACER) system, and paying a modest user fee—in many cases, no fee—members of the public from Alaska to Florida can instantly access and review federal court filings located in courthouses across the Nation. PACER has enabled thousands of reporters, academics, and members of the public to find court records in a way that would have been impossible before the advent of CM/ECF.

The Administrative Office of the United States Courts is currently in the midst of developing its “Next Generation” CM/ECF system, which will increase the functionalities of the system for both bench and bar. For

instance, the enhanced system includes a “central sign-on” feature that will allow court users and attorneys to file and retrieve information in any federal court using the same login and password, greatly simplifying access to the system. Future development efforts will provide automatic calendaring notices to interested parties that will improve access to court proceedings while minimizing scheduling conflicts. Other new features are designed to increase efficiency and ease of use, saving time for judges, court staff, and other system users.

The Supreme Court is currently developing its own electronic filing system, which may be operational as soon as 2016. Once the system is implemented, all filings at the Court—petitions and responses to petitions, merits briefs, and all other types of motions and applications—will be available to the legal community and the public without cost on the Court’s website. Initially, the official filing of documents will continue to be on paper for all parties in all cases, with the electronic submission an additional requirement for parties represented by attorneys. Once the system has operated effectively for some time and the Supreme Court Bar has become well acquainted with it, the Court expects that electronic filing will be the official means for all parties represented by counsel, but paper filings will still be required. Parties proceeding pro se will continue to submit

documents only on paper, and Court personnel will scan and upload those documents to the system for public access. The Court will provide more information about the details of the system, including the process for attorneys to register as authorized filers, in the coming months.

These new systems are important steps forward. Indeed, the federal judiciary's CM/ECF system was pioneering technology when it was introduced, and it remains the premier model among court systems around the world for electronic case management. Nevertheless, the federal courts, including the Supreme Court, must often introduce new technologies at a more measured pace than other institutions, especially those in private industry. They will sometimes seem more guarded in adopting cutting-edge innovations, and for good reason, considering some of the concerns that the judiciary must consider in deploying new technologies.

For instance, the federal courts, like other government institutions, are subject to the federal procurement process, which understandably sacrifices speed in favor of fair procedures for commercial hardware and software vendors to compete for the government's business. Courts are likewise subject to the federal appropriation process. Congress faces the difficult task of developing a budget for the entire government, and legitimate

disagreements over funding priorities can complicate the planning of nationwide computer system upgrades and roll-outs for the judiciary.

The federal courts, however, also face obstacles that arise from their distinct responsibilities and obligations. The judiciary has a special duty to ensure, as a fundamental matter of equal access to justice, that its case filing process is readily accessible to the entire population, from the most tech-savvy to the most tech-intimidated. Procedural fairness begins in the clerk's office. When deploying CM/ECF, the judiciary must make sure that its operating instructions are clear, its applications and dashboards are intuitive, and its systems are compatible with a broad range of consumer hardware and software. Unlike commercial enterprises, the courts cannot decide to serve only the most technically-capable or well-equipped segments of the public. Indeed, the courts must remain open for those who do not have access to personal computers and need to file in paper, rather than electronic, form.

The courts also have important security concerns that must be satisfied before new systems go live and continuously throughout their operational life. Litigation often involves sensitive matters: Criminal prosecutions, bankruptcy petitions, malpractice suits, discrimination cases, and patent disputes may all lead to the collection of confidential information that should be shielded from public view to protect the safety of witnesses,

the privacy of litigants, and the integrity of the adjudicatory process. Courts understandably proceed cautiously in introducing new information technology systems until they have fairly considered how to keep the information contained therein secure from foreign and domestic hackers, whose motives may range from fishing for secrets to discrediting the government or impairing court operations.

The federal judiciary also faces implementation challenges in light of its conscious decision to maintain a decentralized system of organization. For 225 years, since the enactment of the Judiciary Act of 1789, the federal courts in each state have exercised a fair degree of operational independence to ensure that they are responsive to local challenges, capabilities, and needs. The individual courts have had considerable latitude to experiment with new technologies, which has led to some courts initiating local innovations. When the Administrative Office plans a nationwide initiative, such as Next Generation CM/ECF, it must devote extensive resources to conferring with judges, court executives, and lawyers across the country, examining what has worked on a local basis, and identifying features that should be adopted nationally. These deliberations ensure that the implementation of a national system takes due account of local experience, including both successes and failures.

Federal judges are stewards of a judicial system that has served the Nation effectively for more than two centuries. Like other centuries-old institutions, courts may have practices that seem archaic and inefficient—and some are. But others rest on traditions that embody intangible wisdom. Judges and court executives are understandably circumspect in introducing change to a court system that works well until they are satisfied that they are introducing change for the good.

As technology proceeds apace, we cannot be sure what changes are in store, for the courts or society generally. Innovations will come and go, but the judiciary will continue to make steady progress in employing new technology to provide litigants with fair and efficient access to the courts. The sculptures that adorn the Supreme Court provide a reminder of that resolve, a resolve that has outlived the Court's long-gone pneumatic tube system. The often overlooked east pediment, installed on the rear portion of the building, features images of historic lawgivers and other symbolic figures. It is flanked by imagery drawn from a well-known fable: A hare on one side sprints in full extension for the finish line, while a tortoise on the other slowly plods along. Perhaps to remind us of which animal won that famous race, Cass Gilbert placed at the bases of the Court's exterior

lampposts sturdy bronze tortoises, symbolizing the judiciary's commitment to constant but deliberate progress in the cause of justice.

I am privileged and honored to be in a position to thank all of the judges, court staff, and judicial personnel throughout the Nation for their continued excellence and dedication. I wish to extend a special thanks to District Judge John Bates, who will step down on January 1, 2015, as Director of the Administrative Office of the United States Courts and return to his duties as a United States District Judge for the District of Columbia. The judiciary has benefited enormously from his wise counsel, strong leadership, and steadfast commitment to the cause of justice. I am grateful for his service.

Best wishes to all in the New Year.

Appendix

Workload of the Courts

In 2014, caseloads held steady in the U.S. district courts and probation offices, but decreased in the U.S. appellate courts, bankruptcy courts, and pretrial services system. Total filings for civil cases and criminal defendants in the district courts grew less than one percent to 376,536, with civil cases increasing four percent while filings from criminal defendants decreased 11 percent. The number of persons under post-conviction supervision rose nearly one percent to 132,858. Filings in the regional courts of appeals fell three percent to 54,988. Cases opened in the pretrial services system declined eight percent to 100,068. Petitions filed in the bankruptcy courts dropped 13 percent to 963,739.

The Supreme Court of the United States

The total number of cases filed in the Supreme Court decreased from 7,509 filings in the 2012 Term to 7,376 filings in the 2013 Term, a decrease of 1.77 percent. The number of cases filed in the Court's *in forma pauperis* docket decreased from 6,005 filings in the 2012 Term to 5,808 filings in the 2013 Term, a 3.28 percent decrease. The number of cases filed in the Court's paid docket increased from 1,504 filings in the 2012 Term to 1,568 filings in the 2013 Term, a 4.26 percent increase. During the 2013 Term,

79 cases were argued and 77 were disposed of in 67 signed opinions, compared to 77 cases argued and 76 disposed of in 73 signed opinions in the 2012 Term. The Court also issued six per curiam decisions during the 2013 Term in cases that were not argued.

The Federal Courts of Appeals

In the regional courts of appeals, filings decreased three percent to 54,988. Appeals involving pro se litigants, which constituted 51 percent of filings, declined three percent. Total criminal appeals fell eight percent. Appeals of administrative agency decisions dropped 16 percent. Bankruptcy appeals fell 14 percent. Total civil appeals increased one percent.

The Federal District Courts

Civil case filings in the U.S. district courts rose four percent to 295,310. Cases involving diversity of citizenship (i.e., disputes between citizens of different states) increased 13 percent, mainly because of growth in personal injury and product liability filings.

Cases filed with the United States as defendant fell five percent, mostly because of reductions in prisoner petitions and Social Security cases. Filings with the United States as plaintiff declined 14 percent as cases involving contracts and cases involving forfeitures and penalties decreased.

Filings for criminal defendants (including those transferred from other districts) dropped 11 percent to 81,226. Excluding transfers, fewer defendant filings were reported for all types of major offenses. Defendants charged with drug crimes declined 14 percent. Defendants prosecuted for immigration violations fell eight percent, with the southwestern border districts accounting for 77 percent of national immigration defendant filings.

Defendants accused of property offenses (including fraud) decreased 11 percent. Reductions also occurred in defendants charged with firearms and explosives crimes, sex offenses, traffic offenses, and violent crimes.

The Bankruptcy Courts

Filings of bankruptcy petitions decreased 13 percent to 963,739. Fewer petitions were filed in all bankruptcy courts but one (filings rose three percent in the District of Puerto Rico). Consumer (i.e., non-business) petitions declined 13 percent, and business petitions dropped 19 percent. Bankruptcy petitions fell 15 percent under Chapter 7, 20 percent under Chapter 11, and nine percent under Chapter 13.

After the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 took effect, a steep reduction in bankruptcy petition filings occurred. Filings thereafter rose from 2007 to 2010, but have fallen in each of the last

four years. The total for 2014 is 40 percent below the total for 2010, and the lowest total since 2007.

The Federal Probation and Pretrial Services System

The 132,858 persons under post-conviction supervision on September 30, 2014, was nearly one percent above the total one year earlier. Persons serving terms of supervised release after leaving correctional institutions grew two percent to 111,585 and amounted to 84 percent of all persons under supervision.

Cases opened in the pretrial services system in 2014, including pretrial diversion cases, decreased eight percent to 100,068.