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Public Information Office
pio@supremecourt.gov

2017 Year-End Report on the Federal Judiciary

In October 1780, while American patriots engaged the British in decisive battles for independence, a storm was brewing in the Caribbean. The Great Hurricane of 1780—the deadliest Atlantic hurricane on record—tracked a course from the Lesser Antilles to Bermuda, leaving a trail of destruction that touched both Florida and Puerto Rico. Historians estimate that more than 20,000 people died. The “Great Hurricane” was just one of several storms that ravaged the Caribbean and Gulf of Mexico that fall. In all, more than 28,000 perished.

Nearly two and a half centuries later, we remain vulnerable to natural catastrophes. Modern communication has enhanced our ability to learn of impending disasters, take precautions, and respond to those in need. But today’s news cycle can also divert attention from the continuing consequences of calamities. The torrent of information we now summon and dispense at the touch of a thumb can sweep past as quickly as the storm

itself, causing us to forget the real life after-effects for those left in misfortune's wake.

Federal disaster response is primarily the responsibility of the executive and legislative branches of the federal, state, and territorial governments, which can muster, fund, and deploy the resources needed to respond to emergencies. Still, during this season of holidays and celebrations, we cannot forget our fellow citizens in Texas, Florida, Puerto Rico, and the Virgin Islands who are continuing to recover from Hurricanes Harvey, Irma, and Maria, and those in California who continue to confront historic wildfires and their smoldering consequences. The courts cannot provide food, shelter, or medical aid, but they must stand ready to perform their judicial functions as part of the recovery effort. The federal judiciary has an ongoing responsibility to prepare for catastrophes and ensure that the third branch of government remains open and functional during times of national emergency.

Court emergency preparedness is not headline news, even on a slow news day. But it is important to assure the public that the courts are doing their part to anticipate and prepare for emergency response to people in need.

The Administrative Office of the United States Courts is the agency within the judicial branch responsible for providing the broad range of managerial and program support necessary for federal courts throughout the country. The Administrative Office staff addresses matters that span the federal court system, including human resources, information technology, and facilities stewardship. The Administrative Office has established an Emergency Management and Preparedness Branch that maintains continuity of operations programs within that agency and provides training and consulting functions for hundreds of court units across the country. That's no small task for a court system that employs 30,000 people and includes 12 regional courts of appeals, 94 district courts, 90 bankruptcy courts, and a collection of other specialized tribunals, probation and pretrial services offices, and federal defender offices.

Our federal courthouse communities vary in size. Some large cities, like Houston, are home to dozens of federal judges and have substantial support teams for busy dockets. Smaller locales, like Key West, may have only a single judicial officer and a handful of court employees. The deadly hurricanes of 2017 and other emergency events brought home the need for a national response capability to deal with emergencies on a scale both large and small. Preparation begins with planning. The judiciary must anticipate

the broad range of calamities that might strike, ranging from severe weather to earthquakes, from cyberterrorism to on-the-ground terrorist attacks. The planners must identify the particular risks and available resources by region and locality to calculate how to deploy manpower and maintain channels of communication. Plans must be scaled to enable prompt and flexible response to both foreseeable and unforeseeable consequences of emergency events.

The Emergency Management and Preparedness Branch provides critical consultation and planning support for federal courts throughout the country as they design their emergency plans and run drills. But the Branch also goes a step further by operating a Judiciary Emergency Response Team, which offers courts facing an emergency a single point of contact for logistical support. The Response Team serves as a principal node for communication and a clearinghouse for information. It provides a central source for assisting personnel and directing resources to support the affected court's administrative needs, including procurement, information technology, facilities, and security.

I recognize that this might sound like trying to fight fire with administrative jargon. But imagine yourself one of a handful of employees of the bankruptcy court in Santa Rosa, California, when raging wildfires

suddenly approach the courthouse where you work and state officials order evacuation—as happened this past September. The staff members did not face the emergency alone; they had at their disposal a professional response team to assist in making quick decisions to protect personnel, relocate services, and ensure continuity of operations.

The Administrative Office’s national support system includes the provision of remote information technology resources. These resources can enable courts to keep case management and electronic filing systems online for judges, attorneys, and court personnel, who can continue their work from safe locations during and after storms and other emergency events. These resources also allow courts with public websites to provide the bar and public with critical updates and notices about operations. During Irma, Harvey, and Maria, the Administrative Office’s communications team monitored the status of all affected courts and provided regular public updates on the judiciary’s own central website (<http://www.uscourts.gov>) and on the Administrative Office’s Twitter feed.

The courts are continuously enhancing and enlarging their response capabilities, building on gradual improvements over the past 30 years. The Administrative Office and individual courts learned valuable lessons from the Loma Prieta earthquake that struck San Francisco in 1989, the

September 11 terrorist attack in 2001, and Hurricanes Katrina and Rita, which devastated the city of New Orleans and other parts of Louisiana and Mississippi in 2005. Those upgraded emergency preparedness practices were put to the test by the 2008 floods in Cedar Rapids, Iowa, the 2012 Superstorm Sandy in New York and New Jersey, and the 2016 floods in Baton Rouge and surrounding parishes. The severe weather events of this past summer, affecting disparate parts of the country so close in time, placed unique challenges on our emergency response capabilities.

The hurricanes brought flooding, power outages, infrastructure damage, and individual hardship to Texas and Florida. But the judicial districts of the Virgin Islands and Puerto Rico were especially hard hit. Judges and court employees responded in dedicated and even heroic fashion. They continued to work even in the face of personal emergencies, demonstrating their commitment to their important public responsibilities.

The Judicial Emergency Response Team assisted local judges and court employees in finding missing court personnel, securing buildings, and continuing or resuming court operations. But the efforts did not stop there. The storm also affected persons subject to the courts' continuing jurisdiction. For example, the courts have responsibility to hear legal claims of individuals detained in criminal proceedings prior to sentencing, and

special measures were required for those in custody in Puerto Rico and the Virgin Islands. Before Hurricane Maria made landfall, the Justice Department's Bureau of Prisons moved more than 1,200 detained individuals to mainland facilities in Mississippi, Florida, Alabama, and Georgia. In addition to facilitating secure transport arrangements with the U.S. Marshals Service, judicial personnel made arrangements to ensure assignment of mainland judges to handle urgent proceedings, the provision of necessary language interpreter services, and continued access to lawyers in the Federal Defender system. I happened to be in Jackson meeting with Mississippi federal judges when word arrived that a large number of the detainees would be sent to that state. Many of the judges in the room raised their hands on the spot to volunteer to take on the extra work.

For individuals who had completed terms of imprisonment but were serving sentences of supervised release, the Administrative Office's Probation and Pretrial Services Office stepped in to assist. The office joined in tracking individuals and responding to location monitoring alerts in every district affected by the hurricanes when local staff was unavailable. The Probation Office for the Southern District of New York took the initiative to help colleagues in the District of Puerto Rico by monitoring electronic arrest

notices. That office's generous support freed local probation officers to tend to their own families and homes.

The Administrative Office and affected courts also learned some lessons about improving future response. They discovered gaps in our communications protocols for Puerto Rico and the Virgin Islands arising from widespread power outages, impaired cellular networks, and limited internet connectivity. The scope of infrastructure damage on those islands impeded efforts to reach key personnel during and immediately after storms. Going forward, the Administrative Office will do more to pre-position essential equipment, such as satellite telephones, batteries, generators, and emergency supplies on islands and other areas susceptible to hurricanes and flooding. The Administrative Office will also identify and develop better backup communications systems and networks to reach critical personnel when routine telecommunications services are down or mainline power is lost.

The most important lesson learned is a gratifying one. Judges and court employees responded to daunting challenges with extraordinary neighborliness, generosity, and dedication. For example, when the chief probation officer for the District of Puerto Rico made it to work on the second business day following Hurricane Maria's destructive passage

through San Juan, he discovered 25 members of the District’s probation staff already at the office, raring to go. They assembled search parties to fan out across the city and nearby areas to find the 40 staff members unaccounted for at that time. Another example comes from the Virgin Islands. Court employees in St. Thomas, who endured catastrophic damage from Hurricane Irma, took up a collection to assist their counterparts in St. Croix when it was hit by Hurricane Maria two weeks later—even as they themselves coped with their own loss of homes, food, clothes, and personal effects. Court employees around the country not only assisted with the workloads of the affected courts, but also contributed funds and sent care packages to help their colleagues struggling with loss or damage to their homes. And many other court employees have made generous contributions to disaster relief charities, directly or through the Combined Federal Campaign.

The courts also received critical assistance from our colleagues in the Executive Branch. The judiciary owes special thanks to the United States Marshals Service and the General Services Administration (GSA). Among other duties, the Marshals Service provides security for judges and staff. Deputy marshals and court security officers around the country safeguard our facilities and our people. The GSA, which manages the hundreds of courthouses and other federal buildings, worked with local court employees

to confront flooding, mold, damage to power generators, and the inherent challenge of operating when public electric and water services are unavailable. All these public servants helped us restore operations as quickly as possible.

Congress has provided that, “All courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders.” 28 U.S.C. § 452. On fair weather days, it is easy to take that provision for granted. When disaster strikes, it can be honored only through the tireless efforts of judges, court employees, Administrative Office staff, and the many friends of the judiciary. I know full well that many members of the public, including members of our court family, continue to face hardship. We should continue to keep them in our thoughts and prayers.

Last year, in my annual report, I noted that federal trial judges must often work alone, without the benefit of collegial decision-making or the comfort of shared consensus. But this year, we have many rich examples of federal judges working together, with the support of court employees and Administrative Office staff, to keep courthouses open and operational. Those examples are a reminder that we have a national court system that can

work collectively to address challenges that would overwhelm individual courts.

* * *

We have a new challenge in the coming year. Events in recent months have illuminated the depth of the problem of sexual harassment in the workplace, and events in the past few weeks have made clear that the judicial branch is not immune. The judiciary will begin 2018 by undertaking a careful evaluation of whether its standards of conduct and its procedures for investigating and correcting inappropriate behavior are adequate to ensure an exemplary workplace for every judge and every court employee.

I have asked the Director of the Administrative Office to assemble a working group to examine our practices and address these issues. I expect the working group to consider whether changes are needed in our codes of conduct, our guidance to employees—including law clerks—on issues of confidentiality and reporting of instances of misconduct, our educational programs, and our rules for investigating and processing misconduct complaints. These concerns warrant serious attention from all quarters of the judicial branch. I have great confidence in the men and women who comprise our judiciary. I am sure that the overwhelming number have no

tolerance for harassment and share the view that victims must have clear and immediate recourse to effective remedies.

Once again, I am privileged and honored to be in a position to thank the judges, court staff, and judicial personnel throughout the Nation for their continued excellence and dedication. Let's not forget the victims of the disasters that occurred over the past year. I hope we can all find opportunities to assist our fellow citizens who remain in need.

Best wishes to all in the New Year.

Appendix

Workload of the Courts

In the 12-month period ending September 30, 2017, the number of cases filed in the Supreme Court decreased. The number of cases filed in the regional appellate courts, the district courts, and bankruptcy courts also decreased. Cases activated in the pretrial services system declined, as did the number of persons under post-conviction supervision.

The Supreme Court of the United States

The total number of cases filed in the Supreme Court decreased by 2.63 percent from 6,475 filings in the 2015 Term to 6,305 filings in the 2016 Term. The number of cases filed in the Court's *in forma pauperis* docket decreased by 3.47 percent from 4,926 filings in the 2015 Term to 4,755 filings in the 2016 Term. The number of cases filed in the Court's paid docket increased from 1,549 filings in the 2015 Term to 1,550 filings in the 2016 Term. During the 2016 Term, 71 cases were argued and 68 were disposed of in 61 signed opinions, compared to 82 cases argued and 70 disposed of in 62 signed opinions in the 2015 Term. The Court also issued one *per curiam* decision during the 2016 Term in a case that was not argued.

The Federal Courts of Appeals

In the regional courts of appeals, filings fell 16 percent to 50,506. Appeals involving pro se litigants, which amounted to 50 percent of filings, declined 20 percent. Total civil appeals increased one percent. Criminal appeals fell 14 percent, appeals of administrative agency decisions decreased five percent, and bankruptcy appeals declined four percent.

Original proceedings in the courts of appeals, which include prisoner requests to file successive habeas corpus proceedings in the district court, dropped 60 percent this year to 5,486, accounting for most of the overall caseload decline. These filings had spiked in 2016, after the Supreme Court's decision in *Welch v. United States*, No. 15-6418 (Apr. 16, 2016), which provided a new basis for certain prisoners convicted under the Armed Career Criminal Act to challenge their sentences.

The Federal District Courts

Civil case filings in the U.S. district courts fell eight percent to 267,769. Cases with the United States as defendant decreased 29 percent. That reduction returned filings to typical levels, following a spike in 2016 caused by post-*Welch* challenges to criminal sentences. Cases with the United States as plaintiff increased five percent because of actions related to foreclosures. Cases involving diversity of citizenship (i.e., disputes between

citizens of different states) fell seven percent as personal property damage cases dropped 40 percent.

Filings for criminal defendants (including those transferred from other districts) changed little, decreasing less than one percent to 77,018.

Defendants charged with property offenses fell six percent, mainly in response to a five percent drop in defendants charged with fraud.

Defendants accused of immigration violations declined two percent, with the southwestern border districts receiving 77 percent of national immigration defendant filings. Drug crime defendants, who accounted for 32 percent of total filings, fell one percent, although defendants accused of crimes associated with drugs other than marijuana rose four percent. Reductions also were reported for filings involving sex offenses, general offenses, and violent crimes. Filings for defendants prosecuted for firearms and explosives offenses rose 11 percent. Increases also occurred in filings related to traffic offenses, regulatory offenses, and justice system offenses.

The Bankruptcy Courts

Bankruptcy petition filings decreased two percent to 790,830. Fewer petitions were filed in 56 of the 90 bankruptcy courts. Consumer petitions dropped two percent, and business petitions fell six percent. Filings of petitions declined two percent under Chapter 7 and five percent under

Chapter 11. Filings under Chapter 13 remained relatively stable, decreasing one percent.

This year's total for bankruptcy petitions is the lowest since 2007, which was the first full year after the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 took effect. From 2007 to 2010, bankruptcy filings rose steadily, but they have fallen in each of the last seven years.

The Federal Probation and Pretrial Services System

A total of 134,731 persons were under post-conviction supervision on September 30, 2017, a reduction of two percent from one year earlier. Of that number, 116,708 persons were serving terms of supervised release after leaving correctional institutions, a one percent decrease from the prior year.

Cases activated in the pretrial services system, including pretrial diversion cases, declined three percent to 88,750.