

**NORTHERN DISTRICT OF CALIFORNIA**  
**LAWYER REPRESENTATIVE COMMITTEE REPORT**

**2016-2017**

Submitted by Erick Howard (Shartsis Friese LLP) and Ashok Ramani (Keker, Van Nest & Peters LLP), 2017-18 Committee Co-Chairs.

- I. Introduction: This report will cover judicial developments in the Northern District since August 2016, our District Conference, and other activities of the Lawyer Representative Committee during that time.
  
- II. Judicial Appointments and Retirements
  - A. The Northern District continues to enjoy its full complement of active district-court judges. Together with the continued strong contributions of our six senior-status judges and 12 full-time magistrate judges, the District is well prepared to serve the interest of justice in our federal system.
  
  - B. In November 2016, Judge Ronald Whyte retired from the bench after serving for twenty-four years as a district-court judge. Appointed in 1992, Judge Whyte quickly developed a national reputation as a leader in patent and technology litigation. The Northern District will greatly miss Judge Whyte and his countless contributions to the bench, the bar and the people of our district. The district honored him by naming the attorney lounge in the San Jose courthouse, where Judge Whyte served, after him.
  
  - C. In March 2017, the United States Senate, in a 98-0 vote, confirmed Judge Charles Breyer as a member of the Sentencing Commission. Judge Breyer's term will expire October 2021.
  
  - D. In June 2016, Magistrate Judge Paul Grewal resigned after having served for six years. In January 2017, the court appointed Susan van Keulen to that magistrate-judge position.
  
  - E. In January 2017, Judge William W. Schwarzer passed away at the age of 91. Judge Schwarzer served as a District Judge on the court for 33 years. He was a superb judge, held in the highest esteems by his colleagues on the bench and bar. The late Chief Justice William Rehnquist also recruited Judge Schwarzer to head the Federal Judicial Center in Washington, DC. We will miss Judge Schwarzer and are thankful for his distinguished service.

The Court recently announced that it has appointed a new Magistrate Judge in the Eureka Division. Robert Illman will take the set of Magistrate Judge Nandor Vadas when Magistrate Judge Vadas retires in November. Judge Vadas was appointed in 2004 and will be missed.

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### III. District Conference

- A. *The 2017 District Conference:* In the Spring of 2017, the Northern District Judicial Conference was, for the fifth consecutive year, held at the Silverado Resort in Napa. Approximately 250 judges, practitioners, and experts in the areas under discussion gathered at the Silverado Resort from April 28 to 30.
1. The Conference again marked the continuing efforts of the Court and the LRC to conduct outreach to diverse communities of lawyers and ensure that the full diversity of the District was reflected in Conference attendees. Conference events were designed to increase the ability of first-time and younger attendees to interact with the members of the Court at the Conference. The LRC also continued its “green effort” with registration and Conference materials presented entirely on the web.
  2. We also noted the importance of the Conference as being the inception point for several of the district’s programs and local rules. The court’s Ombudsman Program and Guidelines for Professional Conduct were born out programs, comments, and suggestions raised at the circuit and district conferences. As a result of a panel at last year’s Conference concerning litigation funding, the court amended its standing order governing the contents of joint case management statements to require disclosure of any interested person or entity that is funding the prosecution of any claim or counterclaim in a proposed class, collective or representative action.
  3. As is typical for our Conference, the Lawyer Representatives prepared an extremely full agenda beginning at 8:00 a.m. on Saturday morning, extending through the entire day, and resuming again on Sunday morning at 8:30 a.m. The conference was opened by Chief Judge Hamilton, who provided a recap of developments in the District.
  4. Following Chief Judge Hamilton’s kickoff, the Conference explored the following topics:
    - a. Race, Justice and the Federal Bail System: Judge Donna M. Ryu moderated a panel concerning the impact of race on federal bail decisions, and the consequences of the denial of bail, including in connection with conviction rates, sentence lengths, housing, employment opportunities and family relationships. The panelists represented all aspects of the bail process, from bench and pre-trial services to prosecution and defense, as well as an academic perspective. Panelists included Professor Shima Baughman from the University of Utah S.J. Quinney College of Law, Brian Lewis, former Assistant U.S. Attorney in the Northern District of California, Silvio Lugo, Deputy Chief Pretrial Services Officer and

Candis Mitchell and Assistant Federal Public Defender in the Northern District of California.

- b. Class Actions After *Spokeo v. Robins*: Judge Jacqueline Scott Corley led a discussion among Professor Brian Fitzpatrick from Vanderbilt Law School, Deepak Gupta of Gupta Wesslet PLLC and Quyen Ta of Kecker, Van Nest & Peters LLP in a lively discussion concerning the impact of the Supreme Court’s *Spokeo* decision on class action cases, particularly with respect to pleading and case management strategies for the Court, and the plaintiffs’ and defense bars.
- c. Conduct Unbecoming: Fighting Gender Bias Against Women Litigators: Judge Yvonne Gonzalez Rogers moderated an important panel discussion concerning the pervasive problem of gender bias which continues to affect women litigators both in the courtroom and out. The panel, comprising Elisabeth Cabraser of Lief Cabraser Heimann & Bernstein, Miriam Kim of Munger Tolles & Olsen, LLP, Bobbie Wilson of Perkins Coie LLP and former Magistrate Judge Paul Grewal from Facebook, Inc., addressed the topic and offered strategies for the bench and bar to combat gender discrimination.
- d. This year we moved our traditional closing conference panel, the “Supreme Court Review”, up a day, and slightly changed the format. Judge Jon Tigar moderated a timely and entertaining discussion with Professor Pamela Karlan of Stanford Law School and Dean Erwin Chemerinsky of UC Irvine concerning not only the significant cases of the previous term, but the future of the Court now that it has a full complement of justices with the appointment of Justice Neil Gorsuch.
- e. Our break-out sessions focused on the following topics:
  - (i) Criminal: “The Merits of Returning to a Mandatory Sentencing Guideline System.” Moderated by Judge Vincent Chhabria, federal criminal practitioners from the defense and prosecution bars engaged in Oxford style debates on the very timely topic of the pros and cons of mandatory minimum sentencing regimes.
  - (ii) Civil: “Adventures in Case Management: Discussion of Innovative Approaches to Managing Litigation.” Judge Haywood S. Gilliam, Jr. lead a discussion concerning the recent procedural innovations for dealing with case management, in particular the proportionality in discovery rules adopted in 2015, proposed alterations to class action

settlement rules and the Federal Judicial Center's pilot project on initial discovery protocols in employment cases.

- (iii) Bankruptcy: Bankruptcy Judge Hannah L. Blumenstiel presided over a roundtable discussion regarding changes to the Northern District bankruptcy docket, the disruption of long-standing big law firm bankruptcy groups, and the contraction of the number of bankruptcy judges, and how these shifts impact the larger bankruptcy system.
  - f. The Sunday schedule kicked off with a riveting discussion led by Judge Ed Chen regarding how the result of the 2016 election may affect the regulatory landscape. Judge Chen was joined by Jina Choi the Regional Office Director of the Securities and Exchange Commission, Ann O'Brien the Assistant Chief of the Antitrust Division of the Department of Justice, Sylvia Quast the Environmental Protection Agency's Regional Counsel for the Western Region, and Scott Nelson, a practitioner from Public Citizen Litigation Group to discuss how the policy shifts instituted by the Trump administration compare with previous changes of administration, and how these shifts may affect enforcement in the future.
  - g. Finally, we were honored to close the Conference with a fascinating and emotional presentation by G. Douglas Jones, former U.S. Attorney General for the Northern District of Alabama, and William Baxley, former Attorney General of Alabama who told the story of their 20 years+ prosecutions of the perpetrators of the 16th Street Baptist Church bombing in 1963 that killed four young girls, one of the deadliest crimes of the civil rights era.
5. The entertainment and casual interaction among bench and bar at the Conference also reflected a Northern District-centric approach. We celebrated Napa's rich wine history during our Saturday reception by recreating the 1976 "Judgment of Paris" competition between Napa Valley wines and French wines (dramatized in the film "Bottleshock"). But the highlight of the Conference's Saturday night was the triumphant return of the "Recusals" featuring an ensemble of no less than half a dozen of our own Northern District judges.

#### IV. Other Activities in 2016-17

- A. In keeping with the Northern District tradition of 18 lawyer representatives in three staggered classes, the Court added six new lawyer representatives in October 2016. The committee hosted a reception welcoming these new members in Fall 2016. We are proud that the committee has so well reflected all manner of

the diversity of our District, and we are grateful for the service of the six “graduating” lawyer representatives.

- B. Throughout 2016-17, the lawyer representatives worked with the court on a variety of initiatives of interest. These included local-rules projects in several substantive areas.
- C. The practitioners in our District continue to actively support and assist the Court in connection with a variety of projects, including:
  - 1. 31 practitioners who sit on one of our Local Rules Attorney Advisory Committees (Admiralty, Habeas Corpus, Civil, ADR and Patent)
  - 2. 85 practitioners who serve as Criminal Justice Act (CJA) members and provide excellent representation of indigent defendants charged with a crime.
  - 3. 385 practitioners who are on a list of attorneys who have volunteered to provide pro bono representation through our Federal Pro Bono Project.
  - 4. 350 practitioners who have undergone training and were available to serve as neutrals for our court’s ADR programs, with 216 assigned to actually serve.

The Lawyer Representatives for the Northern District of California look forward to next month’s Ninth Circuit Conference, and to working with the other Circuit representatives in attendance.

Erick Howard (EHoward@sflaw.com)

Ashok Ramani (aramani@keker.com)