

FOREWORD

Judge Leslie H. Southwick

The *Law Review* yet again has performed the important work of bringing together experts to survey a year's worth of Fifth Circuit Court of Appeals opinions. Each opinion represents the best efforts of a court panel, a fact that I hope gains the respect of those who study the opinions, even if there is disagreement with some of them. This annual Survey is useful to the bar and bench, the Fifth Circuit bench as much as any other. Thank you, *Texas Tech Law Review*, for your good work.

First, some details on the big picture. There were 7,636 appeals filed in the circuit in 2015, while 7,398 were resolved on the merits or otherwise. Because the median time between notice of appeal and the ruling by a three-judge panel is nine months, a majority of the cases resolved in any year are not the ones whose appeals were filed that year. On average, each active judge issued 233 opinions, which was second only to one other circuit. Thank goodness for law clerks, our Staff Attorneys Office, and others who so ably assist us. Just over half of our caseload consists of appeals by pro se litigants, mainly prisoners but also others.

The cases described in the annual Survey that follows are a small segment of the impersonal numbers. The vast majority of our thousands of decisions for the year, though, must be ignored altogether in this Survey. What we judges must keep at the forefront of our consideration of them all is that each case has vital importance to those involved in the litigation, from the simplest and most routine to those involving significant national policy. We strive to treat each as important.

Since October 1, 2012, our court has been led by Chief Judge Carl E. Stewart of Shreveport, Louisiana. Though our headquarters courthouse is in New Orleans, all but three of our active judges reside elsewhere. The court has seventeen judgeships, but since January 2014 there have been two vacancies. There are also six senior judges who perform extraordinarily valuable work. A senior judge has served for a sufficient length of time on the court to retire and assume a lighter caseload. A judge's taking senior status opens up the position for the appointment of someone else, thereby increasing the effective number of judges available to work on cases.

The most senior member of the court is Judge Thomas M. Reavley of Houston, who was appointed in 1979 and became a senior judge in 1990. He is 95 years old, as sharp mentally as any of his younger colleagues, far more gracious than the rest of us, but, he says, shorter than the 6 foot 4 he once was. He is known for his clearly expressed, extremely succinct opinions. His

wife since 2004, Fifth Circuit Judge Carolyn D. King of Houston, was appointed on the same 1979 day but is his junior in age by some considerable number of years.

There have been 84 Fifth Circuit judges. The first was later nominated and confirmed to the Supreme Court, but, oddly, none has been since. That first judge was William B. Woods, a Union Army general from Ohio who settled in Alabama after the Civil War. When Congress in 1869 finally authorized one circuit court judgeship for each circuit, President Ulysses Grant, also a Ohio native and of course a former Union general, selected Woods as a reliable presider over the circuit that contained six of the eleven states of the old Confederacy. In 1880, another former Union general, Ohioan, and President, Rutherford B. Hayes, promoted Woods to the Supreme Court.

It took almost ninety years for a second member of the Fifth Circuit to be nominated to the high court but less than one more year for a third. Nominated but not confirmed were Judges Homer Thornberry of Texas in June 1968 and G. Harrold Carswell of Florida in May 1969. Several current judges came extremely close to selection for the Supreme Court, but not quite close enough.

The Supreme Court is topical in this foreword because the Fifth Circuit lost its long-time circuit Justice, Antonin Scalia, who died February 13, 2016. Justice Scalia was an intellectual giant, whose insistence that the Supreme Court return to constitutional fundamentals affected the way in which his colleagues, not to mention advocates, had to analyze issues. His writing style could be erudite as well as colloquial all in the same paragraph, maximizing the pungency of his words. He was persuasive and always quotable. He also was a great friend to many judges in this circuit due in part to his attendance at our annual judicial conference. All federal judges in the circuit are invited to attend the conference, and most do. We each got at least a glimpse of what a warm-hearted, genuinely engaging individual "Nino" was. Some even went hunting regularly with him, which is what had brought him to the Fifth Circuit's western edge in far west Texas where he died.

Justice Scalia's priorities were his Roman Catholic faith, his family, and the Constitution. We are not likely to meet his mix of brilliance and personality again.

As Justice Scalia himself no doubt would insist, I close not with these sad observations but with a return to the deserved commendation of the *Law Review* for having brought all of these excellent writers together to survey the work of the Fifth Circuit. The judges of this court are grateful for the careful review of some of our more significant opinions.