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1995 Year End Report by Chief Justice William H. Rehnquist On the Federal Judiciary

Introduction

This year marks my tenth occasion as Chief Justice to issue an annual report on the federal judiciary. Since Chief Justice Warren Burger began the tradition, this year-end report has served as a valuable way to speak to Congress, the Executive branch, the Judiciary itself, and the public at large. Over the years I have noticed how some issues reappear while others mark a new direction or watershed. This year we have seen both the return of old issues and the emergence of new ones.

The Third Branch has long stood as a powerful example of the way in which a properly functioning legal institution in a democracy can work -- when there are three separate, independent, co-equal, interactive branches of government. It is a separateness that, as James Madison noted, is "essential to the preservation of liberty," and as Montesquieu stressed, is required, because "there is no liberty if the power of judging be not separated from the legislative and executive powers."

Last year I highlighted the relationship between the federal judiciary and Congress and this year I return to this theme. The past year's events make this an easy choice for a leitmotif again. Our nation's Founders ensured judicial independence through constitutional provisions that grant federal judges life tenure during good behavior and protect members of the federal judiciary from reductions in compensation. But the drafters of the Constitution also were careful to secure an equally important interdependence and interaction among the branches.

The Constitution places the independent judiciary it creates within a democratic government that is ultimately accountable to the people. One of the challenges of American government is to preserve the legitimate independence of the judicial function while recognizing the role Congress must play in determining how the judiciary functions. The Constitution gives Congress authority to determine the size, jurisdiction, and structure of the judicial branch, the level at which it will be funded, and, within limits, the basic procedural rules the courts apply. Congress, though, has historically recognized that close consultation with the judiciary is a vital ingredient to ensure appropriate exercise of these responsibilities. Naturally, Congress and the courts view these matters from different perspectives, but those differences, as often as not, result in a sort of Hegelian synthesis which is better than either perspective standing alone. Over the last twenty years, four statutes exemplify Congress' increasing interest in judicial administration: the Speedy Trial Act (1974); the Judicial Conduct and Disability Act (1980); the Sentencing Reform Act (1984); and the Civil Justice Reform Act (1990). Some have criticized Congress for becoming involved in these areas; others view the legislation as an appropriate exercise in oversight.

At present there are two issues of concern to the judiciary which illustrate this often creative tension between Congress and the courts. The first is the current governmental "shutdown" because of the inability of Congress and the President to agree on appropriation bills. It would be a mistake to regard this dispute as some sort of Washington-based turf battle. Important questions of policy are involved, and since Congress and the President are both part of the law-making process it is understandable why each maneuvers to have its own view prevail.

But the judiciary is not part of the law-making process, and nothing in the judiciary's budget involves any dispute of principle between Congress and the President. Because of this, I have requested both the House and the Senate to separate the judiciary's budget from the comprehensive appropriation for

Commerce, Justice, State, and the Judiciary, of which it is traditionally a part. There is simply no reason for depriving the public of any part of the function which the judicial branch performs because of disputes between the executive and legislative branches with respect to other agencies included in the larger appropriation bill.

The second issue arises because of the plan of Senator Charles Grassley, Chairman of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, to send questionnaires to all judges asking about the amount of time they devote to judicial and related tasks. There can be no doubt that answers to some form of such questions could aid Congress in making decisions about judicial salaries, permitted outside income from teaching, creating new judgeships, and filling existing vacancies. There can also be no doubt that the subject matter of the questions and the detail required for answering them could amount to an unwarranted and ill-considered effort to micro-manage the work of the federal judiciary. We must hope that the Committee's inquiries are designed to obtain information which is the legitimate prerogative of Congress without trenching on judicial independence.

During my ten-year tenure as Chief Justice, I have seen the continuing cultivation of a positive relationship. Congress has consistently balanced economic, practical, political, and constitutional considerations. Since its inception, Congress has cooperated with the Judicial Conference of the United States, the judiciary's policy-making body, and the Administrative Office of the United States Courts. Congress has also benefitted from the research of the Federal Judicial Center in a variety of policy areas. The forging of an effective working relationship with Congress has occurred when the federal bench simultaneously has maintained its independence and impartiality while participating in a suitable manner. As an example, from 1985 to 1995, the total judiciary budget has grown by 180 percent due to the support of Congress.

Examples of accountability include the recent General Accounting Office Report on the federal judiciary. The Report, among other things, reviews the relationship between the Administrative Office and the Federal Judicial Center. It reaches positive conclusions about the continued independence of the Administrative Office and the Federal Judicial Center, concluding that there is little or no duplication of work between the two agencies, and thus no cost savings to be had in merging them. This type of inquiry is entirely legitimate, appropriate, and I hope it will continue to be used in a responsible fashion. I am confident that such examination will not only reveal the value of the work of agencies such as the Federal Judicial Center and the Administrative Office, but will reinforce the continued need for independence and strong financial support from Congress.

Other old pressures have resurfaced. In one of Chief Justice Burger's last year-end reports he drew attention to the critical problem posed by inflation shrinking judges' compensation. Although a Quadrennial Commission on Executive, Legislative and Judicial Salaries had been established to address the problem of compensation, its recommendations have fallen victim to political pressures. The problem then, continues to be a problem now; unless a solution is found to deal adequately with the issue of judicial salary erosion, it will be difficult to attract outstanding lawyers to the bench and retain them.

To resolve this type of financial strain in the face of dwindling resources requires cooperation. Similarly, I think it is important that appropriate representatives of the Congress and the judiciary sit down together to discuss and evaluate other current challenges facing the legal system. Renewed cooperation such as the upcoming Three Branch Conference, where we can gather in small groups to focus on specific issues, is a welcome forum.

A recent example of how the process of cooperation should work involved the discussion of courthouse construction. Over the last few decades, the judiciary began to outgrow the courthouses built primarily

in the 1930's. This is a complicated process, involving the judiciary, which has a need for space, the General Services Administration, which has a large and complicated building program to manage, and Congress, whose members are interested in ensuring that the courts in their home states are properly served and that their constituents share in the economic benefits of construction. In response to criticisms, the judiciary prioritized its needs using objective criteria such as the amount previously expended, the need for courtrooms, security risks, leasing pressures and the number of years of occupancy strain.

Such examples of cooperative relations whereby the judiciary sets its own priorities in order to aid the Congress in dispensing scarce resources is why I have supported the process of long-range planning. I am hopeful that Congress will give serious study and consideration to the Long Range Plan for the Federal Courts, which the Judicial Conference is currently in the process of approving. This plan was developed to help guide future administrative action and policy development by the Conference and other judicial branch authorities. Among its commentary are a number of sections relating specifically to Congress' oversight role and the continuing interaction of, and communication among, the three branches. While I do not expect every part of this plan to become national policy, I believe it is a valuable document that offers a framework for the interests of the federal judiciary, and provides a road map for serious study from which the other branches could certainly benefit. As underscored by the plan, the courts, both federal and state, require adequate resources to accommodate the impact of new legislation.

A continuing emerging issue raised by the Long Range Plan is caseload growth. All judges, lawyers, and even many casual observers of the judicial system, are aware of the increase in filings in the various federal courts of appeals. There are several different ways to try to solve this problem. One is to expand the number of judges who hear appeals -- either by increasing the number of judges on each circuit, or creating some hybrid court between the present trial courts and courts of appeals. Another approach is to begin limiting the appeal as of right from the trial court to the court of appeals further than it is already limited. Others have advocated splitting circuits, or a unified court of appeals. As is to be expected, each solution has generated debate. The Judicial Conference is strongly opposed to unlimited expansion of the federal judiciary, because an appellate court that is too large often becomes unwieldy, and may have difficulty maintaining consistency of precedent. Carefully controlled growth is required in this area. Whether, or how, to attempt to circumscribe the appeal as of right is a matter for debate and one which I hope will be the source of study and robust discussion.

II. The Year in Review

A. The Federal Courts' Caseload

The most significant factor in the Federal Courts' caseload in 1995 is that filings increased in the 12 regional courts of appeals, the district courts, and the bankruptcy courts. Overall, district court filings climbed 4 percent as civil filings[1] increased 5 percent and criminal filings[2] remained stable. United States bankruptcy court filings[3] increased 6 percent, reversing two years of decreasing filings that, in turn, had followed eight years of sustained growth. After declining 4 percent in 1994, appeals filings[4] rose 4 percent in 1995, reaching 1993's all-time high of 50,000 cases. Prior to last year's decline, appeals filings had increased every year since 1978.

External forces, such as legislation and changes in the economy, have the potential to exert a substantial influence on the judiciary's caseload. The 104th Congress has been extremely active on many issues of critical importance to the judiciary. Passing legislation in any of these areas has the potential to affect the caseload of the federal courts in ways that may be significant, but are currently hard to gauge.

Developments in the economy, such as the current increase in private debt, will likely have an impact on future trends in bankruptcy filings.

The number of judicial vacancies is another factor which has and will greatly affect the workload of the courts. As was the case last year, the pace of nominations and confirmations in 1995 has been high and represents a significant achievement in keeping the number of judicial vacancies low, although the Senate process slowed in late October. During the First Session of the 104th Congress, President Clinton nominated 86 persons for Article III judgeships. At this time fifty-four of these nominees have been confirmed by the Senate. Thirty nominations are either pending before the Senate Judiciary Committee or awaiting floor action.

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[1] Civil case filings in the U.S. district courts increased from 236,400 to 248,300, a 5 percent increase. This rise resulted mostly from increases in private cases involving federal question litigation. Federal question litigation rose 13 percent, primarily due to personal injury product liability cases which nearly doubled. This sizeable increase was due to breast implant cases which were removed from state to federal courts following the bankruptcy of Dow Corning. Other areas of federal question litigation that increased were civil rights filings which rose 13 percent and prisoner petitions which rose 9 percent. In contrast, diversity of citizenship cases declined 6 percent, mostly as a result of a 30 percent drop in personal injury/product liability cases. Cases involving the U.S. government as plaintiff or defendant dropped 5 percent, primarily as a result of decreases in cases brought by the U.S. government to recover on defaulted student loans (down 13 percent) and overpayment of veterans' benefits (down 62 percent).

[2] Criminal cases in the U.S. district courts remained stable in 1995, rising from 45,500 to 45,800, an increase of approximately 1 percent. The overall increase in criminal filings would have been greater but drunk driving and traffic violations, usually misdemeanors, fell 26 percent. Drug filings were stable, rising only 1 percent and remained at 25 percent of all criminal case filings. Immigration offenses were 53 percent higher in 1995, and weapons and firearms filings rose 16 percent.

[3] For the first time in 2 years, filings increased almost 6 percent in the U.S. bankruptcy courts, rising from 838,000 to 883,000. This was primarily due to increases in Chapter 7 and 13 cases. Chapter 7 filings, which account for over 68 percent of all bankruptcy filings, rose 5 percent and Chapter 13 filings, which account for 31 percent of all bankruptcy filings, rose 9 percent. Filings of Chapters 11 and 12 continued to drop at 21 and 5 percent, respectively.

[4] Returning to the historical trend, the number of appeals filed in the 12 regional courts of appeals rose in 1995 by almost 4 percent from 48,000 to 50,000. Original proceedings, bankruptcy and civil appeals all experienced increases in filings, up 27, 21 and 6 percent, respectively. Criminal appeals declined 5 percent, with drug-related appeals experiencing the most notable drop.

B. The Supreme Court of the United States

IN MEMORIAM

On June 25, 1995, the death of Chief Justice Warren Burger brought to an end a memorable judicial career. Chief Justice Burger presided over the Supreme Court for seventeen years, authoring important opinions, lending his leadership to questions of law and judicial policy, and playing an important part in the creation of various institutions such as the National Center for State Courts, the Institute for Court Management, and the state-federal judicial councils. He worked tirelessly to improve the agencies of judicial administration, broaden their programs, and implement policies such as the drafting of the standards of criminal justice for the American Bar Association. All these efforts contributed mightily to the improved functioning of the judiciary.

C. Caseload Statistics

The total number of case filings in the Supreme Court again increased, although less dramatically than in the previous Term, and the number of cases heard and decided on the merits declined. During the 1994 Term, case filings totalled 6,996, up from 6,897 the previous Term, a 1.4 percent increase. Filings in the Court's in forma pauperis docket also increased slightly -- up 1.3 percent, from 4,796 to 4,858. The Court's paid docket experienced a jump of 38 cases from the previous Term, reaching 2,138. It was an increase identical to that from the 1993 Term. The Court decided 94 cases in the 1994 Term, compared to 99 the previous Term. Signed opinions accompanied 82 of the decisions, a drop of two from the 1993 Term. Again last Term, there were no cases set for reargument.

III. The Administrative Office of the United States Courts

The Administrative Office, established in 1939, enables the judiciary to conduct its own affairs and carry out its responsibilities for the proper administration of justice. Among its responsibilities, the Judicial Conference of the United States is charged with surveying the condition of business in the courts and making recommendations to promote uniformity of management procedures and expeditious conduct of court business. With assistance from its standing committees, the Judicial Conference oversees the programs and operations of the judiciary.

The Director of the Administrative Office is supervised by the Judicial Conference of the United States, and the Administrative Office provides the principal staff work that enables the Conference to carry out its policymaking and oversight functions. The Administrative Office plays a pivotal role in federal court administration, and the breadth of the agency's functions is evidenced by a solid record of accomplishments, e.g. monitoring judiciary operations and programs, collecting and analyzing data, allocating resources, conducting studies and evaluations, identifying opportunities for cost reductions and efficiencies, designing new systems, providing technical assistance and advice to the courts, monitoring legislative proposals that would affect the judiciary, and fostering communications with the other branches of government and the public.

The judicial councils of the circuits, also created in 1939, are granted authority to make all necessary and appropriate orders for the effective and expeditious administration of justice within their circuits, and the judicial councils, among other things, consider allegations of judicial misconduct or disability under 28 U.S.C. § 372(c). The courts themselves have substantial responsibility for their own administration, and each individual judge is responsible for the management of his or her cases. These complementary elements of the judiciary's uniquely effective governance structure support the fundamental principle of judicial independence.

The Administrative Office continues to do an admirable job of providing leadership and support to the federal courts despite severe budget constraints. While the courts' workload and staff have expanded, so has the demand for services from the Administrative Office. The budget increases for the Administrative Office have not kept pace with the greater expansion of the judiciary; this imbalance has intensified in recent years. The agency's appropriation has grown only 6 percent since 1992 -- not nearly enough even to cover inflation -- while the courts' budget increased 22 percent. The outlook for 1996 and beyond does not promise financial relief.

Of particular note among the many achievements this year, the Administrative Office: conducted Economy Subcommittee-sponsored studies to control costs; assisted in the completion of the Long Range Plan for the Federal Courts; coordinated the judiciary's communications with the 104th Congress on legislation and appropriation matters affecting the federal courts; expanded the new Court Personnel System and the Cost Control Monitoring System; began conducting program administration reviews of federal defender organizations; installed the Data Communications Network at 83 court sites; assumed direct responsibility for the automation training and support centers in Arizona and Texas and for the

Central Violations Bureau; sponsored a Summit on Supervision of Offenders; promulgated new quality standards for pretrial services, petty offense presentence investigation, and post-sentence investigation reports; developed information for the judicial councils of the circuits on bankruptcy appellate panels; issued standards for the conduct of court reviews; improved automated statistical reporting; and took numerous steps to reduce the judiciary's space costs.

1995 marked the tenth anniversary of L. Ralph Mecham's tenure as Director of the Administrative Office, and I join many others throughout the judicial branch in recognizing this milestone of service and leadership.

IV. The Federal Judicial Center

In March, Judge William Schwarzer concluded five years of leadership of the Center when he reached the mandatory retirement age for the Center's Director. During his stewardship the Center added to its reputation as a nationally recognized research institution whose studies were marked by excellence. I have every expectation that Judge Rya Zobel, of the United States District Court for the District of Massachusetts, as the Center's seventh director, will not only continue this tradition, but enhance it.

In an ever more challenging environment, the Federal Judicial Center continues to carry out its statutory mandate -- to educate and train judges and court staff, conduct research concerning the operation of the courts and assist the Judicial Conference and its committees with analysis and evaluation of court procedures.

In 1995, the Center provided orientation seminars for almost 200 federal judges and continuing judicial education programs to about 2,500 judges. The topics ranged in variety from the intricacies of DNA, to the changing law of sentencing, to the use of alternative procedures for resolving litigation. The Center responded to an imminent increase in the number of trials under federal death penalty legislation by offering trial judges advice and assistance, began a project to help federal courts manage the growing number of cases filed by prisoners and others without lawyers, and published manuals to help judges try complex cases, often with scientific evidence.

Center educational programs reached nearly 20,000 supporting staff of the federal courts system including probation and pretrial services officers, employees of the clerks' offices, and others. These programs reveal the mix of administrative and management issues facing the federal judicial system, such as instructing probation officers on the supervision of mentally ill or addicted offenders, stressing the importance of customer service in dealing with litigants, lawyers, and the public, and teaching the importance of security and safety.

Because of the Center's growing reliance on alternative educational methods, four out of every five court support staff who participate in Center education do so in programs held at the work site, saving travel dollars. Center video programs are major instruments for orientation of new judges and court personnel. Interactive instructional programs let deputy clerks learn about federal procedural rules on their desk top computers. On-line computer conferences instruct judges and staff on how to be better managers, and let them exchange experiences with colleagues across the country without leaving their offices.

The judiciary, the bar, and the Congress are reassessing many of the procedural rules that determine how federal courts operate. In 1995, Center analyses informed the committees of the Judicial Conference and relevant congressional committees of the actual operations of rules governing imposition of attorney sanctions, class actions, pretrial discovery, jury selection, and fee shifting.

The Center will be an important contributor in helping the judiciary learn to do more with less, without sacrificing quality. Independent studies will be required to evaluate the effects of new projects, demands for continuing educational programs in complex areas of the law, and Center's support for Judicial Conference Committees will increase as more becomes expected from the judiciary. I am confident that the Center, under Judge Zobel, will be able to meet these challenges and hope that Congress will continue to support the Center with all the resources it needs.

V. United States Sentencing Commission

After an extended tour of eight years as chairman of the United States Sentencing Commission, Judge William W. Wilkins, Jr., from the United States Court of Appeals for the Fourth Circuit, was replaced by Richard P. Conaboy, a district court judge from the Middle District of Pennsylvania. Judge Wilkins should be commended for his skillful guidance of the Commission on the challenging questions and issues raised in the sentencing arena.

Day-to-day the Commission is focused on amending guidelines; writing statutorily required reports; and facilitating a working relationship with the executive, legislative and judicial branches. The guidelines have been under constant review since their enactment and last year 25 of 27 amendments submitted to Congress became effective on November 1. Judge Conaboy has promised a plan of continuity, assessment, simplification, and management review during his tenure.

Conclusion

Justice Oliver Wendell Holmes observed, albeit in dissent, that "[t]he great ordinances of the Constitution do not establish and divide fields of black and white." The subjects of current interest in which both Congress and the judiciary have a role to play illustrate the truth of his comment. No one doubts that it is Congress, and not the judiciary, which makes laws. No one doubts that it is the judiciary, and not Congress, which decides cases. But in the great gray area between these core functions, there must be give and take in order to work out common sense solutions to recognized problems.

1996 YEAR-END REPORT ON THE FEDERAL JUDICIARY

CHIEF JUSTICE WILLIAM H. REHNQUIST

I. Overview

Once again this year -- in my eleventh annual report on the state of the judiciary -- I am struck by the paradox of judicial independence in the United States: we have as independent a judiciary as I know of in any democracy, and yet the judges are very much dependent on the Legislative and Executive branches for the enactment of laws to enable the judges to do a better job of administering justice.

Federal judges have tenure during good behavior, and their compensation may not be diminished. And, since the time of Chief Justice John Marshall, these independent judges have exercised the authority to have the final say as to the meaning of the United States Constitution and the laws enacted by Congress. But it is Congress which decides how many federal judgeships there should be, and of what type they should be; Congress decides what kind of cases federal courts should hear, as well as, within limits, what procedures they should follow. Congress must appropriate money for the judiciary's budget and determine the salaries of all federal judicial officers.

The 104th Congress enacted two bills of great importance to the judiciary, both of which contained major parts of recommendations by the Judicial Conference: the Antiterrorism and Effective Death Penalty Act, and the Federal Courts Improvement Act. Unfortunately, judges can only regret that Congress failed to repeal Section 140 of the Continuing Resolution Act of December 15, 1981, Public Law 97-92 ("Section 140"), which provides that no cost-of-living salary increases shall be granted to federal judges without express legislative approval. The Senate version of this year's Federal Courts Improvement Act included a provision repealing Section 140, but that provision did not make it through the legislative process.

Congress compounded the negative impact of failing to repeal Section 140 when it declined in October to approve the 2.3 percent Employment Cost Index ("ECI") adjustment in salary for federal judges in January of 1997. This marks the fourth year in a row that federal judges have not received an ECI adjustment. The result is that federal judges today are paid no more than they were paid in 1993 -- which means that at this writing, inflation has reduced their salaries by 8.6 percent. In terms of dollars, federal judges are paid between $12,865 and $13,645 less than what they would have been paid if Congress had approved the ECI adjustments in the past four years.

The significance of Congress' failing both to repeal Section 140 and to grant an ECI adjustment to judges' salaries cannot be overstated in terms of its effects on the morale and quality of the federal judiciary. Section 140 jeopardizes the ability to retain and recruit to the judiciary the most capable lawyers from all socio-economic classes and geographical areas, including high-cost-of-living urban areas. We must ensure that judges, who make a lifetime commitment to public service, are able to plan their financial futures based on reasonable expectations.

While federal judicial salaries lag behind inflation, the salaries of the profession from which federal judges are recruited have fared differently. Today, the average salaries of partners in the nation's largest law firms are nearly two and one half times the salaries of federal judges. *The National Law Journal* reports that the average salary per partner in the nation's largest law firms in 1993 was $310,644 and the average salary of top corporate general counsel was $662,707. In contrast, in 1997 district and circuit court judges will be paid $133,600 and $141,700, respectively. Clearly, this disparity between the salaries of the judicial and legal professions cannot continue indefinitely without compromising the

morale of the federal judiciary and eventually its quality.

Judges realize that in smaller cities across our country these salaries will buy more than they do in metropolitan areas, and that lawyers' earnings vary considerably from place to place. But the judges are not expecting or requesting any major adjustment in their pay. They are only asking that the pay that was set some years ago be adjusted for increases in the cost-of-living since that time -- a benefit that many working people in the private sector, and almost all employees of the federal government, regularly expect and receive.

I recognize that some members of Congress have said that they should not receive any cost-of-living adjustments until the federal budget is balanced. This kind of decision is obviously up to Congress, which has the primary responsibility for coming up with a balanced budget. But the judiciary can play only a small part in the effort to balance the national budget. Congress, therefore, should not subject the judiciary to the same sort of incentives that Congress might impose on itself.

The federal judiciary is certainly mindful of the nation's effort to balance its budget. Indeed, the federal judiciary has made significant contributions within its own budget. Federal judges, who serve without compensation on committees of the Judicial Conference, such as the Budget Committee, have implemented management policies in the federal judiciary that, according to the Administrative Office of the U.S. Courts, saved the American taxpayers millions of dollars last year alone. By comparison, the amount of money involved in ECI salary adjustments for the federal judiciary is insignificant. The Office of Management and Budget projects that an ECI adjustment of 3.1 percent will be due to judges in January 1998. If approved by Congress, that adjustment would cost approximately six million dollars, which is equal to only about one-quarter of one percent of the estimated total judiciary budget for fiscal year 1998. And this percentage is from a judiciary budget that in turn is only two-tenths of 1 percent of the entire federal budget. In short, federal judges in this country need and have earned pay adjustments, and we therefore must renew our efforts to persuade Congress to repeal Section 140.

Another shortcoming in Congress' 1996 record on legislative matters concerning the federal judiciary that will confront us again in 1997 is its decision not to create additional federal judgeships. Despite an increasing caseload and the fact that no new Article III judgeships have been created since 1990, Congress declined the Judicial Conference's request to create such positions. A similar request for new bankruptcy judgeships also was not acted upon by Congress. Circuit court judges continue to be especially squeezed between time constraints and heavy dockets. Eventually, Congress will have to reconcile this mismatch between federal caseload and judicial personnel. Either the former must be reduced or the latter increased if the quality of justice administered by the federal judiciary is to be maintained.

Notwithstanding the problems of judicial administration that Congress and the federal judiciary did not resolve in 1996, there were significant achievements this past year. Two pieces of legislation bearing on matters of judicial administration deserve specific recognition: the Antiterrorism and Effective Death Penalty Act was signed into law on April 24th; and the Federal Courts Improvement Act was signed on October 19th. Both of these laws contain valuable reforms that will improve the administration of justice. They are also commendable examples of the results that can be achieved when Congress consults with members of the federal judiciary as it considers laws bearing on judicial administration.

The habeas corpus provisions of the Antiterrorism and Effective Death Penalty Act ("Antiterrorism Act") are especially important. For many years the federal judiciary has been flooded by successive and repetitious habeas corpus petitions from state prisoners, especially in death penalty cases. State and federal courts have often duplicated each other's efforts or, even worse, worked at cross-purposes. Eight years ago, retired Justice Lewis F. Powell chaired a committee to investigate the problems in this area

and make appropriate recommendations. That committee -- the Ad Hoc Committee on Federal Habeas Corpus Review of Capital Sentences -- began a process of legislative-judicial consultation, primarily through the Judicial Conference, that came to fruition in the habeas corpus provisions of the Antiterrorism Act.

Relevant provisions of the Antiterrorism Act establish one-year deadlines for filing petitions; require certificates of appealability; limit successive petitions; and restrict access to the federal judiciary if a claim was adjudicated at the state level. In capital cases, the law has narrowed federal habeas corpus jurisdiction. If a state provides a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in state post-conviction proceedings brought by indigent prisoners whose convictions have become final for state law purposes, those prisoners' access to federal habeas corpus review is limited. These reforms of habeas corpus review reflect the wisdom of Alexander Hamilton's observation that "the national and state systems are to be regarded as one whole" and they will improve the quality of justice by coordinating and unifying the work of state and federal courts.

The Federal Courts Improvement Act contains thirty-one provisions endorsed by the Judicial Conference. Some of these provisions are identical to those recommended in The Long Range Plan for the Federal Courts adopted by the Conference in 1995: Section 201 expands the authority of magistrate judges; Section 205 raises the amount-in-controversy requirement in diversity jurisdiction cases; Section 401 increases filing fees in civil cases; and Section 605 abolishes the Special Railroad Court. Derived from a long range integrated plan composed by experienced federal judges, these reforms are especially valuable.

To encourage such deliberate and thoughtful reforms in the future, I have in the past year established a new mechanism that will institutionalize long range planning in certain Judicial Conference committees. In this era of expanding federal litigation but shrinking resources, long range planning for the federal judiciary is as essential as legislative-judicial consultation on proposals concerning judicial administration before Congress.

The Year in Review

The Federal Courts' Caseload

As in 1995, the most significant highlight in the caseload of the Federal Courts in 1996 is that filings rose in the 12 regional courts of appeals, the U.S. district courts, and the U.S. bankruptcy courts. U.S. bankruptcy court filings soared 26 percent, from approximately 883,500 petitions to over 1,111,000, exceeding the one million mark for the first time in the history of the United States courts. Filings under chapters 7, 12, and 13 all increased. Chapter 7 filings, which accounted for over 68 percent of all bankruptcy filings, rose 27 percent. Chapter 13 filings, which accounted for 30 percent of all bankruptcy filings, rose 24 percent. Chapter 12 filings also increased 24 percent, but accounted for less than 1 percent of all bankruptcy filings. Filings under chapter 11, which accounted for 1 percent of all bankruptcy filings, remained essentially stable in 1996, dropping less than 1 percent.

Overall, district court filings climbed nearly 8 percent as civil case filings increased 8 percent, from approximately 248,300 to 269,100. A key reason for this growth was a rise in total private cases (up nearly 15,000 cases). This rise primarily resulted from an 18 percent jump in diversity of citizenship cases, mainly in personal injury/product liability filings (mostly related to the breast implant cases filed in the Northern District of Alabama), which jumped 56 percent. However, many of these cases were filed twice (i.e., once when they were transferred from state courts to federal courts, and again when

they were subsequently transferred from the district courts where they were originally filed to the Northern District of Alabama as part of Multidistrict Litigation Docket Number 926). The second major area of increase in private cases was federal question litigation, which grew 4 percent. This rise resulted chiefly from personal injury cases (up 82 percent) and civil rights employment cases (up 25 percent). The surge in private personal injury cases was directly related to an influx of oil explosion cases in the Middle District of Louisiana, where total civil filings more than doubled. Cases involving the U.S. government as plaintiff or defendant jumped 13 percent, primarily due to marked increases in U.S. plaintiff recoveries of defaulted student loans (which nearly quadrupled) and federal prisoner petitions related to motions to vacate sentence (up 62 percent).

Criminal cases in the U.S. district courts rose 5 percent, from nearly 45,800 to 47,900. While the 5 percent increase in drug filings contributed to this growth, the most significant factor was immigration cases, which went up 40 percent to approximately 5,500. Virtually all of the increase in immigration filings was concentrated in districts along the border with Mexico. Weapons and firearms filings declined 13 percent, and drunk driving and traffic cases decreased 3 percent.

The number of appeals filed in the 12 regional courts of appeals rose 4 percent in 1996 to attain an all-time high of almost 52,000 in 1996. Both criminal and civil appeals increased, rising 7 and 6 percent, respectively. Administrative agency appeals, bankruptcy appeals, and original proceedings decreased, dropping 14 percent, 14 percent, and 6 percent, respectively.

The number of judicial vacancies can have a profound impact on a court's ability to manage its caseload effectively. Because the number of judges confirmed in 1996 was low in comparison to the number confirmed in preceding years, the vacancy rate is beginning to climb. When the 104th Congress adjourned in 1996, 17 new judges had been appointed and 28 nominations had not been acted upon. Fortunately, a dependable corps of senior judges contributes significantly to easing the impact of unfilled judgeships. It is hoped that the Administration and Congress will continue to recognize that filling judicial vacancies is crucial to the fair and effective administration of justice.

The Supreme Court of the United States -- Caseload Statistics

The total number of case filings in the Supreme Court declined from 6,996 in the previous Term to 6,595 in the 1995 Term-a decrease of 5.7 percent. Filings in the Court's in forma pauperis docket declined from 4,858 to 4,500-a 7.4 percent drop. The decline in the Court's paid docket was only 43 cases, from 2,138 to 2095 -- a 2 percent decrease. During the 1995 Term, 90 cases were argued and 75 signed opinions were issued, compared to 94 cases argued and 82 opinions issued in the 1994 Term. No cases from the 1995 Term were scheduled for reargument in the 1996 Term.

The Administrative Office of the United States Courts

In the face of continuing fiscal austerity, the Administrative Office of the United States Courts continues to strengthen federal courts' capabilities to administer justice effectively. A decade ago, Administrative Office Director Leonidas Ralph Mecham launched an effort to delegate to the courts many of the administrative authorities Congress earlier had granted to the Administrative Office Director. As a result, the federal courts today are better able to manage their resources effectively and cope with resource shortages. Decentralized budget, procurement, and other management authorities have enabled each court to make decisions locally about how to achieve economies and where to devote its limited resources most productively. Combining flexibility and local accountability, decentralized judicial administration has been key to the success of the federal judiciary's ability to bring innovation and economy to the courts' operations while preserving high standards for the delivery of justice.

An important achievement in decentralization occurred this year with the full implementation of the Court Personnel System. The new system provides the federal courts with a modern human resource management program that gives each court the authority to determine the appropriate number and types of staff positions within overall budget limits. Within funding controls, jobs will be designed and compensation levels set based on each court's needs compared with standard benchmarks. In concert with the existing decentralized budget and procurement authorities, the decentralization of personnel management authority augments the capability of court managers to determine how to use budgeted funds most effectively -- enabling consideration, for example, of whether it would be most advantageous to spend limited additional funds on two entry-level positions, one senior position, contract services, computers, or other matters.

Throughout this year, the Administrative Office continued to play a central role in the judiciary's efforts to economize. The agency analyzed program and operating costs, conducted studies and evaluations, and identified opportunities for improvement or savings. The Administrative Office made recommendations to Judicial Conference committees and implemented Judicial Conference economy measures, assisted the courts in making changes, and communicated with Congress and others regarding the judiciary's needs and accomplishments. Many new approaches for improving program performance and reducing costs have been successful, and others hold promise for the future. Early this year, the Administrative Office published a report detailing the judiciary's numerous economy achievements, which amounted to more than $250 million annually in both savings and cost avoidances.

One of the more promising means of increasing the efficiency of judicial administration and the business processes in the courts is the use of technology. The Administrative Office is working with Judicial Conference committees, judges, and court personnel to increase the use of automation in the courts. Dozens of automation projects are under way, including new systems for financial accounting, jury administration, and library administration. Imaging, internet and web technologies, satellite video-conferencing, and other cutting-edge technologies may substantially improve routine court operations and reduce the volumes of paper handled. Electronic alternatives offer promise for streamlining court administrative operations, simplifying filing processes for litigants, saving time and money, and improving accessibility, accuracy, and usefulness of information.

In 1996, the Administrative Office registered many accomplishments that should help the courts operate more effectively. They include development of architecture standards for information systems in the judiciary; continued installation of the judiciary's data communications network; identification of efficient court administration practices through the Methods Analysis Program; completion of a study by the National Academy of Public Administration on alternative court administrative structures; continued development of a national automated bankruptcy noticing system; issuance of a contract to a service center to build jury wheels for district courts; coordination of a comprehensive space inventory; agreement with the Department of Justice on implementing a pretrial drug testing pilot program; and completion of more than 100 financial audits.

The Administrative Office continues to make the best of its own budget, which has been growing at a much slower rate than the judiciary's as a whole. In the face of an escalating workload, the judiciary's budget has risen 60 percent since 1991. The Administrative Office's funding grew only 23 percent in the same period. The agency has had a hiring freeze in place for several years, and its staff size is smaller today than it was two years ago. From a long-term perspective, the Administrative Office's portion of the total judiciary budget has substantially declined. Twenty years ago, the Administrative Office accounted for 3.6 percent of the judiciary's funding. Ten years ago, its portion was 3.1 percent; five years ago, it was 2.5 percent; and now it is 1.5 percent.

Since its establishment in 1939, the Administrative Office has provided a wide range of support and

services in administrative, financial, statistical, legislative liaison, technical, legal, communications, and program management areas for the federal judiciary, as well as staff support to the Judicial Conference of the United States and its committees. The agency has been shifting its emphasis away from the direct provision of administrative services better handled by the courts themselves to focus on program development, management, communications, analysis, and review functions critical to the operations of the Judicial branch. While the nature of its work has been changing, the demands on the Administrative Office to provide support to the judiciary nonetheless continue to grow.

The Federal Judicial Center

The Federal Judicial Center is the federal courts' agency for continuing education and research. Much of the Center's work in 1996 helped implement legislative actions. The Center inaugurated a newsletter to alert federal courts to decisions interpreting last April's Prisoner Litigation Reform Act, which governs inmate lawsuits over the conditions of their confinement, as well as to decisions regarding the habeas corpus provisions of the Antiterrorism Act which govern how federal courts handle prisoners' habeas corpus petitions.

Last September, from its studio here in Washington, the Center broadcast a videoseminar on "New Developments in the Federal Law of Habeas Corpus," which analyzed the new habeas corpus provisions for the benefit nationwide of approximately 1,700 federal judges, judicial staff, and others. The broadcast was part of the Center's efforts to help federal judges with death penalty litigation, and it also marked a new era in the Center's education and training programs. Developments in satellite technology now justify placing "downlinks" in federal courthouses to enable judges and court staff to receive educational broadcasts. Next year, the Center, the Administrative Office, the United States Sentencing Commission, and, of signal importance, federal courts across the country will establish a broadcast network in the federal courts. This effort is an excellent example of cooperation among the agencies. The Center's expertise in videoproduction and curriculum design will enable the entire third branch to make good use of this form of communication and education. I am grateful to the Congress, especially to Chairman Harold Rogers of the House Appropriations Subcommittee, for pressing the Center and the courts to explore use of this new technology.

Such broadcasts cannot replace education that allows judges and staff from different regions the opportunity for sustained sharing of techniques, but they add another dimension to Judicial branch education while responding to legislative demands to reduce travel costs. The Center's satellite broadcasts continue its efforts to provide training through videocassettes and other in-court methods. Eighty percent of federal court support staff who receive training from the Center received it at their work site.

As to prisoners' condition-of-confinement cases, the Center's new *Resource Guide for Managing Prisoner Civil Rights Litigation* provides practical advice on effective management of cases under the Prisoner Litigation Reform Act. *The Resource Guide* is part of a broader Center program to help federal courts with pro se litigation -- cases filed without lawyers. Such cases impose special burdens on courts to ensure that they are handled fairly and efficiently.

The first interactive electronic federal court "kiosk" began operations this November. It was a joint project of the United States District Court for the District of Columbia and the Center and was instituted in part to help with non-prisoner pro se litigation. Several state courts, such as Arizona's, have kiosks to let citizens file cases and get information about schedules, jury duty, and employment opportunities, thus enhancing services while saving staff time for other work.

The Center's education programs in 1996 reached over 30,000 judges and Judicial branch staff. These programs addressed case law and legislative developments, giving special attention to such areas as the use of bankruptcy appellate panels, science and health care issues in litigation, jury selection and operations, supervision and investigation of defendants and offenders, and effective court management.

The Center's research -- primarily in response to Judicial Conference committee needs -- included a major survey of judges and chief probation officers on sentencing statutes and guidelines and analysis of the operation of Federal Rules of Procedure governing class action litigation.

Lastly, at the suggestion of Judge Rya Zobel, the Center's Director, the Center's Board began a year-long analysis of the priorities the Center should assign to its many missions. I am confident that the results of this planning process will help maintain the Center as a vital element in improving federal judicial administration.

United States Sentencing Commission

Review of the sentencing guidelines was a top priority of the U.S. Sentencing Commission in 1996. The review's objective was to reduce the complexity of guideline application and to assess how well the guidelines are meeting the congressional objectives outlined in the Sentencing Reform Act of 1984. To this end, the Commission declared a moratorium on guideline amendments in 1996 (except for those necessary to implement congressional directives). The action was well received throughout the judiciary.

The amendment hiatus allowed commissioners to gather insights from judges, attorneys, probation officers, and academics on recommended changes, and to begin narrowing the options for possible guideline amendments. In addition, the Commission expended considerable resources reviewing and responding to sentencing-related legislation enacted by Congress involving mandatory restitution, terrorism, international counterfeiting, drug trafficking, and immigration. By year's end, the Commission plans to publish a series of amendment options for comment.

The Commission appointed Dr. John H. Kramer as its Staff Director in July 1996. Dr. Kramer is Executive Director of the Pennsylvania Commission on Sentencing and a Professor of Sociology and Criminal Justice at The Pennsylvania State University. Finally, the Commission plans to distribute its first televised Public Service Announcements in 1997. The ads target "at-risk" youth with an educational message about the significant punishments that result upon conviction for federal crimes.

Conclusion

The federal judiciary's achievements and disappointments of the past year illuminate both the basic principle of separation of powers and the interdependent relationship that exists between Congress and the judiciary. In the words of Justice Robert Jackson, "While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity." To preserve liberty, the Judicial branch of the federal government is separate, equal, and independent from the Legislative branch. Yet both must work together if feasible solutions are to be found to the practical problems that confront today's federal judiciary.

Over the years, Congress has properly recognized the need for close consultation with the judiciary, thereby contributing to a proper reconciliation of judicial independence with the basic principle of democratic accountability. The Antiterrorism Act and the Federal Courts Improvement Act are two examples of what can be accomplished when the branches of government work together. We look

forward to working with Congress in the coming year to resolve the ongoing problems faced by the judiciary.

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THE 1997 YEAR-END REPORT ON THE FEDERAL JUDICIARY

WILLIAM H. REHNQUIST

Chief Justice of the United States

I. OVERVIEW

As I review the state of the Judiciary this year and compare it with the 11 previous years I have served as Chief Justice, I am impressed by the degree to which our relations with Congress have dominated 1997. Congressional responses and initiatives on judicial issues ranging from funding to salaries, and from federal jurisdiction to judicial vacancies, all have had a significant influence on the Judiciary over the past year. The results have been mixed--which is scarcely surprising--and therefore we will face some of the same challenges in 1998 that confronted us in 1997. Despite the work that remains to be done, I am encouraged by the Judiciary's ability to perform its essential role in our constitutional structure of government.

A. Funding, Salaries, Jurisdiction, and Vacancies

I first would like to express my gratitude to Congress for its financial support of the Judiciary. In a time of scarce resources, Congress responded favorably to the careful financial plan adopted by the Executive Committee of the Judicial Conference of the United States. These moneys will be used wisely and economically. The Judiciary supports fully the national goal of eliminating the budget deficit and has instituted a formal process to identify and implement initiatives to reduce or avoid costs.

I also wish to extend the thanks of the federal judges to Congress for the 2.3 percent Employment Cost Index ("ECI") adjustment that it approved to take effect on January 1, 1998, as well as my appreciation to the members of the Judicial Conference of the United States, the Federal Judges Association, the Magistrate Judges Association, the National Conference of Bankruptcy Judges, the Federal Bar Association, the American Bar Association, judges, the staff of the Administrative Office of the United States Courts, and various other bar groups for all the time and energy they invested this year on the issue of judicial compensation. In particular, Ralph Mecham and his legislative staff, and Judge Barefoot Sanders and the members of his Committee on the Judicial Branch, deserve special recognition.

In my last Year-End Report, I noted that Congress had not granted federal judges an ECI adjustment in four years, thereby reducing judges' salaries in constant dollars by 8.6 percent. During 1997, the aforementioned groups and organizations worked very hard to rectify the situation. They urged Congress both to repeal Section 140 of the Continuing Resolution Act of December 15, 1981, Public Law 97-92 ("Section 140"), which provides that no salary increases shall be granted to federal judges without express legislative approval, and to provide a catch-up pay adjustment equal to the ECI adjustments not

granted since 1993.

Although we are pleased that Congress approved the 2.3 percent adjustment, it is obviously not an enduring solution to a problem that continues to endanger the morale and quality of the federal Judiciary. In general, all the adjustment does (assuming that inflation in 1997 is about 2.3 percent) is to ensure that federal judges are, in absolute terms, no worse off than they were at the end of last year. It prevents further deterioration of "real" judicial salaries. But it does not redress previous loss, or the disparity I noted last year between federal judicial salaries and the salaries of the profession from which federal judges are recruited.

The federal Judiciary must shortly go back to Congress to seek the relief it needs and deserves. Only then will judges who make a lifetime commitment to public service be able to plan their financial futures based on reasonable expectations of compensation.

With regard to the non-monetary problems currently troubling the federal Judiciary, most are directly related to its large and expanding workload. Fiscal Year 1997 saw courts of appeals and bankruptcy filings at their highest rates in history. District courts also were very busy. In addition to a small increase in civil filings, there was a 5 percent increase in criminal cases in 1997, producing the largest federal criminal caseload in 60 years. Many factors have produced this upward spiral, including laws enacted by Congress that expand federal jurisdiction over crimes involving drugs and firearms, Supreme Court decisions, large class-action litigation, and changes in executive prosecution policies. Unless steps are taken to stop or reverse this trend, either the demands placed on the federal Judiciary will eventually outstrip its resources, or the Judiciary will become so large that it will lose its traditional character as a distinctive judicial forum of limited jurisdiction.

Since December 1990, the last time Congress created any new judgeships, the number of cases filed in courts of appeals has grown by 21 percent and those filed in district courts have increased by 24 percent. Largely because of this expanding caseload, in March 1997 the Judicial Conference of the United States recommended to Congress the creation of 12 permanent court of appeals judgeships and five temporary court of appeals judgeships as well as 24 permanent and 12 temporary district court judgeships. After several months of deliberation, Congress extended 11 existing temporary judgeships for an additional five years--for which the Judiciary is grateful--but did not create any additional judgeships. A judgeship was added to one district by taking another away from a different district, but that was as far as Congress was willing to go.

In general, Congress has declined to eliminate the disparity between resources and workload in the federal Judiciary by an expansion of the number of judges. There have been instances, however, in which Congress wisely has acted to reduce this disparity by enacting laws that in effect decrease the number of potential filings in federal court. In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act, which streamlined habeas corpus procedures for both state and federal prisoners, and the Prison Litigation Reform Act (PLRA), which did the same for prisoners' civil rights actions.

Although it is too early to make definitive judgments concerning the impact these laws will have on prisoner suits, the evidence thus far strongly suggests that they will have a positive effect. The one-year statute of limitations for both state and federal prisoner applications for writs of habeas corpus produced a sharp rise in applications between February and April 1997, but then they dropped off sharply. As of June 1997, the number of habeas corpus applications has fallen well below the average number of monthly filings during the 15 months prior to the law's enactment in April of 1996. PLRA achieved a similar result. Monthly civil rights filings by prisoners decreased 46 percent from April 1996 to February 1997.

With the limited degree of hindsight available to us--and keeping in mind that there are many variables that could affect the future rate of prisoner filings in federal court--the Effective Death Penalty Act and the PLRA appear to be promising examples of how Congress can reduce the disparity between resources and workload in the federal Judiciary without endangering its distinctive character. Unfortunately, Congress' efforts to enact legislation of this type have been sporadic and inconsistent. I therefore call on Congress to consider legislative proposals that would reduce the jurisdiction of federal courts. For many years, diversity of citizenship cases have been identified as one such area in which Congress could enact some very useful reforms.

Should Congress, conversely, consider expanding the jurisdiction of the federal Judiciary, it should do so cautiously and only after it has considered all the alternatives and the incremental impact the increase will have on both the need for additional judicial resources and the traditional role of the federal Judiciary. In particular, the Judicial Conference of the United States has raised concerns about legislation pending in Congress to "federalize" certain juvenile crimes, maintaining its long-standing position that federal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts.

This desire to federalize new crimes or civil causes shows that the federal Judiciary has become a victim of its own success. The congressional desire to federalize stems from the sense that the federal courts, by and large, render a brand of justice that is both more dependable and more efficient than that rendered by some of the state systems. But no small part of the success of the federal system--its ability to attract first-rate talent, for example--is because the federal courts have traditionally been courts of limited jurisdiction. If the federal system ends up with the same sort of potpourri of cases that state courts must necessarily decide, it may lose the special competence that now sets it apart from many state systems.

If federal jurisdiction remains at its current level--or, worse, increases--judicial vacancies will aggravate the problem of too few judges and too much work. Currently, 82 of the 846 Article III judicial offices in the federal Judiciary--almost one out of every ten--are vacant. Twenty-six of the vacancies have been in existence for 18 months or longer and on that basis constitute what are called "judicial emergencies." In the Court of Appeals for the Ninth Circuit, the percentage of vacancies is particularly troubling, with over one-third of its seats empty.

Judicial vacancies can contribute to a backlog of cases, undue delays in civil cases, and stopgap measures to shift judicial personnel where they are most needed. Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal Judiciary. Fortunately for the Judiciary, a dependable corps of senior judges has contributed significantly to easing the impact of unfilled judgeships.

The institutions that have the constitutionally assigned powers of nominating and confirming judicial nominees bear some of the responsibility for the current situation, but structural aspects of the appointment process also contribute to the existing high level of vacancies. For example, a larger Judiciary increases the average number of retirements per year and the corresponding number of nominees. The additional burdens placed on the appointment process by such an increase may slow it down. An appointment process that might work well to fill the vacancies of a 700-member Judiciary might struggle with a Judiciary of 800 or 850 members. Accordingly, increasing the size of the federal Judiciary so that it can handle expanded workloads might have the unintended effect of increasing the vacancy rate, perhaps leaving unaffected the gap between resources and workload that motivated the initial increase in the number of judges. This ironic result strongly supports the common-sense conclusion that, in this country, a bigger federal Judiciary is not necessarily a part of a solution for every public-policy question.

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Whatever the size of the federal Judiciary, the President should nominate candidates with reasonable promptness, and the Senate should act within a reasonable time to confirm or reject them. Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. The Senate confirmed only 17 judges in 1996 and 36 in 1997, well under the 101 judges it confirmed during 1994.

The Senate is, of course, very much a part of the appointment process for any Article III judge. One nominated by the President is not "appointed" until confirmed by the Senate. The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down. In the latter case, the President can then send up another nominee.

B. Special Commissions and Appointments

During 1997, two measures to study important issues pertaining to the federal Judiciary were initiated. This past fall, in another example of the way the three branches of our government work together, Congress passed a bill creating a Commission on Structural Alternatives for the Federal Courts of Appeals which the President signed into law on November 26, 1997. This Commission will study the structure and alignment of the nation's court of appeals system, particularly the Ninth Circuit, and report within 12 months its findings to the President and Congress. In accordance with the provisions of this law, I appointed to this Commission Retired Justice Byron R. White; U.S. Circuit Judge Gilbert S. Merritt of the U.S. Court of Appeals for the Sixth Circuit; U.S. Circuit Judge Pamela Ann Rymer of the U.S. Court of Appeals for the Ninth Circuit; U.S. District Judge William D. Browning of Arizona; and N. Lee Cooper, former President of the American Bar Association, of Birmingham, Alabama.

The second effort to study issues of importance to the federal Judiciary was generated within the Third Branch. In July of 1997, the Federal Judicial Center requested the Executive Committee of the Judicial Conference to consider and recommend that the Judicial Conference concur in the FJC's recently adopted strategic plan. Because the strategic plan at points would affect the Administrative Office of the United States Courts, the Executive Committee recommended that I appoint an Ad Hoc Committee of the Judicial Conference to study the merits of the motions and make a report and recommendation to the Conference for its consideration in March 1998. The Conference approved the Executive Committee's recommendation on September 23, 1997, and on October 20, 1997, I appointed Judge Wm. Terrell Hodges as Chair of the Ad Hoc Committee and Judges William H. Barbour, Jr., Boyce F. Martin, Jr., Robert L. Miller, Jr., and Stephanie Kulp Seymour as members.

II. THE YEAR IN REVIEW

A. The Federal Courts' Caseload

In 1997, the caseload of U.S. Bankruptcy Courts soared to a record level for the second consecutive year, climbing 23 percent. More than 1,350,000 petitions were filed in Fiscal Year 1997, easily topping the previous record of approximately 1,111,000 filings recorded in Fiscal Year 1996. Filings under Chapters 7 and 13 were responsible for the increase, with the overall jump in filings emanating predominantly from non-business petitions. Chapter 7 filings, which accounted for more than 70 percent of all bankruptcy filings, rose 26 percent. Chapter 13 filings, which constituted 29 percent of all bankruptcy filings, increased 18 percent. Chapter 11 filings, which amounted to less than 1 percent of all bankruptcy filings, dropped 11 percent. Chapter 12 filings, which equalled less than 0.1 percent of all bankruptcy filings, declined 12 percent.

In addition, criminal cases increased 5 percent, civil filings 1 percent, and appeals filings 1 percent.

This 5 percent increase in criminal cases brought the total number of criminal cases to 50,363, the highest level in over 60 years. This year's increase was due primarily to filings related to drug and immigration cases in the southwestern border districts of the United States. Drug case filings rose 13 percent to 13,656 and immigration case filings increased 21 percent to 6,677. Filings of weapons and firearms cases and drunk driving and traffic violations remained stable.

The number of civil filings in the U.S. district courts was 272,027. The small increase in filings was attributable primarily to increases in actions involving the United States as a plaintiff or defendant and in filings pertaining to federal question jurisdiction, usually in personal injury/product liability cases. U.S. plaintiff or defendant actions increased 23 percent in 1997, rising from 48,755 to 60,004 cases. U.S. plaintiff cases increased 35 percent, primarily because filings involving contract actions almost doubled. The influx of recoveries of overpayments related to defaulted student loans grew from 4,460 to 9,043 and was the key reason for the overall increase in contract actions. The number of filings with the U.S. as defendant also rose, primarily because of a 46 percent jump in social security filings. Social security disability insurance cases increased 47 percent, rising by more than 2,400 cases, largely as the result of the Social Security Administration's processing of a large backlog of cases. Prisoner petitions dropped 8 percent this year primarily because of a 31 percent drop in civil rights petitions filed by prisoners. This reduction stemmed from the PLRA, which, among other provisions, places limitations on how prisoner petitions may be filed. This drop nearly offsets the other increases in the civil caseload in the district courts, resulting in the small percentage increase in filing overall. The drop in prisoner petitions contributed to a 2 percent decrease in total federal question litigation. However, a 90 percent rise in personal injury/product liability cases related to breast implants contributed to the overall national rise. Civil filings in the Eastern District of Michigan skyrocketed by more than 10,000 cases as a result of the recent decision involving Dow Chemical in the Sixth Circuit Court of Appeals. This decision led to the filing of breast implant cases in Eastern Michigan, where Chapter 11 federal bankruptcy proceedings involving the Dow Corning Corporation are pending.

Appeals filed in the 12 regional courts of appeals set a record level of more than 52,300. The overall increase resulted from administrative agency appeals and original proceedings, which rose 56 percent and 16 percent, respectively. Civil, criminal, and bankruptcy appeals declined, falling 3 percent, 2 percent, and 19 percent, respectively.

B. The Supreme Court of the United States--Caseload Statistics

The total number of case filings in the Supreme Court increased from 6,597 in the previous term to 6,634 in the 1996 Term--an increase of slightly more than 0.5 percent. Filings in the Court's in forma pauperis docket increased from 4,500 to 4,578--a 1.7 percent rise. The decline in the Court's paid docket was only 40 cases, from 2,095 to 2,055--a 1.9 percent decrease. During the 1996 Term, 90 cases were argued and 80 signed opinions were issued, compared to 90 cases argued and 75 opinions issued in the 1995 Term. No cases from the 1996 Term were scheduled for re-argument in the 1997 Term.

III. UNITED STATES SENTENCING COMMISSION

The Sentencing Commission, like the federal Judiciary, suffers from serious delays in the appointment process. The terms of Vice Chairman Michael Gelacak and Commissioners Michael Goldsmith and Judge Deanell R. Tacha expired in late 1997. These commissioners will continue to serve for up to one year or until new appointments are confirmed, but their vacancies must be considered in the light of three previous vacancies on the seven-member panel. The long and the short of the matter is that for the Commission to function properly six appointments to vacancies are needed. Two of the positions have

been vacant since October 1995, one of the positions has been vacant since May 1997, and the three remaining positions have been vacant since October 1997. The Judicial Conference of the United States acted promptly in making its recommendations to the President with regard to the judicial vacancies on the Commission. But the President has simply not made any nominations to fill these vacancies. The function of the Sentencing Commission may not be well known to the general public, but it serves a vitally important function in the enforcement of the criminal law in federal courts. Its statutory function is seriously hindered by this inaction.

Sentencing-related research continued as a top agency focus in 1997. Early in the year, the Commission reported results from its first survey of public attitudes towards federal sentences. More than 1,700 citizens throughout the United States expressed their opinions on crime and punishment as part of a study of "just punishment," one of the four statutory purposes of sentencing. Also this year, the Commission submitted to Congress a second report and recommendation on revising the federal cocaine sentencing policy. It again unanimously recommended that the disparity in federal penalties for powder cocaine and crack cocaine be reduced and suggested a range of possible options to accomplish this end. Another Commission report to Congress concluded that "broad and inconsistent use of money laundering penalties" is contributing to substantial unwarranted disparity.

The Commission formed an office of legislative and public affairs in 1997 to communicate more effectively with Members of Congress, the Commission's many customers, and the public. In addition, the agency inaugurated a series of "mini-hearings" on specific guideline-related topics to increase public input into the ongoing assessment of the Sentencing Guidelines' effectiveness.

The Commission produced two public service announcements in 1997 to deter youth from becoming involved in drug crimes. These 30-second announcements, distributed to more than 5,000 network and cable television stations, received extensive exposure across the country. Additionally, the Commission is examining ways of using new technologies like electronic mail and document imaging to collect, analyze, and archive more efficiently the massive amounts of federal sentencing data it receives each year.

IV. ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

The Administrative Office of the United States Courts serves the Judicial Conference of the United States and the federal courts in many ways. It collects data and analyzes statistics, consults with the courts about their needs and priorities, makes improvements in judicial administration, and implements and promotes Judicial Conference policies and programs. In addition, it is instrumental in the Judiciary's success in obtaining adequate appropriations and in communicating the Judiciary's views to Congress on legislative matters that affect the operations of the Judiciary.

Led by the Administrative Office's efforts, the federal Judiciary has achieved an impressive devolution of management authority and control away from Washington to the individual federal courts. The Director has delegated to local federal courts many of his statutory financial, personnel, procurement, and other administrative authorities. This kind of decentralization has benefited both the Judiciary and the taxpayer because it encourages every court to find innovative ways to increase efficiency and save money. Decentralized management has established the Judiciary as an archetype for other complex public and private institutions, and it has also garnered the attention of judicial leaders and administrators from other nations.

The key to the success of the budget decentralization program is national spending controls combined with local accountability and flexibility. The individual courts determine how to spend funds for staff, equipment, supplies, and services to meet their particular needs. To enhance this program further, the Administrative Office this year simplified the way it allots operating funds to the courts. Funds previously allocated in 40 separate expense categories were combined in one aggregate amount based on formulas developed by teams of statisticians, financial analysts, program experts, and court staff. As a result, the paperwork burden for preparing each court's budget request was substantially reduced or eliminated, and the courts were assured of an equitable distribution of these operating funds.

The Administrative Office is testing prototype electronic case file systems, which will enable courts to receive, store, and retrieve documents electronically. Also this year, testing began on a new state-of-the-art financial accounting system for the courts. Experiments demonstrated that mobile computing enabled probation officers to access information away from the office, allowing them to spend more time in the community supervising offenders. New systems for personnel and payroll processing, jury administration, and library administration are also in progress. An evaluation is under way to assess the practicality and cost-effectiveness of a variety of technologies, such as real-time reporting, digital-audio recording, and evidence presentation devices that show promise to facilitate courtroom procedures. In concert with the Federal Judicial Center, the Administrative Office is helping to develop a federal judicial television network that will broadcast educational and informational programming by satellite to judges and court employees nationwide.

V. FEDERAL JUDICIAL CENTER

The Federal Judicial Center provides education, training, and research for the federal Judiciary.

This summer the FJC Board approved a strategic plan to guide the FJC in the years ahead. The plan recommends some changes in the FJC's research operations and discontinuance of its occasional support of automation innovations in the courts. It also responds to Congress' interest in reducing government spending on travel by directing the FJC to continue its emphasis on satellite broadcasting and other forms of "distance learning." This year, for example, the FJC introduced a newsletter series and a satellite broadcast that will help probation officers deal with the problems presented by particularly difficult offenders, such as members of street or prison gangs.

Almost 85 percent of the 34,000 judicial branch participants in FJC programs received training in their own courts. Next year FJC broadcasts will reach even larger audiences through the federal judicial television network described in the previous section. I also participated in a satellite broadcast by introducing the FJC's July 1997 review of major decisions in the Supreme Court's 1996 Term.

Among its research products this year, the FJC provided the Judicial Conference's Civil Rules Committee an interesting analysis of the effect of "pretrial disclosure" rules that the Conference adopted in 1993 to reduce litigation costs and delays. These rules allow courts to direct attorneys to disclose pretrial materials to opponents rather than requiring them to ferret out each other's materials through traditional discovery. Although a majority of attorneys surveyed by the FJC thought "disclosure" made little difference, those who perceived an effect--a reduction in cost and delay, and an increase in fairness--favored its adoption in all federal courts.

FJC research assisted other Judicial Conference committees. For example, its review of alternative dispute resolution programs in "demonstration districts" under the Civil Justice Reform Act provided a view of the efficacy of these programs different from one that emerged from a separate study of the Act's pilot districts. And the Judicial Conference this year approved a "risk prediction index" that the

FJC developed to help probation officers determine the likelihood that an offender may commit another crime and tailor supervision plans accordingly. Within three months of the Conference's approval of the new "RPI," the FJC produced a multi-media training plan for probation offices.

These activities demonstrate the value of a separate research and education center within the judicial branch to provide policymakers and judges fresh perspectives on the vexing issues the courts confront in adapting procedures for their improved management.

IN MEMORIAM

The Judiciary and the country lost a dear friend and dedicated public servant in 1997. Justice William J. Brennan, Jr., passed away on July 24, 1997. Justice Brennan served on the Supreme Court of the United States for 33 years. In that capacity, he has left his mark on many important areas of American constitutional law as well as on the lives of those who had the privilege of serving with him. He was a warm hearted colleague who will be missed by all who knew him.

VI. CONCLUSION

There are many reasons for those of us who serve in the Judiciary to take pride in our accomplishments in 1997. It was a year in which a Judiciary composed of fewer judges took on an increased workload. We are all indebted to the senior judges in our country who have contributed greatly to meeting the demands placed on the Judiciary. The American public continues to hold the Judiciary in high regard. The American Judiciary continues to command respect abroad. Representatives of other judicial systems frequently visit our courts, and from my conversations with them it is clear that there is international recognition of an able, independent federal Judiciary in this country. Let us strive to uphold this splendid tradition as we go forward toward the millennium.

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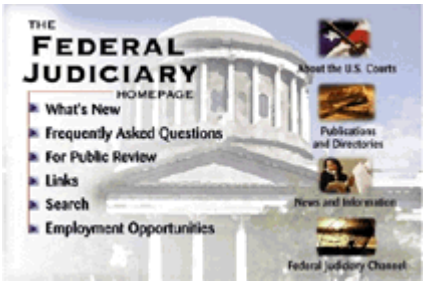

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The 1998 Year-End Report of the Federal Judiciary

Chief Justice William H. Rehnquist

Overview

The federal Judiciary enters the last year of the 20th century immersed in many of the same struggles that have defined our federal system of government for 210 years. The administration of justice is affected not only by the relationships among the Judiciary and the other two branches of the federal government, but also by the balance of power between the federal and state governments. In this, my 13th Year-End Report, I will address several of the problems affecting the Judiciary in 1998.

I am pleased to report on the progress made in 1998 by the Senate and the President in the appointment and confirmation of judges to the federal bench—a need that I raised in my 1997 Report as one for which both the Executive and Legislative Branches bore responsibility. The Senate confirmed 65 judicial nominees in 1998, a figure that is above the average number of judges nominated and confirmed in recent years. These appointments will help address the disparity between the courts' workload and their resources. I also note my gratitude to senior federal judges who, despite their semi-retired status, continue to help ease backlogs in courts around the country.

I also extend my thanks to Congress for continuing to provide adequate financial support to the Judiciary as we work together to maintain a balanced budget. The Judiciary remains committed to fiscal responsibility, and for its part, requested the smallest percentage funding increase in 20

years for fiscal year 1999, even as it faces a growing caseload. The Third Branch is particularly appreciative of the appropriation for the construction of 13 new or expanded courthouse facilities for fiscal year 1999. The new courthouses will replace aging and obsolete facilities and are much needed to alleviate overcrowded conditions and reduce security risks.

Appointments, Jurisdiction, and Salaries

Although the Judiciary is strengthened by the progress made on important issues in 1998, serious problems continue to confront us. The most pressing of those problems are not new, but they have grown in importance either from the neglect or ambivalence of the other branches of government. They are: (1) the failure to appoint any Commissioners to the United States Sentencing Commission—all seven Commissioner positions are vacant; (2) the growing caseload in the federal Judiciary resulting from continued expansion of federal jurisdiction; and (3) the continuing relative decline in judicial salaries. There are, of course, many challenges facing the Judiciary. I focus primarily on these three problems, however, because they need immediate attention. All three are soluble.

Appointments to the United States Sentencing Commission

The political impasse on the appointments to the United States Sentencing Commission, which has been problematic for the past few years, has now reached stunning proportions. There currently are no Commissioners at the Sentencing Commission and no nominations are pending. The failure to fill these vacancies is all the more egregious when one considers the fact that the seven Commissioners authorized by statute have staggered six-year terms, and that there are additional statutory constraints to insure a bipartisan Commission. For example, at least three of the Commissioners must be federal judges, and no more than four can be members of the same political party. The fact that no appointments have been made to fill any one of these seven vacancies is paralyzing a critical component of the federal criminal justice system.

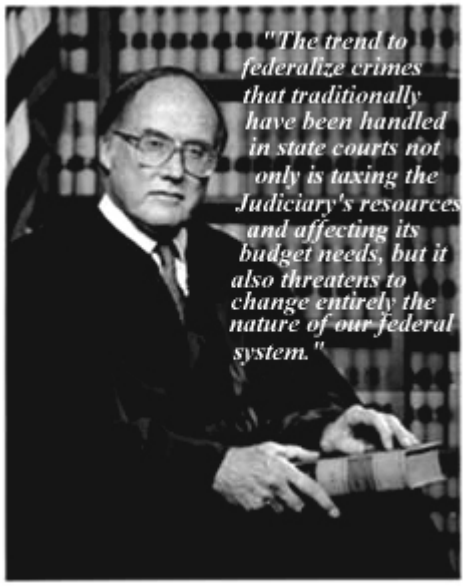
The Sentencing Commission was created under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. Its principal purposes are to reduce disparity in sentencing in the federal courts; to establish sentencing policies and practices for the federal courts, including guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal crimes; to advise and assist Congress and the Executive Branch in the development of effective and efficient crime policy; and to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues, serving as an information resource for Congress, the Executive Branch, the courts, criminal justice practitioners, the academic community, and the public.

Although the staff of the Commission has been able to carry on the Commission's routine functions, in its present state the Commission is unable to perform some of its core and crucial responsibilities. For example, there are no Commissioners to propose guideline amendments or to take action on Congressional directives or implement legislation. There are no Commissioners to resolve or address circuit conflicts in Sentencing Guidelines interpretations. Every commission needs to make adjustments or respond to changing circumstances or new information. The Sentencing Commission is unable to do so until Commissioners are appointed. With criminal cases in federal courts reaching historic levels, the Judiciary needs a fully functioning Sentencing Commission. If we are going to have Sentencing Guidelines, the Sentencing Commission must be empowered to do its work. The President and the Senate

should give this situation their immediate attention.

Caseload and Expanding Jurisdiction

The number of cases brought to the federal courts is one of the most serious problems facing them today. Criminal case filings in federal courts rose 15% in 1998—nearly tripling the 5.2% increase in 1997. Over the last decade, Congress has contributed significantly to the rising caseload by continuing to federalize crimes already covered by state laws. A series of such laws have been enacted in the past few years, including, to name a few, the Anti-Car Theft Act of 1992, the Child Support Recovery Act of 1992, the Animal Enterprise Protection Act of 1992, and the recent arson provisions added to Title 18 in 1994. In contrast, the effect that the Antiterrorism and Effective Death Penalty Act and the Prison Litigation Reform Act are having on habeas corpus proceedings and prisoners' actions continues to appear positive.



The trend to federalize crimes that traditionally have been handled in state courts not only is taxing the Judiciary's resources and affecting its budget needs, but it also threatens to change entirely the nature of our federal system. The pressure in Congress to appear responsive to every highly publicized societal ill or sensational crime needs to be balanced with an inquiry into whether states are doing an adequate job in these particular areas and, ultimately, whether we want most of our legal relationships decided at the national rather than local level. Federal courts were not created to adjudicate local crimes, no matter how sensational or heinous the crimes may be. State courts do, can, and should handle such problems. While there certainly are areas in criminal law in which the federal government must act, the vast majority of localized criminal cases should be decided in the state courts which are equipped for such matters. This principle was enunciated by Abraham Lincoln in the 19th century, and Dwight Eisenhower in the 20th century—matters that can be handled adequately by the states should be left to them; matters that cannot be so handled should be undertaken by the federal government.

Recently, the Commission on Structural Alternatives for the Federal Courts of Appeals, chaired by Retired Justice Byron R. White, noted that the structure and alignment of the appellate courts is affected by the volume of appeals, which is in turn driven by the jurisdiction of the federal courts. The Commission said in its *Final Report* that "significant changes need to be made in the jurisdiction of the federal courts," and emphasized the importance of "restraint in conferring new jurisdiction on the federal courts, particularly in areas traditionally covered by state law and served by state courts…."

In 1995, the Judicial Conference of the United States, after much study, adopted the *Proposed Long-Range Plan for the Federal Courts* for the next century. Recommendation 1 of the *Long-Range Plan* reads as follows: "Congress should commit itself to conserving the federal courts as a distinctive judicial forum of limited jurisdiction in our system of federalism. Civil and criminal jurisdiction should be assigned to the federal courts only to further clearly defined and justified national interests, leaving to the state courts the responsibility for adjudicating all

other matters." In accordance with this principle, the *Long-Range Plan* recommends that federal courts should only have criminal jurisdiction in five types of cases:

(1) offenses against the federal government or its inherent interests;

(2) criminal activity with substantial multi-state or international aspects;

(3) criminal activity involving complex commercial or institu- tional enterprises most effectively prosecuted using federal re- sources or expertise;

(4) serious high level or widespread state or local government corrup- tion; and

(5) criminal cases raising highly sensitive local issues.

Although Congress need not follow the recommendations of the Judicial Conference, this *Long-Range Plan* is based not simply on the preference of federal judges, but on the traditional principle of federalism that has guided the country throughout its existence.

Similarly, Justice White and Judge Gilbert Merritt included a separate statement in the *Final Report* of the Commission on Structural Alternatives for the Federal Courts of Appeals that describes the core functions of federal courts, the role federal courts should appropriately have in criminal matters, and the factors that should be considered before assigning new responsibilities to the federal courts. Those factors include determining whether the proposed legislation would assign work to the federal system that is within its core functions; whether states are inadequately addressing the perceived need; whether the federal courts have the capacity to take on new business without additional resources or restructuring; and the extent to which proposed legislation is likely to affect the caseload, and in turn whether the federal courts have the capacity to perform their core functions and fulfill their mandate for "just, speedy, and inexpensive determination" of actions. Other factors include the cost of delay to litigants and whether the perceived needs are, or could be, served as well by alternatives such as alternative dispute resolution or administrative proceedings.

Many others have written on how Congress might appropriately balance jurisdiction between state and federal courts. A common element of the recommended threshold standards for federal criminal legislation is remedying demonstrated state failure. Such an approach would reduce the likelihood that a particularly high profile or egregious event would be enough on its own to justify new federal laws. Such an approach also is more consistent with judicial federalism and with Alexander Hamilton's observation in the *Federalist No. 82* that "the national and State systems are to be regarded as ONE WHOLE." A re-examination of diversity jurisdiction is also warranted.

Diversity jurisdiction was originally enacted as part of the Judiciary Act of 1789 when there was reason to fear that out-of-state litigants might suffer prejudice at the hands of local state court judges and juries, and there was legitimate concern about the quality of state courts. Conditions have changed drastically in two centuries. At the very least, there simply is no need to allow in-state plaintiffs to avail themselves of diversity jurisdiction to remove matters to federal court. These lawsuits account for a substantial percentage of the federal caseload, and as state law is applied in such cases in any event, there is no good reason to keep them in federal court.

I have requested Chairman Howard Coble of the Subcommittee on Courts and Intellectual Property of the House Judiciary Committee to conduct hearings in the next session of Congress on the issue of the general expansion of federal jurisdiction caused by federalizing state crimes, and on curtailing federal diversity jurisdiction. Chairman Coble has demonstrated an interest in the federal courts' caseload and, in the most recently concluded session of Congress, sponsored the Alternative Dispute Resolution Act, which directs federal courts to provide alternatives to litigation in court and gives them flexibility in how to do so.

Judicial Salaries

For the fifth time in the past six years, Congress has denied federal judges, top officials in the Executive Branch, and its own members cost-of-living salary adjustments. Since January 1993, the value of the salaries for these positions has declined 16% when measured against the Consumer Price Index. The relative cumulative loss of purchasing power during this period for a federal district judge exceeds $77,000.

Federal judges, who have made a lifetime commitment to federal service, should not be required to bear these continuing financial penalties. The vast majority of career government employees and retirees receive inflation adjustments annually. Career employees may also receive added locality pay adjustments. Denying cost-of-living adjustments to top officials is a regressive approach to compensation and is counter-productive to the common sense goal of encouraging capable individuals to enter the Judiciary. The 1989 law providing for annual cost-of-living salary increases for these positions should be allowed to operate as intended.

Panel Attorney Compensation

Another issue of concern is the rate of pay that court-appointed attorneys receive to defend individuals in criminal cases. By statute, the Judiciary bears the responsibility for ensuring that defendants in federal criminal cases receive legal representation. If the defendant is unable to pay, the Judiciary must provide a lawyer to vindicate the defendant's rights. This responsibility is met through Federal Defender Offices, Community Defender Offices, and attorneys in private practice who are appointed by the court, generally referred to as "panel attorneys."

Congress established maximum hourly rates of compensation for panel attorneys in 1964 with the passage of the Criminal Justice Act. Since the first adjustments to those rates in 1970, the maximums have fallen far behind inflationary effects. In 1986, Congress authorized the Judicial Conference to set higher maximum hourly rates of up to $75. Since then, the Judicial Conference has approved the higher rate in 93 of 94 judicial districts upon a finding of demonstrated need. However, Congress has appropriated funds only sufficient to pay up to the $75 rate in part or all of 16 districts. In other districts, because of a one-time authorized increase, panel attorneys may only be paid $65 for in-court work and $45 for out-of-court work.

The Judiciary's budget request for fiscal year 2000 will include funds sufficient to pay all panel attorneys at the $75 rate. I respectfully urge Congress to give very serious consideration to this request. Inadequate compensation for panel attorneys is seriously hampering the ability of judges to recruit attorneys to provide effective representation. The Judiciary, in turn, is taking steps to insure that defender services' costs are reasonable.

Technological Advancements

The federal Judiciary continues to progress toward the next century with the help of technological advancements. Installation of a nationwide data communications network in the Judiciary was completed in October, one year ahead of schedule. More than 700 Judiciary sites and 28,000 Judiciary employees are now linked electronically by a secure internal electronic communications network. Similarly, the Judi-ciary's Internet sites are increasingly used to disseminate publications, statistics, and other information about the federal Judiciary and its programs. Use of this technology is expected to generate savings of about $1 million annually in paper and postage costs. Judicial opinions are regularly posted on the Internet in many circuits, as are schedules, local rules, fee schedules, and job vacancies. Prototype electronic case files systems which could allow courts to receive, send, store, and retrieve case-related documents in electronic format also have been developed and are being tested in a number of district and bankruptcy courts.

This year, the Administrative Office of the U.S. Courts completed a preliminary assessment of the use of courtroom technologies—video evi-dence presentation, videoconferen-cing, electronic methods of taking the record, and access to external databases—which confirmed that such technologies can, in many cases, reduce trial time and litigation costs, and improve fact-finding, jury understanding of evidence, and access to court proceedings. This year also, the Federal Judicial Center, along with the Administrative Office of the U.S. Courts and the U.S. Sentencing Commission, launched the Federal Judicial Television Network to provide some education and information to judges and staff throughout the country without the need for travel.

Information Assistance to Foreign Judiciaries

Representatives from judicial systems of countries from around the world who are engaged in reforming their systems continue to seek to learn more about our Judiciary. This year more than 500 representatives of 41 foreign judiciary systems formally visited the Supreme Court of the United States alone seeking information about our system of justice. Information was provided on topics ranging from judicial independence to judicial review, the Rule of Law, and the work of the federal courts. The International Judicial Relations Committee of the Judicial Conference also continues to play an impor-tant role in providing information and technical assistance to developing judicial systems worldwide.

Special Commissions

Commission on Structural Alternatives for the Federal Courts of Appeals

In December 1997, pursuant to a law passed by Congress creating the Commission on Structural Alternatives for the Federal Courts of Appeals, I appointed Retired Justice Byron R. White; Judge Gilbert S. Merritt of the United States Court of Appeals for the Sixth Circuit; Judge Pamela Ann Rymer of the United States Court of Appeals for the Ninth Circuit; Judge William D. Browning of the United States District Court for Arizona; and N. Lee Cooper, former President of the American Bar Association, to serve as Commissioners. The Commission elected Justice White as Chair and N. Lee Cooper as Vice Chair. The Commission was created to study the structure and alignment of the Federal Courts of Appeals, with particular reference to the Ninth Circuit. In less than nine months, the Commission held six public hearings across the country, took testimony from 89 witnesses, and, with the assistance of the Federal Judicial Center, conducted extensive research on structural alternatives, including surveys of all district and circuit judges and a large sample of appellate lawyers. The

Administrative Office of the U.S. Courts also provided valuable assistance to the Commission. On December 18, 1998, the Commission filed a comprehensive *Final Report* with Congress and the President which contains a thorough analysis of both historical and contemporary information about the federal circuit system. The Commission's recommendations are thought-provoking and should serve as a useful guide to Congress and the Judiciary for years to come. I commend the Commission for its thorough work in such a short time.

Additionally, in 1998 I appointed an Ad Hoc Committee of the Judicial Conference—chaired by Judge Wm. Terrell Hodges, and consisting of Judges William H. Barbour, Jr., Boyce F. Martin, Jr., Robert L. Miller, Jr., and Stephanie Kulp Seymour—to study certain aspects of the Federal Judicial Center's strategic plan as it related to the Administrative Office of the U.S. Courts. The Ad Hoc Committee recommended two motions to the Judicial Conference of the United States which more clearly define the judicial educational and training roles of the Federal Judicial Center and the Administrative Office of the U. S. Courts. Both motions were approved by the Judicial Confer-ence, and the Judiciary extends its gratitude to this Committee.

The Year in Review

The Federal Courts' Caseload

For the first time in 26 years, criminal filings experienced a double-digit increase, growing by 15 percent. In 1998, filings of criminal cases grew 15 percent to 57,691 cases. This means that, on average, each authorized federal judge handles 89 criminal filings per year. Not since 1972 have the criminal filings risen by double digits. That year, filings rose 14 percent, and the courts received more immigration cases than fraud cases. Twenty-six years later, immigration filings have once again exceeded the number of fraud filings, making immigration-related offenses the second most significant offense category after drug law violations. The increase in filings related to drugs and immigration occurred primarily along the southwestern border districts, although drug-related filings rose or remained stable in more than 57 districts across the nation. Nationwide, immigration filings rose 40 percent to 9,339 cases, and drug filings rose 19 percent to 16,281 cases.

Filings in U.S. courts of appeals and U.S. bankruptcy courts also rose, by 3 percent and 5 percent, respectively. Appeals filed in the 12 regional courts of appeals rose 3 percent in 1998 to a record level of more than 53,800. The overall increase resulted from civil and bankruptcy appeals, which rose 6 percent and 4 percent, respectively. Criminal appeals remained stable, while administrative agency appeals and original proceedings dropped 14 percent and 8 percent, respectively. Although bankruptcy petitions increased from approximately 1,350,000 to more than 1,400,000, attaining a record high for the 11th consecutive quarter, the 5 percent increase represented a slowing of the double-digit growth seen in the two previous years. Filings under Chapter 7 accounted for more than 70 percent of all bankruptcies and, with a 7 percent growth, were the main cause of the continued climb in the bankruptcy numbers. Chapter 13 filings, which made up 28 percent of all bankruptcy filings, rose a modest 1 percent. Chapter 11 filings and Chapter 12 filings, each of which constitutes less than 1 percent of all bankruptcy filings, dropped 22 percent and 9 percent, respectively.

In contrast, civil filings declined 6 percent. The number of civil filings in the U.S. district courts was 256,787. The 6 percent decline in filings was attributable primarily to decreases in federal question litigation, filings involving the United States as a defendant, and diversity of citizenship filings. Federal question litigation filings dropped 6 percent from 156,596 to

146,827. The overall decline in these filings was largely a result of a 22 percent decline in personal injury cases, of which the 4,300case decline in product liability filings (mostly breast implant cases) had the greatest effect. In addition, a significant decline in federal question litigation involved state prisoner petitions, which dropped by more than 3,200. The overall reduction in state prisoner petitions likely results from the continuing effects of the Prison Litigation Reform Act, which, among other provisions, places limitations on how prisoner petitions may be filed. Filings with the United States as defendant fell by 12 percent from 39,038 to 34,463.

This decline stemmed chiefly from a 34 percent decrease in prisoner petitions filed by federal prisoners. Motions to vacate sentence decreased 46 percent (nearly 5,400 filings), mostly as a result of the subsiding effects of the *Bailey v. United States* Supreme Court ruling, which restricted the imposition of enhanced penalties for using firearms in violent crimes or drug trafficking offenses, and the 1996 Antiterrorism and Effective Death Penalty Act, which provided a one-year limitation period for filing state habeas corpus petitions and federal motions to vacate sentence. Diversity of citizenship filings declined 6 percent (more than 3,200 cases) largely because of the drop in personal injury/product liability filings related to breast implants.

The Supreme Court of the United States Caseload Statistics

The total number of case filings in the Supreme Court increased from 6,634 in the previous term to 6,781 in the 1997 Term—an increase of slightly more than 2.2 percent. Filings in the Court's *in forma pauperis* docket increased from 4,578 to 4,694—a 2.5 percent rise. The increase in the Court's paid docket was by only 30 cases, from 2,055 to 2,085—a 1.46 percent increase. During the 1997 Term, 96 cases were argued and 91 signed opinions were issued, compared to 90 cases argued and 80 opinions issued in the 1996 Term. No cases from the 1997 Term were scheduled for re-argument in the 1998 Term.

Administrative Office of the United States Courts

The Administrative Office of the U.S. Courts serves as the central support agency for the administration of the federal court system. The agency provides core administrative services and support in many areas and implements and promotes Judicial Conference policies and programs by issuing guidelines, standards, and procedures; providing technical assistance and training; and conducting reviews and evaluations.

The Administrative Office also prepares and submits the Judiciary's budget to Congress. This year, the Administrative Office enhanced the Judiciary's long-range planning and budgeting process to anticipate budget and program needs over the next five years. This process will strengthen the connections between project plans and budget formulation and execution processes, thereby improving the Judiciary's ability to set priorities, determine resource requirements, and implement program plans.

The agency also has been working with court staff to address computer programming issues relating to the advent of the year 2000. The Judiciary's national case management systems and software have been successfully modified and tested to ensure they are Year 2000 compliant. Agency staff are also working with individual courts to make necessary modifications to their locally developed systems.

The agency implemented a new advisory structure in 1998, streamlining how it obtains input and advice from judges, court managers, and other Judiciary employees essential to the development of policy recommendations and the deployment of useful programs, systems, and services.

As part of a report to Congress this year on the rising costs of the federal defender services programs, the Administrative Office developed a list of recommendations for containing defender service costs. Independent consultants also studied the cost, availability, and quality of appointed counsel in federal death penalty cases. Their final report made a number of recommendations to ensure that expenditures in federal death penalty cases stay within reasonable limits.

The Administrative Office completed an analysis of the federal probation and pretrial services system's home confinement program, which monitors non-violent federal offenders and defendants in their homes on a daily basis as an alternative to pretrial detention or post-conviction incarceration. The findings demonstrated that home confinement is both a successful and cost-effective alternative. The estimated average daily cost of federal custody in 1997 was $64.32, while the estimated average daily cost of home confinement supervision was $17.98.

The Administrative Office received two awards for excellence this year. In recognition of the Judiciary's long-range facilities planning process used to forecast space requirements for the federal courts, the agency received the General Services Administration's 1998 Annual Achievement Award for Real Property Innovation. It also received the National Performance Review's "Hammer Award," which recognizes efforts to help build a federal government that works better and costs less, for a collaboration with the Department of Veterans Affairs resulting in reduced costs for office supplies for Judiciary and Department of Veterans Affairs' offices nationwide.

The Federal Judicial Center

The Federal Judicial Center improves the operation of the federal courts through research and education. This April, the FJC began operation of the Federal Judicial Television Network, which broadcasts education and information to more than 200 court sites with satellite receiving equipment installed by the Administrative Office. The Judiciary's broadcasting network is the second largest in the federal government, behind only the Social Security Administration. By January 1999, the Network will broadcast more than 500 hours of programming, including 39 programs that the FJC produced specifically for the network.

Appropriately, Congressman Harold Rogers of Kentucky introduced the FJC's first broadcast. Chairman Rogers believes strongly in "distance education"—providing education without the money and time that travel requires. So does the FJC. Last year, over three-fourths of the 30,000 participants in its education programs used distance education technologies including but not limited to the Network.

Technology and science also influence the substance of FJC education because they affect the litigation process. Satellite broadcasts show probation officers how offenders under supervision may be using the Internet illegally and helped judges handle evidentiary problems created by the use of computer simulations to recreate events.

At the request of a Judicial Conference committee, the FJC is evaluating whether panels of experts appointed by judges in the breast implant litigation might be appro-priate for other types of litigation. It is working with the American Association for the Advancement of Science and the National Academy of Sciences to help federal judges who want to call on the scientific community for assistance with scientific evidence. The FJC is preparing a new edition of its *Reference Manual on Scientific Evidence* to help judges exercise their scientific evidence "gatekeeping" role, and it has provided research and analysis for the Mass Tort Working Group that I appointed last year to assess the seemingly intractable problems posed by mass tort litigation. In anticipation that judges will benefit from additional advice in this area, I have appointed a new Board of Editors, chaired by Judge Stanley Marcus of the Center's Board, to work with the FJC on revisions to its *Manual for Complex Litigation*.

These efforts are only part of the FJC's much broader offerings that orient new judges and court staff, analyze legislative and case law developments that affect their work, hone skills of court and case man-agement, and inform all members of the Judicial Branch of their obligations under the codes of conduct and ethics statutes that govern them.

The United States Sentencing Commission

In the absence of Commissioners, the Commission staff has continued its work on tasks such as developing policy options to implement recent amendments in criminal statutes and to further previously established priorities; providing training and technical assistance to the criminal justice community; preparing the fiscal year 1998 annual report and sourcebook of federal sentencing statistics; conducting sentencing-related research; and serving as a clearinghouse for federal sentencing information.

In January 1998, the Sentencing Commission published for comment a number of proposed amendments implementing broad changes in the guidelines covering theft, fraud, and other economic crimes and addressing issues relating to telemarketing fraud, congressional initiatives, and proposals to eliminate conflicts among circuits. Subsequently, three public hearings were held to receive comments on the proposed amendments.

On May 1, 1998, when some Commissioners remained in office, the Sentencing Commission sent to Congress 11 sentencing guideline amendments, which took effect November 1, 1998. Several of these amendments resolved conflicting appellate court interpretations. The Commission also adopted an amendment providing for increased punishment in fraud cases involving mass marketing or sophisticated concealment techniques, crimes that impact large numbers of vulnerable victims. The sophisticated concealment amendment was modified by additional guideline amendments adopted by the Commission in September in response to the Telemarketing Fraud Prevention Act of 1998. Commission research staff estimates the combined effect of the amendments will be to increase sentences in telemarketing fraud cases from a current average of 21 months to a minimum of 33 months, representing an approximate 57 percent increase.

Throughout 1998, Commission staff continued to include as one of its top priorities the systematic study and analysis of the guidelines for fraud, theft, and tax offenses. Additionally, in advancing the Commission's research and information dissemination agenda, Commission staff in the fall presented a number of papers at the Annual Meeting of the American Society of Criminology. Topics included computer offense conduct, immigration offenses, methamphetamine offenses, and sentencing guidelines for juveniles. In 1998, the Commission

received documentation on more than 50,000 cases in which sentences were imposed under the guidelines and trained approximately 2,400 individuals at 44 training sessions, including ongoing programs sponsored by the Federal Judicial Center and the Department of Justice.

While the staff has been able to carry on its routine functions, the Commission needs commissioners to develop necessary guideline amendments to implement legislation, address circuit conflicts in guidelines interpretation, and remedy any other application concerns.

In Memoriam

This year, the Judiciary lost a friend and colleague, and the nation lost a distinguished servant, when Lewis F. Powell passed away on August 25. Justice Powell was appointed to the Supreme Court by President Richard M. Nixon in December 1971. He took the oath of office in January 1972 and served for more than 15 years before retiring in 1987. A true patriot and public servant, he practiced law before volunteering to serve in the Air Force in World War II and again before accepting the appointment to the Supreme Court. Lewis Powell was a warm, good man of uncommon influence, personal grace, and fair-mindedness. He endeared himself to all who worked with him, and he will be greatly missed.

Conclusion

As we prepare to complete the work of this millennium and embark upon the next, the Judiciary may take a fair measure of satisfaction in that, despite the challenges we face, the United States court system continues to serve as a global standard of excellence. We must dedicate ourselves to maintaining the splendid tradition of our Judiciary, and to preserving a proper balance with the other branches of government and the states as we continue to work together.

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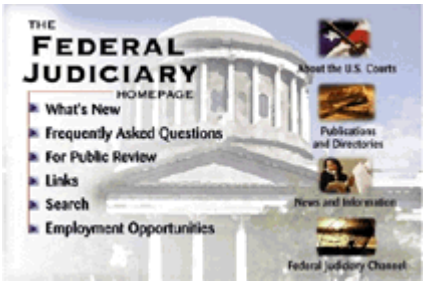

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The 1999 Year-End Report on the Federal Judiciary

Overview

The 1999 Year-End Report on the Federal Judiciary—my 14th as Chief Justice—provides an oppor-tunity to review the state of the Judiciary not only for the past year, but also to reflect briefly on its status this past century, which, I hasten to point out, has another year to run. Just ask the makers of *2001: A Space Odyssey*. Our society experienced enormous technological and industrial advances in the 20th century. We entered the century traveling in horse and buggy, on steamboat, or by rail, and we leave it thinking of man's landing on the moon as old news, to use but one example. Changes in the federal Judiciary in the 20th century may appear less extreme by comparison, but are nonetheless remarkable.

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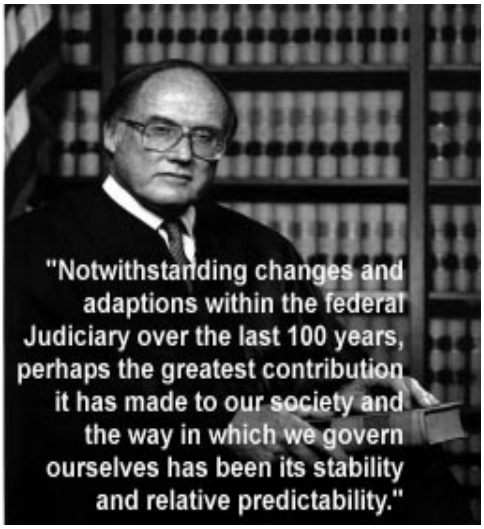

One hundred years ago, there were 108 authorized federal judgeships in the federal Judiciary, consisting of 71 district judgeships, 28 appellate judgeships, and 9 Supreme Court Justices. Today, there are 852—including 655 district judgeships, 179 appellate judgeships and 9 Supreme Court Justices. In 1900, 13,605 cases were filed in federal district courts, and 1,093 in courts of appeals. This past year, over 320,194 cases were filed in federal district courts, over 54,600 in courts of appeals, and over 1,300,000 filings were made in bankruptcy courts alone.

These changes in the federal Judiciary reflect not merely a growth in the population of the United States, but also have been in response to the increasing jurisdiction of federal courts. Some increase in federal jurisdiction has been a natural result of the industrialization and technological development and the corresponding regulation of it in America in the 20th century; some in recent years, however, has resulted from unnecessary federalization of traditional state law matters. Of course, technological advances have had other profound impacts on the Judiciary. A century that began with some federal judges still riding the circuits con-cludes with judges communicating by video conferencing, using a Federal Judicial Television Network, and in some instances reviewing briefs filed electronically.

Notwithstanding changes and adaptations within the federal Judiciary over the last 100 years, perhaps the greatest contribution it has made to our society and the way in which we govern ourselves has been its stability and relative predictability. These traits—consistent throughout the century—have been secured by the Judiciary's independence and are dependent on a healthy support of the other branches of government.

Public recognition of the strengths of the federal Judiciary is encouraging. In a February 1999 Gallop Poll, 80 percent of Americans surveyed stated that they had a "great deal" or "fair" amount of trust in the judicial branch of government, far exceeding figures for the other branches. And a February 1999 report of an American Bar Association nationwide survey on the American system of justice concluded that "at least conceptually, there is strong support for the justice system. The data indicated that 80 percent of all respondents either strongly agree or agree . . . that in spite of its problems, the American justice system is still the best in the world."

The public's views are a function of more than the structure of our government and the independence of the Judiciary. Those views are shaped by the dedication and hard work of federal judges who continue to dispense justice despite an increasing workload and a relatively decreasing salary. We are particularly indebted to our senior federal judges who continue to help with the courts' workload with little incentive other than devotion to public service.

The past year has been one of improvement in the Judiciary. Last year at this time, I singled out three significant problems facing the Judiciary that needed immediate attention: (1) the need to appoint all seven Commissioners of a vacant United States Sentencing Commission; (2) the continuing relative decline in judicial salaries; and (3) the growing caseload in the federal Judiciary. I noted that all three problems were soluble. This year, I extend thanks on behalf of the entire Judiciary to Congress and the Executive Branch for the significant progress we have made on two of the three problems, and for efforts made to address the third.

First, I am pleased to report that the political impasse on the appointments to the United States Sentencing Commission was overcome in 1999. All seven Commissioners were confirmed by the Senate in November, and U.S. Circuit Judge Diana E. Murphy of Minneapolis, Minnesota, is the new Chair. The Sentencing Commission, among other things, reduces disparity in sentencing, establishes sentencing policies and practices in federal courts, and advises Congress and the Executive Branch in the development of crime policy. This much-needed Commission may now address a backlog of work caused by the vacancies and can promulgate guidelines to implement a significant amount of sentencing and crime-related legislation enacted by the 105th Congress.

Second, for only the second time since 1993, I can report some adjustment in the salaries of federal judges. Effective today, federal judges will receive a 3.4 percent Employment Cost Index adjustment in accordance with the Ethics Reform Act of 1989 (2 U.S.C. § 461). The Judiciary is appreciative of the adjustment, but it should not be confused with a raise in salary. We must continue to work for more appropriate compensation for federal judges to maintain the quality and morale of the federal Judiciary.

And, third, I commend the Senate Government Affairs Committee and its Chair, Senator Fred Thompson, for holding hearings on May 6, 1999, on the issue of controlling the federalization of crimes that are better left to state laws and courts to handle. The hearings were held in part as a response to issues I raised in last year's Report, and focused also on the American Bar Association's Task Force on Federalization of Criminal Law, a bipartisan Task Force chaired

by former Attorney General Edwin Meese. The Task Force concluded that the ultimate safeguard for maintaining our balanced Constitutional system must be a "principled recognition by Congress for the long-range damage to real crime control and to the nation's structure caused by inappropriate federalization." As Chairman Meese elaborated at the hearings, the "expanding coverage of federal criminal law, much of which has been enacted without any demonstrated or distinctive federal justification, is moving the nation rapidly towards two broadly overlapping, parallel, and essentially redundant sets of criminal prohibitions, each filled with different consequences for the same conduct. Such a system has little to commend it and much to condemn it."

Eliminating unwarranted federalization of crime will help control growth in federal courts and preserve them as courts of limited jurisdiction. I urge the Congress to continue to examine this issue, and to refer to guidelines on federal courts' criminal jurisdiction set forth in the Long Range Plan for the Federal Courts adopted by the Judicial Conference in 1995 as detailed in my Year-End Report last year.

In the meantime, certain federal courts continue to feel the effects of an increased workload. Congress responded to this problem in 1999 by creating nine new judgeships—four in the Middle District of Florida, three in Arizona, and two in Nevada. The Judicial Conference of the United States seeks additional judgeships in approximately 25 percent of the judicial districts in the United States. Federal courts in U.S. border areas face a crisis in workload created by an unmanageable number of immigration and drug-related cases. The Judicial Conference has been seeking additional judgeships for a number of years, particularly in those areas most affected by such cases, including the Southern District of California, the Southern and Western Districts of Texas, and the Districts of Arizona and New Mexico. More judges are also needed in four Courts of Appeals in the country—the First, Second, Sixth, and Ninth Circuits need judges to meet their workloads and to maintain the quality of justice provided in those courts.

Clearly, the Judiciary does not advocate growth for growth's sake, but must respond to its workload. In that regard, the workload in some jurisdictions of the federal Judiciary is such that some vacancies will not need to be filled. Four vacancies are thus affected: the existing vacancy in the United States District Court for the District of Columbia, and prospective vacancies in the United States District Courts of the District of Delaware, the District of Wyoming, and the Southern District of West Virginia will not need to be filled. The Judicial Conference has so advised the Executive and Legislative Branches.

Next

Supreme Court of the United States

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2000 YEAR-END REPORT ON THE FEDERAL JUDICIARY

I. Overview

The 2000 Year-End Report on the Federal Judiciary is my 15th report as Chief Justice. Despite the seesaw aftermath of the Presidential election, we are once again witnessing an orderly transition of power from one Presidential administration to another. This Presidential election, however, tested our Constitutional system in ways it has never been tested before. The Florida State courts, the lower federal courts and the Supreme Court of the United States became involved in a way that one hopes will seldom, if ever, be necessary in the future.

I am pleased to report that a federal courts improvement bill was enacted for the first time in four years. The Act includes nearly 30 provisions covering a wide range of issues of importance to federal court operations. Thanks are due to Congress for creating ten new district judgeships and for confirming 39 judges during the last year, including three in Arizona, one of the Southwestern states where judges are so urgently needed. I hope that the 107th Congress will take action on the Judicial Conference's request to establish ten additional court of appeals judgeships, 44 additional district court judgeships and 24 new bankruptcy judgeships.

Although Congress responded to many of the Judiciary's legislative priorities during this year, I will focus in this report on what I consider to be the most pressing issue facing the Judiciary: the need to increase judicial salaries. I will also discuss proposed legislation that would effectively bar judges from attending privately sponsored seminars.

II. Judicial Compensation

One key to the independence of the federal Judiciary is that Article III of the Constitution of the United States guarantees federal judges tenure during good behavior and prohibits reducing their compensation while in office. Yet the federal courts of course depend on Congress for funding, including any increase in judicial compensation.

At the Constitutional Convention, the framers saw the necessity of allowing periodic increases in judicial salaries. Although the original draft of the compensation clause of Article III contained a prohibition on either decreasing or increasing the salary of a sitting judge, the delegates to the Convention recognized that freezing judges' salaries would be unworkable and would nullify the protections of life tenure. The delegates agreed that Congress ought to

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be able "to increase salaries as circumstances might require . . . ."[1] They noted three independent factors that could justify raising judicial salaries: inflation, an increased workload or societal expectations. As Alexander Hamilton explained:

It will readily be understood, that the fluctuations in the value of money and in the state of society, rendered a fixed rate of compensation [for judges] in the Constitution inadmissible. What might be extravagant to-day, might in half a century become penurious and inadequate.[2]

The delegates also recognized that the Judiciary would require persons "of the first talents" and that to attract them the pay would have to be substantial.[3] Today, all of these factors point to the need for a salary increase for the Judiciary.

I recognize that the salaries of federal judges are higher than average salaries in many occupations, and that some may be skeptical of the need to raise the salaries of judges who already earn more than $140,000 per year. But in order to continue to provide the nation a capable and effective judicial system we must be able to attract and retain experienced men and women of quality and diversity to perform a demanding position in the public service. The fact is that those lawyers who are qualified to serve as federal judges have opportunities to earn far more in private law practice or business than as judges.

In order to continue to attract highly qualified and diverse federal judges -- judges whom we ask and expect to remain for life -- we must provide them adequate compensation. To paraphrase a statement made by George Mason at the Constitutional Convention, I fear that otherwise the question will be not who is most fit to be chosen, but who is most willing to serve. We cannot afford a Judiciary made up primarily of the wealthy.

We should abandon the approach to judicial salaries that puts off the inevitable increases until salaries have so eroded in value that substantial increases are necessary. The Commission on Executive, Legislative and Judicial Salaries (known as the "Quadrennial Commission") was devised in 1967 to solve this problem through an independent commission of private sector members that would recommend to the President appropriate salary changes for the Judiciary as well as the Congress and senior Executive Branch officers. 2 U.S.C. §§ 351 *et seq.* The President was to take these recommendations into account in making his salary recommendations to Congress. Unless Congress acted to disapprove them within 30 days, the salary rates recommended by the President would be implemented.

The Quadrennial Commission, whose members were appointed every four years by the President, the Speaker of the House, the President of the Senate and the Chief Justice, first met in 1968. Although the President's recommendation to Congress was less than the Commission's recommendation, it was implemented in 1969. The 1973 Quadrennial Commission's recommendation and the President's recommendation based upon it were not implemented. The 1977 Quadrennial Commission for the first time recommended different rates of pay for Level II Executive Branch officers ($60,000), Members of Congress ($57,500) and court of appeals judges ($65,000). The President recommended $57,500 for all three categories, which was implemented in 1977.

The 1981 Quadrennial Commission's recommendation and that of the President were not implemented. The 1985 Quadrennial Commission made no salary recommendations, but the 1987 Quadrennial Commission recommended that the rates of pay for Level II Executive

Branch officers, Members of Congress and court of appeals judges be raised to $135,000; the President recommended $89,500 for Level II Executive Branch employees and Members of Congress, and $95,000 for court of appeals judges.[4] The recommendations were implemented in 1987. The 1989 Quadrennial Commission's recommendation and the President's recommendation based upon it were not implemented, but they laid the groundwork for the enactment later that year of the Ethics Reform Act.

In addition to the Quadrennial Commissions, in 1975 Congress enacted the Executive Salary Cost-of-Living Adjustment Act, which gave judges, Members of Congress and high-level Executive Branch officials the same automatic cost-of-living adjustments accorded to other federal employees, unless specifically rejected by Congress. In practice, however, Congress frequently rejected or reduced the cost-of-living adjustments due under the Act. In 1981, Congress enacted section 140 of Public Law No. 97-92, which requires specific congressional action to give judges cost-of-living adjustments.

As the President noted in transmitting his 1989 salary recommendations to Congress, "[e]very one of the Commissions that has met over the past 20 years concluded that a pay increase for key Federal officials was necessary." Cong. Rec., vol. 135, pt. 1, p. 251, Jan. 19, 1989. The President also noted that the 1989 Quadrennial Commission had "documented both the substantial erosion in the real level of Federal executive pay . . . since 1969 and the recruitment and retention problems that have resulted, especially for the Federal judiciary." Id. Because neither the Quadrennial Commissions' recommendations nor cost-of-living adjustments were regularly implemented, periodic crises in federal pay continued to arise.

The Ethics Reform Act of 1989, Public Law No. 101-194, was the latest effort to resolve this problem. It provided a cost-of-living adjustment that year, followed by a pay raise the following year, for a total increase in judicial pay of nearly 35%. The Act also provided for yearly upward adjustments (automatic unless rejected by Congress for Members of Congress and Executive Branch officers, but still requiring legislation for judges) based upon the Employment Cost Index (ECI). Since 1993, however, there have been only three adjustments in the salaries of federal judges -- a 2.3% adjustment in 1998, a 3.4% adjustment in 2000 and a 2.7% adjustment effective today. The 1989 Act also replaced the Quadrennial Commission with a different form of commission; that commission has never even met.

Although the Judiciary is appreciative of any upward adjustment, these small and infrequent increases have once again allowed federal judicial salaries to erode. This unfortunate situation should not continue. As in the late 1980s, we are facing a critical moment in judicial compensation. The need for increased compensation for federal judges has been raised in 13 of the last 19 Year-End Reports, yet during that time judicial salaries have not even kept pace with inflation. And they have been far outpaced by salaries of lawyers in the private sector.

Twenty years ago, those lawyers who were appointed to the federal bench from private practice earned an average of about $131,000 just prior to their appointments. As of January 1, 2001, our federal district court judges make $145,100 and our court of appeals judges are paid $153,900 per year. Yet many partners in top firms in large cities now make in excess of $500,000 per year. It is no wonder that during the 1990s, 54 federal district court and court of appeals judges left the bench. While we cannot say that these judges left because of salary concerns alone, this number compares with 41 judges during the 1980s and just three during the 1960s.

If the federal Judiciary had received the ECI adjustments called for by the Ethics Reform Act of 1989, district court judges would now be paid about $159,300 and court of appeals judges $168,900. Instead, the compensation of federal judges continues to lag far behind both inflation and the spiraling compensation of attorneys in private practice. Many judicial law clerks, who work for federal judges for one or two years immediately after graduating from law school, leave their clerkships to work for top firms in big cities and immediately make as much as the judges for whom they clerked. While most of these law clerks have been out of law school for only a year or two, our federal judges are necessarily already experienced attorneys when they are appointed. Becoming a federal judge is an honor and a privilege, and requires a devotion to public service. But even the most devoted public servant should be fairly compensated.

Toward the end of the 106th Congress, there was a move to repeal the ban on honoraria for judges imposed by the Ethics Reform Act of 1989, in an effort to ameliorate the effect of lagging salaries and Congress's failure to implement cost-of-living adjustments envisioned by the Act. This move was met with an outcry against what some feared would create the appearance of impropriety, even though any honoraria would be governed by the strict standards of the Code of Conduct for United States Judges, just as they had been before 1989. Yet many of those who condemned any effort to repeal the honoraria ban recognized the genuine need to increase salaries for the federal Judiciary.

The 107th Congress has a real opportunity to solve the problem of inadequate judicial compensation, particularly in light of the current budgetary surplus. First, Congress should act to pass legislation to restore foregone ECI adjustments by increasing judicial salaries by 9.6% and the President should sign this legislation. Second, because judges are appointed for life and expected to remain on the bench, increases in judicial compensation should not be tied to increases for non-career public servants. Third, future Ethics Reform Act increases for the Judiciary should be automatic. Finally, some form of the Quadrennial Salary Commission should be revived in order to advise Congress and the President periodically as to appropriate compensation for senior government officials. I am hopeful that during the next year, we can work together to bring about a lasting solution to ensuring consistent, adequate compensation for the Judiciary.

III. Privately Sponsored Seminars

Last July, after a private organization issued a report critical of judges' attending private educational seminars at the expense of the seminar sponsors, legislation was introduced that would prohibit federal judges from accepting "anything of value in connection with a seminar." The Judicial Education Reform Act of 2000, known as the Kerry-Feingold Bill (S. 2990 (106th Cong.)) would give the Board of the Federal Judicial Center the power to authorize government funding for judges to attend only those "seminars that are conducted in a manner so as to maintain the public's confidence in an unbiased and fair-minded judiciary."

The assignment to the FJC Board -- or to any government board -- of authority that is tantamount to deciding what seminars or educational meetings federal judges may attend -- and to decide it under the extraordinarily vague standard set out above -- has most of the elements commonly associated with government censorship. Such a proposal seems quite out of place in this country, with its tradition of freedom of speech and of the press. As Justice Holmes famously noted (in his dissent in *Abrams v. United States*, 250 U.S. 616, 630 (1919)), "the ultimate good desired is better reached by free trade in ideas" than by censorship.

Existing legal and ethics provisions properly restrict judges from accepting benefits from parties to litigation before them and provide for disqualification in any instance where a judge's impartiality might reasonably be questioned. The current financial disclosure requirements also ensure that information regarding attendance at private seminars at the expense of the seminar sponsors is available to the public.

At its meeting in September, the Judicial Conference of the United States opposed the Kerry-Feingold Bill, noting that it is overly broad, raises potential constitutional issues and would mandate an inappropriate censorship role for the Federal Judicial Center. Subsequently, the FJC Board also opposed the bill. In addition to the reasons cited by the Judicial Conference, the FJC Board explained that the legislation would jeopardize the Federal Judicial Center's ability to cosponsor seminars with law schools and other organizations, as it occasionally does now. The legislation is also opposed by the Federal Judges Association and the deans of a number of law schools.

The Federal Judicial Center's mandate is to provide continuing education for federal judges and court personnel -- and for over 30 years the Center has ably performed this task. Later in this report, I describe the range of programs for judges presented by the Center last year. Nevertheless, the Center cannot provide every federal judge education each year on the wide array of subjects that judges may confront, including topics primarily of local concern. Seminars organized by law schools, bar associations and other private organizations are a valuable source of education in addition to that provided by the Federal Judicial Center. The effect of S. 2990 would be dramatically to restrict the information made available to federal judges through seminars by requiring that the content of that information and the identities of its presenters be weighed against a prediction of public confidence in fair-mindedness. This is contrary to the public interest in encouraging an informed and educated Judiciary, and contrary to the American belief in a free trade in ideas.

IV. The Year in Review

Information Assistance to Foreign Judiciaries

As I have noted in previous Year-End Reports, many representatives of foreign judicial systems continue to turn to our Judiciary for education and technical assistance. This year over 900 representatives from more than 60 foreign judicial systems formally visited the Supreme Court of the United States seeking information about our system of justice. The Federal Judicial Center, the Administrative Office of the United States Courts, and the International Judicial Relations Committee of the Judicial Conference have been instrumental in providing international visitors with information, education and technical assistance to improve the administration and independence of foreign courts and enhance the rule of law. At the same time, we have gained valuable insights into our own judicial system by exchanging information with these foreign visitors.

The Federal Courts' Caseload

In Fiscal Year 2000, filings in the 12 regional courts of appeals were essentially static, growing by four cases from the previous year to 54,697.[5] In the district courts, civil filings showed a similar pattern, declining by less than 1% to 259,517 cases,[6] while criminal filings rose for the sixth straight year.[7] The increase in criminal filings was echoed by a 7% gain in the number of defendants requiring pretrial services.[8] The number of persons on probation,

which is less directly affected by criminal filings, went up by 3%.[9] Filings in U.S. bankruptcy courts continued a decline that began last year, falling 7% from 1,354,376 to 1,262,102.[10]

The number of judicial confirmations increased 40% from 25 in 1999 to 35 in Fiscal Year 2000, while the count of vacancies grew from 62 as of September 30, 1999, to 66 one year later. In addition to the 35 confirmations mentioned above, the Senate confirmed four judicial nominees on October 3.

The Supreme Court of the United States - Caseload Statistics

The total number of case filings in the Supreme Court increased from 7,109 in the 1998 Term to 7,377 in the 1999 Term - an increase of 3.8%. Filings in the Court's *in forma pauperis* docket increased from 5,047 to 5,282 - a 4.7% rise. The Court's paid docket increased by 31 cases, from 2,061 to 2,092 - a 1.5% increase. During the 1999 Term, 83 cases were argued and 79 were disposed of in 74 signed opinions, compared to 90 cases argued and 84 disposed of in 75 signed opinions in the 1998 Term. No cases from the 1999 Term were scheduled for re-argument in the 2000 Term.

V. The Administrative Office of the United States Courts

The Administrative Office of the United States Courts serves as the central support agency for the administration of the federal court system. Among the Administrative Office's most important responsibilities are preparing, under the guidance and direction of the Judicial Conference and its Committee on the Budget, the Judiciary's annual budget request, and subsequently submitting that request to Congress. Because the Judiciary's appropriations bill is included with those of the Departments of Commerce, Justice, State and certain other federal agencies, the Judiciary's budget was once again delayed this year because of policy differences between the Congress and the President. Although these issues had nothing to do with the federal courts, the uncertain budget situation had the potential to jeopardize the effective and efficient operation of the Judicial Branch. Ultimately, however, under the leadership of the Judicial Conference's Budget Committee, chaired by Judge John G. Heyburn, II, and Administrative Office Director Leonidas Ralph Mecham, the Judiciary fared well in the Fiscal Year 2001 appropriations bill. The 8% funding increase will enable the Judiciary, for the first time in two years, to hire new staff. This will come as especially welcome news to the Southwestern border courts, which have experienced a 125% increase in criminal caseload over the past three years.

Because much of the Judiciary's budget is expended for the salaries of its personnel, the Judiciary devotes considerable attention to developing scientifically derived staffing formulas based on the functions and work requirements of the different court offices. In order to ensure staffing formulas reflect current work, they are updated periodically. After an intensive study of all major staffing formulas, new formulas were developed and implemented this year. The new staffing formulas reflect efficiencies realized in all program areas since the last formulas were developed, as well as new work.

An independent comprehensive study of the Judiciary's space and facilities program was completed this year. The consultant's report described numerous program achievements, including actions to achieve savings in the space and facilities program, a useful *U.S. Courts Design Guide*, and an effective long-range facilities planning process. Due to the efforts of the Judicial Conference's Committee on Security and Facilities, chaired by Judge Jane R.

Roth, the Administrative Office and the General Services Administration, Congress approved funding for eight critically needed courthouse construction projects totaling $559 million over the next two years.

A top priority of the Administrative Office is developing and implementing new technologies and systems that enhance the management and processing of information and the performance of court business functions. Implementation of a new system for processing Criminal Justice Act panel attorney payment vouchers was completed this year, and agency staff continued to deploy new systems for jury administration and financial accounting.

This past year, development work continued on case management/electronic case file systems that will replace the current core case management systems for the appellate, district and bankruptcy courts. These new systems have the potential to change dramatically court operations because they will also include electronic case filing capabilities which will reduce the volume of paper case files. Today's technological capabilities that allow relatively easy access to information require careful consideration of issues related to security and privacy. Because court documents often contain private or sensitive information, the Administrative Office, under the guidance of the Judicial Conference Committee on Court Administration and Case Management, is studying the privacy and security implications of electronic case files. Also, the Committee on Rules of Practice and Procedure is considering changes to the federal rules to accommodate the practicalities of digital processes.

In 2000, the Administrative Office launched the federal law clerk information system, a new data base accessible through the Judiciary's Internet Web site that allows prospective law clerk candidates to obtain information about upcoming or existing employment opportunities as law clerks to federal judges. Within days of the system going live, information on more than 300 law clerk positions was posted on the Web site.

Community outreach programs are an important means of increasing the public's understanding of the federal Judiciary. This year, more than 1,300 high school seniors at 34 court locations across the country participated in a Law Day program sponsored by the Administrative Office called Judicial Independence and You. The program won an Outstanding Law Day Activity Award from the American Bar Association's Standing Committee on Public Education.

VI. The Federal Judicial Center

One element of an effective and independent judicial system is a capacity to provide its judges the continuing education they need to do their jobs. Within the federal judicial system, that is the major role of the Federal Judicial Center.

Along with the Judicial Conference, the FJC's Board, which I chair, last year cautioned against proposals, such as the Kerry-Feingold Bill I discussed previously, that would unduly restrict judges' ability to attend privately funded educational programs. That caution, however, should not diminish the essential role of the FJC and the financial support that it needs. Law schools and public policy organizations cannot, and should not be expected to, offer judges education in the full range of their responsibilities.

Federal judges today face cases involving complicated statutes and factual assertions, many of which straddle the intersections of law, technology, and the physical, biological and social

sciences. FJC education programs and reference guides help judges sort out relevant facts and applicable law from the panoply of information with which the adversary system bombards them. The FJC thus contributes to the independent decisionmaking that is the judge's fundamental duty.

Last year the FJC presented nine orientation seminars for new judges on basic topics such as civil and criminal procedure, case management, sentencing, evidence and ethics. Twelve three-day continuing education programs each covered multiple areas such as law and the Internet, employment law, sentencing, habeas corpus, prisoner litigation and capital case litigation, as well as the new evidence and procedure rules, electronic discovery, statistics, genetics, relations with the media and ethics. Eleven other programs, from two to four days long, each dealt exclusively with a specific subject, such as intellectual property, employment law, environmental law, case management, bankruptcy law or mediation.

These programs were designed and coordinated by the FJC's staff of judicial education specialists, with guidance from the FJC's Board and advisory groups of judges. The FJC also presents a few joint programs with law schools. Last year it worked with the University of Alabama, Boalt Hall at the University of California and the Georgetown Law Center. For every program, the FJC has two main goals: to ensure that the curriculum includes the competing aspects of the topic, and that it is up-to-date on both substantive law and procedure.

The FJC has been particularly responsive to the Supreme Court's trilogy of decisions, starting with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), which requires judges to inquire more vigorously into the reliability of all expert testimony, while honoring the jury's fact-finding role. In 2000, the FJC released the second edition of its nationally recognized *Reference Manual on Scientific Evidence*. The *Manual* does not instruct judges about what evidence to admit or exclude. Instead, it helps judges identify and narrow issues in areas ranging from multiple regression analysis, to epidemiology, to engineering practices and methods. Because the *Manual* is easily available on the FJC's Web site and from commercial publishers, it also helps lawyers deal with complex evidence. In addition, this year a series of programs on the federal Judiciary's satellite television network will help judges analyze scientific evidence under the *Daubert* standards and also under *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), which expands judges' responsibilities in patent cases.

FJC programs also reach other topics, such as recent broadcasts on the ramifications of the Supreme Court's decision last term in *Apprendi v. New Jersey*, 530 U.S. 446 (2000), a forthcoming online collection of materials to assist judges assigned federal death penalty prosecutions, and a handbook for judges on the strengths and weaknesses of various types of alternative dispute resolution mechanisms and how to implement court-based "ADR" effectively.

VII. The United States Sentencing Commission

At an investiture ceremony held at the Supreme Court of the United States on January 5, 2000, I administered the oath of office to the seven new members of the United States Sentencing Commission. The new Commission consists of Judge Diana E. Murphy (chair), Judge Ruben Castillo (vice chair); Judge William K. Sessions, III (vice chair), Mr. John R. Steer (vice chair), Judge Sterling Johnson, Jr., Judge Joe Kendall, and Professor Michael E. O'Neill. These seven voting commissioners are joined by *ex-officio* members Mr. Michael J.

Gaines and Mr. Laird C. Kirkpatrick. The Commission announced on March 9 the appointment of Timothy B. McGrath as its new staff director. Mr. McGrath had served as the Commission's interim staff director for the 18 months prior to his appointment.

The Commission on May 1, 2000, sent to Congress a number of amendments to the federal sentencing guidelines that will significantly increase penalties for some serious crimes. Many of the newly enacted guideline provisions are in response to congressional concerns and address such serious crimes as the improper use of new technology in copyright and trademark violations, sexual offenses against children, methamphetamine trafficking, identity theft, cell phone cloning, telemarketing fraud and firearms offenses.

Co-sponsored by the U.S. Sentencing Commission and the Federal Bar Association, the Ninth Annual National Seminar on the Federal Sentencing Guidelines was held May 3-5 in Clearwater Beach, Florida. Presentations were made on a variety of topics including the fraud and theft guidelines, restitution, drug issues, firearms offenses, immigration offenses, criminal history, relevant conduct and grouping of multiple counts. The seminar was attended by 368 people, primarily U.S. probation officers and defense attorneys.

The Commission announced on August 8 its priorities for the amendment cycle ending May 1, 2001. The priorities include work on an economic crimes package; money laundering; counterfeiting; further responses to the Protection of Children from Sexual Predators Act of 1998; firearms; nuclear, chemical and biological weapons; unauthorized compensation and related offenses; offenses implicating the privacy interests of taxpayers; the initiation of a review of the guidelines relating to criminal history; and the initiation of an analysis of the operation of the "safety valve" guidelines.

On October 12 and 13, the Commission presented its Third Symposium on Crime and Punishment in the United States. The symposium, "Federal Sentencing Policy for Economic Crimes & New Technology Offenses," focused on current economic crime sentencing and the ways in which new technologies have impacted the landscape of criminal activity. The Commission co-sponsored this symposium with the Committee on Criminal Law of the Judicial Conference, the ABA White Collar Crime Committee and the National White Collar Crime Center.

I commend Judge Murphy and the staff of the United States Sentencing Commission, as well as Director Mecham and the staff of the Administrative Office of the United States Courts and Judge Fern Smith and the staff of the Federal Judicial Center, for their sustained contribution to an independent and effective Judiciary.

VIII. Conclusion

For several years, I have noted that we would have to continue to work to increase compensation for federal judges to maintain the quality and morale of the federal Judiciary. I look forward to working with the 107th Congress and the President to resolve this continuing problem.

Despite all of the challenges we face, the Judiciary can look back upon 2000 as a year of many accomplishments. We have learned to be more efficient and are in the forefront of innovative initiatives such as electronic filing and distance learning. Supported by hard-working staff, federal judges continue to administer justice day in and day out,

notwithstanding an increasing workload and a salary whose real value has eroded substantially over the past decade. We can be proud that our courts continue to serve as a standard of excellence around the world.

Finally, I offer my best wishes to President-elect Bush and Vice President-elect Cheney and to the members of the 107th Congress, just as I extend my best wishes to President Clinton and Vice President Gore and to those legislators who have concluded their elective service. And I extend to all my wish for a happy New Year.

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[1] 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, p. 44 (Max Farrand ed., 1911) (hereinafter Farrand).

[2] The Federalist No. 79 (Lodge ed. 1908), pp. 491-492.

[3] 2 Farrand, at 429.

[4] The Quadrennial Commission's mandate was to recommend salary changes for the Judiciary as well as Congress and senior Executive Branch employees. For simplicity, I have referred only to its recommendations for Level II Executive Branch employees, Members of Congress and court of appeals judges.

[5] Original proceedings increased 18%, and criminal appeals rose 4%, which offset declines in filings of bankruptcy, civil, and administrative agency appeals, down 9%, 2%, and 1%, respectively.

[6] The decline in civil filings in the U.S. district courts was only 754 cases or three-tenths of 1%. Though the total number was essentially unchanged, specific areas of civil litigation experienced significant increases and decreases. Federal question litigation declined 3%, falling by more than 5,000 cases. This was chiefly attributable to a 40% overall decline in personal injury cases, mostly related to asbestos and breast implant filings. Diversity of citizenship filings also fell, declining by 2% to 48,626, largely due to decreases in personal injury/product liability filings. Offsetting these declines were increases in U.S. plaintiff or defendant actions which grew 9%, rising from 65,443 to 71,109 cases. U.S. plaintiff cases increased 10%, primarily because filings involving contract actions grew by 9%. Recovery of overpayments related to defaulted students loans, increasing from 21,816 to 24,329, was the primary reason for the overall contract action increase. The number of filings with the U.S. as defendant also rose, for the most part attributable to a 14% increase in social security filings and a 9% rise in prisoner petitions. The Social Security Administration devoted resources to clearing a backlog and, as a result, social security supplemental security income cases increased 19%, or by more than 1,000 cases, and disability insurance cases increased 11%, rising by more than 700 cases. Prisoner petitions related to motions to vacate sentence rose 10% while habeas corpus prisoner petitions grew by 8%.

[7] Filings of criminal cases rose 5% to 62,745, and the number of defendants increased 4% to 83,963. Fiscal Year 2000 cases and defendant numbers are the highest since 1933, when the Prohibition Amendment was repealed. This caseload growth raised the criminal cases per authorized judgeship from 93 to 96, in spite of nine additional Article III judgeships created

in November 1999. Immigration and firearms cases were chiefly responsible for the increase, with immigration filings growing by 1,509 cases, a 14% rise over last year, and firearms filings growing by 1,020 cases, a 23% jump over last year. The courts received 12,150 immigration cases, 63% of which were in five Southwestern border districts-Southern District of California, District of Arizona, Southern and Western Districts of Texas, and District of New Mexico. For the fourth straight year, weapons and firearms filings rose, with the district courts receiving 6,223 defendants in 5,387 firearms cases. These filings amounted to 9% of all criminal case filings, two percentage points more than they did last year.

[8] In Fiscal Year 2000, the number of defendants entering into the pretrial services system increased to 85,617, while the number of defendants interviewed went up 6% and the number of pretrial reports prepared increased 7%. During the past five years, pretrial reports prepared and cases requiring pretrial services each rose 35%, persons interviewed grew 26%, and defendants released on supervision increased 22%. Cases requiring pretrial services have risen each year since 1994, and this year's total is 53% higher than that for 1994.

[9] There is an average lag of several years before defendants found guilty and sentenced to prison appear in the probation numbers. Supervised release following a period of incarceration continues to account for a growing percentage of the probation population, now standing at 64%. Of the 63,793 persons serving terms of supervised release, 54% had been charged with drug-related offenses.

[10] Following four years of continuous growth, during which filings first exceeded the one-million mark, declines in filings of both personal and business bankruptcy petitions have been reported for the past two years. Drops in Chapter 7 and Chapter 13 petitions were primarily responsible for the overall decline. Filings under Chapter 11, which represent about 1% of all bankruptcy filings, were the only ones showing an increase, up 9%; those filings, however, generally require more judge involvement than do the filings under other chapters of the bankruptcy code. Chapter 7 filings, which constituted 70% of all bankruptcy filings, dropped 9%. Filings under Chapter 13, which accounted for 30% of all bankruptcies, fell 1%. Filings under Chapter 12 plunged 32% since provisions of the code expired on July 1.

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Supreme Court of the United States

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2000 YEAR-END REPORT ON THE FEDERAL JUDICIARY

I. Overview

The 2000 Year-End Report on the Federal Judiciary is my 15th report as Chief Justice. Despite the seesaw aftermath of the Presidential election, we are once again witnessing an orderly transition of power from one Presidential administration to another. This Presidential election, however, tested our Constitutional system in ways it has never been tested before. The Florida State courts, the lower federal courts and the Supreme Court of the United States became involved in a way that one hopes will seldom, if ever, be necessary in the future.

I am pleased to report that a federal courts improvement bill was enacted for the first time in four years. The Act includes nearly 30 provisions covering a wide range of issues of importance to federal court operations. Thanks are due to Congress for creating ten new district judgeships and for confirming 39 judges during the last year, including three in Arizona, one of the Southwestern states where judges are so urgently needed. I hope that the 107th Congress will take action on the Judicial Conference's request to establish ten additional court of appeals judgeships, 44 additional district court judgeships and 24 new bankruptcy judgeships.

Although Congress responded to many of the Judiciary's legislative priorities during this year, I will focus in this report on what I consider to be the most pressing issue facing the Judiciary: the need to increase

judicial salaries. I will also discuss proposed legislation that would effectively bar judges from attending privately sponsored seminars.

II. Judicial Compensation

One key to the independence of the federal Judiciary is that Article III of the Constitution of the United States guarantees federal judges tenure during good behavior and prohibits reducing their compensation while in office. Yet the federal courts of course depend on Congress for funding, including any increase in judicial compensation.

At the Constitutional Convention, the framers saw the necessity of allowing periodic increases in judicial salaries. Although the original draft of the compensation clause of Article III contained a prohibition on either decreasing or increasing the salary of a sitting judge, the delegates to the Convention recognized that freezing judges' salaries would be unworkable and would nullify the protections of life tenure. The delegates agreed that Congress ought to be able "to increase salaries as circumstances might require . . . ."[1] They noted three independent factors that could justify raising judicial salaries: inflation, an increased workload or societal expectations. As Alexander Hamilton explained:

It will readily be understood, that the fluctuations in the value of money and in the state of society, rendered a fixed rate of compensation [for judges] in the Constitution inadmissible. What might be extravagant to-day, might in half a century become penurious and inadequate.[2]

The delegates also recognized that the Judiciary would require persons "of the first talents" and that to attract them the pay would have to be substantial.[3] Today, all of these factors point to the need for a salary increase for the Judiciary.

I recognize that the salaries of federal judges are higher than average salaries in many occupations, and that some may be skeptical of the need to raise the salaries of judges who already earn more than

$140,000 per year. But in order to continue to provide the nation a capable and effective judicial system we must be able to attract and retain experienced men and women of quality and diversity to perform a demanding position in the public service. The fact is that those lawyers who are qualified to serve as federal judges have opportunities to earn far more in private law practice or business than as judges.

In order to continue to attract highly qualified and diverse federal judges -- judges whom we ask and expect to remain for life -- we must provide them adequate compensation. To paraphrase a statement made by George Mason at the Constitutional Convention, I fear that otherwise the question will be not who is most fit to be chosen, but who is most willing to serve. We cannot afford a Judiciary made up primarily of the wealthy.

We should abandon the approach to judicial salaries that puts off the inevitable increases until salaries have so eroded in value that substantial increases are necessary. The Commission on Executive, Legislative and Judicial Salaries (known as the "Quadrennial Commission") was devised in 1967 to solve this problem through an independent commission of private sector members that would recommend to the President appropriate salary changes for the Judiciary as well as the Congress and senior Executive Branch officers. 2 U.S.C. §§ 351 *et seq.* The President was to take these recommendations into account in making his salary recommendations to Congress. Unless Congress acted to disapprove them within 30 days, the salary rates recommended by the President would be implemented.

The Quadrennial Commission, whose members were appointed every four years by the President, the Speaker of the House, the President of the Senate and the Chief Justice, first met in 1968. Although the President's recommendation to Congress was less than the Commission's recommendation, it was implemented in 1969. The 1973 Quadrennial Commission's recommendation and the President's recommendation based upon it were not implemented. The 1977 Quadrennial Commission for the first time recommended different rates of pay for Level II Executive Branch officers ($60,000),

Members of Congress ($57,500) and court of appeals judges ($65,000). The President recommended $57,500 for all three categories, which was implemented in 1977.

The 1981 Quadrennial Commission's recommendation and that of the President were not implemented. The 1985 Quadrennial Commission made no salary recommendations, but the 1987 Quadrennial Commission recommended that the rates of pay for Level II Executive Branch officers, Members of Congress and court of appeals judges be raised to $135,000; the President recommended $89,500 for Level II Executive Branch employees and Members of Congress, and $95,000 for court of appeals judges.[4] The recommendations were implemented in 1987. The 1989 Quadrennial Commission's recommendation and the President's recommendation based upon it were not implemented, but they laid the groundwork for the enactment later that year of the Ethics Reform Act.

In addition to the Quadrennial Commissions, in 1975 Congress enacted the Executive Salary Cost-of-Living Adjustment Act, which gave judges, Members of Congress and high-level Executive Branch officials the same automatic cost-of-living adjustments accorded to other federal employees, unless specifically rejected by Congress. In practice, however, Congress frequently rejected or reduced the cost-of-living adjustments due under the Act. In 1981, Congress enacted section 140 of Public Law No. 97-92, which requires specific congressional action to give judges cost-of-living adjustments.

As the President noted in transmitting his 1989 salary recommendations to Congress, "[e]very one of the Commissions that has met over the past 20 years concluded that a pay increase for key Federal officials was necessary." Cong. Rec., vol. 135, pt. 1, p. 251, Jan. 19, 1989. The President also noted that the 1989 Quadrennial Commission had "documented both the substantial erosion in the real level of Federal executive pay . . . since 1969 and the recruitment and retention problems that have resulted, especially for the Federal judiciary." Id. Because neither the Quadrennial Commissions' recommendations nor cost-of-living adjustments were regularly implemented, periodic crises in federal pay continued to arise.

The Ethics Reform Act of 1989, Public Law No. 101-194, was the latest effort to resolve this problem. It provided a cost-of-living adjustment that year, followed by a pay raise the following year, for a total increase in judicial pay of nearly 35%. The Act also provided for yearly upward adjustments (automatic unless rejected by Congress for Members of Congress and Executive Branch officers, but still requiring legislation for judges) based upon the Employment Cost Index (ECI). Since 1993, however, there have been only three adjustments in the salaries of federal judges -- a 2.3% adjustment in 1998, a 3.4% adjustment in 2000 and a 2.7% adjustment effective today. The 1989 Act also replaced the Quadrennial Commission with a different form of commission; that commission has never even met.

Although the Judiciary is appreciative of any upward adjustment, these small and infrequent increases have once again allowed federal judicial salaries to erode. This unfortunate situation should not continue. As in the late 1980s, we are facing a critical moment in judicial compensation. The need for increased compensation for federal judges has been raised in 13 of the last 19 Year-End Reports, yet during that time judicial salaries have not even kept pace with inflation. And they have been far outpaced by salaries of lawyers in the private sector.

Twenty years ago, those lawyers who were appointed to the federal bench from private practice earned an average of about $131,000 just prior to their appointments. As of January 1, 2001, our federal district court judges make $145,100 and our court of appeals judges are paid $153,900 per year. Yet many partners in top firms in large cities now make in excess of $500,000 per year. It is no wonder that during the 1990s, 54 federal district court and court of appeals judges left the bench. While we cannot say that these judges left because of salary concerns alone, this number compares with 41 judges during the 1980s and just three during the 1960s.

If the federal Judiciary had received the ECI adjustments called for by the Ethics Reform Act of 1989, district court judges would now be paid about $159,300 and court of appeals judges $168,900. Instead, the compensation of federal judges continues to lag far behind both inflation and the spiraling compensation of attorneys in private

practice. Many judicial law clerks, who work for federal judges for one or two years immediately after graduating from law school, leave their clerkships to work for top firms in big cities and immediately make as much as the judges for whom they clerked. While most of these law clerks have been out of law school for only a year or two, our federal judges are necessarily already experienced attorneys when they are appointed. Becoming a federal judge is an honor and a privilege, and requires a devotion to public service. But even the most devoted public servant should be fairly compensated.

Toward the end of the 106th Congress, there was a move to repeal the ban on honoraria for judges imposed by the Ethics Reform Act of 1989, in an effort to ameliorate the effect of lagging salaries and Congress's failure to implement cost-of-living adjustments envisioned by the Act. This move was met with an outcry against what some feared would create the appearance of impropriety, even though any honoraria would be governed by the strict standards of the Code of Conduct for United States Judges, just as they had been before 1989. Yet many of those who condemned any effort to repeal the honoraria ban recognized the genuine need to increase salaries for the federal Judiciary.

The 107th Congress has a real opportunity to solve the problem of inadequate judicial compensation, particularly in light of the current budgetary surplus. First, Congress should act to pass legislation to restore foregone ECI adjustments by increasing judicial salaries by 9.6% and the President should sign this legislation. Second, because judges are appointed for life and expected to remain on the bench, increases in judicial compensation should not be tied to increases for non-career public servants. Third, future Ethics Reform Act increases for the Judiciary should be automatic. Finally, some form of the Quadrennial Salary Commission should be revived in order to advise Congress and the President periodically as to appropriate compensation for senior government officials. I am hopeful that during the next year, we can work together to bring about a lasting solution to ensuring consistent, adequate compensation for the Judiciary.

III. Privately Sponsored Seminars

Last July, after a private organization issued a report critical of judges' attending private educational seminars at the expense of the seminar sponsors, legislation was introduced that would prohibit federal judges from accepting "anything of value in connection with a seminar." The Judicial Education Reform Act of 2000, known as the Kerry-Feingold Bill (S. 2990 (106th Cong.)) would give the Board of the Federal Judicial Center the power to authorize government funding for judges to attend only those "seminars that are conducted in a manner so as to maintain the public's confidence in an unbiased and fair-minded judiciary."

The assignment to the FJC Board -- or to any government board -- of authority that is tantamount to deciding what seminars or educational meetings federal judges may attend -- and to decide it under the extraordinarily vague standard set out above -- has most of the elements commonly associated with government censorship. Such a proposal seems quite out of place in this country, with its tradition of freedom of speech and of the press. As Justice Holmes famously noted (in his dissent in *Abrams v. United States*, 250 U.S. 616, 630 (1919)), "the ultimate good desired is better reached by free trade in ideas" than by censorship.

Existing legal and ethics provisions properly restrict judges from accepting benefits from parties to litigation before them and provide for disqualification in any instance where a judge's impartiality might reasonably be questioned. The current financial disclosure requirements also ensure that information regarding attendance at private seminars at the expense of the seminar sponsors is available to the public.

At its meeting in September, the Judicial Conference of the United States opposed the Kerry-Feingold Bill, noting that it is overly broad, raises potential constitutional issues and would mandate an inappropriate censorship role for the Federal Judicial Center. Subsequently, the FJC Board also opposed the bill. In addition to the reasons cited by the Judicial Conference, the FJC Board explained that the legislation would jeopardize the Federal Judicial Center's ability to cosponsor seminars with law schools and other organizations, as it occasionally does now. The legislation is also

opposed by the Federal Judges Association and the deans of a number of law schools.

The Federal Judicial Center's mandate is to provide continuing education for federal judges and court personnel -- and for over 30 years the Center has ably performed this task. Later in this report, I describe the range of programs for judges presented by the Center last year. Nevertheless, the Center cannot provide every federal judge education each year on the wide array of subjects that judges may confront, including topics primarily of local concern. Seminars organized by law schools, bar associations and other private organizations are a valuable source of education in addition to that provided by the Federal Judicial Center. The effect of S. 2990 would be dramatically to restrict the information made available to federal judges through seminars by requiring that the content of that information and the identities of its presenters be weighed against a prediction of public confidence in fair-mindedness. This is contrary to the public interest in encouraging an informed and educated Judiciary, and contrary to the American belief in a free trade in ideas.

IV. The Year in Review

Information Assistance to Foreign Judiciaries

As I have noted in previous Year-End Reports, many representatives of foreign judicial systems continue to turn to our Judiciary for education and technical assistance. This year over 900 representatives from more than 60 foreign judicial systems formally visited the Supreme Court of the United States seeking information about our system of justice. The Federal Judicial Center, the Administrative Office of the United States Courts, and the International Judicial Relations Committee of the Judicial Conference have been instrumental in providing international visitors with information, education and technical assistance to improve the administration and independence of foreign courts and enhance the rule of law. At the same time, we have gained valuable insights into our own judicial system by exchanging information with these foreign visitors.

The Federal Courts' Caseload

In Fiscal Year 2000, filings in the 12 regional courts of appeals were essentially static, growing by four cases from the previous year to 54,697.[5] In the district courts, civil filings showed a similar pattern, declining by less than 1% to 259,517 cases,[6] while criminal filings rose for the sixth straight year.[7] The increase in criminal filings was echoed by a 7% gain in the number of defendants requiring pretrial services.[8] The number of persons on probation, which is less directly affected by criminal filings, went up by 3%.[9] Filings in U.S. bankruptcy courts continued a decline that began last year, falling 7% from 1,354,376 to 1,262,102.[10]

The number of judicial confirmations increased 40% from 25 in 1999 to 35 in Fiscal Year 2000, while the count of vacancies grew from 62 as of September 30, 1999, to 66 one year later. In addition to the 35 confirmations mentioned above, the Senate confirmed four judicial nominees on October 3.

The Supreme Court of the United States - Caseload Statistics

The total number of case filings in the Supreme Court increased from 7,109 in the 1998 Term to 7,377 in the 1999 Term - an increase of 3.8%. Filings in the Court's *in forma pauperis* docket increased from 5,047 to 5,282 - a 4.7% rise. The Court's paid docket increased by 31 cases, from 2,061 to 2,092 - a 1.5% increase. During the 1999 Term, 83 cases were argued and 79 were disposed of in 74 signed opinions, compared to 90 cases argued and 84 disposed of in 75 signed opinions in the 1998 Term. No cases from the 1999 Term were scheduled for re-argument in the 2000 Term.

V. The Administrative Office of the United States Courts

The Administrative Office of the United States Courts serves as the central support agency for the administration of the federal court system. Among the Administrative Office's most important responsibilities are preparing, under the guidance and direction of the Judicial Conference and its Committee on the Budget, the Judiciary's annual budget request, and subsequently submitting that request to

Congress. Because the Judiciary's appropriations bill is included with those of the Departments of Commerce, Justice, State and certain other federal agencies, the Judiciary's budget was once again delayed this year because of policy differences between the Congress and the President. Although these issues had nothing to do with the federal courts, the uncertain budget situation had the potential to jeopardize the effective and efficient operation of the Judicial Branch. Ultimately, however, under the leadership of the Judicial Conference's Budget Committee, chaired by Judge John G. Heyburn, II, and Administrative Office Director Leonidas Ralph Mecham, the Judiciary fared well in the Fiscal Year 2001 appropriations bill. The 8% funding increase will enable the Judiciary, for the first time in two years, to hire new staff. This will come as especially welcome news to the Southwestern border courts, which have experienced a 125% increase in criminal caseload over the past three years.

Because much of the Judiciary's budget is expended for the salaries of its personnel, the Judiciary devotes considerable attention to developing scientifically derived staffing formulas based on the functions and work requirements of the different court offices. In order to ensure staffing formulas reflect current work, they are updated periodically. After an intensive study of all major staffing formulas, new formulas were developed and implemented this year. The new staffing formulas reflect efficiencies realized in all program areas since the last formulas were developed, as well as new work.

An independent comprehensive study of the Judiciary's space and facilities program was completed this year. The consultant's report described numerous program achievements, including actions to achieve savings in the space and facilities program, a useful *U.S. Courts Design Guide*, and an effective long-range facilities planning process. Due to the efforts of the Judicial Conference's Committee on Security and Facilities, chaired by Judge Jane R. Roth, the Administrative Office and the General Services Administration, Congress approved funding for eight critically needed courthouse construction projects totaling $559 million over the next two years.

A top priority of the Administrative Office is developing and implementing new technologies and systems that enhance the

management and processing of information and the performance of court business functions. Implementation of a new system for processing Criminal Justice Act panel attorney payment vouchers was completed this year, and agency staff continued to deploy new systems for jury administration and financial accounting.

This past year, development work continued on case management/electronic case file systems that will replace the current core case management systems for the appellate, district and bankruptcy courts. These new systems have the potential to change dramatically court operations because they will also include electronic case filing capabilities which will reduce the volume of paper case files. Today's technological capabilities that allow relatively easy access to information require careful consideration of issues related to security and privacy. Because court documents often contain private or sensitive information, the Administrative Office, under the guidance of the Judicial Conference Committee on Court Administration and Case Management, is studying the privacy and security implications of electronic case files. Also, the Committee on Rules of Practice and Procedure is considering changes to the federal rules to accommodate the practicalities of digital processes.

In 2000, the Administrative Office launched the federal law clerk information system, a new data base accessible through the Judiciary's Internet Web site that allows prospective law clerk candidates to obtain information about upcoming or existing employment opportunities as law clerks to federal judges. Within days of the system going live, information on more than 300 law clerk positions was posted on the Web site.

Community outreach programs are an important means of increasing the public's understanding of the federal Judiciary. This year, more than 1,300 high school seniors at 34 court locations across the country participated in a Law Day program sponsored by the Administrative Office called Judicial Independence and You. The program won an Outstanding Law Day Activity Award from the American Bar Association's Standing Committee on Public Education.

VI. The Federal Judicial Center

One element of an effective and independent judicial system is a capacity to provide its judges the continuing education they need to do their jobs. Within the federal judicial system, that is the major role of the Federal Judicial Center.

Along with the Judicial Conference, the FJC's Board, which I chair, last year cautioned against proposals, such as the Kerry-Feingold Bill I discussed previously, that would unduly restrict judges' ability to attend privately funded educational programs. That caution, however, should not diminish the essential role of the FJC and the financial support that it needs. Law schools and public policy organizations cannot, and should not be expected to, offer judges education in the full range of their responsibilities.

Federal judges today face cases involving complicated statutes and factual assertions, many of which straddle the intersections of law, technology, and the physical, biological and social sciences. FJC education programs and reference guides help judges sort out relevant facts and applicable law from the panoply of information with which the adversary system bombards them. The FJC thus contributes to the independent decisionmaking that is the judge's fundamental duty.

Last year the FJC presented nine orientation seminars for new judges on basic topics such as civil and criminal procedure, case management, sentencing, evidence and ethics. Twelve three-day continuing education programs each covered multiple areas such as law and the Internet, employment law, sentencing, habeas corpus, prisoner litigation and capital case litigation, as well as the new evidence and procedure rules, electronic discovery, statistics, genetics, relations with the media and ethics. Eleven other programs, from two to four days long, each dealt exclusively with a specific subject, such as intellectual property, employment law, environmental law, case management, bankruptcy law or mediation.

These programs were designed and coordinated by the FJC's staff of judicial education specialists, with guidance from the FJC's Board and advisory groups of judges. The FJC also presents a few joint programs with law schools. Last year it worked with the University of Alabama, Boalt Hall at the University of California and the Georgetown Law

Center. For every program, the FJC has two main goals: to ensure that the curriculum includes the competing aspects of the topic, and that it is up-to-date on both substantive law and procedure.

The FJC has been particularly responsive to the Supreme Court's trilogy of decisions, starting with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), which requires judges to inquire more vigorously into the reliability of all expert testimony, while honoring the jury's fact-finding role. In 2000, the FJC released the second edition of its nationally recognized *Reference Manual on Scientific Evidence*. The *Manual* does not instruct judges about what evidence to admit or exclude. Instead, it helps judges identify and narrow issues in areas ranging from multiple regression analysis, to epidemiology, to engineering practices and methods. Because the *Manual* is easily available on the FJC's Web site and from commercial publishers, it also helps lawyers deal with complex evidence. In addition, this year a series of programs on the federal Judiciary's satellite television network will help judges analyze scientific evidence under the *Daubert* standards and also under *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), which expands judges' responsibilities in patent cases.

FJC programs also reach other topics, such as recent broadcasts on the ramifications of the Supreme Court's decision last term in *Apprendi v. New Jersey*, 530 U.S. 446 (2000), a forthcoming online collection of materials to assist judges assigned federal death penalty prosecutions, and a handbook for judges on the strengths and weaknesses of various types of alternative dispute resolution mechanisms and how to implement court-based "ADR" effectively.

VII. The United States Sentencing Commission

At an investiture ceremony held at the Supreme Court of the United States on January 5, 2000, I administered the oath of office to the seven new members of the United States Sentencing Commission. The new Commission consists of Judge Diana E. Murphy (chair), Judge Ruben Castillo (vice chair); Judge William K. Sessions, III (vice chair), Mr. John R. Steer (vice chair), Judge Sterling Johnson, Jr., Judge Joe Kendall, and Professor Michael E. O'Neill. These seven

voting commissioners are joined by *ex-officio* members Mr. Michael J. Gaines and Mr. Laird C. Kirkpatrick. The Commission announced on March 9 the appointment of Timothy B. McGrath as its new staff director. Mr. McGrath had served as the Commission's interim staff director for the 18 months prior to his appointment.

The Commission on May 1, 2000, sent to Congress a number of amendments to the federal sentencing guidelines that will significantly increase penalties for some serious crimes. Many of the newly enacted guideline provisions are in response to congressional concerns and address such serious crimes as the improper use of new technology in copyright and trademark violations, sexual offenses against children, methamphetamine trafficking, identity theft, cell phone cloning, telemarketing fraud and firearms offenses.

Co-sponsored by the U.S. Sentencing Commission and the Federal Bar Association, the Ninth Annual National Seminar on the Federal Sentencing Guidelines was held May 3-5 in Clearwater Beach, Florida. Presentations were made on a variety of topics including the fraud and theft guidelines, restitution, drug issues, firearms offenses, immigration offenses, criminal history, relevant conduct and grouping of multiple counts. The seminar was attended by 368 people, primarily U.S. probation officers and defense attorneys.

The Commission announced on August 8 its priorities for the amendment cycle ending May 1, 2001. The priorities include work on an economic crimes package; money laundering; counterfeiting; further responses to the Protection of Children from Sexual Predators Act of 1998; firearms; nuclear, chemical and biological weapons; unauthorized compensation and related offenses; offenses implicating the privacy interests of taxpayers; the initiation of a review of the guidelines relating to criminal history; and the initiation of an analysis of the operation of the "safety valve" guidelines.

On October 12 and 13, the Commission presented its Third Symposium on Crime and Punishment in the United States. The symposium, "Federal Sentencing Policy for Economic Crimes & New Technology Offenses," focused on current economic crime sentencing and the ways in which new technologies have impacted the landscape

of criminal activity. The Commission co-sponsored this symposium with the Committee on Criminal Law of the Judicial Conference, the ABA White Collar Crime Committee and the National White Collar Crime Center.

I commend Judge Murphy and the staff of the United States Sentencing Commission, as well as Director Mecham and the staff of the Administrative Office of the United States Courts and Judge Fern Smith and the staff of the Federal Judicial Center, for their sustained contribution to an independent and effective Judiciary.

VIII. Conclusion

For several years, I have noted that we would have to continue to work to increase compensation for federal judges to maintain the quality and morale of the federal Judiciary. I look forward to working with the 107th Congress and the President to resolve this continuing problem.

Despite all of the challenges we face, the Judiciary can look back upon 2000 as a year of many accomplishments. We have learned to be more efficient and are in the forefront of innovative initiatives such as electronic filing and distance learning. Supported by hard-working staff, federal judges continue to administer justice day in and day out, notwithstanding an increasing workload and a salary whose real value has eroded substantially over the past decade. We can be proud that our courts continue to serve as a standard of excellence around the world.

Finally, I offer my best wishes to President-elect Bush and Vice President-elect Cheney and to the members of the 107th Congress, just as I extend my best wishes to President Clinton and Vice President Gore and to those legislators who have concluded their elective service. And I extend to all my wish for a happy New Year.

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[1] 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, p. 44 (Max Farrand ed., 1911) (hereinafter Farrand).

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[2] The Federalist No. 79 (Lodge ed. 1908), pp. 491-492.

[3] 2 Farrand, at 429.

[4] The Quadrennial Commission's mandate was to recommend salary changes for the Judiciary as well as Congress and senior Executive Branch employees. For simplicity, I have referred only to its recommendations for Level II Executive Branch employees, Members of Congress and court of appeals judges.

[5] Original proceedings increased 18%, and criminal appeals rose 4%, which offset declines in filings of bankruptcy, civil, and administrative agency appeals, down 9%, 2%, and 1%, respectively.

[6] The decline in civil filings in the U.S. district courts was only 754 cases or three-tenths of 1%. Though the total number was essentially unchanged, specific areas of civil litigation experienced significant increases and decreases. Federal question litigation declined 3%, falling by more than 5,000 cases. This was chiefly attributable to a 40% overall decline in personal injury cases, mostly related to asbestos and breast implant filings. Diversity of citizenship filings also fell, declining by 2% to 48,626, largely due to decreases in personal injury/product liability filings. Offsetting these declines were increases in U.S. plaintiff or defendant actions which grew 9%, rising from 65,443 to 71,109 cases. U.S. plaintiff cases increased 10%, primarily because filings involving contract actions grew by 9%. Recovery of overpayments related to defaulted students loans, increasing from 21,816 to 24,329, was the primary reason for the overall contract action increase. The number of filings with the U.S. as defendant also rose, for the most part attributable to a 14% increase in social security filings and a 9% rise in prisoner petitions. The Social Security Administration devoted resources to clearing a backlog and, as a result, social security supplemental security income cases increased 19%, or by more than 1,000 cases, and disability insurance cases increased 11%, rising by more than 700 cases. Prisoner petitions related to motions to vacate sentence rose 10% while habeas corpus prisoner petitions grew by 8%.

[7] Filings of criminal cases rose 5% to 62,745, and the number of defendants increased 4% to 83,963. Fiscal Year 2000 cases and defendant numbers are the highest since 1933, when the Prohibition Amendment was repealed. This caseload growth raised the criminal cases per authorized judgeship from 93 to 96, in spite of nine additional Article III judgeships created in November 1999. Immigration and firearms cases were chiefly responsible for the increase, with immigration filings growing by 1,509 cases, a 14% rise over last year, and firearms filings growing by 1,020 cases, a 23% jump over last year. The courts received 12,150 immigration cases, 63% of which were in five Southwestern border districts-Southern District of California, District of Arizona, Southern and Western Districts of Texas, and District of New Mexico. For the fourth straight year, weapons and firearms filings rose, with the district courts receiving 6,223 defendants in 5,387 firearms cases. These filings amounted to 9% of all criminal case filings, two percentage points more than they did last year.

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2001 YEAR-END REPORT ON THE FEDERAL JUDICIARY

I. Overview

The 2001 Year-End Report on the Federal Judiciary is my 16th. 2001 will surely be remembered by the entire country, including the federal Judiciary, for the terrorist attacks of September 11 and the anthrax contamination that followed.

I received word of the first strike on the World Trade Center as the 26 federal judges who are members of the Judicial Conference of the United States were preparing to convene at the Supreme Court the morning of September 11. It soon became clear that we would have to cancel the Conference session and evacuate the building, the first cancellation of a Conference meeting since its creation in 1922.

Just six and a half weeks later, our Court was forced to evacuate the building again after traces of anthrax were found in our off-site mail facility. For the first time since our building opened in 1935, the Court heard arguments in another location -- the ceremonial courtroom in the District of Columbia E. Barrett Prettyman Federal Courthouse. The Court was also forced out of its quarters in the Capitol when the British burned part of the Capitol building in August 1814.

Despite the effects of events since September 11, the federal courts, along with the rest of our government, have gotten back to business, even if not business as usual. Our Court has kept its argument schedule, federal (and state) courts have met, albeit with heightened security, and within three weeks, the Judicial Conference completed by mail all of the business that had been on the schedule for September 11 and that could not be postponed.

II. Ensuring a Well-Qualified and Fully Staffed Judicial Branch

The federal courts were created by the Judiciary Act of 1789, which established a Supreme Court and divided the country into three circuits and 13 districts. This structure has obviously changed greatly since 1789, but one thing has not changed: the federal courts have functioned through wars, natural disasters, and terrorist attacks. During times such as these, the role of the courts becomes even more important in order to enforce the rule of law. To continue functioning effectively and efficiently, however, the courts must be appropriately staffed. This means that necessary judgeships must be created and judicial vacancies must be timely filled with well-qualified candidates.

CJr:68

Promptly Filling Vacant Judgeships

It is becoming increasingly difficult to find qualified candidates for federal judicial vacancies. This is particularly true in the case of lawyers in private practice. There are two reasons for these difficulties: the relatively low pay that federal judges receive, compared to the amount that a successful, experienced practicing lawyer can make, and the often lengthy and unpleasant nature of the confirmation process.

Of the inadequacy of judicial pay I have spoken again and again, without much result. Judges along with Congress have received a cost-of-living adjustment this year, and for this they are grateful. But a COLA only keeps judges from falling further behind the median income of the profession. I can only refer back to what I have previously said on this subject.

I spoke to delays in the confirmation process in my annual report in 1997. Then as now I recognize that part of the problem is endemic to the size of the federal Judiciary. With more judges, there are more retirements and more vacancies to fill. But as I said in 1997, "[w]hatever the size of the federal judiciary, the President should nominate candidates with reasonable promptness, and the Senate should act within a reasonable time to confirm or reject them. Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. The Senate confirmed only 17 judges in 1996 and 36 in 1997, well under the 101 judges it confirmed during 1994."

At that time, President Clinton, a Democrat, made the nominations, and the Senate, controlled by the Republicans, was responsible for the confirmation process. Now the political situation is exactly the reverse, but the same situation obtains: the Senate confirmed only 28 judges during 2001. When the Senate adjourned on December 20th, 23 court of appeals nominees and 14 district court nominees were left awaiting action by the Judiciary Committee or the full Senate. When I spoke to this issue in 1997, there were 82 judicial vacancies; when the Senate adjourned on December 20th there were 94 vacancies. The Senate ought to act with reasonable promptness and to vote each nominee up or down. The Senate is not, of course, obliged to confirm any particular nominee. But it ought to act on each nominee and to do so within a reasonable time. I recognize that the Senate has been faced with many challenges this year, but I urge prompt attention to the challenge of bringing the federal judicial branch closer to full staffing.

The combination of inadequate pay and a drawn-out and uncertain confirmation process is a handicap to judicial recruitment across the board, but it most significantly restricts the universe of lawyers in private practice who are willing to be nominated for a federal judgeship. United States attorneys, public defenders, federal magistrate and bankruptcy judges, and state court judges are often nominated to be district judges. For them the pay is a modest improvement and the confirmation process at least does not damage their current income. Most academic lawyers are in a similar situation. But for lawyers coming directly from private practice, there is both a strong financial disincentive and the possibility of losing clients in the course of the wait for a confirmation vote.

Former magistrate, bankruptcy, and state court judges, as well as prosecutors and public defenders, have served ably as federal district and circuit judges, bringing their insights into the process gained from experience. But we have never had, and should not want, a Judiciary composed only of those persons who are already in the public service. It would too much resemble the judiciary in civil law countries, where a law graduate may choose upon graduation to enter the judiciary, and will thereafter gradually work his way up over time.

The result is a judiciary quite different from our common law system, with our practice of drawing on successful members of the private bar to become judges. Reasonable people, not merely here but in Europe, think that many civil law judicial systems simply do not command the respect and enjoy the independence of ours. We must not drastically shrink the number of judicial nominees who have had substantial experience in private practice.

The federal Judiciary has traditionally drawn from a wide diversity of professional backgrounds, with many of our most well-respected judges coming from private practice. As to the Supreme Court, Justice Louis D. Brandeis, who was known as "the people's attorney" for his *pro bono* work, spent his entire career in private practice before he was named to the Supreme Court in 1916 by President Wilson. Justice John Harlan served in several government posts early in his career, but the lion's share of his experience prior to his nomination by President Eisenhower in 1954 was in private practice. When appointed to the Court of Appeals for the Second Circuit, a year before his appointment to the Supreme Court, Justice Harlan succeeded Judge Augustus Hand. Judge Hand and his cousin, Learned Hand, are well known as great court of appeals judges; both spent virtually all the time between their graduation from law school and their appointment as federal judges in private practice. Retired Justice Byron White, who played professional football for the Detroit Lions on the weekends while attending Yale Law School, was in private practice in Colorado for nearly 14 years before joining the Justice Department as deputy attorney general to Robert Kennedy. Less than a year later, President Kennedy named Justice White to the Court. Justice White was the circuit Justice for the Tenth Circuit, where Judge Alfred P. Murrah served as a district judge in Oklahoma and as a judge on the court of appeals. Judge Murrah, who spent his entire career in private practice before becoming a judge, is remembered for much more than having the Oklahoma City federal building named after him. Before being named a judge on the Court of Appeals for the Second Circuit, Justice Thurgood Marshall spent his career in the private sector. He first opened his own law practice in Baltimore and then for many years worked as the top lawyer for the NAACP, becoming known as "Mr. Civil Rights." Justice Marshall left his seat on the court of appeals to become Solicitor General of the United States before President Johnson named him to the Supreme Court in 1967. John Brown, Richard Rives, Elbert Tuttle and John Minor Wisdom, well-known for their courage in enforcing this Court's civil rights decisions as judges on the Court of Appeals for the Fifth Circuit, all served almost exclusively in private practice before their appointments to the bench.

On behalf of the Judiciary, I ask Congress to raise the salaries of federal judges, and I ask the Senate to schedule up or down votes on judicial nominees within a reasonable time after receiving the nomination.

Creating Necessary New Judgeships

Last year I expressed hope that the 107th Congress would take action on the Judicial Conference's request to establish 10 additional court of appeals judgeships, 44 additional district court judgeships and 24 new bankruptcy judgeships. No additional court of appeals judgeships have been created since 1990. No new bankruptcy judgeships have been created since 1992, although the number of cases filed has increased by nearly 500,000 since then. The 107th Congress has not created a single new judgeship.

Despite a significant increase in workload, the Courts of Appeals for the First, Second, and Ninth Circuits have not increased in size for 17 years -- since 1984. During that time period, appellate filings in the First Circuit have risen 65%, in the Second Circuit they have risen almost 58%, and in the Ninth Circuit appellate filings have almost doubled -- rising 94.6%.

The Judicial Conference has asked that the Congress create one new appellate judgeship for the First Circuit, two judgeships for the Second Circuit, five for the Ninth Circuit and two for the Sixth Circuit, which has had only one additional judgeship since 1984.

Congress has recognized the crisis faced by the overwhelming caseloads in the Southwestern border states. Although we are thankful that Congress has provided additional judges during the 106th Congress for four of the five affected districts, it has not alleviated the very serious problem faced by the Southern District of California, based in San Diego, a district with no judicial vacancies. The judges there have the highest number of filings per judge of any federal district court in the nation and the Judicial Conference has requested that eight additional district judgeships be created for this district.

I urge the Congress to act on all of the pending requests for new judgeships during its next session.

III. International Judicial Exchanges

The federal Judiciary continues to play a vital role in the development of independent judicial systems in countries around the world. This year over 800 representatives from more than 40 foreign judicial systems formally visited the Supreme Court of the United States seeking information about our system of justice.

On September 25, 2001, I led a small delegation representing the federal Judiciary on a judicial exchange in Guanajuato, Mexico. The visit was at the invitation of Genaro David Góngora Pimentel, President of the Mexican Supreme Court, and followed a similar visit to Washington by a Mexican delegation in November 1999. Our traveling to Mexico within two weeks of the September 11 attacks underscored the importance of this exchange. I am grateful to President Góngora Pimentel and his colleagues for their invitation to meet with them in Mexico and for their commitment to strengthening cross-border judicial relations in North America.

The visit brought home not only the close connections of our two countries, but the importance of working with other judiciaries to improve the functioning of all judicial systems. The Federal Judicial Center, the Administrative Office of the United States Courts, and the International Judicial Relations Committee of the Judicial Conference have also provided many international visitors with information, education, and technical assistance to improve the administration and independence of foreign courts and enhance the rule of law. Through these judicial exchanges, we also gain valuable insights into our own judicial system by exchanging information with foreign visitors and by visiting foreign courts. Improving the administration of justice -- here and in other courts around the world -- has become even more important in the age of the global economy.

IV. The Year in Review

The Supreme Court of the United States

The work of the Supreme Court continues to grow modestly, putting an increasing strain on the Supreme Court's building, the infrastructure of which has not been changed in any basic way since the building was opened in 1935. I wish to thank Chairman Byrd, Ranking Minority Member Stevens, Chairman Young, Ranking Minority Member Obey, Chairman

Hollings, Ranking Minority Member Gregg, Chairman Wolf, and Ranking Minority Member Serrano for their efforts to secure funds to modernize our Supreme Court building. I am hopeful that the remaining funds necessary to implement our building modernization program, which has been in the planning stage for several years, will be included in our Fiscal Year 2003 appropriation. Significant safety and security upgrades to the Supreme Court building are included in the project and should not be delayed.

The total number of case filings in the Supreme Court increased from 7,377 in the 1999 Term to 7,852 in the 2000 Term -- an increase of 6.4%. Filings in the Court's *in forma pauperis* docket increased from 5,282 to 5,897 -- an 11.6% rise. The Court's paid docket decreased by 138 cases, from 2,092 to 1,954 -- a 6.6% decline. During the 2000 Term, 86 cases were argued and 83 were disposed of in 77 signed opinions, compared to 83 cases argued and 79 disposed of in 74 signed opinions in the 1999 Term. No cases from the 2000 Term were scheduled for re-argument in the 2001 Term. Although the closing of our building did not delay any scheduled arguments, the interruption in mail delivery in the Washington area may have an impact on the number of cases heard by the Court this Term.

The Federal Courts' Caseload

In Fiscal Year 2001, filings in the 12 regional courts of appeals rose 5% to 57,464 -- a new all-time high.[1] Civil filings in the U.S. district courts fell 3% to 258,517,[2] and, after six consecutive years of growth, the number of criminal cases and defendants declined slightly.[3] The essentially static level of criminal filings was reflected in a 1% gain in the number of defendants activated in the pretrial services system.[4] The number of persons on probation and supervised release went up by 4% to an all-time high of 104,715.[5] Filings in the U.S. bankruptcy courts climbed 14% from 1,262,102 to 1,437,354, following two years of decline.[6]

V. The Administrative Office of the United States Courts

The Administrative Office of the United States Courts serves as the central support agency for the administration of the federal court system. In light of the terrorist attacks of September 11 and the ensuing anthrax contamination, the Administrative Office played a pivotal role in ensuring that the federal courts around the country had effective security precautions and mail-screening procedures in place. An emergency response team was convened to work with the staff of the affected courts in New York to get communications and computer systems working and to return the courts to normal operations as soon as possible. In November 2001, Administrative Office Director Leonidas Ralph Mecham created a Judiciary Emergency Preparedness Office to focus on the planning aspects of crisis response.

Even before September 11, court security was a high priority. A study of the court security program by independent security experts was completed in November. The consultants concluded that although there have been substantial improvements in court security over the last two decades, security needs continue to grow. They recommended options for enhancing the physical security of courthouses, addressing security needs during court proceedings, improving the protection of judges in and outside the courthouse, and conducting background checks on employees. The Judicial Conference's Committee on Security and Facilities and the Administrative Office are currently reviewing the report's recommendations.

One of the Administrative Office's key priorities is to secure adequate funding from Congress so that the federal courts can carry out their critical work and maintain the quality of justice. Director Mecham, Judge John Heyburn II, chair of the Judicial Conference's Budget Committee, and Judge Jane Roth, chair of the Security and Facilities Committee, deserve credit for their efforts in this area. The funding provided to the courts for fiscal year 2002 represents a 7.1% increase and will provide the courts adequate staff (including probation and pretrial services offices) to meet growing workloads. I want to express thanks to the Congress for funding an increase in the rates of pay for private "panel" attorneys accepting appointments under the Criminal Justice Act to $90 per hour. This has been a high priority for the Judiciary for several years. I am also pleased to report that Congress has continued to provide significant funds for the courthouse construction program, funding 15 needed courthouse construction projects costing $280 million.

Last year, an independent consultant concluded that the Judiciary is making effective use of technology and that it is doing so with fewer resources invested in technology when compared with other organizations. The Administrative Office continues to develop and implement automated systems that will enhance the management and processing of information and the performance of court business functions. Deployment of a new bankruptcy court case management/electronic case files system began this year, and it is now operating in 14 bankruptcy courts. The system's electronic case files capabilities include the ability to receive and file documents over the Internet. The creation of electronic files will reduce the volume of paper records and make these records more readily accessible. Testing of the district court case management/electronic case files system began in 2001, and development work on the appellate court system is underway.

Under the guidance of the Judicial Conference's Committee on Court Administration and Case Management, the Administrative Office completed a two-year study on how to balance privacy concerns with the rights of the public to access court electronic records. After extensive public comment, the Committee recommended that civil case documents be made available electronically to the same extent they are available at the courthouse (except that certain personal identifiers will be partially redacted). A similar policy will be followed for bankruptcy case documents assuming necessary statutory changes are enacted. The Committee recommended that there be no electronic access to documents in criminal cases at this time. These policies were endorsed by the Judicial Conference in September, and several Conference Committees, supported by Administrative Office staff, are currently working to implement them.

A review of the Judiciary's use of libraries, lawbooks, and legal research materials - both hard copy and electronic - was completed in 2001. While the use of on-line legal resource materials is expanding and continues to show promise for increased use, the study concluded that a clear and compelling need continues to exist for lawbooks and other legal research materials in hard-copy format. The Judicial Conference adopted recommendations to control costs further and to improve the management of court libraries.

VI. The Federal Judicial Center

The Federal Judicial Center, the federal courts' statutory agency for education and research, last year provided education to some 50,000 participants in traditional and distance education programs and continued its research and analysis to improve the litigation process. A few highlights of the Center's work in 2001 follow.

Science and technology. Litigation is increasingly dominated by scientific and technical evidence. The Center's efforts to help judges included its acclaimed Reference Manual on Scientific Evidence, now in its second edition, and a six-part Federal Judicial Television Network series, Science in the Courtroom, on principles of microbiology, epidemiology, and toxicology, and how to manage cases involving these types of evidence. Other judicial education programs dealt with genetics, the human aging process, astrophysics, and the impact of computer technology on the law of intellectual property.

To assist federal judges in dealing with the sophisticated technology many attorneys use to present evidence, the Center provided federal judges its Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial, developed in cooperation with the National Institute for Trial Advocacy. It also provided judges a Guide to the Management of Cases in ADR, which it prepared in light of the growing use of alternatives to traditional litigation.

Management skills for federal courts in uncertain times. Center programs responded to another challenge facing the courts: the need for leadership skills and management practices befitting the complex organizations that federal courts have become. Courts must integrate technology with increasingly sophisticated business practices, and deal with growing caseloads and diverse workforces and litigants, while pursuing their overarching purpose to deliver justice for all.

Demystifying the legal process. The Center assisted the Judicial Conference's Advisory Committee on the Federal Rules of Civil Procedure with a different type of challenge. The Committee has proposed a requirement that attorneys use "plain language" in the notices they send to potential class members in class action suits and asked the Center to develop illustrative language as examples. The Center tested alternative wordings with focus groups of ordinary citizens typical of class members. This testing explored recipients' willingness to open and read a notice as well as their ability to comprehend and apply the information it contained. From this research, the Center produced illustrative notices, which remain on the Center's Web site (www.fjc.gov) for public comment and use.

International judicial cooperation. Given its international reputation, the Center gets frequent visitors from other countries seeking to create or enhance their judicial branch research and education centers. Although it does not use its own funds in responding to these requests, the Center has been of assistance this year in important ways. It hosted seminars or briefings for 422 foreign judges and officials representing 34 countries. The Center also responded to more specific requests for assistance. For example, a delegation from the Russian Academy of Justice spent a week at the Center attending a program on teaching methodology. Three Center representatives traveled to Moscow for a follow-up workshop focusing on distance learning and judicial ethics. Center personnel also played an important role in the U.S. delegation's visit to Mexico, which I described earlier, and will continue that relationship by organizing a seminar next May in Washington for interchange with Mexican judicial educators.

VII. The United States Sentencing Commission

On May 1, 2001, the newly reconstituted United States Sentencing Commission completed its first full sentencing guidelines amendment cycle and submitted to Congress a package of guidelines amendments covering 26 areas. This package of amendments resolved 19 circuit conflicts and included responses to nine new congressional directives (five with emergency

amendment authority). For the first time in years, there are no congressional directives awaiting implementation by the Commission.

The amendments include a multi-part, comprehensive economic crimes package with a new loss table that significantly increases penalties for crimes involving high-dollar loss amounts, but gives judges greater discretion in sentencing defendants convicted of crimes with relatively low loss amounts. The amendments also increase the penalties for ecstasy and amphetamine trafficking; counterfeiting; high-dollar fraud offenses; child sex offenses; and the use of nuclear, biological, and chemical weapons. The Commission also expanded eligibility for first-time, non-violent offenders to obtain relief under the guidelines' "safety valve" provision and it clarified that participants who play a limited role in a crime are eligible for an adjustment to their sentences under the guidelines' "mitigating role" provision. The guidelines went into effect November 1, 2001.

On June 19, 2001, the Sentencing Commission held a public hearing in Rapid City, South Dakota, in response to the March 2000 Report of the South Dakota Advisory Committee to the U.S. Commission on Civil Rights, which recommended that an assessment of the impact of the federal sentencing guidelines on Native Americans in South Dakota be undertaken. As a result of suggestions made at the hearing and subsequent written submissions, the Commission is forming an ad hoc advisory group on issues related to the impact of the Federal Sentencing Guidelines on Native Americans in Indian Country.

The Tenth Annual National Seminar on the Federal Sentencing Guidelines, co-sponsored by the Commission and the Federal Bar Association, was held May 16-18, 2001, in Palm Springs, California. More than 400 federal judges, U.S. probation officers, and attorneys attended. During fiscal year 2001, Commission staff also participated in training for thousands of individuals at training sessions across the country (including ongoing programs sponsored by the Federal Judicial Center and other agencies). Commission staff continue to work with the Federal Judicial Center and the Administrative Office to plan and develop educational and informational programming for the Federal Judicial Television Network. During the year, the Commission's "HelpLine" provided assistance to approximately 200 callers per month.

Finally, congratulations are due to Sentencing Commission Chair Diana E. Murphy who, together with Judge Frank M. Coffin of the U.S. Court of Appeals for the First Circuit, received the 19th Annual Edward J. Devitt Distinguished Service to Justice Award on September 10, 2001. This award recognizes Article III judges who have achieved exemplary careers and have made significant contributions to the administration of justice, the advancement of the rule of law, and the improvement of society as a whole.

VIII. Conclusion

Once again the Judiciary can look back upon the year ended as one of accomplishments in the face of adversity. In spite of the terrorist attacks that have affected the entire country, our courts continue to conduct business, day in and day out. We continue to find ways to perform our work more efficiently.

Despite an alarming number of judicial vacancies, our courts continue to serve as a standard of excellence around the world. At bottom, federal judges are able to administer justice day in and day out because of their commitment and the commitment and hard work of court staff

around the country. My thanks go out to all of them.

I extend to all my wish for a happy New Year.

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[1] Original proceedings surged 48%, largely as a result of a rise in habeas corpus petitions filed by prisoners. Criminal appeals grew 5%, administrative agency appeals increased 2%, and civil appeals rose 1%. Bankruptcy appeals fell 5%. Appeals filings have increased 22% since 1992.

[2] Filings with the United States as plaintiff seeking the recovery of student loans dropped 47%. New administrative procedures implemented by the Department of Education led to fewer such filings in the federal courts. Excluding student loan filings, total civil filings increased 1%. Total private case filings fell less than 1%. Filings related to federal question litigation were consistent with the total decline in private cases, falling less than 1% to 138,441. Diversity of citizenship and civil rights filings each rose less than 1%. Filings related to federal question litigation and diversity of citizenship were greatly affected by the stabilization of personal injury/product liability case filings related to breast implants, oil refinery explosions, and asbestos. Despite an 11% decrease in total filings with the United States as plaintiff or defendant, filings with the United States as defendant increased 10% to 40,644. This was mostly due to a 23% surge in federal prisoner petitions and an 8% rise in social security filings. Motions to vacate sentences filed by federal prisoners grew by 36%. Social security filings related to disability insurance and supplemental security income rose 9% and 6%, respectively. Civil filings have increased 9% since 1992.

[3] Filings of criminal cases dropped by 37 cases to 62,708, and the number of defendants decreased 1% to 83,252. As a result of the creation of 10 additional Article III judgeships, criminal cases per authorized district judgeship declined from 96 to 94. This was the first decrease in cases per judgeship since 1994, when the effects of a hiring freeze on assistant U.S. attorneys was being felt. In succeeding years, federal courts saw increases in criminal filings, primarily due to immigration and drug law-related cases in districts along the Southwestern border of the United States. This year, drug cases rose 5% to 18,425, firearms cases rose 9% to set yet another record at 5,845, traffic cases rose 6% to 4,958, robbery cases rose 8% to 1,355, and sex offense cases rose 8% to 1,017. Immigration filings fell by 873 cases, a 7% decline over last year due to fewer immigration cases reported by the Western District of Texas, the Southern District of California, and the District of New Mexico. However, in the Western District of Texas and in the Southern District of California, the decline in immigration filings was offset by a rise in drug filings. As a result, overall criminal filings increased 2% in the Western District of Texas and declined 3% in the Southern District of California. Criminal filings since 1992 have increased 30%.

[4] In 2001, the number of defendants activated in the pretrial services system increased 1% to 86,140, and the number of pretrial reports prepared rose 1%. During the past five years, pretrial services case activations and pretrial reports prepared each rose 24%, persons interviewed grew 16%, and defendants released on supervision increased 25%. Pretrial case activations have risen each year since 1994, and this year's total is 54% higher than that for 1994.

[5] There is an average lag of several years before defendants found guilty and sentenced to prison appear in the probation numbers. Supervised release following a period of incarceration continues to account for a growing percentage of those under supervision and now stands at 65% of this total. In contrast, the number of individuals on parole is small and declining, composing only 4% of those under supervision. Of the 104,715 persons under probation supervision, 42% had been charged with a drug-related offense. The number of persons on probation has increased 22% since 1992.

[6] Nonbusiness petitions rose 14% and business petitions increased 7%. Filings increased under all chapters except Chapter 12, jumping 17% under Chapter 7, rising 7% under Chapter 11, and increasing 8% under Chapter 13. Bankruptcy filings under Chapter 12, which constituted 0.03% of all petitions filed, fell 31%. This decrease resulted from the expiration of the provisions for Chapter 12 on July 1, 2000. Subsequently, Public Law 107-8 extended the deadline for filing Chapter 12 petitions to June 1, 2001, and Public Law 107-17 extended the deadline further to October 1, 2001. Bankruptcy filings have increased 47% since 1992.

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2002 YEAR-END REPORT ON THE FEDERAL JUDICIARY

I. Overview

The 2002 Year-End Report on the Federal Judiciary is my 17th. As I look back on these reports, I am struck by the number of issues that seem regularly to crop up, or perhaps they never go away -- judicial vacancies, the need for additional judgeships, judges' salaries, judicial appropriations. Each of these issues relates to the fundamental interdependence of our three separate branches of government when it comes to funding our nation's priorities. Although Article III of the Constitution of the United States protects federal judicial independence by promising district and appellate judges tenure during good behavior and "a Compensation, which shall not be diminished during their Continuance in Office," the federal courts of course depend on the Legislative and Executive Branches for funding and staffing. I am concerned about the effect of the current budget impasse on the courts and reiterate my request that Congress extricate the Judiciary by promptly passing a full-year appropriation that addresses the needs of the federal courts.

In this report, I will focus on three key priorities for the federal Judiciary: creating sorely needed new judgeships, promptly filling judicial vacancies, and increasing judicial pay.

II. Creating Necessary New Judgeships

In my last two Year-End Reports, I expressed hope that Congress would take action on the Judicial Conference's request to establish ten additional court of appeals judgeships, 44 additional district court judgeships, and 24 new bankruptcy judgeships. We are grateful that in November, Congress created eight permanent district court judgeships and seven temporary district court judgeships, converted four temporary district court judgeships to permanent status, and extended one temporary district court judgeship for an additional five years.

But no additional court of appeals judgeships have been created since 1990. Despite a substantial increase in workload, the number of judgeships in the Courts of Appeals for the First, Second, and Ninth Circuits has not increased for 18 years -- since 1984. During that time period, appellate filings in the First Circuit have risen 56%, in the Second Circuit they have risen almost 70%, and in the Ninth Circuit appellate filings have more than doubled -- rising almost 115%. The Judicial Conference has asked that Congress create one new judgeship for the First Circuit, two judgeships for the Second Circuit, five for the Ninth

Circuit, and two for the Sixth Circuit, which has had only one additional judgeship since 1984.

No new bankruptcy judgeships have been created since 1992, although the number of cases filed has increased by over 570,000 since then. In 1992, each bankruptcy judge handled an average of 2,998 cases; each now handles an average of 4,777 cases.

I urge the 108th Congress to act on all of the pending requests for new judgeships during its next session.

III. Promptly Filling Vacant Judgeships

I spoke to delays in the confirmation process in my Year-End Report in 1997 and again last year. As I have noted in previous reports, to continue functioning effectively and efficiently, our federal courts must be appropriately staffed. This means that judicial vacancies must be filled in a timely manner with well-qualified candidates. We appreciate the fact that the Senate confirmed 100 judges during the 107th Congress. Yet when the Senate adjourned, there were still 60 vacancies and 31 nominations pending.

With the same party now controlling the White House and the Senate, some will think the crisis has passed and that the confirmation process does not need to be fixed. Be that as it may, there will come a time when that is not the case and the Judiciary will again suffer the delays of a drawn-out confirmation process. On behalf of the Judiciary, I urge the President and the Senate to work together to fix the underlying problems that have bogged down the nomination and confirmation process for so many years. It is of no concern to the Judiciary which political party is in power in the White House or the Senate. We simply ask that the President nominate qualified candidates with reasonable promptness and that the Senate act within a reasonable time to confirm or reject them.

IV. Increasing Judicial Pay

Despite my annual entreaties, there has been no effective action taken to resolve the mounting problem of judicial and other high-level Executive and Congressional pay. In fact, unless the 108th Congress acts, judges will not even receive the cost-of-living adjustment that nearly every other federal employee will receive during 2003. But I am hopeful that during the next year, a real solution to the pay crisis can be achieved.

At the risk of beating a dead horse, I will reiterate what I have said many times over the years about the need to compensate judges fairly. In 1989, in testimony before Congress, I described the inadequacy of judicial salaries as "the single greatest problem facing the Judicial Branch today." Eleven years later, in my 2000 Year-End Report, I said that the need to increase judicial salaries had again become the most pressing issue facing the Judiciary. It remains the most pressing issue today. We cannot continue to use an arrangement for setting pay that simply ignores the need to raise pay until judicial and other high-level government salaries are so skewed that a large (and politically unpopular) increase is necessary. This salary crunch also affects others in the public service by artificially compressing the salaries of those whose pay is tied to these higher salaries.

Inadequate compensation seriously compromises the judicial independence fostered by life tenure. That low salaries might force judges to return to the private sector rather than stay on

the bench risks affecting judicial performance -- instead of serving for life, those judges would serve the terms their finances would allow, and they would worry about what awaits them when they return to the private sector.

This is not a hypothetical concern: According to the Administrative Office of the United States Courts, more than 70 Article III judges left the bench between 1990 and May 2002 -- either under the retirement statute if eligible or simply resigning if not -- as did additional numbers of bankruptcy and magistrate judges. During the 1960s, only a handful of Article III judges retired or resigned. Although we cannot say that the judges who are leaving the bench are leaving only because of inadequate pay, many of them have noted that financial considerations are a big factor.[1] The fact that judges are leaving because of inadequate pay is underscored by the fact that most of the judges who have left the bench in the last ten years have entered private practice.[2] There will always be a differential between government and private sector pay for excellent lawyers. But the Judiciary, in particular, will be compromised if there is too wide a gap. At the present time there is not just a gap, there is a chasm.

We do not want experienced judges to leave because they cannot afford to put their children through college or because their salaries are eaten away by inflation. It is not fair to the judges or to those who have litigation in the federal courts. Every time an experienced judge leaves the bench, the nation suffers a temporary loss in judicial productivity. It takes time for a new judge to gain the experience necessary to judge well and manage an ever-increasing docket efficiently. The judicial system benefits from the infusion of new judges required when judges leave after a lifetime of service. But our system cannot long tolerate the regular loss of experienced, seasoned judges now occurring.

Diminishing judicial salaries affects not only those who have become judges, but also the pool of those willing to be considered for a position on the federal bench. I am not suggesting that there is a shortage of lawyers lined up to apply for vacant judgeships. But many of the very best lawyers, those with a great deal of experience, are not willing to accept a position knowing that their salary will not even keep pace with inflation. Our judges will not continue to represent the diverse face of America if only the well-to-do or the mediocre are willing to become judges.

I recognize that the salaries of federal judges are higher than those in many occupations, and that some may be skeptical of the need to raise the salaries of judges who already earn at least $150,000 per year. But it is not fair to compare judges' salaries to salaries in other occupations. Those lawyers who are most qualified to serve as federal judges have opportunities to earn far more in private law practice or business than as judges. I am not suggesting that we match the pay of the private sector -- but the large and growing disparity must be decreased if we hope to continue to provide our nation a capable and effective federal judicial system. Providing adequate compensation for judges is basic to attracting and retaining experienced, well-qualified and diverse men and women to perform a demanding position in the public service. We need judges from different backgrounds and we want them to stay for life.

The federal Judiciary in the past has been able to attract experienced and able lawyers who have had extended and successful experience in the private sector. Their experience in that sector brings a perspective and an independence that is vital to the Judiciary. But it is these potential candidates who are deterred by the current level of compensation. Although we cannot hope to come close to the amount they earn in private practice, the appeal of public

service makes up a good deal of the difference. That appeal is not enough at the present level of compensation.

During the past year, the National Commission on the Public Service, chaired by Paul Volcker, has been looking into various issues relating to restoring and renewing the public service, including pay. Justice Stephen Breyer and I, along with Chief Judge Deanell Tacha of the Court of Appeals for the Tenth Circuit, testified before the Commission last July, focusing on the critical need to raise judicial pay in order to continue to attract well-qualified nominees to the federal bench and to keep them there for life. It is obvious that the current approach to judicial and other high-level salaries does not work. I hope that the Volcker Commission will suggest a way for the government to implement a permanent solution. And I urge the Congress and the President to take up this issue early in the new year.

V. The Year in Review

The Supreme Court of the United States

As I noted last year, the infrastructure of the Supreme Court's building has not been changed in any basic way since the building was opened in 1935. I remain hopeful that the remaining funds necessary to implement our building modernization program, which has been in the planning stage for several years, will be included in our Fiscal Year 2003 appropriation. Significant safety and security upgrades to the Supreme Court building are included in the project and should not be delayed.

The total number of case filings in the Supreme Court increased from 7,852 in the 2000 Term to 7,924 in the 2001 Term -- an increase of 1%. Filings in the Court's *in forma pauperis* docket increased from 5,897 to 6,037 -- a 2.4% rise. The Court's paid docket decreased by 68 cases, from 1,954 to 1,886 -- a 3.5% decline. During the 2001 Term, 88 cases were argued and 85 were disposed of in 76 signed opinions, compared to 86 cases argued and 83 disposed of in 77 signed opinions in the 2000 Term. No cases from the 2001 Term were scheduled for re-argument in the 2002 Term.

The Federal Courts' Caseload

The federal courts experienced record levels of activity in 2002. Significantly affected were the U.S. bankruptcy courts, where the number of filings grew 8% -- from 1,437,354 to 1,547,669.[3] Civil filings in the U.S. district courts climbed 10% to 274,841[4] and criminal cases rose 7% to 67,000 with the number of defendants growing 6% to 88,354.[5] The number of persons on probation and supervised release went up by 4% to a new record of 108,792.[6] This increase was matched by a 4% gain in the number of defendants activated in the pretrial services system.[7] Filings in the 12 regional courts of appeals increased 0.2% to 57,555, another all-time high.[8]

VI. The Administrative Office of the United States Courts

The Administrative Office of the United States Courts serves as the central support agency for the administration of the federal court system. One of the Administrative Office's key priorities has always been to secure adequate funding for the Judiciary from Congress. As I noted above, the fiscal year 2003 budget process has been a difficult one, and it still has not

been resolved. Despite the efforts of Judge John Heyburn, II, chair of the Judicial Conference's Budget Committee, Director Leonidas Ralph Mecham, his staff, and many others, the Judiciary, like most of the federal government, is currently operating under a continuing resolution. Because there continues to be uncertainty over the level of funding that will be provided to the Judiciary in 2003, agency staff are closely monitoring funding issues.

Since 1985, over $5 billion has been appropriated for 75 courthouse projects. Eleven additional projects totaling more than $300 million are likely to be funded by Congress in 2003 based on last year's request, and 26 buildings will be requested by the Judicial Conference this year for fiscal year 2004. Despite this level of success, there is still a significant backlog of projects. Administrative Office staff and the Judicial Conference Committee on Security and Facilities have revised the way projects are prioritized in the Judicial Conference's five-year courthouse construction plan to ensure that the most critically needed projects are considered by Congress.

This past year, a primary focus of the Administrative Office was to enhance court security and emergency preparedness. The Administrative Office created court security and emergency preparedness Web sites to provide timely security-related information to the courts, it broadcast security-related and emergency preparedness programs over the Federal Judicial Television Network and provided numerous briefings for judges and court managers. With the help of an independent consultant and the courts in New York, a continuity-of-operations model plan was produced to assist courts nationwide in developing their own individual plans. The model plan lays out steps to be taken to safeguard the welfare of Judiciary employees and the public and to ensure that essential functions and activities can continue and that normal functions can resume as quickly and safely as possible.

Director Mecham has spearheaded the decentralization of administrative and budgetary authority to the courts, and implemented modern automated systems to meet changing needs of the courts and their users. The delegation of management authorities from the Administrative Office has given courts considerable flexibility regarding the expenditure of funds and the hiring of personnel. Last year, a *Management Oversight and Stewardship Handbook* was published and training on management oversight was provided to chief district judges and chief bankruptcy judges. This year, a companion program for court executives was launched. In addition, a number of actions were taken this year to strengthen internal controls, including revising policies regarding contracting and procurement, property management, travel and transportation, time and attendance, and the appropriate use of government equipment, including information technology.

Another key Administrative Office responsibility is developing, implementing, and supporting new systems and technologies for the courts. A significant project underway is the continuing implementation of case management/electronic case files systems, which began in the bankruptcy courts in 2001. These systems will provide appellate, bankruptcy, and district courts with both a new case management system and the ability to manage electronic case files. The Administrative Office also completed installation of a new national electronic mail system, which includes a security feature that allows a sender to encrypt an outgoing message so it may only be read by the intended recipient. An automated jury management system has now been implemented in district courts and a new case-management system for probation and pretrial services offices has been installed in more than 20 districts.

VII. The Federal Judicial Center

The Federal Judicial Center is the federal courts' statutory agency for education and research. A few highlights of its work in 2002 include:

Public understanding of the judicial process -- Its interactive Web site, "Inside the Federal Courts," available at www.fjc.gov, helps federal court employees, as well as the media and citizens of this and other countries, understand the Judicial Branch's structure and operation. An 18-minute video, *An Introduction to the Patent System*, is now available for judges who wish to show it to jurors to help explain patents and the patent process. Bar associations are making copies available to lawyers and the public.

Education for federal judges and court personnel -- In 2002, at least 16,600 federal judge and support staff participants received orientation and continuing education through over 300 national, regional, and local seminars, and an estimated 7,500 viewed FJC programs on the Judicial Branch television network. These, along with publications, Web-based programs, and video and audiocassettes covered topics as diverse as redistricting, mediation, scientific evidence, federalism, law and the Internet, cyber terrorism, and supervision of sex offenders. (The Center also provided six programs for over 850 federal defenders, assistant defenders, and their staffs.)

Judicial Ethics -- Two publications provided guidance to judges and law clerks: *Recusal: Analysis of Case Law Under 28 U.S.C. §§ 455 & 144 and Maintaining the Public Trust: Ethics for Federal Judicial Law Clerks*. The Center, with the assistance of Administrative Office staff, provided a report requested by the chair and ranking member of the House Subcommittee on Courts, the Internet, and Intellectual Property on chief judges' public orders under the Judicial Conduct and Disability Act of 1980.

Technology in the litigative process -- At the request of a Judicial Conference committee, the Center is assessing the Conference's Criminal Case Files Pilot Program to identify whether on-line availability of criminal case files might pose special dangers to witnesses and others. The Center's courtroom technology project, which last year produced *Effective Use of Courtroom Technology: A Judge's Guide to Pretrial and Trial* (with the National Institute for Trial Advocacy), this year began an analysis of the perceived need for increased use of videoconferencing in federal criminal proceedings and the possible impact on trial rights.

Civil litigation -- A range of projects is in place to help a Conference advisory committee determine how, if at all, the federal rules should regulate discovery of information and evidence in digital form. Requests of other Conference committees led to assessments, currently underway, of class action filings, and of court orders to protect release of information about settlements.

Alternatives to traditional litigation -- To help federal court alternative dispute resolution administrators implement the 1998 Alternative Dispute Resolution Act, the Center is producing an ADR manual, model referral orders and other forms, model local rules, guidance for selecting and training ADR neutrals, and questionnaires for evaluating ADR programs.

Interjudicial relations -- Pursuant to statute, the Center staff worked with the Department of Justice to assess the effectiveness of the State Justice Institute, a private non-profit organization that Congress established to improve justice in state courts. The Center presented seminars or briefings for 522 foreign judges and officials representing 81 countries.

More specific assistance included a two-day seminar for representatives of the Mexican Instituto de la Judicatura and the Canadian National Judicial Institute, a follow-up to the September 2001 judicial exchange in Mexico that I led, and collaboration with the Center for Russian Leadership at the Library of Congress on a series of exchange programs for Russian judges and law professors. (The Center does not use its own funds for these activities' direct costs.)

New director -- U.S. District Judge Fern M. Smith has announced her intention to return to San Francisco next July, when she completes four years of service as the Center's director. Judge Smith has been an able and dedicated director and on behalf of the federal Judiciary, I thank her for her exceptional service. The Center Board, which I chair, will announce the selection of a new director in February.

VIII. The United States Sentencing Commission

During the past year, the United States Sentencing Commission set up two ad hoc advisory groups on significant guideline topics, with both groups slated to operate for 18 months. In February, the Commission announced the formation of the Ad Hoc Advisory Group on Organizational Guidelines whose mission is to review the general effectiveness of the federal sentencing guidelines for organizations and corporations. In May, the Commission announced the formation of the Ad Hoc Advisory Group on Native American Issues to consider methods to improve the operation of the federal sentencing guidelines in their application to Native Americans prosecuted under the Major Crimes Act.

On May 1, 2002, the Commission submitted to Congress a package of guideline amendments that provide sentencing increases and/or expanded coverage for a number of offenses. The amendments went into effect on November 1, 2002. The Commission adopted a multi-part amendment in response to the USA PATRIOT Act, providing severe penalties for a host of terrorism offenses, including offenses against mass transportation systems and interstate gas or hazardous liquid pipelines. It also increases sentences for terrorist threats that substantially disrupt governmental or business operations or result in costly cleanup measures. The Commission also expanded guideline coverage of offenses that involve bioterrorism, including a new guideline to cover the provision of material support to foreign terrorist organizations.

In response to concerns raised by the Executive Branch and by Native American tribes that the guidelines inadequately addressed offenses involving cultural heritage resources, the Commission developed a new guideline that specifically covers such crimes. Other areas of Commission action included sex trafficking, money laundering, and drug trafficking. Also in May 2002, the Commission provided Congress with a comprehensive 112-page report on cocaine sentencing issues.

On August 28, 2002, the Commission adopted its policy priorities for the amendment cycle ending May 1, 2003. The Commission primarily plans to respond on an emergency basis to the Sarbanes Oxley Act of 2002 and to the Bipartisan Campaign Finance Reform Act of 2002, to continue implementation of the USA PATRIOT Act, to respond to the Public Health and Security and Bioterrorism Preparedness and Response Act of 2002 and to the Terrorist Bombings Convention Implementation Act of 2002, and to continue its work on several studies reflecting the operation of the guidelines over the past 15 years.

One of the Commission's statutory obligations under the Sentencing Reform Act of 1984 is to train criminal justice professionals in guideline application. In carrying out this responsibility, the Commission sponsored, with the Federal Bar Association, the Eleventh Annual National Seminar on the Federal Sentencing Guidelines, attended by more than 400 participants. Commission staff also trained thousands of individuals at many sessions across the country (including ongoing programs sponsored by the Federal Judicial Center and other agencies). Commission staff continue to work collaboratively with the Federal Judicial Center and the Administrative Office of the U.S. Courts to plan and develop educational and informational programming for the Federal Judicial Television Network. Throughout the year, the Commission's telephone "HelpLine" provided guideline application assistance to approximately 200 callers per month.

The appointments of Commissioners Sterling Johnson, Jr., and Joe Kendall expired October 1, 2001, but both continued to serve under the governing statute until Congress adjourned sine die on November 22, 2002. Their departure pares the number of voting commissioners down to five members, making it harder for the Commission to function effectively. I encourage the President and the Senate to act swiftly to fill these two vacancies.

IN MEMORIAM

We lost a good friend and a dedicated public servant during the last year. Justice Byron R. White passed away on April 15, 2002. Justice White was the 93rd Justice to serve on this Court and the first to have served as a Supreme Court law clerk. He served on the Court for more than 31 years. Justice White was a rare combination of brilliant scholar and gifted athlete. He was an able colleague and a valued friend who will be missed by all who knew him.

IX. Conclusion

All of us in the Judiciary can look back upon the year ended as one of many accomplishments. Despite rising caseloads, too many judicial vacancies, and too few authorized judgeships, our courts continue to deliver the highest quality of justice and to serve as a standard of excellence throughout the world. My thanks go out to all of the federal judges and court staff around the country whose dedication and professionalism keeps our courts running so well.

I extend to all my wish for a happy New Year.

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[1] *See, e.g.*, "Insecure About Their Future: Why Some Judges Leave the Bench," *The Third Branch*, Vol. 34, No. 2, February 2002.

[2] June 14, 2002, Statement of Leonidas Ralph Mecham, Secretary of the Judicial Conference of the United States, submitted to the National Commission on the Public Service, at p. 7; "Federal Judicial Pay Erosion - A Report on the Need for Reform," by the American Bar Association and the Federal Bar Association, February 2001, p. 15, n. 46.

[3] The 1,547,669 filings represent a new all-time high. Nonbusiness filings increased 8% and business petitions rose 2%. Filings under chapter 7 increased 7%, filings under chapter 11

increased 11%, and filings under chapter 13 increased 10%. Bankruptcy filings have risen 72.5% since 1993.

[4] Filings involving federal question jurisdiction increased 18%, chiefly as a result of personal injury cases quadrupling to 29,636. Most of these cases were related to asbestos filings, where marked increases occurred nationally. Diversity of citizenship filings increased 16%, with personal injury cases, which grew by 32%, accounting for most of the increase. Most of these cases were filed in the Eastern District of Pennsylvania and the District of Minnesota. During the past year, both of these districts reported substantial increases in new filings related to the Bayer Company, with filings in the Eastern District of Pennsylvania rising by more than 3,500 cases and the District of Minnesota reporting more than 2,000 new filings. In anticipation of continued growth in these cases, they are being transferred to the District of Minnesota under Multidistrict Litigation Docket Number 1431 after being filed in their respective local jurisdictions. Despite the overall increase in civil filings, excluding personal injury, civil filings decreased 2%. Filings involving the United States as plaintiff or defendant dropped 15%, mostly because of a 36% decline in cases with the United States as plaintiff. Most of these filings involved the United States seeking the recovery of overpayments and enforcement of judgments related to defaulted student loans, which fell by 60%. Filings with the United States as defendant decreased 3%, mostly due to a sharp decline in federal prisoner petitions, which fell 17%. Despite the overall decline in U.S. defendant-based filings, Social Security filings increased 7%, primarily as a result of a 13% increase in supplemental security income filings. Over the last ten years, civil filings have increased 20%.

[5] Nationwide, criminal filings rose in 65 districts, with 50 districts receiving 10% more filings than they did in 2001. Criminal cases per authorized judgeship rose from 94 to 101. During the last nine years, criminal filings and criminal cases per authorized judgeship rose every year except in 2001. In 2001, cases per judgeship declined as filings that year remained stable and ten new judgeships were created. This year's report covers the first full year of caseload statistics since the attacks of September 11, 2001. In 2002, overall criminal filings rose primarily due to increases in firearms, immigration, drug, and fraud cases. Federal courts received more defendants charged with firearms offenses and with fraud than in any previous year. Firearms filings surged 26% to 7,382 cases, fraud filings increased 8% to 8,204 cases, and drug filings rose 4% to 19,215 cases. Immigration cases, after declining in 2001, jumped 12% to 12,576 cases. Filings of cases involving extortion and racketeering climbed 27% to 594, and sex offenses increased 17% to 1,187. Offenses involving violation of aircraft regulations and explosives also rose. Criminal filings have risen 43% since 1993.

[6] Persons serving terms of supervised release following their release from prison totaled 73,189 on September 30, 2002, and constituted 67% of all persons under supervision, while the number of individuals on parole declined 9% to 3,384 persons and comprised 3% of those under supervision. The number of persons on probation declined 1% to 31,272, due to a drop in the number of times probation was imposed by magistrate judges. Of the 108,792 persons under supervision, 43% had been charged with drug-related offenses, up 1% from one year ago. There are now 25% more persons under supervision than there were in 1993.

[7] The number of defendants in pretrial services cases opened in 2002 increased 4% to 89,421, and the number of pretrial services reports prepared also rose 4%, while the number of defendants interviewed increased 2%. In conjunction with all pretrial services cases closed during the year, a total of 206,715 pretrial hearings were held, an increase of 6% over the total in 2001. During the past ten years, pretrial services cases activated have increased 57%.

[8] An influx of immigration administrative agency appeals related to the Board of Immigration Appeals' effort to clear its backlog of cases was responsible for the overall rise. Administrative agency appeals surged 75% and criminal appeals grew 3%, which offset declines in original proceedings (down 34%), bankruptcy appeals (down 12%), and civil appeals (down 2%). Appeals filings have grown 15% over the past ten years.

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2003 YEAR-END REPORT ON THE FEDERAL JUDICIARY

I. Overview

This Year-End Report on the Federal Judiciary is my 18th.

I am pleased to report that the Senate confirmed 55 District Court judges during 2003, leaving only 27 vacancies out of 680 judgeships. At the same time, 13 Court of Appeals judges were confirmed, but 17 nominations remain pending.

Unfortunately, Congress failed this year to raise judicial salaries significantly. I would like to thank all of the people -- including the President and his staff, certain Members of the Senate and House (from both sides of the aisle) and their staffs, judges, staff at the Administrative Office of the U.S. Courts, the Volcker Commission, bar associations, law school deans and others outside of government -- who worked so hard during the last year to get Congress to increase the pay of judges beyond a modest cost-of-living adjustment. We came remarkably close, but will have to continue the effort in 2004.

The Fiscal Year 2004 budget process has been a difficult one, and the Judiciary's appropriation for the fiscal year that began on October 1 will not be enacted until sometime in January, 2004, at the earliest. The delay in enacting an appropriations bill has disrupted the Judiciary and forced it to operate at inadequate levels of funding under continuing resolutions.

We appreciate that, for Fiscal Year 2004, the omnibus appropriations bill currently pending includes $222 million for new courthouse construction and $248 million to repair existing courthouses. The Judiciary's funding for Fiscal Year 2004 included in the omnibus appropriations bill, however, is inadequate.

The continuing uncertainties and delays in the funding process have necessitated substantial effort on the part of judges and judiciary managers and staff to modify budget systems, develop contingency plans, cancel activities, and attempt to cut costs. Many courts may face hiring freezes, furloughs, or reductions in force. I hope that the Congress will soon pass a Fiscal Year 2004 appropriation for the Judiciary, and that in future years the Judiciary's budget is enacted prior to the beginning of the fiscal year.

In this report, I will focus on the relationship between the Judicial Branch and the Legislative

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II. Relations Between the Congress and the Judiciary

During the last year, it seems that the traditional interchange between the Congress and the Judiciary broke down when Congress enacted what is known as the PROTECT Act, making some rather dramatic changes to the laws governing the federal sentencing process.

It is well settled that the definition of what acts shall be criminal is a legislative function, as is the prescription of what sentence or range of sentences shall be imposed on those found guilty of such acts. Congress indicated rather strongly, by the PROTECT Act, that it believes there have been too many downward departures from the Sentencing Guidelines. It has taken steps to reduce that number. Such a decision is for Congress, as was the enactment of the Sentencing Reform Act of 1984 nearly 20 years ago that laid the basis for the current regime of guideline sentencing.

But the PROTECT Act was enacted without any consideration of the views of the Judiciary. It is, of course, the prerogative of Congress to determine what to consider in enacting a statute. But it surely improves the legislative process at least to ask the Judiciary its views on such a significant piece of legislation. It is Congress's job to legislate; but each branch of our government has a unique perspective, and taking into account these diverse perspectives improves the process. That was the point of the Judicial Conference's resolution of last September concerning the PROTECT Act.

Among the provisions in the Act that many find troubling is that requiring the collection of downward departure information on an individual judge-by-judge basis. Congress may, of course, change the rules under which judges operate. And there can be no doubt that collecting information about how the Sentencing Guidelines, including downward departures, are applied in practice could aid Congress in making decisions about whether to legislate on these issues. Collecting downward departure information on a judge-by-judge basis, however, seems to me somewhat troubling. For side-by-side with the broad authority of Congress to legislate and gather information in this area is the principle that federal judges are not to be removed from office for their judicial acts. The subject matter of the questions Congress may pose about judges' decisions, and whether they target the judicial decisions of individual federal judges, could appear to be an unwarranted and ill-considered effort to intimidate individual judges in the performance of their judicial duties. In any event, the Justice Department, through the United States Attorneys' Offices, can obtain judge-specific information on an informal basis. And the Department can choose to appeal downward departures that it feels are unwarranted.

Obtaining the views of the Judiciary before the PROTECT Act was enacted would have given all members of Congress the benefit of a perspective they may not have been aware of on this aspect of the legislation and other aspects that deal with a delicate process that judges understand very well. Congress may well have enacted these provisions of the PROTECT Act in any event. But at least judges would have known that the process included a meaningful opportunity to have their views heard.

In 1939, on the 150th anniversary of the inauguration of our government, the Congress invited Chief Justice Charles Evans Hughes to address a joint session of Congress. He paid

tribute to the legislators before him and to those who had preceded them.

> In thus providing the judicial establishment, and in equipping and sustaining it, you have made possible the effective functioning of the department of government which is designed to safeguard with judicial impartiality and independence the interests of liberty. But in the great enterprise of making democracy workable we are all partners. One member of our body politic cannot say to another -- "I have no need of thee." We work in successful cooperation by being true, each department to its own function, and all to the spirit which pervades our institutions. . . . [1]

The history of co-operation between Congress and the Judiciary in drafting such laws bears out Hughes' observations. In 1891, Congress enacted the Evarts Act, which established the United States Circuit Courts of Appeals. The circumstances in the federal courts before passage of the Evarts Act would seem familiar today. The nation's growth after the Civil War, along with the expansion of federal jurisdiction, strained the appellate capacity of the system, while the trial courts struggled to deal with serious delays.

Reform was necessary, but "[s]tubborn political convictions and strong interests . . . made the process of accommodation long and precarious." [2] By the end of the 1880's, Chief Justice Morrison Waite, Justice John Harlan, and Justice Stephen Field all spoke out publicly urging Congress to take action to relieve the Supreme Court of its crushing burden, and, more broadly, to make federal courts accessible to litigants. In 1890, Congress began to take serious steps to remedy the crisis.

That year, the Senate Judiciary Committee, chaired by William Evarts of New York, reported out of committee a bill that created intermediate federal appellate courts, which Supreme Court Justices favored, while retaining as much of the traditional federal court structure as possible, as favored by many of the lawyers in and represented by Congress. After seven months of wrangling over the final form of the legislation, the Evarts bill was signed by the President in March 1891 -- establishing a new tier of appellate courts and making the district courts full-fledged trial courts. By working together with the Judiciary, Congress enacted a decisive remedy. During the Supreme Court's 1890 Term, 623 new cases had been docketed. During its 1892 Term, only 275 new cases were filed.

Throughout the last century, Congress took many steps to alter the federal judicial system, some at the urging of federal judges, some not, but almost always in consultation. During the 1920's, when the Supreme Court was still housed in the Capitol Building, Chief Justice Taft and other members of the Court were visible to many legislators -- too visible in the minds of some -- promoting certain ideas and resisting others.

Congress agreed with Taft to create the Conference of Senior Circuit Judges (now the Judicial Conference of the United States). It passed the Certiorari Act of 1925, sometimes called "the Judges' Bill" because members of the Court had such a strong hand in crafting it. That statute addressed the very serious caseload congestion in the Court by giving the Court more discretion as to which cases to hear. Some members of Congress were doubtful -- why shouldn't every litigant have a right to get a decision on his case from the Supreme Court? Chief Justice Taft responded that in each case, there had already been one trial and one appeal. "Two courts are enough for justice," he said. To obtain still a third hearing in the Supreme Court, there should be some question involved more important than just who wins

this lawsuit.

The Certiorari Act greatly reduced the number of decisions in either state courts of last resort or federal appeals courts that parties could appeal to the Supreme Court as a matter of right. It greatly expanded the cases in which parties could seek review only by filing a petition for a writ of certiorari with the Court, leaving it for the Court to decide whether or not to grant the petition and hear the case. This authority made the single biggest difference in the Supreme Court's docket. No longer did the Court have to hear almost every case an unhappy litigant presented to it. Instead, for the most part, the Court could select only those relatively few cases involving issues important enough to require a decision from the Supreme Court.

Congress, however, hardly gave Chief Justice Taft all he sought. It rejected his proposal for "judges-at-large," whom the Chief Justice could assign to districts with serious backlogs, favoring instead what is now our system of temporary assignments. Taft's labeling his idea a "flying squadron of judges" probably did little to convince members of Congress of its merits. Similarly, Congress resisted his and others' efforts to establish uniform rules of procedure in federal courts, although that basic idea was adopted in the next decade.

Also, in the 1930's, interplay between the three branches brought about the basics of our current system of federal court governance. President Roosevelt's original idea of replacing the Justice Department as federal court administrator with a "proctor" appointed by the Supreme Court was transformed by legislative-judicial consultation into the statute creating the Administrative Office of the U.S. Courts, which functions under the direction and supervision of the Judicial Conference. Similarly, in the 1960's, Congress, with the advice of the Judicial Conference and Chief Justice Warren, created the Federal Judicial Center to provide the Judiciary with independent research and education programs to improve judicial administration. The FJC provides both initial training and a sort of continuing education for judges and court staff. It publishes manuals, conducts research and, along with the Administrative Office, has made a real difference in improving judicial administration.

The legislation I have described above, and many other statutes -- and proposed statutes -- over the years, have not necessarily been the product solely of harmonious judicial-legislative cooperation. Members of Congress and judges bring different perspectives to the same problems, and those different perspectives can create different conclusions and disagreements over both ends and means. That is inherent in our system of government.

Congress, by design, is accountable to the people and, in a Republic, has a responsibility to hold other branches accountable as well. Members of Congress, and their constituents, may see the administration of justice and operation of the courts from different perspectives than do judges, and judges are bound to respect those perspectives. Judges, though, have a perspective on the administration of justice that is not necessarily available to members of Congress and the people they represent. Judges have, again by Constitutional design, an institutional commitment to the independent administration of justice and are able to see the consequences of judicial reform proposals that legislative sponsors may not be in a position to see. Consultation with the Judiciary will improve both the process and the product.

III. The Year in Review

The Supreme Court of the United States

This year we broke ground on our long-anticipated building modernization program. It is my hope that we remain on schedule and complete the project under budget.

The total number of case filings in the Supreme Court increased from 7,924 in the 2001 Term to 8,255 in the 2002 Term - an increase of 4 percent. Filings in the Court's *in forma pauperis* docket increased from 6,037 to 6,386 - a 5.8 percent rise. The Court's paid docket decreased by 17 cases, from 1,886 to 1,869 - a 1 percent decline. During the 2002 Term, 84 cases were argued and 79 were disposed of in 71 signed opinions, compared to 88 cases argued and 85 disposed of in 76 signed opinions in the 2001 Term. No cases from the 2002 Term were scheduled for re-argument in the 2003 Term. This year the Court reconvened a month earlier than usual to hear a full day's argument in the Bipartisan Campaign Reform Act cases. Written opinions deciding the cases were handed down in December.

The Federal Courts' Caseload

In Fiscal Year 2003, the federal courts experienced record highs in filings in most program areas, and a decline in only one. Filings in the 12 regional courts of appeals grew 6 percent from 57,555 to 60,847, a record number.[3] Criminal case filings increased 5 percent to an all-time high of 70,642, surpassing the previous record reported in 1932, the year before the Prohibition Amendment was repealed.[4] In contrast, civil filings declined 8 percent to 252,962.[5] Filings in the U.S. bankruptcy courts increased 7 percent from 1,547,669 to 1,661,996, the second consecutive year filings have set a record.[6] The number of persons on probation and supervised release went up by 2 percent to an all-time high of 110,621.[7] There was a 7 percent gain in the number of defendants activated by pretrial services.[8]

IV. The Administrative Office of the United States Courts

The Administrative Office of the United States Courts serves as the central support agency for the administration of the federal court system. One of the biggest challenges facing the Administrative Office in 2003 was working to secure adequate funding for the Judiciary from Congress so that the federal courts can carry out their critical mission.

The Administrative Office also plays a pivotal role in identifying and promoting efficient practices, systems, and programs in the Judiciary. More than ten years ago, Director Leonidas Ralph Mecham implemented a budget decentralization program that allocates funds based on equitable formulas, and gives court managers considerable flexibility regarding the expenditure of those funds. Courts send back any funds they do not need in a given year so the funds can be used where they are most needed. This budget approach eliminates the "use it or lose it" concept that applies in many federal organizations. It has generated substantial savings, which has reduced the amount the Judiciary has had to request of Congress. Under this program, the courts now manage annually about $2 billion. This past year, contractors performed an independent assessment of the budget decentralization program and concluded that it has been enormously successful for the courts and might serve as a model for other federal agencies.

In 2003, the courts and the Administrative Office made substantial progress in implementing new electronic case management systems (known collectively as CM/ECF systems) that enable federal courts to receive and process case filings electronically. The ability to file case

documents over the Internet and to access court records electronically is a significant achievement that will make it easier for attorneys and others to do business with the courts. Such a system currently is operating in two-thirds of the bankruptcy courts nationwide, and a district court system is now operating in a third of the federal districts. The design of an appellate court system is well underway. More than 10 million cases are on CM/ECF systems and over 40,000 attorneys nationwide have filed documents in federal courts over the Internet.

The Public Access to Court Electronic Records (PACER) system allows users to obtain case and docket information, such as a listing of all parties and participants in a case, a chronology of case events and court opinions, from federal appellate, district, and bankruptcy courts via the Internet. This inexpensive, fast and comprehensive system has proven to be very popular, and there are nearly 300,000 registered users. This past year, the Judicial Conference, based on a successful pilot program, endorsed a new policy permitting electronic access to criminal case files to the same extent as public access to criminal case files at the courthouse (the Conference had previously adopted policies regarding access to appellate, civil, and bankruptcy case files). Administrative Office staff currently are working with Conference committees to develop guidance for the courts to implement this policy.

Courtroom technology systems, including video evidence-presentation systems, video conferencing systems, and electronic means of taking the record (*e.g.*, realtime reporting capabilities), have been installed nationwide. Agency staff are completing the deployment of a modern financial accounting system throughout the Judiciary. A new case-management system for probation and pretrial services offices has been installed in more than 60 districts, and a new human resources/payroll system for court employees was implemented.

Court security continues to be a high priority. With assistance from Administrative Office staff, most federal courts have developed or are in the process of developing continuity-of-operations plans. The Administrative Office is currently working with experts and court officials to design a program for conducting simulated emergency exercises that will test individual court plans. Several key enhancements were made this past year to national communications systems that provide judges and court administrators with reliable communications links with the Administrative Office, other federal agencies, and local police and fire departments.

V. The Federal Judicial Center

The Federal Judicial Center is the federal courts' statutory agency for education and research. In September, Judge Fern M. Smith stepped down after four successful years as Center director and returned to the Northern District of California. The Center's Board, which I chair, selected Judge Barbara J. Rothstein of the Western District of Washington as the Center's ninth director. She assumed her duties in September.

A few highlights of the Center's work in 2003 include:

Civil litigation. Among its efforts to help judges handle civil litigation fairly and effectively, the Center completed the fourth edition of its *Manual for Complex Litigation*. An impetus for this new edition was the growing number of claims for damages allegedly caused by defective products, often referred to as "mass torts." I am grateful to Judge Stanley Marcus of

Miami, who chaired the Board of Editors that worked with the Center to produce this new edition.

In the same vein, the Center has added to the illustrative class action notices that it has developed at the request of the Judicial Conference's Civil Rules Advisory Committee. Class action notices advise prospective class members about the litigation and their rights in respect to it. The Committee asked the Center to develop illustrative notices to help lawyers comply with a recently imposed requirement in the Civil Rules that notices "concisely and clearly state" information about the action "in plain, easily understood language." The most recent additions include Spanish-language versions of some previously released notices. All are available on the FJC's Web site (www.fjc.gov).

Research performed for the Civil Rules Committee includes an examination of the incidence of sealed settlement agreements in federal district courts and the circumstances surrounding the sealing of settlement agreements. Center researchers are also working with the Committee to develop an amendment to clarify, given current information technology, what constitutes a "document" or "data compilation" subject to discovery under Rule 34. This is an extension of the Center's work on civil discovery of documents stored in electronic, and sometimes inaccessible, formats.

Criminal litigation. The Center this year reported its positive evaluation of the Judicial Conference pilot program referenced earlier involving public electronic access to documents in criminal cases. In September, the Conference approved continuation of the program, with Center monitoring, until the Conference approves specific guidance for system-wide implementation.

Judgeships and judges. The Center has under way intensive efforts to develop revised "case weights" for both the federal district and bankruptcy courts. The weights represent the relative burden imposed by different types of cases and are essential for the Judicial Conference's determination of the need for new judgeships in the various districts.

In a related project, the Center is assisting the Judicial Conference's Bankruptcy Committee in developing guidelines, model questionnaires, and alternative approaches that bankruptcy judges can use to obtain interim reviews from attorneys who practice before them regarding their performance in areas that the courts of appeals are to consider, pursuant to statute, in connection with the reappointment of bankruptcy judges who have served their 14-year terms.

Education for federal judges and court personnel. In 2003, the Center provided orientation and continuing education to at least 13,000 federal judge and support staff participants through 400 national, regional, and local seminars. Over 800 federal defenders, assistant defenders, and their staffs attended five Center programs. FJC programs on the Judicial Branch's television network reached an estimated 17,000 viewers. These, along with publications, Web-based programs, and video and audiocassettes, covered topics as diverse as terrorism and the law, employment discrimination, court managers' legal and financial responsibilities, and probation officer supervision of offenders with mental disorders.

Assistance to foreign judiciaries. Center experts participated in several technical assistance projects (funded by other agencies) such as a seminar on distance education for the judicial branch, sponsored by the Russian Academy of Justice in Moscow.

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VI. The United States Sentencing Commission

During the last year, the United States Sentencing Commission spent much of its time responding to a number of congressional directives related to major crime legislation. The Commission unanimously approved amendments to the federal Sentencing Guidelines implementing provisions of the USA PATRIOT Act regarding terrorism offenses, the Sarbanes-Oxley Act involving white collar frauds, the Bipartisan Campaign Reform Act concerning election law violations, the Homeland Security Act regarding cybersecurity and attacks on critical infrastructure, and the PROTECT Act.

Along with the amendment implementing the PROTECT Act directive, the Commission submitted a report to Congress that closely examines the rate of downward departure from the guidelines. The Act directed the Commission "to ensure that the incidence of downward departures are substantially reduced" and to allow for early disposition programs as authorized by the Attorney General. The report concluded that the downward departure rate has increased from 5.8 percent in Fiscal Year 1991 to 18.1 percent in Fiscal Year 2001. Approximately 40 percent of the downward departures granted in Fiscal Year 2001 were government initiated. If all of the government initiated downward departures were excluded, the departure rate would be about 10.9 percent. In preparing the report, the Commission considered an analysis of the sentencing documents submitted to it by the courts, the case law involved, the record from a series of public hearings held by the Commission, public comments received from solicitations published by the Commission in the Federal Register, and the input of the bench and bar in several parts of the country where the Commission conducted training sessions for judges and practitioners.

Two ad hoc advisory groups, one on the organizational Sentencing Guidelines and one on Native American sentencing issues presented their final reports and recommendations to the Commission last fall. The Organizational Guidelines Group, chaired by former United States Attorney B. Todd Jones of Minnesota, recommended amending the existing organizational guidelines in order to reflect contemporary legislative, regulatory, and corporate governance requirements. On November 5, the Commission voted to publish for public comment a proposed Sentencing Guideline's amendment that incorporates the specific recommendations of the advisory group with final action anticipated by May 1, 2004.

The Advisory Group on Native American Sentencing Issues was chaired by Chief Judge Lawrence Piersol of the United States District Court for the District of South Dakota and included a number of individuals who are enrolled tribal members. The advisory group was formed in response to concerns regarding the impact of the federal Sentencing Guidelines on Native Americans sentenced under the Major Crimes Act. The group's final report concludes that the sentencing impact on Native Americans resulting from federal criminal prosecution varies from offense to offense and among jurisdictions. The report and recommendations of each group can be found on the Commission's Web site (www.ussc.gov).

On September 2, 2003, the Commission adopted its policy priorities for the amendment cycle ending May 1, 2004. The priorities include responding to the PROTECT Act directive and consideration and implementation of the recommendations made by the two ad hoc advisory groups. The Commission also is continuing its work in a number of other areas, including terrorism, manslaughter and assault, sex offenses and child pornography, immigration offenses, public corruption, and criminal history, as well as its work on a study geared toward analyzing the guidelines in light of the goals of sentencing reform described in the Sentencing

Reform Act and the statutory purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2).

Based upon a recent General Accounting Office report, Federal Drug Offenses: Departures from Sentencing Guidelines and Mandatory Minimum Sentences: Fiscal Years 1999-2001 (October 2003), that recommended improving document submission and tracking by the courts and the Commission, a coordinated effort is underway by the Administrative Office of the U.S. Courts, the Federal Judicial Center, and the Sentencing Commission to review relevant standardized documents and training of court personnel.

Two preexisting vacancies on the Commission were filled on June 25, 2003, when United States District Judge Ricardo H. Hinojosa and former Deputy Assistant Attorney General Michael E. Horowitz were sworn in as Commissioners. On October 31, 2003, the terms of one other Commissioner, Michael E. O'Neill, and two Vice Chairs, United States District Judge Ruben Castillo and Chief Judge William K. Sessions, III, expired. The President nominated Chief Judge Sessions for reappointment, and the nomination was approved by the full Senate on December 10, 2003. Commissioner O'Neill and Vice Chair Castillo continue to serve under the governing statute until Congress adjourns sine die or new Commissioners are appointed. I encourage the President to complete the nomination process for the remaining two positions and hope the Senate will timely act on the appointments.

VII. Conclusion

I am proud of the job our courts continue to perform, year in and year out. I want to thank all of the federal judges and court staff around the country whose hard work and commitment ensure that our courts continue efficiently to dispense justice.

The year just passed stands out by reason of the U.S. led invasion of Iraq that began in March. We have all been touched by the fighting in Iraq, and having several employees of the Supreme Court called to serve in the military brought it closer to home. My condolences go out to those who have been injured, and to their families and the families of those who have been killed.

I extend to all my wish for a happy New Year.

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[1] Cong. Record, House, March 4, 1939 at 2250.

[2] Felix Frankfurter and James M. Landis, *The Business of the Supreme Court*, The MacMillan Company, 1928, p. 85.

[3] Administrative agency appeals surged 73 percent, bankruptcy appeals increased 7 percent, and criminal appeals increased 3 percent, which more than offset declines in original proceedings (down 7 percent) and civil appeals (down 3 percent). A continued influx of immigration administrative agency appeals related to the Board of Immigration Appeals' effort to clear its backlog of cases was responsible for the overall rise. Appeals filings have increased 26 percent since 1994.

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[4] Filings increased in 63 districts, and 35 districts received at least 10 percent more filings than they did in 2002. Since 1993, criminal case and defendant filings have risen in each year with the lone exception of 2001. The growth in filings this year caused criminal cases per authorized judgeship to climb from 101 in 2002 to 104 in 2003, despite the 15 additional judgeships authorized by Congress that became effective on July 15, 2003. In 2003, the overall growth in the criminal caseload stemmed primarily from immigration and firearms cases, as filings for these offenses reached their highest levels ever. Immigration filings jumped 22 percent to 15,400 cases to surpass the previous record set in 1954 when the Immigration and Naturalization Service began a repatriation project to remove illegal Mexican immigrants. Firearms filings climbed 23 percent to 9,075 cases pursuant to the expansion of Project Safe Neighborhoods. Filings of drug cases declined 1 percent nationally, but still increased in 50 districts. Fraud cases related to nationality laws increased 26 percent to 301 cases, and passport fraud cases rose 57 percent to 411 cases. Criminal filings have risen 55 percent since 1994.

[5] Filings related to personal injuries dropped 33 percent, primarily as a result of decreases in personal injury/product liability cases involving asbestos (such filings had soared 98 percent the previous year). Excluding personal injury cases, civil filings otherwise were relatively stable, falling 1 percent.

Total private civil filings fell 8 percent as federal question filings related to asbestos dropped 99 percent. Overall filings involving federal question jurisdiction fell 13 percent, chiefly because personal injury cases decreased 80 percent. Much of this decline can be attributed to asbestos filings, which plummeted by nearly 24,000 cases as far fewer plaintiffs filed cases alleging injuries from asbestos.

Filings involving the United States as plaintiff fell 24 percent, largely due to a 52 percent decrease in student loan cases, which continued a trend that began in 2001 following the implementation of administrative measures by the Department of Education to improve the collection of these debts. Filings with the United States as defendant decreased 3 percent, mostly because of a 6 percent decrease in Social Security cases related to disability insurance and supplemental security income. Diversity of citizenship filings rose 8 percent, with personal injury cases accounting for the bulk of the increase. Over the last ten years, civil filings have increased 7 percent.

[6] Nonbusiness filings increased 8 percent and business petitions fell 7 percent. Filings increased under all chapters except chapter 11, surging 117 percent under chapter 12, climbing 9 percent under chapter 7, and increasing 5 percent under chapter 13. Bankruptcy filings under chapter 11, which comprised less than 1 percent of all petitions filed, declined 13 percent. Bankruptcy filings have increased 34 percent during the last ten years.

[7] Persons serving terms of supervised release following their release from prison totaled 75,680 on September 30, 2003, and constituted 68 percent of all persons under supervision, while the number of individuals on parole declined 8 percent to 3,129 persons and comprised only 3 percent of those under supervision. The number of persons on probation declined 2 percent to 30,602, due to a drop in both the number of persons on probation imposed by judges and by magistrate judges. Of the 110,621 persons under supervision, 44 percent had been convicted of a drug-related offense, up 1 percent from one year ago. There are now 24 percent more persons under supervision than there were in 1994.

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[8] The number of defendants in pretrial services system cases opened in 2003, including pretrial diversion cases, increased 7 percent to 97,317, and the number of pretrial reports prepared also rose 7 percent, while the number of defendants interviewed increased 5 percent.

In conjunction with all pretrial services cases closed during the year, a total of 221,199 pretrial hearings were held, an increase of 7 percent over the total in 2002. During the past ten years, pretrial services cases activated have increased 67 percent.

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2004 YEAR-END REPORT ON THE FEDERAL JUDICIARY

I. Overview

This Year-End Report on the Federal Judiciary is my 19th.

In last year's report, I focused on the need to repair the relationship between the Judicial Branch and the Legislative Branch. There is still much work to do, but during the year many judges and members of Congress have worked together to begin to improve the relationship, and I thank all of them for their efforts. In part because of criticism by members of Congress, in May I appointed a committee, chaired by Justice Stephen Breyer, to evaluate and report on the way the Judicial Conduct and Disability Act of 1980 is being implemented. At the invitation of Representatives Judy Biggert and Adam Schiff, I met with the bipartisan Congressional Caucus on the Judicial Branch. Sitting down face-to-face helps to establish better working relationships. I hope that these and similar efforts continue in the coming years.

In this report, I will address the funding crisis currently affecting the federal Judiciary. I will also focus on the recently mounting criticism of judges for engaging in what is often referred to as "judicial activism."

II. The Judiciary's Budget Crisis

The Fiscal Year 2005 budget process has been very difficult. The Judiciary's appropriation for the fiscal year that began on October 1 was not signed into law until December 8. The recurring delays in enacting annual appropriations bills have severely disrupted its operations. Nine out of the last 10 fiscal years began with no appropriations bills passed for the Judiciary.

The continuing uncertainties and delays in the funding process, along with rising fixed costs that outpace any increased funding from Congress, have required many courts to impose hiring freezes, furloughs, and reductions in force. In some cases they have had to cut back services available to the public. During Fiscal Year 2004, this resulted in a 6 percent reduction -- 1,350 positions -- in employees other than judges and the staff who work in their chambers. The area of probation and pretrial services was particularly hard hit.

In March I asked the Executive Committee of the Judicial Conference, chaired by Chief Judge Carolyn Dineen King, to develop an integrated strategy for controlling costs in Fiscal Year 2005 and beyond. The Committee did a yeoman's job, producing a comprehensive cost-containment strategy, which was endorsed unanimously by the Judicial Conference in September 2004. The strategy entails a moratorium on some courthouse construction projects; improving workforce efficiency; a study of basic changes in the Judicial Branch's approach to compensation for non-judges; promoting more effective use of technology; a study of possible program changes to reduce costs in defender services, court security,

probation and pretrial services, and bankruptcy case processing, among others; and regular examination of court fees to reflect economic changes.

This effort has involved nearly all of the committees of the Judicial Conference and court staff throughout the country, as well as the Administrative Office of the U.S. Courts and the Federal Judicial Center. I thank everyone who is participating in this effort.

Implementing this cost containment strategy will ameliorate but not end the Judiciary's funding crisis. As the Judiciary's workload continues to grow, the current budget constraints are bound to affect the ability of the federal courts efficiently and effectively to dispense justice. One way in which Congress could immediately relieve the judicial budget crisis facing the country would be to reassess the rent that the Judiciary is required to pay to the General Services Administration for courthouses around the country. These rental payments today account for no less than 20 percent of the Judiciary's budget.

Another issue that I hope will be addressed this year is the critical need for additional judgeships, especially in the courts of appeals. In early 2003, the Judicial Conference requested nine permanent and two temporary court of appeals judgeships. No new court of appeals judgeships have been established since 1990 and three of the courts for which new judgeships are needed -- the First, Second and Ninth Circuits -- have not had any new judgeships for 20 years. I urge the members of the 109th Congress to ensure that the judgeship and funding needs of the federal Judiciary are met.

III. Criticism of Judges Based on Judicial Acts

Criticism of judges has dramatically increased in recent years, exacerbating in some respects the strained relationship between the Congress and the federal Judiciary. But criticism of judges and judicial decisions is as old as our republic, an outgrowth to some extent of the tensions built into our three-branch system of government. To a significant degree these tensions are healthy in maintaining a balance of power in our government.

By guaranteeing judges life tenure during good behavior, the Constitution tries to insulate judges from the public pressures that may affect elected officials. The Constitution protects judicial independence not to benefit judges, but to promote the rule of law: judges are expected to administer the law fairly, without regard to public reaction. Nevertheless, our government, in James Madison's words, ultimately derives "all powers directly or indirectly from the great body of the people." Thus, public reaction to judicial decisions, if it is sustained and widespread, can be a factor in the electoral process and lead to the appointment of judges who might decide cases differently.

John Marshall, who is known as the Great Chief Justice, was roundly criticized for Supreme Court decisions involving the authority of the national government -- decisions that are now recognized as essential building blocks of our nation. Federal judges were severely criticized 50 years ago for their unpopular, some might say activist, decisions in the desegregation cases, but those actions are now an admired chapter in our national history. On the other hand, criticism of the

Supreme Court's decision in the Dred Scott case, which Charles Evans Hughes rightly described as a "self-inflicted wound" from which it took the Court at least a generation to recover, proved correct.

Although arguments over the federal Judiciary have always been with us, criticism of judges, including charges of activism, have in the eyes of some taken a new turn in recent years. I spoke last year of my concern, and that of many federal judges, about aspects of the PROTECT Act that require the collection of information on an individual, judge-by-judge basis. At the same time, there have been suggestions to impeach federal judges who issue decisions regarded by some as out of the mainstream. And there were several bills introduced in the last Congress that would limit the jurisdiction of the federal courts to decide constitutional challenges to certain kinds of government action.

A natural consequence of life tenure should be the ability to benefit from informed criticism from legislators, the bar, academe, and the public. When federal judges are criticized for judicial decisions and actions taken in the discharge of their judicial duties, however, it is well to remember two principles that have long governed the tenure of federal judges.

First, Congress's authority to impeach and remove judges should not extend to decisions from the bench. That principle was established nearly 200 years ago in 1805, after a Congress dominated by Jeffersonian Republicans impeached Supreme Court Justice Samuel Chase. Chase was charged for actions he took in trials during the 1790s, sitting as circuit justice, and later for a series of grand jury charges. The

grand jury charges, coming near the time of the Supreme Court's 1803 decision in Marbury v. Madison that the federal courts have the power to declare an act of Congress unconstitutional, led the House to impeach Chase and send the matter to the Senate for trial.

Although there were 25 Jeffersonian Republicans and nine Federalists in the Senate, on each count, the Republicans failed to muster the two-thirds' vote necessary to convict. Chase was by no means a model judge, and his acquittal certainly was not an endorsement of his actions. Rather, the Senate's failure to convict him represented a judgment that impeachment should not be used to remove a judge for conduct in the exercise of his judicial duties. The political precedent set by Chase's acquittal has governed the use of impeachment to remove federal judges from that day to this: a judge's *judicial* acts may not serve as a basis for impeachment. Any other rule would destroy judicial independence -- instead of trying to apply the law fairly, regardless of public opinion, judges would be concerned about inflaming any group that might be able to muster the votes in Congress to impeach and convict them.

Congress confirmed this underlying principle almost 25 years ago when it passed the Judicial Conduct and Disability Act authorizing anyone to file a complaint against a federal judge for misconduct or disability affecting the judge's ability to discharge his duties. If the charges are substantiated, they can lead to various kinds of discipline short of removal from office. Congress made clear, though, that the statute did not authorize complaints "directly related to the merits

of a decision or procedural ruling." The appellate process provides a remedy for challenges to such decisions or rulings.

If judges cannot be removed from office for judicial decisions, how can we be certain that the Judicial Branch is subject to the popular will? The answer to that question may be found in President Franklin Roosevelt's clash with the Supreme Court of the 1930s. The Court had invalidated legislation FDR thought was essential to restore the country to prosperity during the Great Depression. Roosevelt, and an overwhelmingly Democratic Congress, faced a Court that had for 30 years been reading into our Constitution a doctrine of "freedom of contract" which was hostile to social legislation, and had adopted a very limiting view of congressional authority under the commerce clause.

In FDR's view, the Court had become a roadblock to the progressive reforms needed in the nation, and he planned to use his immense political resources to bring the Court into step with the President and Congress. In February 1937, Roosevelt proposed a plan to "reorganize" the Judicial Branch, but the crux of his proposal was that the President would be empowered to appoint an additional six Justices to the Court and thereby enlarge the Court's membership up to a total of 15. Roosevelt's true aim, of course, was to "pack" the Court all at once to produce a majority sympathetic to the New Deal. Despite his huge majorities in both Houses of Congress, however, the bar, the press, and eventually public opinion began to rally against the proposal, and it was defeated.

President Roosevelt lost this battle in Congress, but he eventually won the war to change the judicial philosophy of the Supreme Court. He won it the way our Constitution envisions such wars being won -- by the gradual process of changing the federal Judiciary through the appointment process. Although Roosevelt appointed no Justices during his first term, in his second term he nominated and the Senate confirmed five, producing a Court that was much more sympathetic to the New Deal. During his entire tenure as President, FDR appointed seven Associate Justices and one Chief Justice.

In this way, our Constitution has struck a balance between judicial independence and accountability, giving individual judges secure tenure but making the federal Judiciary subject ultimately to the popular will because judges are appointed and confirmed by elected officials. It is not a perfect system -- vacancies do not occur on regular schedules, and judges do not always decide cases the way their appointers might have anticipated. But for over 200 years it has served our democracy well and ensured a commitment to the rule of law.

No doubt the federal Judiciary, including the Supreme Court, will continue to encounter challenges to its independence and authority because of dissatisfaction with particular decisions or the general direction of its jurisprudence. Let us hope that the Supreme Court and all of our courts will continue to command sufficient public respect to enable them to survive basic attacks on the judicial independence that has made our judicial system a model for much of the world.

IV. The Year in Review

The Supreme Court of the United States

The total number of case filings in the Supreme Court decreased from 8,255 in the 2002 Term to 7,814 in the 2003 Term -- a decrease of 5.3 percent. Filings in the Court's *in forma pauperis* docket decreased from 6,386 to 6,092 -- a 4.6 percent decline. The Court's paid docket decreased by 147 cases, from 1,869 to 1,722 -- a 7.9 percent decline. During the 2003 Term, 91 cases were argued and 89 were disposed of in 73 signed opinions, compared to 84 cases argued and 79 disposed of in 71 signed opinions in the 2002 Term. No cases from the 2003 Term were scheduled for reargument in the 2004 Term.

The Federal Courts' Caseload

Civil and appellate filings increased in Fiscal Year 2004. Criminal filings were essentially static, and bankruptcy filings declined. Civil filings rose by 11 percent,[1]

[1] Much of the increase in civil filings came about because of a 16 percent growth in federal question filings (i.e., actions under the Constitution, laws, or treaties of the United States in which the United States is not a party in the case). In particular, there was a doubling of special statutory actions related to financial investments, which in the District of South Carolina resulted in a surge of 19,244 additional cases. Federal question filings related to personal injury/product liability, labor laws, and protected property rights also increased in 2004. Personal injury/product liability filings more than doubled to 2,221 cases because of a variety of new cases filed nationally; labor law filings grew 6 percent due to cases filed under the Fair Labor Standards Act; and a 7 percent rise in protected property rights actions consisted largely of copyright and patent cases.

Total diversity of citizenship filings increased 11 percent, mostly as a result of a 62 percent spike in personal injury/product liability filings. Most of these cases were filed in the Northern District of Ohio and the Eastern District of Pennsylvania. The Northern District of Ohio had many new filings under Multidistrict Litigation Docket Number 1535, which addresses alleged injurious effects of welding devices. The Eastern District of Pennsylvania had many new filings under Multidistrict Litigation Docket Number 1203, which addresses the alleged injurious effects of certain diet drugs.

filings of appeals grew 3 percent,[2] criminal filings grew less than 1 percent,[3] and filings in the bankruptcy courts declined for the first time since 2000, falling 3 percent to

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Filings with the United States as plaintiff or defendant fell 2 percent. Cases with the United States as plaintiff dropped 8 percent, largely due to a 24 percent decline in foreclosure cases. Filings with the United States as defendant rose by only 137 cases to 38,391. Filings of Social Security cases fell 7 percent; however, this reduction was offset by a 22 percent jump in motions to vacate sentence and a 13 percent rise in habeas corpus prisoner petitions.

Over the past 10 years, civil filings have risen 19 percent, mostly as a result of increases in personal injury/product liability, Social Security, and labor law cases.

[2] Filings in the 12 regional courts of appeals grew from 60,847 to 62,762, a record number. Administrative agency appeals surged 23 percent, original proceedings rose 13 percent, and criminal appeals increased 4 percent, which more than offset 4 percent declines in both bankruptcy appeals and civil appeals. The overall rise was due in large part to a continued influx of challenges to the decisions of the Board of Immigration Appeals -- as that agency cleared its backlog of cases -- and a jump in second or successive motions filed by inmates with habeas corpus petitions. Appeals filings have increased 25 percent since 1995.

[3] Case filings increased in 44 districts, and in 29 of those districts the increase was at least 10 percent above 2003. The slight national increase in filings coupled with the expiration of a temporary district court judgeship caused criminal cases per authorized judgeship to rise from 104 in 2003 to 105 in 2004. The growth in the criminal caseload stemmed primarily from increases in cases involving immigration, sex offenses, and firearms, with filings for these offenses reaching their highest levels ever. Immigration cases climbed 11 percent to 17,021. Sixty-nine percent of all immigration cases were filed in five districts along the nation's southwestern border, each of which received more immigration filings than in 2003. Sex offense cases jumped 24 percent to 1,638, largely due to cases in which defendants were charged under laws relating to sex crimes involving juveniles. Firearms case filings climbed 3 percent to 9,352, rising in 52 districts. Nineteen districts received 25 percent or more case increases because of Project Safe Neighborhoods, which supports partnerships among federal, state, and local law enforcement agencies to promote the prosecution of firearms violations under federal laws in communities that have been most affected by gun violence. Drug cases fell 3 percent overall to 18,440, despite increases in such filings in 43 districts. The number of drug case filings has been affected by the government's focus on national security and the commitment of federal resources to anti-terrorism efforts. Filings of fraud cases fell 7 percent to 7,539. Social Security fraud cases fell 31 percent to 672 as these filings returned to their 2001 level, the year the Department of Justice began prosecuting defendants for identity theft under Social Security laws. Income tax fraud cases grew 15 percent to 496, and passport fraud cases grew 9 percent to 449. Since 1995, criminal case filings have grown 55 percent.

1,618,987 in 2004.[4] The number of persons on probation and supervised release went up by 2 percent to an all-time high of 112,883,[5] and there was a 3 percent gain in the number of defendants activated by the pretrial services system.[6]

V. The Administrative Office of the United States Courts

As the central support agency for the federal courts, the Administrative Office of the U.S. Courts performs a wide variety of functions. This past year, the staff of the Administrative Office devoted much of its time and energy to addressing critical funding shortages for the federal Judiciary. Director Leonidas Ralph Mecham and his staff played pivotal roles in helping the federal courts cope with the impact of reductions in personnel and services, and launched an intensive effort

[4] Nonbusiness filings decreased 3 percent, and business petitions fell 4 percent. Filings decreased under all chapters except Chapter 11, falling 66 percent under Chapter 12, 4 percent under Chapter 13, and 2 percent under Chapter 7. The reduction in Chapter 12 filings occurred because the legislation authorizing this chapter expired on January 1, 2004. Bankruptcy filings under Chapter 11, which comprised less than 1 percent of all petitions filed, grew 2 percent. Even though filings declined in Fiscal Year 2004, they have soared 83 percent over the last 10 years and remain at close to peak levels.

[5] Persons serving terms of supervised release following their release from prison totaled 78,594 on September 30, 2004, and they constituted 70 percent of all persons under post-conviction supervision. The number of individuals on parole declined 7 percent to 2,914 and comprised only 3 percent of those under supervision. The number of persons on probation declined 6 percent to 28,882, due to a drop in the imposition of sentences of probation by both district judges and magistrate judges. Of the 112,883 persons under post-conviction supervision, 44 percent were convicted of a drug-related offense, the same as one year ago. There are now 32 percent more persons under post-conviction supervision than there were in 1995.

[6] The number of defendants in pretrial services system cases opened in 2004, including pretrial diversion cases, increased 3 percent to 100,005. Pretrial services officers prepared 2 percent more pretrial reports, while the number of defendants interviewed increased 3 percent. In conjunction with all pretrial services cases closed during the year, a total of 223,092 pretrial hearings were held, an increase of 1 percent over the total in 2003. During the past 10 years, cases activated in the pretrial services system have increased 62 percent.

to communicate with Congress about the effects of funding shortfalls on judiciary operations and services.

In conjunction with Judicial Conference committees, the Administrative Office is engaged in more than 50 cost-containment initiatives related to space and facilities cost control, workforce efficiency, compensation review, effective use of technology, and program changes. Chief among these initiatives are thorough reviews of the facilities planning processes and design standards for courthouses; a review of judiciary compensation systems; process redesign and methods analysis programs; a review of administrative support services in the courts; probation and pretrial services program revisions; defender services program studies; and the identification and implementation of more cost-effective service delivery models for information technology.

Both Fiscal Years 2004 and 2005 began with no appropriations bills passed for the Judiciary. This required the Administrative Office to dedicate considerable time anticipating and responding to the unpredictable budget situation. Staff developed contingency plans, recalculated detailed budgets for the operation of the federal court system, modified program activities, and kept the courts informed so they could make informed management, budget, and personnel decisions.

The continuing resolutions passed by Congress when it was unable to complete work on appropriations bills did not provide enough funds to continue current operations. In response, the Administrative Office developed and issued guidance on budget and workforce planning, furloughs, job abolishment, and buyout

and early-out retirement programs. The Administrative Office's human resources staff answered thousands of downsizing questions from concerned court managers and employees.

Due to budget constraints, the Administrative Office itself had over 100 vacancies -- leaving nearly 10 percent of its positions unfilled -- notwithstanding the increase in work. Anticipating the budget crisis, the Administrative Office already had begun efforts to cut program costs where feasible. Many ideas for achieving economies were considered and implemented, in consultation with court advisory groups. In support of the Judicial Conference and its committees, the Administrative Office produced extensive analyses of short- and long-term resource requirements.

In addition to the extensive budget and cost-containment activities, the Administrative Office focused its remaining resources on core business necessities and projects that will deliver future benefits. Emergency preparedness and continuity of operations remained high priorities. Significant progress was made in 2004 in making courts safer and in ensuring their continued and effective operation in the event of a crisis.

The deployment of vital information technology systems continued throughout the year. The installation of a new financial accounting system was completed so that for the first time ever, all courts are using a single, integrated financial system. The Judiciary's human resources management information system was extended to cover all court personnel. The agency also completed the

installation of a probation and pretrial services case-management system in all districts. Deployment of modern case management and electronic filing systems has now reached almost all bankruptcy courts, and is in place in well over half the district courts. These systems are key to managing increasing workloads in a limited-growth environment.

VI. The Federal Judicial Center

The Federal Judicial Center is the federal courts' agency for education and research. In 2004, the Center provided continuing education to at least 11,000 federal judge and support staff participants through 396 national, regional, and local seminars. Many more benefited from FJC programs on the Judicial Branch's television network and from Center publications, Web-based programs, and video and audio cassettes. Additionally, over 600 federal defenders, assistant defenders, and their staffs attended three Center programs.

Although Center programs covered the range of legal, procedural, and management challenges facing judges and court employees, a recurring theme in much of the Center's work this year was helping judges and court managers identify, and share with colleagues, ways to maintain quality services and effective operations in periods of budget austerity.

The Center itself has long faced this same challenge. Over the last 10 years, its appropriation has increased a mere 13 percent. In response, the Center has reduced its travel expenditures by 15 percent and its staff by 19 percent. The Center's Board, which I chair, this year committed the Center to continued

economizing so as to maintain current levels of service, believing that as the federal courts face the challenges of serious cost containment, their need for the Center's work is greater than ever.

Some specific highlights of the Center's work in 2004 are outlined below.

For several years, judges and lawyers have debated whether courts of appeals should prohibit citation to so-called unpublished opinions. The Judicial Conference's Standing Committee on Rules of Practice and Procedure, in cooperation with the Appellate Rules Advisory Committee, has asked the Center to report next spring on the possible impact of a rule permitting citation of unpublished opinions.

Center researchers also analyzed local court of appeals rules that impose requirements beyond those in the national rules on the form and content of appellate briefs, to help the Advisory Committee evaluate proposed amendments to the Federal Rules of Appellate Procedure.

The Center provided the Advisory Committee on Civil Rules its study of sealed settlement agreements, based on an examination of over 288,000 cases. The study found 1,270 cases that appear to have sealed settlement agreements, suggesting a national sealed settlement agreement rate of 0.44 percent. Researchers also found that in 97 percent of these cases, although the settlement is sealed, the complaint is not, so the public has access to the plaintiffs' allegations.

The Center completed its work to develop new statistical case weights for the district courts. The case weights reflect the relative burden imposed on district

judges by different types of cases and are an important, objective tool that assists the Judicial Conference in formulating its requests to Congress for additional district judgeships. The Center is also developing revised case weights for the bankruptcy courts.

As I mentioned earlier, last spring I asked Justice Stephen Breyer to chair the special study committee to assess the federal Judiciary's administration of the 1980 statute that permits anyone to file a complaint alleging that a federal judge has engaged in misconduct or is unable to perform the duties of the office. I asked the Center, along with the Administrative Office, to support the study committee through rigorous, objective research on this sensitive subject, and I am grateful for the work that they began this year and that will continue through 2005.

VII. The United States Sentencing Commission

Judge Diana E. Murphy resigned as chair of the United States Sentencing Commission on January 31, 2004. Judge Murphy became chair in 1999 and oversaw significant accomplishments, including the issuance of a special report to Congress on disparities in cocaine penalties, an overhaul of white collar offenses under the guidelines, and the completion of a special report to Congress on departure trends. I thank her for her service.

In August, President Bush appointed Judge Ricardo H. Hinojosa of McAllen, Texas, to be the new chair of the Sentencing Commission. Judge Hinojosa has served as a member of the Sentencing Commission since May of 2003; his appointment as chair was confirmed by the Senate on November 21, 2004. In

addition to the appointment of Judge Hinojosa, the Senate also confirmed Ms. Beryl A. Howell as a commissioner on the Sentencing Commission, and confirmed the reappointments to the Commission of Judge Ruben Castillo (vice chair) and Professor Michael E. O'Neill.

On April 30, 2004, the Sentencing Commission sent to Congress a package of amendments that revised standards for corporate compliance and ethics programs and modified penalties for crimes including public corruption offenses, possession of certain destructive devices, mishandling of hazardous materials offenses, trafficking in the drug GHB, and fraudulently obtaining a U.S. passport. The amendments became effective November 1, 2004.

In May 2004, over 460 attendees participated in the 13th Annual National Seminar on the Federal Sentencing Guidelines. The seminar was co-sponsored by the U.S. Sentencing Commission and the Federal Bar Association in Miami Beach, Florida. In November 2004, the Commission held a series of public hearings in Washington, D.C., to hear testimony from judges, prosecutors, the defense bar, victims rights groups, and academics on the current status of federal sentencing policy and the challenges facing the Commission. In addition, throughout the summer and fall of 2004, Commission members and staff attended numerous seminars and conferences related to the Supreme Court's ruling in Blakely v. Washington.

Throughout the year, the Commission published a series of reports, including *Fifteen Years of Guidelines Sentencing*, a comprehensive review of the research

literature and sentencing data; and two reports on recidivism: (1) *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* and (2) *Recidivism and the "First Offender."*

In Fiscal Year 2004, the Commission received documentation on approximately 70,000 cases sentenced under the guidelines. Also, the Commission staff provided training at 74 seminars with over 6,600 participants. Commission staff continue to work with the Federal Judicial Center and the Administrative Office of the U.S. Courts to plan and develop educational and informational programming for the Federal Judicial Television Network. During the year, the Commission's "HelpLine" provided guideline application assistance to approximately 100 callers per month.

VIII. Conclusion

Because of the budget crisis, this was a particularly difficult year for judges and court staff throughout the country. I want to thank them for their continued dedication. We can all be proud of the job our courts perform in efficiently dispensing justice.

On a personal note, I also want to thank all of those who have sent their good wishes for my speedy recovery.

Finally, I offer my best wishes to President Bush and Vice President Cheney and to the members of the 109th Congress, just as I extend my best wishes to those legislators who have concluded their service. I extend to all my wish for a happy New Year.

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2005 Year-End Report on the Federal Judiciary

I. Introduction

New Year's Day in America means football, parades, and, of course, the Year-End Report on the Federal Judiciary. I am pleased to carry on the tradition launched by Chief Justice Burger, and continued for the past 19 years by Chief Justice Rehnquist, of issuing on New Year's Day a report on the state of the federal courts. I recognize that it is a bit presumptuous for me to issue this Report at this time, barely three months after taking the oath as Chief Justice. It remains for me very much a time for listening rather than speaking. But I do not intend to start the New Year by breaking with a 30-year-old tradition, and so will highlight in this Report issues that are pressing and apparent, even after only a few months on the job.

First and foremost: the state of the federal judiciary is strong. We celebrated on September 24th the 250th anniversary of the birth of Chief Justice John Marshall. If Marshall were able to observe the work of the federal courts today, there doubtless would be much that would surprise him. But he would see in the work of the men and women who took the same judicial oath he did the same commitment to uphold the Constitution and to fulfill the Framers' vision of a judicial branch with the strength and independence "to say what the law is," without fear or favor. Marbury v. Madison (1803).

II. Violence Directed at Judges

No review of the year just passed can ignore the violent events that took place in Illinois and Georgia in February and March. The Nation was shocked by the horrific murders of a U. S. District Court judge's husband and mother by a disappointed litigant, and the terrible incident in Atlanta in which a judge, court reporter, and deputy were killed in the Fulton County courthouse. These attacks underscored the need for all branches of government, state and federal, to improve safety and security for judges and judicial employees, both within and outside courthouses. We see emerging democracies around the world struggle to establish court systems in which judges can apply the rule of law free from the threat of violence; we must take every step to ensure that our own judges, to whom so much of the world looks as models of independence, never face violent attack for carrying out their duties.

III. Appropriations and Judicial Independence

Article III of our Constitution seeks to protect judicial independence by providing that district and appellate judges serve during good behavior and receive "a Compensation, which shall not be diminished during their Continuance in Office." These provisions alone, important as they are, cannot guarantee judicial independence, and a strong and independent judiciary is not something that, once established, maintains itself. It is instead a trust that every generation is called upon to preserve, and the values it secures can be lost as readily through neglect as direct attack.

In recent years, the budget for the federal judiciary and the ever-lengthening appropriations process have taken a toll on the operations of the courts. There are two

areas of concern that have come to the fore and now warrant immediate attention and action. The first may come as a surprise to many: unlike many other elements of the federal government, the judiciary is required to pay a large and ever-increasing portion of its budget as rent to another part of the government — the General Services Administration (GSA). According to information compiled by the Administrative Office of the U. S. Courts, while the judiciary spends almost sixteen percent of its total budget on GSA rent — twenty-two percent of its "salaries and expenses" appropriations — only three percent of the Department of Justice budget goes toward GSA rent, and the Executive Branch as a whole spends less than two-tenths of one percent of its budget on GSA rent. During fiscal year 2005, the judiciary paid $926 million to GSA in rent, even though GSA's actual cost for providing space to the judiciary was $426 million. The disparity between the judiciary's rent and that of other government agencies, and between the cost to GSA of providing space and the amount charged to the judiciary, is unfair. The federal judiciary cannot continue to serve as a profit center for GSA.

Escalating rents combined with across-the-board cuts imposed during fiscal years 2004 and 2005 resulted in a reduction of approximately 1,500 judicial branch employees as of mid-December when compared to October 2003. We are grateful that our fiscal year 2006 appropriation provides the judiciary with a 5.4 percent increase over fiscal year 2005. While this should allow the courts to restore some of these staffing losses, the judiciary must still find a long-term solution to the problem of ever-increasing rent payments that drain resources needed for the courts to fulfill their vital mission.

A more direct threat to judicial independence is the failure to raise judges' pay. If judges' salaries are too low, judges effectively serve for a term dictated by their financial

position rather than for life. Figures gathered by the Administrative Office show that judges are leaving the bench in greater numbers now than ever before. In the 1960s, only a handful of district and appellate court judges retired or resigned; since 1990, 92 judges have left the bench. Of those, 21 left before reaching retirement age. Fifty-nine of them stepped down to enter the private practice of law. In the past five years alone, 37 judges have left the federal bench — nine of them in the last year.

There will always be a substantial difference in pay between successful government and private sector lawyers. But if that difference remains too large — as it is today — the judiciary will over time cease to be made up of a diverse group of the Nation's very best lawyers. Instead, it will come to be staffed by a combination of the independently wealthy and those following a career path before becoming a judge different from the practicing bar at large. Such a development would dramatically alter the nature of the federal judiciary.

Chief Justice Rehnquist wrote often about the need to raise judicial pay — going so far as to say in his 2002 Year-End Report that he felt at risk of "beating a dead horse." Despite his entreaties, however, the situation has gotten worse, not better. According to information gathered by the Administrative Office, the real pay of federal judges has declined since 1969 by almost 24 percent, while the real pay of the average American worker during that time has increased by over 15 percent.

Three years ago, in January 2003, the National Commission on the Public Service concluded that "Congress should grant an immediate and significant increase in judicial, executive and legislative salaries" and that "[i]ts first priority in doing so should be an immediate and substantial increase in judicial salaries." Yet no effective action has been

taken to address this problem. I am not the first person to observe that the way judicial and other high-level government salaries are set — allowing the salaries to stagnate until large increases are required — simply does not work. And all those in public service whose pay scales are tied to those of higher-level officials feel the pinch of compressed salaries.

I understand that it is difficult for Congress to raise the salaries of federal judges, especially in a tight budget climate. I also understand that it is the responsibility of Congress to do difficult things when necessary to preserve our constitutional system. Our system of justice suffers as the real salary of judges continues to decline. Every time an experienced judge leaves the bench early, the judiciary suffers a real loss. Every time a judge leaves the bench for a higher paying job, the independence fostered by life tenure is weakened. Every time a potential nominee refuses to be considered, the pool of candidates from which judges are selected narrows.

If Congress gave judges a raise of 30 percent tomorrow, judges would — after adjusting for inflation — be making about what judges made in 1969. This is not fair to our Nation's federal judges and should not be allowed to continue. Unfortunately, judges do not have a natural constituency to argue on their behalf. They do not serve a particular group, and courts — by their very design — often have to render unpopular decisions. Judges must rely on the Congress and the President to increase their pay.

The federal judiciary, as one of the three coordinate branches of government, makes only modest requests of the other branches with respect to funding its vital mission of preserving the rule of law under our Constitution. Those of us in the judiciary understand the challenges our country faces and the many competing interests that must

be balanced in funding our national priorities. But the courts play an essential role in ensuring that we live in a society governed by the rule of law, including the Constitution's guarantees of individual liberty. In order to preserve the independence of our courts, we must ensure that the judiciary is provided the tools to do its job.

A New Year inevitably kindles fresh hope. In the coming year, the men and women of the federal judiciary will faithfully discharge their heavy responsibility of ensuring equal justice under law. The other two branches of government can aid us in that effort by, first, enacting a significant pay raise for federal judges, and, second, eliminating or at least sharply lowering the courthouse rent that the judiciary is required to pay GSA. These two steps — whose budgetary impact would be vanishingly small — would go a long way toward maintaining a strong and independent federal judiciary with the resources to administer justice efficiently and fairly. And that is priceless.

IV. In Memoriam

On September third, the Nation lost a distinguished and dedicated public servant, and we in the judiciary lost a good friend and colleague. William H. Rehnquist led the Third Branch of our government for almost 19 years. He will be counted by history — an avocation to which he offered four books of his own — as among the handful of great Chief Justices of the United States. For the many of us both within and outside the judiciary who were fortunate enough to know him personally, he will always be remembered as a fair, thoughtful, and decent man.

V. Conclusion

I want to thank the judges and court staff throughout the country for their continued hard work and dedication to our common calling over the past year. I extend to all my wish for a Happy New Year.

Appendix

Workload of the Courts

The Supreme Court of the United States

The total number of case filings in the Supreme Court decreased from 7,814 in the 2003 Term to 7,496 in the 2004 Term — a decrease of 4.1 percent. Filings in the Court's *in forma pauperis* docket decreased from 6,092 to 5,755 — a 5.5 percent decline. The Court's paid docket increased by 19 cases, from 1,722 to 1,741 — a 1.1 percent increase. During the 2004 Term, 87 cases were argued and 85 were disposed of in 74 signed opinions, compared to 91 cases argued and 89 disposed of in 73 signed opinions in the 2003 Term. No cases from the 2004 Term were scheduled for reargument in the 2005 Term.

The Federal Courts' Caseload

Filings in the U.S. bankruptcy courts surged to an all-time record during 2005, rising 10 percent to 1,782,643.[1] This growth stemmed from the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Appeals also reached new levels due in part to a surge in criminal appeals and prisoner

[1] Nonbusiness filings increased 10 percent, and business petitions decreased 2 percent. While chapter 7 and chapter 12 filings grew 17 percent and 53 percent, respectively, chapter 11 and chapter 13 filings dropped 36 percent and 6 percent, respectively. The reduction in chapter 11 filings represented a return to a more typical level after last year's 220 percent rise in chapter 11 petitions filed in the Southern District of New York. Bankruptcy filings have soared 60 percent over the last 10 years.

petitions.[2] In contrast, district court civil filings declined by 10 percent, primarily as a result of decreases in federal question filings and diversity of citizenship cases.[3]

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[2] Filings in the regional courts of appeals rose 9 percent to an all-time high of 68,473, marking the 10th consecutive record-breaking year and the 11th successive year of growth. This increase stemmed from upswings in criminal appeals, original proceedings, and prisoner petitions following the U.S. Supreme Court's decisions in Blakely v. Washington, 542 U.S. 296 (2004) and U.S. v. Booker, 543 U.S. 220 (2005), and from continued growth in appeals of administrative agency decisions involving the Board of Immigration Appeals (BIA). As large as the increase is, it would have been higher had not the Court of Appeals for the Fifth Circuit's operations been affected by Hurricane Katrina. That court's data include 92 appeals filings for the month of September, significantly lower than the 700 to 1,000 it reported for each month from October 2004 to August 2005. Nationwide, criminal appeals rose 28 percent to 16,060. The largest increases were in cases involving drugs (up 31 percent to 6,099), immigration (up 55 percent to 2,896), firearms and explosives (up 23 percent to 2,505), and property (up 15 percent to 1,967). Administrative agency appeals rose 12 percent to 13,713, primarily due to challenges to BIA decisions, which began rising in 2002. Appeals filings have increased 32 percent since 1996.

[3] Specifically, total federal question filings dropped 16 percent because of the substantial decline in filings (19,630 cases) in the District of South Carolina. In the previous year, an abnormally high number of cases related to personal property financial investments were filed in this district. Federal question filings related to civil rights also fell last year, declining by 10 percent. Most of these cases involved employment issues and other types of civil rights issues.

Total diversity of citizenship filings dropped 8 percent, mainly as a result of a 15 percent decrease in personal injury/product liability filings. The District of Minnesota reported a large drop in cases involving the anticholesterol drug Baycol. The Central District of California reported declines in multidistrict litigation cases involving both hormone replacement therapy medication and diet drugs. The Northern District of Ohio saw a major decrease in filings in multidistrict litigation cases which addressed claims of injuries caused by welding rods containing manganese.

Filings with the United States as plaintiff or defendant rose 8 percent. Cases with the United States as defendant climbed 9 percent, mainly as a result of a 29 percent jump in prisoner petitions. Especially significant was the 45 percent rise in motions to vacate sentence. In addition, federal *habeas corpus* prisoner petitions increased 16 percent. Increases in both motions to vacate sentence and federal *habeas corpus* prisoner petitions are, in part, related to the Booker decision. Filings related to the recovery of defaulted student loans and drug-related seizures of property increased 18 percent and 6 percent, respectively.

Over the past 10 years, civil filings have declined 6 percent, mostly as a result of decreases in prisoner petitions, civil rights employment cases, and personal injury/product liability cases.

Criminal filings dropped by a small amount,[4] as did the number of defendants in cases activated by pretrial services.[5] Persons under postconviction supervision remained stable at 112,931.[6]

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[4] Criminal case filings declined 2 percent to 69,575, and defendants in these cases declined one percent to 92,226. This drop was likely attributable in part to the effects of Hurricane Katrina. After Katrina, district courts in the Fifth and Eleventh Circuits reported fewer cases than normal. The decrease in filings in 2005 lowered the cases per authorized judgeship from 105 to 102. The median case disposition time for defendants rose from 6.2 months in 2004 to 6.8 months in 2005, as courts took longer to process post-Booker cases.

Overall drug cases declined 1 percent to 18,198; the numbers of defendants, however, rose 1 percent to 32,637. Immigration filings rose less than 1 percent, but, nonetheless, stood at record high levels of 17,134 cases and 18,322 defendants. Prosecution of sex offenses rose 9 percent to 1,779 cases, primarily due to an increase in filings of sexually explicit material cases. The criminal filing category with the largest numeric increase was non-marijuana drug filings, as cases went up 5 percent to 13,102 and defendants climbed 6 percent to 25,121. Firearms and explosives cases declined 4 percent to 9,207 cases. This year's decrease was the first since 1996, a period during which criminal case filings grew 45 percent.

[5] The number of defendants in pretrial services system cases opened in 2005, including pretrial diversion cases, fell less than 1 percent to 99,365. Nevertheless, pretrial services officers prepared 1 percent more pretrial reports, and the number of defendants interviewed increased 2 percent. In conjunction with all pretrial services cases closed during the year, a total of 231,060 pretrial hearings were held, an increase of 4 percent over the total in 2004. During the past 10 years, cases activated in the pretrial services system have increased 52 percent.

[6] Persons serving terms of supervised release following their release from prison totaled 82,832 on September 30, 2005, and they constituted 73 percent of all persons under postconviction supervision. The number of individuals on parole declined 5 percent to 2,778 and made up only 2 percent of those under supervision. The number of persons on probation declined 8 percent to 26,554, due to a continuing drop in the imposition of sentences of probation by both district judges and magistrate judges. Of the 112,931 persons under postconviction supervision, 44 percent had been convicted of a drug-related offense, the same as one year ago. There are now 27 percent more persons under postconviction supervision than there were in 1996.

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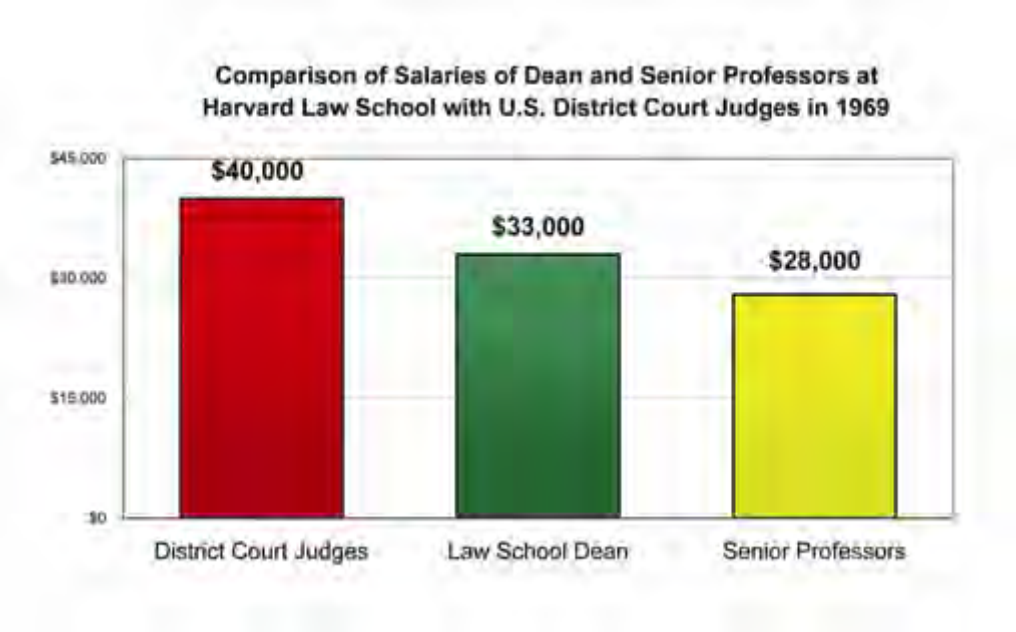
2006 Year-End Report on the Federal Judiciary

Between December 19 and January 8 there are 32 college bowl games—but only one Year-End Report on the Federal Judiciary. I once asked my predecessor, Chief Justice William H. Rehnquist, why he released this annual report on the state of the federal courts on New Year's Day. He explained that it was difficult to get people to focus on the needs of the judiciary and January 1 was historically a slow news day—a day on which the concerns of the courts just might get noticed.

This is my second annual report on the judiciary, and in it I am going to discuss only one issue—in an effort to increase even more the chances that people will take notice. That is important because the issue has been ignored far too long and has now reached the level of a constitutional crisis that threatens to undermine the strength and independence of the federal judiciary.

I am talking about the failure to raise judicial pay. This is usually the point at which many will put down the annual report and return to the Rose Bowl, but bear with me long enough to consider just three very revealing

charts prepared by the Administrative Office of the United States Courts. The first shows that, in 1969, federal district judges made 21% *more* than the dean at a top law school and 43% *more* than its senior law professors.

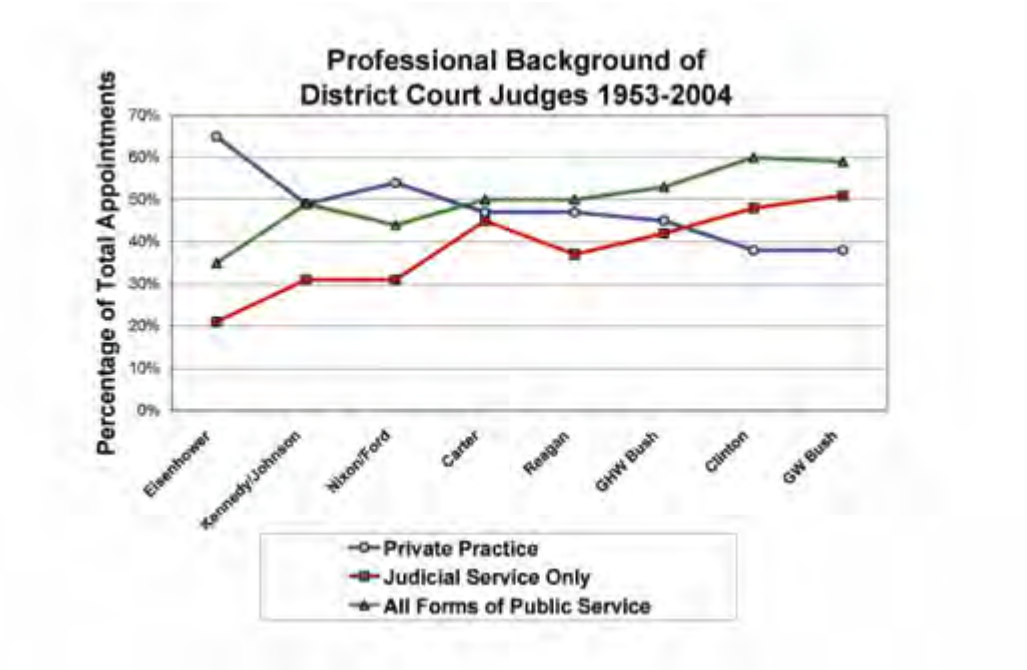


Today, federal district judges are paid substantially less than—about *half*—what the deans and senior law professors at top schools are paid. *See, e.g.*, Report of the National Commission on the Public Service, URGENT BUSINESS FOR AMERICA: REVITALIZING THE FEDERAL GOVERNMENT FOR THE 21ST CENTURY 22-23 (January 2003) (the Volcker Commission Report). (We do not even talk about comparisons with the practicing bar anymore. Beginning lawyers fresh out of law school in some cities will earn more in their *first year* than the most experienced federal district judges before whom those lawyers hope to practice some day.)

The next chart shows how federal judges have fared compared not to those in the legal profession, but to U.S. workers in general. Adjusted for inflation, the average U.S. worker's wages have risen 17.8% in real terms since 1969. Federal judicial pay has *declined* 23.9%—creating a 41.7% gap.

Some of you may be thinking—"So what? We are still able to find lawyers who want to be judges." But look at the next and last chart. An important change is taking place in where judges come from—particularly trial judges. In the Eisenhower Administration, roughly 65% came from the practicing bar, with 35% from the public sector. Today the numbers are about reversed—roughly 60% from the public sector, less than 40% from private practice. It changes the nature of the federal judiciary when judges

are no longer drawn primarily from among the best lawyers in the practicing bar.



This is not the first time this issue has been raised in one of these annual reports. Twenty years ago Chief Justice William H. Rehnquist submitted his first year-end report. He specifically focused on the inadequacy of judicial compensation. He pointed out that Congress had failed, over a period of nearly two decades, to provide judges with salaries commensurate with increases in the cost of living and the importance of their responsibilities. Chief Justice Rehnquist emphasized that, because a capable and qualified federal judiciary is essential to the proper functioning of our system of government, judicial compensation is critically important to the country as a whole. Congress responded to these arguments through the

Ethics Reform Act of 1989, Pub. L. No. 101-94, 103 Stat. 1716 (1989), which provided for a phased-in adjustment that helped to make up for the previous years of salary erosion. However, the mechanisms set up in that Act to prevent future salary erosion have failed, and judicial salaries have continued to fall further and further behind the cost of living.

In the face of continuing congressional inaction to fix these problems, the late Chief returned to this subject again and again in his year-end reports. Sixteen years later, Congress has still not enacted a salary increase, providing instead only occasional and modest cost-of-living adjustments. A bad situation once again has reached the level of a crisis.

As Chief Justice Rehnquist observed, federal judges willingly make a number of sacrifices as a part of judicial life. They accept difficult work, public criticism, even threats to personal safety. Federal judges, who have historically been leaders of the bar before joining the bench, do not expect to receive salaries commensurate with what they could easily earn in private practice. They can rightly expect, however, to be treated more fairly than they have been. Judges, who have the obligation to make decisions without regard to public favor and who must frequently make unpopular decisions, have no constituency in Congress to voice their concerns. They must rely on fact, equity, and reason to speak on their behalf. Those considerations make

clear that the time is ripe for our Nation's judges to receive a substantial salary increase.

Congressional inaction in the face of this situation is grievously unfair. Since Chief Justice Rehnquist first called for a pay raise *twenty years ago*, the decline in real compensation has continued. Judges who willingly make substantial sacrifices in support of public service are being asked to bear unreasonable burdens. In the face of decades of congressional inaction, many judges who must attend to their families and futures have no realistic choice except to retire from judicial service and return to private practice. The numbers are sobering. In the past six years, 38 judges have left the federal bench, including 17 in the last two years. If judicial appointment ceases to be the capstone of a distinguished career and instead becomes a stepping stone to a lucrative position in private practice, the Framers' goal of a truly independent judiciary will be placed in serious jeopardy.

Inadequate compensation directly threatens the viability of life tenure, and if tenure in office is made uncertain, the strength and independence judges need to uphold the rule of law—even when it is unpopular to do so—will be seriously eroded. And as Alexander Hamilton explained, "[t]he independence of the judges once destroyed, the constitution is gone, it is a dead letter; it is a vapor which the breath of faction in a moment may

dissipate." *Commercial Advertiser* (Feb. 26, 1802) (reprinted in *The Papers of Alexander Hamilton,* Volume XXV 525 (Columbia University Press 1977).

The American people and their government have a profound stake in the quality of the judiciary. The dramatic erosion of judicial compensation will inevitably result in a decline in the quality of persons willing to accept a lifetime appointment as a federal judge. Our judiciary will not properly serve its constitutional role if it is restricted to (1) persons so wealthy that they can afford to be indifferent to the level of judicial compensation, or (2) people for whom the judicial salary represents a pay increase. Do not get me wrong—there are very good judges in both of those categories. But a judiciary drawn more and more from only those categories would not be the sort of judiciary on which we have historically depended to protect the rule of law in this country.

We are at the point where reason commands action. The National Commission on the Public Service described judicial pay as "the most egregious example of the failure of federal compensation policies" and unambiguously recommended, *four years ago*, that Congress enact "an immediate and substantial increase in judicial salaries." Volcker Commission Report 22. The budgetary cost of that action is miniscule in

proportion to its value in preserving the strong and independent judiciary that is vital to our constitutional structure. No doubt a judicial salary increase would be unpopular in some quarters, but Congress—like the courts—must sometimes make decisions that are unpopular in the short term to promote a greater long-term good. Congress has a constitutional responsibility to do so.

I raised the issue of judicial compensation in my first year-end report. Much of what I say in this report is not new. Nevertheless, I have no choice but to highlight this issue because without fair judicial compensation we cannot preserve the quality and independence of our judiciary, which is the model for the world.

As we enter the new year, the federal judiciary remains strong, but it needs the support of the coordinate branches if it is to maintain the strength and independence it must have to fulfill its constitutional role. That is the challenge for the coming year.

I thank the judges and court staff throughout the country for their continued hard work and dedication. I am very grateful for the personal sacrifices they and their families make every day. As Robert Frost reminded us "from the heart," we work as one, whether "together or apart." I extend to all best wishes for a Happy New Year.

Appendix

Workload of the Courts

The Supreme Court of the United States

The total number of cases filed in the Supreme Court increased from 7,496 filings in the 2004 Term to 8,521 filings in the 2005 Term—an increase of 13.7%. The number of cases filed in the Court's *in forma pauperis* docket increased from 5,755 filings in the 2004 Term to 6,846 filings in the 2005 Term—a 19% increase. The number of cases filed in the Court's paid docket decreased from 1,741 filings in the 2004 Term to 1,671 filings in the 2005 Term—a 4% decline. During the 2005 Term, 87 cases were argued and 82 were disposed of in 69 signed opinions, compared to 87 cases argued and 85 disposed of in 74 signed opinions in the 2004 Term. No cases from the 2005 Term were scheduled for reargument in the 2006 Term.

The Federal Courts of Appeals

The number of appeals filed in the regional courts of appeals in fiscal year 2006 declined by 3% from the record level set in fiscal year 2005. The courts of appeals received 66,618 filings. All categories of appeals, except original proceedings, declined. Before 2006, the number of appellate filings had declined only twice since 1959. The past year's decline stemmed from decreases in criminal appeals and federal prisoner petitions following the

filing deadline for cases affected by the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), as well as a reduction in appeals from administrative agency decisions involving the Board of Immigration Appeals (BIA).

Nationwide, the number of criminal appeals dropped by 5% to 15,246 filings, after rising by 28% in 2005 in response to the *Booker* decision. Despite that decline, the number of criminal appeals in 2006 surpassed by more than 25% the number of filings in the years before the Court's decision in *Blakely v. Washington*, 542 U.S. 296 (2004). The number of administrative agency appeals fell by 4% to 13,102 because of a reduction in the number of cases that the BIA completed in 2005. Since 2002, the number of BIA appeals has soared by 168%. The number of civil appeals declined by 3% to 31,991 as the statute of limitations expired for the filing of *Booker*-related habeas corpus petitions. The number of prisoner petitions filed by state prisoners rose by 3% to 11,129 filings. The number of original proceedings climbed by 9% to 5,458 filings, as prisoners continued to file second or successive motions seeking permission to file habeas corpus petitions. The courts of appeals continue to receive petitions from the backlog of state prisoners affected by the *Blakely* decision, who must exhaust their state court remedies before seeking relief in federal court.

Despite the year's overall decline, the total number of appeals increased by 16%, or 9,063 filings, from 2002 to 2006.

The Federal District Courts

Over the past five years, the number of civil cases filed in the United States district courts has fallen by 6%, or 15,300 cases. The decline has occurred primarily in cases involving civil rights, personal injury, and Social Security claims.

Nevertheless, the number of civil cases filed in 2006 increased by 2% to a total of 259,541 cases. That growth occurred primarily because of a sharp jump in asbestos-related diversity cases in the Eastern District of Pennsylvania. Excluding those filings, civil cases declined by 4% from 2005 to 2006, as federal question cases involving prisoner petitions and civil rights dropped significantly. The national median time from filing of a civil case to its disposition was 8.3 months, which reflected a decline from the 9.5-month median period in 2005.

The increase in asbestos-related diversity cases in the Eastern District of Pennsylvania resulted in a 29% increase in the national figure for diversity of citizenship cases, totaling 18,179 cases. Cases in which the United States was a plaintiff or defendant declined by 15% to 44,294 cases, while those in which the United States was a defendant fell by 17%. The

latter number declined because federal prisoner petitions decreased by 33% (down by 5,978 cases) as filings returned to levels consistent with the number of petitions filed before the Supreme Court's decision in *Booker*.

The number of criminal cases filed in 2006 decreased by 4% to 66,860 cases and 88,216 defendants. The decline stemmed from shifts in priorities of the United States Department of Justice, which directed more of its resources toward combating terrorism. The number of criminal cases filed in 2006 is similar to the number of cases filed in 2002, when criminal case filings jumped by 7% following the terrorist attacks on September 11, 2001. Although the number of criminal case filings declined in 2006, the median time for case disposition for defendants climbed from 6.8 months in 2005 to 7.1 months in 2006. The median time period, which was 27 days longer than in 2004, reflected an increase in the time that courts needed to process post-*Booker* cases.

The number of drug-related criminal cases decreased by 4% to 17,429 filings. The number of defendants charged with drug crimes fell by 6% to 30,567 individuals. The number of immigration-related criminal cases, which rose to record levels in 2005, declined by 5% to 16,353 cases. The number of defendants charged in those cases decreased by 4% to 17,651 individuals. Most of the decline in immigration-related criminal cases is

attributable to a decline in cases charging offenses involving improper first-time entry. Sex-related criminal cases climbed by 6% to 1,885 filings, and the number of defendants charged in those cases increased by 8% to 1,975 individuals. Criminal cases involving firearms and explosives cases declined by 6% to 8,678 filings, and the number of defendants charged in those cases dropped 5% to 9,800 individuals. For the second consecutive year, the number of criminal cases declined. The number of cases had risen in nine of the previous ten years.

The Bankruptcy Courts

The number of filings in the United States bankruptcy courts fell from 1,782,643 cases in 2005 to 1,112,542 cases in 2006. The past year's number, which reflects the lowest number of bankruptcy cases filed since 1996, was 38% below the record number in 2005, when filings soared as debtors rushed to file before the October 17, 2005, implementation date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The 2005 surge in filings accelerated until the implementation date, and more than half of the total 2006 filings occurred in the first month of the fiscal year. Non-business filings dropped by 38%, and business petitions fell by 20%. Chapter 7 and chapter 13 filings declined by 38% and 36%,

respectively, and chapter 11 filings dropped by 10%. Chapter 12 filings rose by 3%, reflecting 12 more filings than the previous year.

Pretrial Services

The number of defendants activated in pretrial services, including pretrial diversion cases, dropped by nearly 3% from 99,365 cases in 2005 to 96,479 cases in 2006. As a result, the number of pretrial services reports prepared by Pretrial Services officers declined by more than 2%. The number of cases opened in 2006, including pretrial diversion cases, was nearly 6% greater than the 91,314 cases opened in 2002. During that same period, the number of persons interviewed grew by 1% from 63,528 to 64,018 individuals.

Post-Conviction Supervision

The number of persons under post-conviction supervision in 2006 increased by less than 1% to 114,002 individuals. As of September 30, 2006, the number of persons serving terms of supervised release after their release from a correctional institution totaled 85,729 individuals. That number constituted 75% of all persons under post-conviction supervision, compared to 73% in the previous year. Persons on parole declined by nearly 10% from 3,183 individuals in 2005 to 2,876 individuals in 2006. The parole cases accounted for less than 3% of post-conviction cases. Because

of a continuing decline in the imposition of sentences of probation by both district court judges and magistrate judges, the number of persons on probation decreased by 5% to 25,178 individuals. That figure represented 22% of all persons under post-conviction supervision. Proportionately, the number of individuals under post-conviction supervision for a drug-related offense remained unchanged from a year ago at 44%.

From 2002 to 2006, the number of persons under post-conviction supervision grew by 5%, an increase of 5,210 individuals. The number of persons released from correctional institutions who served terms of supervised release increased by 17% over the same time period.

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2007 Year-End Report on the Federal Judiciary

On a warm and sunny Wednesday in September of the past year, a Russian judge, accompanied by a fellow Russian and two American judges, walked among the white headstones of Arlington National Cemetery. Like other visitors, the Russian judge came to pay his respects and lay a wreath at one of the markers. And like others navigating the solemn rows of white stones, he and his companions asked for directions from fellow visitors. A teacher leading a group of school children offered to help, and she led the judge to the grave of a former Army private who had served his country in World War II and again in later life.

The teacher asked the Russian judge, through an interpreter, why he wished to honor the memory of William H. Rehnquist. The judge, Justice Yuriy Ivanovich Sidorenko of the Supreme Court of the Russian Federation, explained that, in Chief Justice Rehnquist's later years, they had become friends. The teacher remarked that she did not know much about our former Chief Justice, and she invited Justice Sidorenko to speak to her students about their friendship. Standing near the Chief Justice's headstone,

Justice Sidorenko provided an impromptu and personal insight into their shared interest in the rule of law. He expressed his admiration for our late Chief and described how the American jurist had provided advice and encouragement to Russian judges as they took up the challenge of reforming their judiciary in the post-Soviet era.

During his September visit, Justice Sidorenko expressed similar sentiments in a private meeting with my colleagues and me. He recalled how, when they first met in 2002, Chief Justice Rehnquist had noted his Swedish heritage. They discussed the 1709 Battle of Poltava, where Peter the Great of Russia won a decisive victory over invading Swedish forces. Justice Sidorenko recounted how, when he later encountered difficulties with the Russian legislature in achieving judicial reforms inspired by the example of American courts, the Chief Justice sent him a handwritten note of encouragement: "*Remember Poltava*."

Few could have imagined these episodes a mere 25 years ago. Justice Sidorenko's words are poignant, but his actions in seeking to reform the Russian judiciary reflect a more fundamental truth that should resonate with all Americans: When foreign nations discard despotism and undertake to reform their judicial systems, they look to the United States Judiciary as the model for securing the rule of law.

In recent years, even mature democracies with established traditions have modified their judicial systems to incorporate American principles and practices. For example, Great Britain, which exported its common law system to the American colonies some 400 years ago, has recently imported the distinctly American concept of separation of powers. It has transferred the House of Lords' judicial review functions to an independent Supreme Court. Japan has adopted trial procedures inspired by American jury practice, while South Korea is increasingly employing American-style oral advocacy in its judicial review proceedings. But perhaps most important, our federal courts provide the benchmark for emerging democracies that seek to structure their judicial systems to protect basic rights that Americans have long enjoyed as the norm.

Most Americans are far too busy to spend much time pondering the role of the United States Judiciary—they simply and understandably expect the court system to work. But as we begin the New Year, I ask a moment's reflection on how our country might look in the absence of a skilled and independent Judiciary. We do not need to look far beyond our borders, or beyond the front page of any newspaper, to see what is at stake. More than two hundred years after the American Revolution, much of the world remains subject to judicial systems that provide doubtful opportunities for

challenging government action as contrary to law, or receiving a fair adjudication of criminal charges, or securing a fair remedy for wrongful injury, or protecting rights in property, or obtaining an impartial resolution of a commercial dispute. Many foreign judges cannot exercise independent judgment on matters of law without fear of reprisal or removal.

Americans should take enormous pride in our judicial system. But there is no cause for complacency. Our judicial system inspires the world because of the commitment of each new generation of judges who build upon the vision and accomplishments of those who came before. I am committed to continuing three of my predecessor's important but unfinished initiatives to maintain the quality of our courts.

First, I will carry on the efforts to improve communications with the Executive and Legislative Branches of government. The Constitution's provision for three separate but coordinate Branches envisions that the Branches will communicate through appropriate means on administrative matters of common concern. Each has a valuable perspective on the other. The Branches already engage in constructive dialogue through a number of familiar forums, including the Judicial Conference, congressional hearings, and advisory committee meetings. But the familiar avenues are not necessarily the only ones.

The Judiciary has a special interest, rooted in history, in improving relations with the Legislative Branch. Until 1935, the Congress and the Supreme Court were both housed in the Capitol, and it has been observed that the sharing of common space encouraged mutual understanding, respect, and collegiality even as the legislators and judges performed their distinctly different responsibilities. I am assured that my colleagues are happy in our separate building and not inclined to move back to the Capitol (even were we invited), so I have asked the Administrative Office of the United States Courts to consider other opportunities for improving inter-Branch communication and cooperation. The separate Branches may not always agree on matters of mutual interest, but each should strive, through respectful exchange of insights and ideas, to know and appreciate where the others stand.

Second, I share my predecessor's view that the Judiciary must relentlessly ensure that federal judges maintain the highest standards of integrity. Federal judges hold a position of public trust, and the public has a right to demand that they adhere to a demanding code of conduct. The overwhelming majority do. But for those who do not, the Judiciary must take appropriate action. Last year, a study committee commissioned by the former Chief Justice and chaired by Associate Justice Stephen Breyer issued

a Report on the Implementation of the Judicial Conduct and Disability Act of 1980. While the study committee found that, overall, the Judiciary does an excellent job of handling complaints about judges, it also found that there remains room for improvement. The Judicial Conference has implemented eight of the twelve recommendations in the Report, and the remaining four will be considered at the Conference's next meeting.

James Madison observed in *Federalist No. 51* that, if men were angels, there would be no need for government. Likewise, if judges were beyond imperfection, there would be no need for judicial discipline procedures. History and human nature teach that the Judiciary must be continually vigilant in maintaining the high standards of judicial office. When entertaining a complaint about a judge, the Judiciary must apply the same qualities of reason, impartiality, and wisdom that epitomize the judicial process. The Judiciary cannot tolerate misconduct. The public rightly expects the Judiciary to be fair but firm in policing its own.

Finally, I am resolved to continue Chief Justice Rehnquist's twenty-year pursuit of equitable salaries for federal judges. Over the past year, congressional leaders and a wide range of groups that value a capable and independent Judiciary have made progress on this matter. The House Judiciary Committee passed a bill by an overwhelming bipartisan vote of 28

to five that would help reverse the steady erosion of judicial salaries since 1969, the benchmark year that Congress has utilized in recent years for assessing federal pay levels. The bill would restore judicial pay to the same level that judges would have received if Congress had granted them the same cost-of-living pay adjustments that other federal employees have received since 1989—not a full restoration but a significant one. The Senate Judiciary Committee was considering a similar bill when the 2007 Session ended. We are grateful for the continuing support of the bipartisan leadership in both the House and the Senate, as well as the support of the President, on this vital legislation. The legislation reflects a commitment on the part of the Legislative and Executive Branches to carry out their constitutional responsibilities with respect to the Judicial Branch, and I urge prompt passage as a first order of business in the new session.

The pending legislation strikes a reasonable compromise for the dedicated federal judges who, year after year, have discharged their important duties for steadily eroding real pay. This salary restoration legislation is vital now that the denial of annual increases over the years has left federal trial judges—the backbone of our system of justice—earning about the same as (and in some cases less than) *first-year lawyers* at firms in major cities, where many of the judges are located.

I do not need to rehearse the compelling arguments in favor of this legislation. They have already been made by distinguished jurists, lawyers, and economists in congressional hearings, letters, and editorials—and seconded by a broad spectrum of commercial, governmental, and public interest organizations that appear as litigants before the courts. I simply ask once again for a moment's reflection on how America would look in the absence of a skilled and independent Judiciary. Consider the critical role of our courts in preserving individual liberty, promoting commerce, protecting property, and ensuring that every person who appears in an American court can expect fair and impartial justice. The cost of this long overdue legislation—less than .004% of the annual federal budget—is miniscule in comparison to what is at stake.

In closing, I thank the judges and court staff throughout the Nation for their continued hard work and dedication. I am grateful for the personal sacrifices they and their families make every day. As we face the challenges of the coming year, I offer this note of encouragement: *Remember Philadelphia*. On a daily basis, you are continuing our Founders' profound commitment to posterity made in that city with the promulgation of our Constitution 220 years ago.

Appendix

Workload of the Courts

The Supreme Court of the United States

The total number of cases filed in the Supreme Court increased from 8,521 filings in the 2005 Term to 8,857 filings in the 2006 Term—an increase of 4%. The number of cases filed in the Court's *in forma pauperis* docket increased from 6,846 filings in the 2005 Term to 7,132 filings in the 2006 Term—also a 4% increase. The number of cases filed in the Court's paid docket increased from 1,671 filings in the 2005 Term to 1,723 filings in the 2006 Term—a 3% increase. During the 2006 Term, 78 cases were argued and 74 were disposed of in 67 signed opinions, compared to 87 cases argued and 82 disposed of in 69 signed opinions in the 2005 Term. No cases from the 2006 Term were scheduled for reargument in the 2007 Term.

The Federal Courts of Appeals

The number of appeals filed in the regional courts of appeals in fiscal year 2007 decreased by 12% to 58,410. All categories of appeals, except bankruptcy appeals, fell. The decline of the past two years was the result of a reduction in appeals from administrative agency decisions involving the Board of Immigration Appeals (BIA), as well as decreases in criminal appeals and federal prisoner petitions brought about by the Supreme Court's

decision in *United States v. Booker*, 543 U.S. 220 (2005). The decline is the second successive drop after the record level set in fiscal year 2005.

Across the nation, the number of criminal appeals dropped by 14% to 13,167 filings, approaching levels that existed before criminal appeals soared in response to the decision in *Booker*. The number of administrative agency appeals fell by 21% to 10,382, because of a reduction in the number of cases that the BIA completed in 2006. However, this drop has occurred in the context of a BIA caseload that reached a record level in 2005, and had expanded more than fourfold between 2001 and 2007. The number of civil appeals declined by 5% to 30,241. The overall number of prisoner petitions decreased by 8% to 15,472 filings, as filings by state prisoners declined. The number of original proceedings fell by 31% to 3,775 filings. This decline primarily stemmed from a reduction in filings of second or successive motions for permission to seek habeas corpus relief, which fell to levels similar to those reached before *Booker*.

The Federal District Courts

Civil filings in the U.S. district courts remained relatively stable, falling less than 1%, or 2,034 cases, to 257,507. Diversity of citizenship filings were chiefly responsible for this small decline as the number of cases in this category dropped by 7,751 or 10%. Diversity of citizenship filings

were, in turn, disproportionately affected by a decrease of more than 11,000 personal injury cases related to asbestos and diet drugs in the Eastern District of Pennsylvania.

Federal question filings grew 3% to 139,424 due to cases arising from personal injury, labor law, and contract disputes. The Southern District of New York reported an influx of more than 6,500 personal injury filings related to the terrorist attacks in New York City on September 11, 2001, and the Middle District of Florida had over 6,200 personal injury/product liability filings under multidistrict litigation number 1769, which involves claims that the antipsychotic drug Seroquel caused diabetes-related injuries. Labor law cases grew 13%, largely because of more than 2,400 Fair Labor Standards Act cases filed in the Northern District of Alabama. The plaintiffs in these cases allege unfair labor practices by a department store in that region.

Filings with the United States as plaintiff or defendant increased 3% (up 1,170 cases) to 45,464. Cases with the United States as defendant rose 2% (up 863 cases), as filings of statutory actions related to consumer credit increased 55%. Cases with the United States as plaintiff increased mostly as a result of a 12% (up 273 filings) rise in defaulted student loan cases. The national median time from filing to disposition for civil cases was

9.6 months, up more than 1 month from 8.3 months in 2006. This increase resulted from the disposition of more than 6,300 oil refinery explosion cases in the Middle District of Louisiana that have been pending more than three years.

The number of criminal cases filed in 2007 rose by 2% to 68,413 cases, and defendants in these cases increased 1% to 89,306. The median case disposition time for defendants declined slightly from 7.1 months in 2006 to 7.0 months in 2007, yet this disposition time remains 21 days longer than in 2004, an indication of the time that courts have needed to process post-*Booker* cases.

Property offense cases grew 7% to 12,621, and defendants in such cases rose 6% to 16,277. Fraud cases rose 13% to 8,101, and fraud defendants climbed 10% to 10,804. Immigration filings increased 2% to 16,722 cases and 17,948 defendants. The charge of improper reentry by an alien accounted for 74% of all immigration cases. Sex offense filings jumped 31% to 2,460 cases, and defendants in such cases climbed 30% to 2,572. The growth in sex offense filings stemmed primarily from filings related to sexually explicit materials, and to a lesser degree, from all other sex offenses. Traffic offense filings for both cases and defendants jumped 22% to 4,427 and 4,429, respectively. Drug cases dropped 2% to 17,046,

and defendants charged with drug crimes fell 2% to 29,885. Filings of drug cases and defendants declined as filings associated with non-marijuana drugs fell.

The Bankruptcy Courts

Filings in the U.S. bankruptcy courts fell 28% from 1,112,542 in 2006 to 801,269 in 2007. This is the lowest number of bankruptcy cases filed since 1990, and is 55% below the record number of filings in 2005, when filings soared as debtors rushed to file before the October 17 implementation date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Nonbusiness filings dropped 29%, and business petitions fell 5%. Chapter 13 filings rose 14%, while filings under Chapter 7, Chapter 11, and Chapter 12 fell 42%, 2%, and 4%, respectively.

Pretrial Services

The number of defendants activated in pretrial services, including pretrial diversion cases, rose by nearly 2% from 96,479 in 2006 to 97,905 in 2007. As a result, the number of pretrial services reports prepared by Pretrial Services officers increased by 2%. The number of cases opened in 2007, inclusive of pretrial diversion cases, was less than 1% greater than the 97,317 opened in 2003. During that same period, the number of persons interviewed decreased nearly 4% from 66,824 individuals to 64,099.

Post-Conviction Supervision

The number of persons under post-conviction supervision in 2007 increased by 2% to 116,221 individuals. As of September 30, 2007, the number of individuals serving terms of supervised release after their release from a correctional institution totaled 89,497 and constituted 77% of all persons under post-conviction supervision. During the previous year, persons serving terms of supervised release were 75% of all those under post-conviction supervision. Persons on parole fell more than 10%, from 2,876 individuals in 2006 to 2,575 individuals in 2007. Parole cases now account for less than 2% of post-conviction cases. Because of a continuing decline in the imposition of sentences of probation by both district court judges and magistrate judges, the number of persons on probation decreased by 5% to 23,974 individuals. That figure represented 21% of all persons under post-conviction supervision. Proportionately, the number of individuals under post-conviction supervision for a drug related offense remained unchanged from a year ago at 44%.

From 2003 to 2007, the number of persons under post-conviction supervision grew by 5%, an increase of 5,600 individuals. The number of persons released from correctional institutions who served terms of supervised release increased by 18% over the same time period.

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202-479-3211

2008 Year-End Report on the Federal Judiciary

This past November, the Smithsonian Institution completed an acclaimed renovation of its National Museum of American History, which houses many of our Nation's most treasured historical artifacts. The highlight for many visitors is the Star-Spangled Banner Gallery, which provides a permanent home for the garrison flag that flew over Fort McHenry on the morning of September 14, 1814. The appearance of the flag at dawn marked the success of American soldiers in repulsing a British attack during the War of 1812 and inspired Francis Scott Key to compose the song that has become our national anthem.

The Smithsonian Institution has painstakingly preserved this fragile flag. It lies solemnly unfurled behind a glass wall in a darkened conservation chamber. The flag bears scars from the pitched battle, but it also shows blemishes, regrettably, from later neglect. The stripes are frayed, the canton is worn, and one of its fifteen stars has gone missing. Souvenir collectors during the nineteenth century snipped away fabric from its edges.

This tattered flag nevertheless inspires deep reverence. Why? Because it speaks eloquently to the sacrifices of every American who has contributed to the preservation of the United States.

Our country wisely preserves and maintains its national symbols. As citizens, we should strive with no less determination and vigor to preserve and maintain what our flag signifies and our anthem celebrates. The Constitution that secures the freedoms we hold dear endures not only because it enables self-government, but also because individuals come forward to participate in the function of governing, through voting and jury duty, through military and civilian service, and through elected and appointed office. A great government depends on all its citizens to contribute their talents and ideals in response to their Nation's call.

The Judiciary depends on such people, who have made American courts the envy of the world and the model for new democracies. As I have previously pointed out, however, widespread esteem is no reason for complacency. In last year's report, I identified my goals of strengthening the Judiciary by promoting greater inter-Branch cooperation, maintaining high standards of judicial conduct, and restoring fair compensation for federal judges. This year, as the Nation faces severe economic strains, I

would like to note briefly what the dedicated men and women in the Judiciary are doing to control the costs of administering justice.

The Judiciary, including the Supreme Court, other federal courts, the Administrative Office of the United States Courts, and the Federal Judicial Center, received a total appropriation in fiscal year 2008 of $6.2 billion. That represents a mere two-tenths of 1% of the United States' total $3 trillion budget. Two-tenths of 1%! That is all we ask for one of the three branches of government—the one charged "to guard the Constitution and the rights of individuals." Alexander Hamilton, *Federalist No. 78*.

Despite the miniscule amount the Judiciary adds to the cost of government, the courts have undertaken rigorous cost containment efforts, a process begun four years ago, long before the current economic crisis. In September 2004, the Judicial Conference—the judges who set policy for the Judiciary—endorsed a cost-containment strategy that called for examining more than fifty discrete operations for potential cost savings. My predecessor, Chief Justice William H. Rehnquist, was well known for insisting that the courts operate efficiently. The Judiciary nevertheless has found new ways to achieve significant savings in three general areas: rent, personnel, and information technology.

The Judiciary has initiated a program to contain rent costs, which accounted for about 19% of our 2004 budget. We first identified and eliminated rental overcharges through an extensive audit of rent expenditures. We then adopted growth caps, which will result in space limitations for judicial personnel—including judges—and deferring new construction. Those efforts have produced significant savings. In 2004, the Judiciary estimated that it would devote $1.2 billion of its 2009 budget to rent. The Judiciary now estimates its rent requirement will be $1.0 billion, a 17% reduction.

We have also examined ways to control the growth of personnel costs, which accounted for 57% of the Judiciary's 2004 budget. The majority of the Judiciary's personnel budget—nearly 90%—is for support staff, including clerks, secretaries, and administrative personnel. The Judiciary has revised the way it sets salaries for court employees to ensure that compensation is not out of line with employee responsibilities, job skills, and performance. The courts are continuously looking for other ways to do more with less. For example, judges now employ not more than one career law clerk to assist them with legal research and associated duties, where in the past many judges employed two or even more. Judges instead are making greater use of less experienced "term" law clerks who can provide

useful service for one or two years at a lower cost. As additional measures, the Administrative Office and the Federal Judicial Center instituted self-imposed hiring freezes, trimmed budget requests, and voluntarily declined to fill vacant positions to reduce expenses. In aggregate, those measures should save as much as $300 million from 2009 through 2017.

The Judiciary is steeped in history, but not tied to the past: We have increased efficiency through the use of information technology, which accounted for 5% of the Judiciary's 2004 budget. The courts now routinely use computers to maintain court dockets, manage finances, and administer employee compensation and benefits programs. The Judiciary has achieved significant savings through more cost-effective approaches in deploying those systems. For example, the courts have found that they can employ new technology in tandem with improvements in their national data communications network to consolidate local servers and other information technology infrastructure. The Judiciary's consolidation of its jury management program resulted in a savings of $2.0 million in the first year and an expected annual savings of $4.8 million through 2012. A similar consolidation of the probation case management system is projected to save $2.6 million over the same period. The Judiciary is currently undertaking a consolidation of technology in its national accounting system, which is

expected to achieve savings and cost avoidances totaling $55.4 million through 2012. Those at the Office of Management and Budget or the Congressional Budget Office may not be impressed by these numbers, but don't forget: The entire Judicial Branch accounts for only 0.2% of the Nation's budget. For us, these are real savings.

The Supreme Court itself has worked hard to contain costs, holding back on requests for new funding until absolutely necessary. For 2009, the Court submitted a budget that called for *no new spending* and requested only the standard, government-wide inflationary adjustments to its budget. The Court's personnel have kept an eagle eye on expenditures for an ongoing building renovation—the first since the building was completed in 1935—to update and repair antiquated systems and improve security. That renovation, now expected to be completed in 2010, has fallen behind schedule. That apparently is not unusual in Washington. But this project remains on budget despite those setbacks—a welcome departure from the Washington norm.

As all these efforts illustrate, the Judiciary is committed to spending its tiny share of the federal budget responsibly and will continue to make sacrifices to contain the costs of administering justice. We have worked amicably with our appropriators in Congress to achieve these results. But the courts cannot preserve their vitality simply by following a non-fat

regimen. The Judiciary must also continue to attract judges who are the best of the best.

During these times, when the Nation faces pressing economic problems, resulting in business failures, home foreclosures, and bankruptcy, and when Congress is called upon to enact novel legislation to address those challenges, the courts are a source of strength. They guarantee that those who seek justice have access to a fair forum where all enter as equals and disputes are resolved impartially under the rule of law.

The courts decide issues of momentous importance to the litigants and to a broader community of persons affected by the outcomes of precedent-setting decisions. The legal issues in today's global, technology-driven economy are increasingly complex, and judges must respond with wisdom and skill acquired from study, reflection, and experience. If the Nation wants to preserve the quality of American justice, the government must attract and retain the finest legal minds, including accomplished lawyers who are already in high demand, to join the bench as a lifelong calling.

I suspect many are tired of hearing it, and I know I am tired of saying it, but I must make this plea again—Congress must provide judicial compensation that keeps pace with inflation. Judges knew what the pay was when they answered the call of public service. But they did not know that

Congress would steadily erode that pay in real terms by repeatedly failing over the years to provide even cost-of-living increases. Last year, Congress fell just short of enacting legislation, reported out of both House and Senate Committees on the Judiciary, that would have restored cost-of-living salary adjustments that judges have been denied in past years. One year later, Congress has still failed to complete action on that crucial remedial legislation, despite strong bipartisan support and an aggregate cost that is miniscule in relation to the national budget and the importance of the Judiciary's role. To make a bad situation worse, Congress failed, once again, to provide federal judges an annual cost-of-living increase this year, even though it provided one to every other federal employee, including every Member of Congress. Congress's inaction this year vividly illustrates why judges' salaries have declined in real terms over the past twenty years.

Our Judiciary remains strong, even in the face of Congress's inaction, because of the willingness of those in public service to make sacrifices for the greater good. The Judiciary is resilient and can weather the occasional neglect that is often the fate of those who quietly do their work. But the Judiciary's needs cannot be postponed indefinitely without damaging its fabric. Given the Judiciary's small cost, and its absolutely critical role in protecting the Constitution and rights we enjoy, I must renew the Judiciary's

modest petition: Simply provide cost-of-living increases that have been unfairly denied! We have done our part—it is long past time for Congress to do its.

I am privileged and honored to be in a position to thank the judges and court staff throughout the land for their continued hard work and dedication. When our Nation's flag is proudly raised above courthouse plazas across the country each morning, these men and women once again take up the responsibility of preserving the rule of law. They can claim common cause with others in civilian and military service who, like the patriots at Fort McHenry, are guardians of liberty.

Best wishes for the New Year.

Appendix

Workload of the Courts

The Supreme Court of the United States

The total number of cases filed in the Supreme Court decreased from 8,857 filings in the 2006 Term to 8,241 filings in the 2007 Term—a decrease of 7%. The number of cases filed in the Court's *in forma pauperis* docket decreased from 7,132 filings in the 2006 Term to 6,627 filings in the 2007 Term—also a 7% decrease. The number of cases filed in the Court's paid docket decreased from 1,723 filings in the 2006 Term to 1,614 filings in the 2007 Term—a 6% decrease. During the 2007 Term, 75 cases were argued and 72 were disposed of in 67 signed opinions, compared to 78 cases argued and 74 disposed of in 67 signed opinions in the 2006 Term. No cases from the 2007 Term were scheduled for reargument in the 2008 Term.

The Federal Courts of Appeals

The number of appeals filed in the regional courts of appeals in fiscal year 2008 rose by 5% to 61,104 filings. All categories of appeals increased except bankruptcy appeals. After declining for two consecutive years, administrative agency appeals grew by 12% to 11,583 filings, primarily because challenges to the Board of Immigration Appeals decisions climbed by 13% to 10,280 petitions for review.

Criminal appeals rose by 4% to 13,667 filings. That increase stems from sentencing appeals in non-marijuana drug cases. On November 1, 2007, the United States Sentencing Commission issued an amendment to its sentencing guidelines that reduced the penalties for most crack cocaine offenses and prompted numerous appeals. Civil appeals also increased by 4% to 31,454 filings. Prisoner petitions rose by 9% to 16,853 filings. Overall, non-prisoner civil appeals dropped by 1% to 14,601 filings. Both state and federal appeals in that category declined. Bankruptcy appeals fell by 9% to 773 filings. The number of original proceedings in the appeals courts decreased by 4% to 3,627 filings.

The Federal District Courts

Civil filings in the U.S. district courts increased by 4%, rising from 257,507 cases to 267,257 cases. Diversity of citizenship filings grew by 22%. Excluding the diversity filings, the number of civil cases decreased by 3% during fiscal year 2008. That decline reflects a reduction in federal question cases involving personal injury, as well as cases involving labor laws, protected property rights, and contracts.

The rise in diversity of citizenship filings, reflecting an increase of 15,838 cases, resulted primarily from the near doubling of personal injury

cases related to asbestos and diet drugs in the Eastern District of Pennsylvania.

Federal question case filings dropped by 3% to 134,582 cases. Personal injury filings declined by 46% (down by more than 5,200 cases) primarily as a result of large decreases in filings in the Southern District of New York and the Northern District of Alabama. The Southern District of New York, which in 2007 had reported a surge of more than 6,500 personal injury filings related to the terrorist attacks in New York City on September 11, 2001, had 3,900 fewer personal injury filings this year. Labor law cases fell by 10%, down by more than 1,800 cases. The Northern District of Alabama, which had received more than 2,400 filings under the Fair Labor Standards Act in 2007, had 2,300 fewer of those cases in 2008. Copyright cases declined by 27%, down by 1,166 cases nationally.

Filings that involved the United States as plaintiff or defendant fell by 3% to 44,164 cases, a decline of 1,300 cases. The number of cases in which the United States was a defendant dropped by 4%, down by 1,385 cases, as filings of federal habeas corpus prisoner petitions decreased by 8%. The number of cases in which the United States was a plaintiff remained relatively stable. That number rose by less than 1%, as a result of a 10% increase in defaulted student loan cases.

The number of criminal cases filed in 2008 rose by 4% to 70,896 cases, and the number of defendants in those cases increased by 3% to 92,355 defendants. The median case disposition time for defendants declined slightly from 7.0 months in 2007 to 6.8 months in 2008, as the proportion of defendants convicted of immigration law violations, which typically have shorter processing times than other crimes, rose in the overall criminal caseload.

Immigration criminal case filings jumped by 27% to 21,313 cases, and the number of defendants in those cases rose by 26% to 22,685 defendants. That growth in immigration cases resulted mostly from filings addressing improper reentry by aliens and filings involving fraud and misuse of visa or entry permits in the five southwestern border districts. Sex offense case filings grew by 9% to 2,674 cases, and the number of defendants in those cases climbed by 7% to 2,760 defendants. The increase in sex offense filings stemmed from cases involving sexually explicit material and sex offender registration. The number of drug cases dropped by 7% to 15,784 cases, and the number of defendants charged with drug crimes fell by 3% to 28,932 cases. Those reductions occurred when investigative agencies shifted their focus from drugs to terrorism and sex offenses.

The Bankruptcy Courts

Filings in the United States bankruptcy courts rose by 30% from 801,269 cases in 2007 to 1,042,993 cases in 2008. The increase in bankruptcy filings in 2008 is nearly equal to the decline in bankruptcy filings that occurred in 2007, the first fiscal year in which all 12 months of filings occurred after the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The bankruptcy courts received 1,112,542 filings in 2006, which encompassed the last weeks before the effective date of the Act—October 17, 2005. The number of bankruptcy filings in 2008 was 6% below that figure. Between 2007 and 2008, non-business filings, which accounted for 96% of all filings, rose by 30%, and business filings increased by 49%. Chapter 7 filings increased by 40%, Chapter 11 filings by 49%, and Chapter 13 filings by 14%, while Chapter 12 filings fell by 8% in 2008.

Pretrial Services

Both the number of defendants activated in pretrial services, including pretrial diversion cases, and the number of pretrial services reports prepared by Pretrial Services officers increased by 2% in 2008. The number for defendants activated increased from 96,259 persons to 98,244 persons.

Post-Conviction Supervision

In 2008, the number of persons under post-conviction supervision continued to increase, this year by 4% to 120,676 individuals. As of September 30, 2008, 95,159 individuals were serving terms of supervised release after serving terms of imprisonment at a correctional institution, representing 79% of all persons under post-conviction supervision. In comparison, during 2007, the number of persons serving terms of supervised release represented 77% of all those under post-conviction supervision. Persons on parole declined almost by 8%, from 2,575 individuals in 2007 to 2,378 individuals in 2008. Parole now accounts for less than 2% of post-conviction cases. Both district judges and magistrate judges are imposing fewer sentences of probation, and the number of persons on probation decreased by 994 to 22,980. That number represented 19% of all persons under post-conviction supervision. Approximately 46% of the persons under post-conviction supervision are being supervised on account of a drug-related offense.

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202-479-3211

2009 Year-End Report on the Federal Judiciary

Chief Justice Warren Burger began the tradition of a yearly report on the federal judiciary in 1970, in remarks he presented to the American Bar Association. He instituted that practice to discuss the problems that federal courts face in administering justice. In the past few years, I have adhered to the tradition that Chief Justice Burger initiated and have provided my perspective on the most critical needs of the judiciary. Many of those needs remain to be addressed. This year, however, when the political branches are faced with so many difficult issues, and when so many of our fellow citizens have been touched by hardship, the public might welcome a year-end report limited to what is essential: The courts are operating soundly, and the nation's dedicated federal judges are conscientiously discharging their duties. I am privileged and honored to be in a position to thank the judges and court staff throughout the land for their devoted service to the cause of justice.

Best wishes in the New Year.

Appendix

Workload of the Courts

The Supreme Court of the United States

The total number of cases filed in the Supreme Court decreased from 8,241 filings in the 2007 Term to 7,738 filings in the 2008 Term—a decrease of 6.1%. The number of cases filed in the Court's *in forma pauperis* docket decreased from 6,627 filings in the 2007 Term to 6,142 filings in the 2008 Term—a 7.3% decrease. The number of cases filed in the Court's paid docket decreased from 1,614 filings in the 2007 Term to 1,596 filings in the 2008 Term—a 1.1% decrease. During the 2008 Term, 87 cases were argued and 83 were disposed of in 74 signed opinions, compared to 75 cases argued and 72 disposed of in 67 signed opinions in the 2007 Term. One case from the 2008 Term was reargued later that Term.

The Federal Courts of Appeals

In 2009, filings in the regional courts of appeals declined 6% to 57,740. Filings of criminal appeals, bankruptcy appeals, and original proceedings rose, but reductions occurred in filings of civil appeals and appeals of administrative agency decisions. Overall, the decline stemmed mainly from a drop in administrative agency appeals involving the Board of Immigration Appeals.

The Federal District Courts

Civil filings in the U.S. district courts rose 3%, increasing by 9,140 cases to 276,397. Filings of diversity-of-citizenship cases and cases involving federal questions (i.e., actions under the Constitution, laws, or treaties of the United States in which the United States is not a party in the case) grew as the courts received more cases related to asbestos, civil rights, consumer credit, contract actions, and foreclosures. Filings of cases in which the United States was a party fell 2% to 43,144, as filings related to student loans and prisoner petitions declined.

Diversity-of-citizenship filings climbed 10% (up 8,752 cases), primarily as a result of a national increase in personal injury cases related to asbestos. Most of the asbestos filings took place in the Eastern District of Pennsylvania. Federal-question filings rose 1% to 136,041. Filings of cases involving consumer credit, such as those filed under the Fair Credit Reporting Act, increased 53% (up 2,143 cases), fueled in part by the current economic downturn, particularly in the nation's most populous districts.

Criminal case filings (including transfers) rose 8% to 76,655, and the number of defendants climbed 6% to 97,982, surpassing the previous record for the number of defendants, 92,714, set in 2003. The number of criminal cases reached its highest level since 1932, the year before ratification of the

Twenty-first Amendment, which repealed prohibition. In that year, 92,174 criminal cases were filed.

Increases occurred in cases related to immigration, fraud, marijuana trafficking, and sex offenses. Filings in other offense categories with significant numbers—non-marijuana drugs and firearms-and-explosives—declined. Immigration filings climbed to record levels, as cases jumped 21% to 25,804, and the number of defendants rose 19% to 26,961. This growth resulted mostly from filings addressing either improper reentry by aliens or fraud or misuse of a visa or entry permit. The charge of improper reentry by an alien accounted for 80% of all immigration cases and 77% of all immigration defendants. The vast majority of immigration cases—88%—were filed in the five southwestern border districts.

The Bankruptcy Courts

In 2009, a total of 1,402,816 bankruptcy petitions were filed in the U.S. courts, an increase of 35% over the 1,042,806 filed in 2008. The 2009 total represents the greatest number of bankruptcy filings since 2005, when many debtors rushed to file petitions before October 17, 2005, the date on which the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) took effect. In 2009, the number of bankruptcy filings

exceeded 2008 totals in 93 of the 94 districts, and nine districts experienced increases of 60% or more.

Bankruptcy filings rose by 45% under Chapter 7, 68% under Chapter 11, 47% under Chapter 12, and 13% under Chapter 13. Business petitions climbed by 52%, and non-business petitions increased by 34%.

The Federal Probation and Pretrial Services System

On September 30, 2009, the number of persons under post-conviction supervision was 124,183, an increase of nearly 3% over the total one year earlier. Persons serving terms of supervised release after leaving correctional institutions rose more than 4% this year and accounted for 80% of all persons under supervision. Cases opened in the pretrial services system, including pretrial diversion cases, grew by nearly 6% to 105,294.

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2010 Year-End Report on the Federal Judiciary

In 1935—in the midst of the Great Depression—many Americans sought respite from the Nation's economic troubles at their local movie theaters, which debuted now-classic films, such as *Mutiny on the Bounty*, *Top Hat*, and *Night at the Opera*. Moviegoers of that era enjoyed a prelude of short features as they settled into their seats. As the lights dimmed, the screen beamed previews of coming attractions, Merrie Melody cartoons, and the Movietone newsreels of current events. The 1935 news shorts also provided many Americans with their first look at the Supreme Court's new building, which opened that year.

Seventy-five years later, the Supreme Court's majestic building stands out as a familiar and iconic monument to the rule of law. The architect's use of classical elements and durable stone has aptly captured the Court's imperishable role in our system of government. Thanks to the genius of those who framed our Constitution, and those who have maintained faith with its words and ideals over the past two centuries, the American people

have a Supreme Court and a national judicial system that are the model for justice throughout the world. But that is no reason for complacency. As the world moves forward, the courts must be responsive to change, while preserving their place as the venue where justice is achieved through impartial judgment and dispassionate application of law. The judiciary, no less than other public and private enterprises, must engage in strategic planning to anticipate and overcome new challenges in the immediate and more distant future.

The Judicial Conference—the federal judiciary's policymaking body—is examining the need to adapt for the future through thoughtful and deliberate processes. The Conference, which includes all the chief judges of the federal courts of appeals as well as experienced district judges from each of the regional circuits, is the proper body to chart a course for the courts over the long term that preserves the judiciary's unique role in our system of government. Its members are engaged trustees of a cherished institution, and they have an obligation secured by a solemn judicial oath to safeguard the integrity of the judicial process. They also have the perspective, experience, and wisdom to evaluate the positive and negative effects of change on the quality and fairness of the judicial system.

This past September, the Judicial Conference approved the *Strategic Plan for the Federal Judiciary*.[*] The plan recognizes the fundamental mission of the courts to provide fair and impartial resolution of legal disputes, and it embraces the underlying values that characterize the judiciary, including independence, impartiality, excellence, and fidelity to the rule of law. The plan identifies seven long-term issues that are critical to the future operation of the federal courts. The judiciary's central objective is, of course, to do justice according to law in every case. Accomplishing that objective requires, however, a determined focus on subsidiary issues, including managing the courts' public resources, maintaining a skilled workforce of judges and support staff, deploying new technologies that enable the courts to do more with less, and developing rules and procedures that provide litigants with reasonable and economical access to the judicial process. It also requires focus on issues that extend beyond the courthouse, such as fostering positive relations with the coordinate branches of government and enhancing the public's understanding of the role of the courts.

The Judicial Conference's plan sets out goals and the strategies for attaining them. The goals and strategies are necessarily stated in general

[*] *See* http://www.uscourts.gov/uscourts/FederalCourts/Publications/StrategicPlan2010.pdf

terms, which reflect the uncertainties that emerge in any attempt to foresee the future. They are also subject to regular review and revision in response to change. Those goals and strategies, though inexact and alterable, are vital in setting national priorities. But goals and strategies are not enough. The judiciary must take determined steps to translate aspirational objectives into concrete actions. That responsibility rests in significant measure with the Judicial Conference's committees and the judges who serve on them. The ultimate success of strategic planning depends on the contributions of individual judges who participate in committee work and take time away from their pressing dockets to develop specific initiatives and put them into practice.

I am grateful to the federal judges and administrative staff who have developed the *Strategic Plan for the Federal Judiciary*, as well as the committees and their staffs who will implement it. Their work will, I believe, have a lasting impact. Some of the results we are looking for, such as cost savings, improved efficiency, and reduced backlogs, are readily quantifiable. Others, such as maintenance of the public trust, are more difficult to calculate. But we owe the public our best efforts even if the results cannot always be reduced to precise measure.

There are, however, some immediate obstacles to achieving our goals. Two stand out at the beginning of this new year: an economic downturn that has imposed budgetary constraints throughout the government, and the persistent problem of judicial vacancies in critically overworked districts.

Budgetary constraints are nothing new for the judiciary. Chief Justice Rehnquist's 2004 year-end report addressed what he described as the "Judiciary's Budget Crisis." He noted that the recurring delays in enacting annual appropriations bills, as well as rising fixed costs that had outpaced increased funding, had severely disrupted the judiciary's operations. In response, Chief Justice Rehnquist directed the Judicial Conference to develop an integrated cost containment strategy for fiscal year 2005 and beyond. Since that time, the judiciary has worked closely with Congress in exercising self-imposed fiscal discipline, and Congress in turn has stood ready to provide funding for the judiciary's vital needs. This year, Congress will face extraordinary challenges in addressing the federal deficit. The judiciary will continue to move forward with the initiatives begun by my predecessor to control judicial expenditures.

Those initiatives include focused efforts to reduce judicial costs through more efficient use of office space, information technology, and support personnel. On space, the judiciary has worked with the General

Services Administration to reduce its rental rates through fixed term agreements. The courts have also implemented new cost control programs that have contributed significantly to a reduction of 365,000 square feet of current space usage from the needs projected in 2005. On technology, the judiciary has realized savings by consolidating and standardizing data systems throughout the federal courts. On personnel, the judiciary has tightened its standards for adding additional support staff. It now evaluates staffing requests through new formulas that reflect best practices within the court system. That approach will enable the judiciary to reduce by 60% its request for new court staff in fiscal year 2012.

The Supreme Court itself is doing its part. I have asked Court personnel to monitor Court operations and seek out opportunities to reduce spending by improving operations and cutting unnecessary expenses. As a result of those efforts, and notwithstanding increases in operating costs owing to inflation, the Court expects to voluntarily reduce its fiscal year 2012 appropriations request to less than its fiscal year 2011 request. Not many other federal government entities can say that.

As I explained in my first year-end report, those of us in the federal judiciary understand the challenges our country faces and the many competing interests that must be balanced in funding our government. The

judiciary's needs are strikingly modest compared to the government as a whole—less than two-tenths of 1% of the federal budget for one of the three constitutional branches of government. But the courts are committed to working closely with the President and Congress to shoulder our share of the burdens of reducing the federal deficit. We will strive to reduce costs where possible, but we ask in return that our coordinate branches of government continue to provide the financial resources that the courts must have to carry out their vital mission.

The judiciary depends not only on funding, but on its judges, to carry out that mission. The Constitution, as one of its many checks and balances, entrusted the selection of new judges to the political branches. The judiciary relies on the President's nominations and the Senate's confirmation process to fill judicial vacancies; we do not comment on the merits of individual nominees. That is as it should be. The judiciary must respect the constitutional prerogatives of the President and Congress in the same way that the judiciary expects respect for its constitutional role.

Over many years, however, a persistent problem has developed in the process of filling judicial vacancies. Each political party has found it easy to turn on a dime from decrying to defending the blocking of judicial nominations, depending on their changing political fortunes. This has

created acute difficulties for some judicial districts. Sitting judges in those districts have been burdened with extraordinary caseloads. I am heartened that the Senate recently filled a number of district and circuit court vacancies, including one in the Eastern District of California, one of the most severely burdened districts. There remains, however, an urgent need for the political branches to find a long-term solution to this recurring problem.

We should all be grateful to the judges and court staff throughout the country—and especially those in overburdened districts—for their selfless commitment to public service. There is no better example of that than the work of our retired senior judges. Although they are under no obligation to do so, many of them continue to carry substantial caseloads. They do this for no extra compensation. We would be in dire straits without their service, and the country as a whole owes them a special debt of gratitude.

Despite the many challenges, the federal courts continue to operate soundly, and the Nation's federal judges continue to discharge their duties with wisdom and care. I remain privileged and honored to be in a position to thank the judges and court staff for their dedication to the ideals that make our Nation great.

Best wishes in the New Year.

Appendix

Workload of the Courts

In 2010, nearly all major areas of the federal judiciary had larger caseloads. Filings of bankruptcy petitions climbed 14% to nearly 1.6 million. Filings in the U.S. district courts grew 2% to 361,323 in response to a 2% increase in civil case filings (totaling 282,895) and criminal case filings (totaling 78,428). The number of persons under post-conviction supervision rose 2.5% to 127,324. Cases opened in the pretrial services system increased 6% to 111,507. Only the federal courts of appeals experienced a reduced caseload this year with 55,992 filings, a decrease of 3%.

The Supreme Court of the United States

The total number of cases filed in the Supreme Court increased from 7,738 filings in the 2008 Term to 8,159 filings in the 2009 Term—an increase of 5.4%. The number of cases filed in the Court's *in forma pauperis* docket increased from 6,142 filings in the 2008 Term to 6,576 filings in the 2009 Term—a 7.0% increase. The number of cases filed in the Court's paid docket decreased from 1,596 filings in the 2008 Term to 1,583 filings in the 2009 Term—a 1.0% decrease. During the 2009 Term, 82 cases

were argued and 77 were disposed of in 73 signed opinions, compared to 87 cases argued and 83 disposed of in 74 signed opinions in the 2008 Term.

The Federal Courts of Appeals

Filings in the regional courts of appeals dropped 3% to 55,992. Filings of original proceedings increased, and filings of civil appeals remained stable. Reductions occurred, however, in filings of criminal appeals of many types, and filings of appeals of administrative agency decisions decreased in response to a decline in appeals involving the Board of Immigration Appeals, which made fewer decisions, thereby reducing the pool of cases that could be appealed.

The Federal District Courts

Civil filings in the U.S. district courts rose 2%, increasing by 6,498 cases to 282,895. Cases filed with the United States as plaintiff or defendant remained stable, decreasing by 107 cases to 43,037.

Filings of federal question cases (i.e., actions under the Constitution, laws, or treaties of the United States in which the United States is not a party in the case) climbed 2% to 138,655 as the courts received more cases related to consumer credit, civil rights, labor laws, Social Security, and foreclosures. Many of these cases arose out of the economic downturn.

Filings of diversity of citizenship cases (i.e., cases between citizens of different states) rose 4% to a new record of 101,202. Most of these cases addressed claims of personal injury or product liability. Filings of multidistrict litigation related to asbestos that were transferred to the Eastern District of Pennsylvania and severed into separate filings grew 2% to 48,588.

Criminal case filings (including transfers) rose 2% to 78,428, and the number of defendants in those cases also grew 2% to reach an all-time high of 100,366. Immigration offenses accounted for much of the criminal caseload as filings of immigration cases increased 9% to 28,046 and the number of defendants in those cases increased 8% to 29,149. The majority of immigration cases—73%—were filed in the five southwestern border districts. Most of the immigration cases—83%—involved charges of improper reentry by aliens.

Filings of fraud cases also set a new record. Cases grew 12% to 9,371, and the number of defendants in those cases rose 13% to 12,639. Significant increases were reported for offenses related to identification documents and information, most of which involved false documents and information presented by illegal immigrants. Filings of cases involving drug

offenses decreased 5% to 15,785, and the number of defendants in those cases declined 2% to 29,410.

The Bankruptcy Courts

Filings of petitions for bankruptcy totaled 1,596,355, a 14% increase over the previous year's filings and the highest number received since 2005, the last full year before the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 took effect. Filings rose in 73 of the 90 bankruptcy courts. Although business petitions fell 1%, nonbusiness petitions grew 14%. Bankruptcy filings increased by 16% under Chapter 7, fell by 4% under Chapter 11, and grew by 9% under Chapter 13.

The Federal Probation and Pretrial Services System

On September 30, 2010, the number of persons under post-conviction supervision was 127,324, an increase of 2.5% over the total one year earlier. The number of persons serving terms of supervised release after leaving correctional institutions rose more than 3% and accounted for 81% of all persons under supervision. Cases opened in the pretrial services system this year, including pretrial diversion cases, grew nearly 6% to 111,507.

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