Supreme Court of the United States

CHIEF JUSTICE'S YEAR-END REPORTS ON THE FEDERAL JUDICIARY

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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).

[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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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.

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.

Supreme Court of the United States

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January 1, 2003, 12:01 a.m. E.S.T.

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

Branch.

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.

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.

[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.

[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]

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[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

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[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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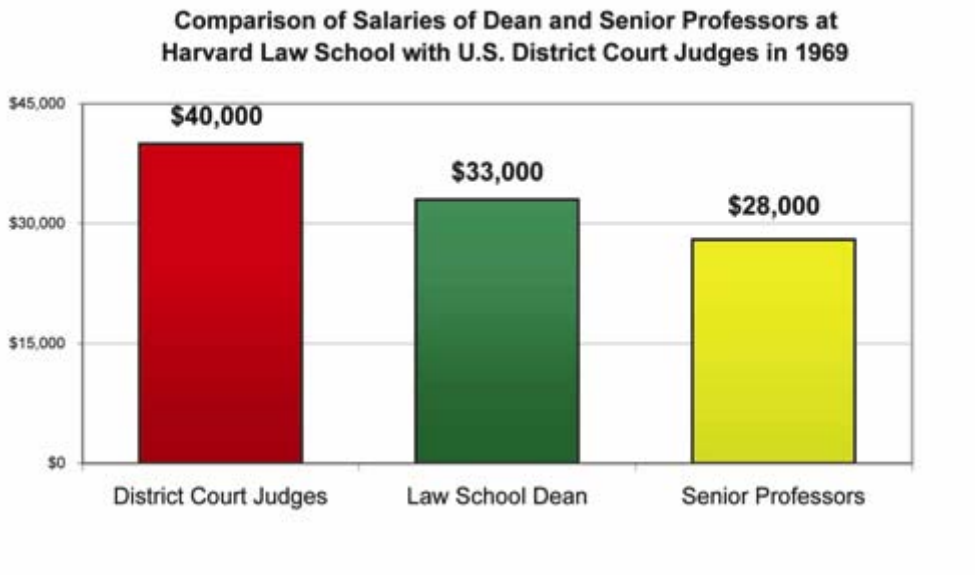
2006 Year-End Report on the Federal Judiciary

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.

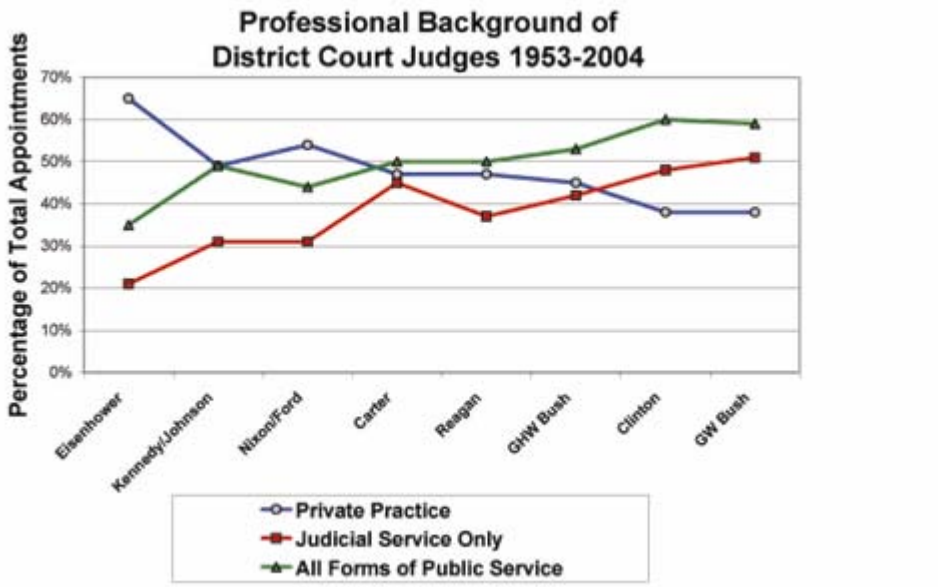


Today, federal district judges are paid substantially less than—about *half*—what the deans and senior law professors at top schools are paid. *See, e.g.*, Report of the National Commission on the Public Service, URGENT BUSINESS FOR AMERICA: REVITALIZING THE FEDERAL GOVERNMENT FOR THE 21ST CENTURY 22-23 (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.