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2008 Year-End Report on the Federal Judiciary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Best wishes for the New Year.

Appendix

Workload of the Courts

The Supreme Court of the United States

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

The Federal Courts of Appeals

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

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

The Federal District Courts

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

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

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

Federal question case filings dropped by 3% to 134,582 cases. Personal injury filings declined by 46% (down by more than 5,200 cases) primarily as a result of large decreases in filings in the Southern District of New York and the Northern District of Alabama. The Southern District of New York, which in 2007 had reported a surge of more than 6,500 personal injury filings related to the terrorist attacks in New York City on September 11, 2001, had 3,900 fewer personal injury filings this year.

Labor law cases fell by 10%, down by more than 1,800 cases. The Northern District of Alabama, which had received more than 2,400 filings under the Fair Labor Standards Act in 2007, had 2,300 fewer of those cases in 2008.

Copyright cases declined by 27%, down by 1,166 cases nationally.

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

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

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

The Bankruptcy Courts

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

Pretrial Services

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

Post-Conviction Supervision

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