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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.