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2012 Year-End Report on the Federal Judiciary

Imagine a young seaman, two hundred years ago, standing night watch at the rail of an American frigate. Just one generation removed from the war for independence, he finds his Nation once again squaring off in battle with Great Britain, the world's preeminent sea power. The sailor has ample reason to be anxious. Britain's Royal Navy includes 115 ships of the line and 126 frigates, while the United States Navy consists of only 17 vessels. Perhaps the seaman musters confidence from the name of his ship: *USS Constitution*.

Named by President Washington himself, the *Constitution* was one of six frigates Congress authorized in 1794 to bolster the fledgling United States Navy. The name was apt. The ship's designer, Joshua Humphreys, drew on venerable Old World principles and New World ingenuity to engineer a nautical vessel uniquely suited to the country's needs. Like the Framers, Humphreys produced an American original. He fashioned a ship long on keel but tight of beam. Constructed from frontier timber and copper bolts

forged by Paul Revere, the *Constitution* was durable but economical, nimble yet powerful. Christened with a bottle of madeira—the favorite beverage of future Chief Justice John Marshall— she launched on October 21, 1797.

During her early years, the *Constitution* patrolled the eastern seaboard and saw action in the Caribbean and along the Barbary Coast. But she became the stuff of legends two hundred years ago, at the outbreak of the War of 1812. Called into battle off the coast of Nova Scotia on August 19, the *Constitution* engaged and decisively defeated the British warship *HMS Guerriere*. The American ship's sturdy oak hull repelled the *Guerriere*'s 18-pound cannon balls, earning her the nickname "Old Ironsides." Four months later, the *Constitution* repeated the feat off the coast of Brazil. On December 29, she traded broadsides with *HMS Java* and reduced the British ship to an unsalvageable wreck.

The War of 1812 was fought over a wide field of battle. Measured against the whole war effort, the *Constitution*'s unexpected victories did not play a decisive role in the outcome of the conflict. But facing long odds, she did her part and did it well. The triumphs of Old Ironsides boosted America's sagging morale during the early days of the war. Her exploits were celebrated in the paintings of Thomas Birch, the poetry of Oliver Wendell Holmes, Sr., and the prose of James Fenimore Cooper. Through

two centuries, she has remained a symbol of American courage, skill, and tenacity. Currently docked in Boston Harbor, *USS Constitution* is still seaworthy and boasts the title of the world's oldest commissioned vessel afloat.

Two hundred years after the War of 1812, our country faces new challenges, including the much publicized “fiscal cliff” and the longer term problem of a truly extravagant and burgeoning national debt. No one seriously doubts that the country's fiscal ledger has gone awry. The public properly looks to its elected officials to craft a solution. We in the Judiciary stand outside the political arena, but we can continue to do our part to address the financial challenges within our sphere. The Judiciary recognized this responsibility eight years ago, when the Judicial Conference, under the leadership of Chief Justice Rehnquist, first put in place an aggressive cost-containment strategy. Four years ago, in my 2008 Year-End Report, I provided a summary of some of the Judiciary's efforts. It is time to revisit that subject.

Now as then, the Judicial Branch continues to consume a miniscule portion of the federal budget. In fiscal year 2012, 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 of \$6.97 billion. That represented a mere two-tenths of one percent of the United States' total budget of \$3.7 trillion. Yes, for each citizen's tax dollar, only two-tenths of one penny go toward funding the entire third branch of government! Those fractions of a penny are what the courts need to keep court facilities open, pay judges and staff, manage the criminal justice system (including pre-trial, defender, and probation services), process civil disputes ranging from complex patent cases to individual discrimination suits, and maintain a national bankruptcy court system. Those fractions of a penny are what Americans pay for a Judiciary that is second to none.

Even though the Judiciary consumes such a tiny portion of the federal budget, it must continue to do its part to search out cost savings in the face of the government's budget deficit. In 2004, the Judicial Conference endorsed a cost-containment strategy that called for examining more than fifty discrete operations for reducing expenses. Since then, the Judiciary has focused on three principal targets for realizing those savings: rent, personnel expenses, and information technology.

Our most significant cost containment success has been in controlling rent costs. In fiscal year 2005, GSA rental payments accounted for nearly 24 percent of the Judiciary's Salaries and Expenses account. To reduce

those costs, we first undertook an extensive audit of rent expenditures to identify and eliminate overcharges. We then adopted growth caps, which will result in space limitations for judicial personnel—including judges—and deferring new construction. In fiscal year 2005, rent was projected to grow by an average of six percent per year, reaching more than \$1.4 billion by fiscal year 2013. As a result of cost-containment efforts, the fiscal year 2013 interim financial plan for GSA space rental totals less than \$1.1 billion, a reduction of almost \$322 million from the fiscal year 2005 projection. Rent is now 21 percent of the Salaries and Expenses account.

But we cannot stop there. We are attempting to identify usable space in courthouses for judiciary employees, such as probation and pretrial services officers, who are currently in space leased elsewhere. That leased space can then be relinquished to reduce recurring rent costs. In addition, we are continuing to examine other ways to better utilize space, such as consolidating libraries and taking advantage of digital library collections, to assist in reducing overall budgetary needs.

We have also examined ways to control the growth of personnel costs, which accounted for 62 percent of the Judiciary's fiscal year 2005 budget. The majority of the Judiciary's personnel budget—nearly 85 percent—is for support staff, including clerks, secretaries, and administrative personnel.

The options for further savings here are limited. The rates of pay for judicial support staff have stayed the same for the past three years: Like other federal employees, judicial support staff have not received the standard cost-of-living increases designed to ensure their salaries keep pace with inflation, so they have seen a real decline in their salaries. (Federal employees are currently scheduled to receive a modest cost of living adjustment in 2013.) Despite those curbs on pay increases, we continue to ask these public servants to do more with less by streamlining business practices and adopting management measures to improve efficiency.

For example, we are continuously reviewing and revising position descriptions to ensure that every employee's compensation is consistent with job responsibilities, skills, and performance. We are also updating staffing formulas to match personnel to workloads. In the case of bankruptcy courts, a new staffing formula for bankruptcy clerks' offices, approved by the Judicial Conference in September 2012, will reduce expenditures by more than \$100 million annually. Updated formulas for district courts, courts of appeals and circuit units, and probation and pretrial services offices will be developed and implemented in 2014 and 2015. As additional measures, the Administrative Office and the Federal Judicial Center have instituted

rigorous cost-savings measures, trimmed budget requests, and voluntarily declined to fill vacant positions to reduce expenses.

We are continuing to look for ways to achieve still greater savings in personnel costs. One promising avenue is the practice of sharing administrative services among court units within and across judicial districts and programs. For example, the district and bankruptcy courts within a single district may be able to develop mechanisms for sharing personnel and resources to achieve economies and eliminate redundancies. The Judicial Conference has directed individual courts to develop local plans for sharing administrative services. To encourage this practice, the Judiciary is updating its work measurement formulas to reflect a presumption of sharing.

We have also been able to leverage additional savings through the use of information technology, which accounted for six percent of the Judiciary's fiscal year 2005 budget. The courts have achieved significant savings through more cost-effective approaches in deploying the computer systems they use to maintain court dockets, manage finances, and administer employee compensation and benefits programs. For example, the courts have realized economies by consolidating servers and other information technology infrastructure. They have extended those consolidation efforts to their jury management programs, probation case management systems, and

national accounting system, which should generate annual savings of several million dollars beginning in fiscal year 2014. As part of the Judiciary's national data and communications system, the courts are now implementing a national "voice-over-IP" telephone system to achieve additional savings by providing data, voice, and video services on a single network. They are also increasingly relying on computer-assisted legal research to reduce the costs of purchasing law books and maintaining brick-and-mortar libraries.

The Supreme Court continues to set a good example on cost containment. Since 2004, the Court has searched for opportunities to conserve taxpayer funds. In fiscal year 2012, the Court requested an appropriation of \$75.55 million to fund its judicial operations—a 2.8 percent *decrease* from its fiscal year 2011 request of \$77.76 million. In fiscal year 2013, the Court's appropriation request rose to \$77.16 million, largely in response to new judicial security needs—but still less than its fiscal year 2011 request. Since that time, the Court has engaged in further cost-cutting, implementing more than \$2.2 million in expense-reduction measures, primarily in the areas of financial and human resources management. For fiscal year 2014, the Court will submit an appropriation request of \$74.89 million—a 3.7 percent *decrease* from its fiscal year 2011 request,

notwithstanding unavoidable inflationary cost increases for goods and services over the past three years.

The Judiciary has been doing its part to carefully manage its tiny portion of the federal budget. Because the Judiciary has already pursued cost-containment so aggressively, it will become increasingly difficult to economize further without reducing the quality of judicial services. Virtually all of the Judiciary's core functions are constitutionally and statutorily required. Unlike executive branch agencies, the courts do not have discretionary programs they can eliminate or projects they can postpone. The courts must resolve all criminal and civil cases that fall within their jurisdiction, often under tight time constraints. A significant and prolonged shortfall in judicial funding would inevitably result in the delay or denial of justice for the people the courts serve.

I therefore encourage the President and Congress to be especially attentive to the needs of the Judicial Branch and provide the resources necessary for its operations. Those vital resource needs include the appointment of an adequate number of judges to keep current on pending cases. At the close of 2012, twenty-seven of the existing judicial vacancies are designated as presenting judicial emergencies. I urge the Executive and

Legislative Branches to act diligently in nominating and confirming highly qualified candidates to fill those vacancies.

Despite the financial and resource constraints, the Judiciary continues to discharge its duties, even under the most trying circumstances. A hallmark of our courts has long been their resilience and fortitude in the most challenging times. When Hurricane Sandy struck the eastern seaboard, it caused devastating damage to public and private property, destroying essential communications and transportation infrastructure. In response, the federal courts promptly activated their continuity of operations plans. Judicial personnel reported to work, notwithstanding their own personal circumstances, and courts maintained communications with jurors, lawyers, and staff, while making arrangements to address urgent court matters. As just one example, the United States District Court for the Southern District of New York conducted emergency hearings in lower Manhattan the day after the storm hit, working in a building without heat or hot water that was only sparsely lit by gas-fueled emergency generators.

Over the span of two hundred years, some things remain the same. Then as now, our Nation owes a debt of gratitude to those who answer the call of their country and provide loyal and selfless service for the benefit of

their fellow citizens. There are countless examples of such service through our judicial system, but this year I would like to draw attention to just one.

On September 30, 2012, Mark R. Kravitz, United States District Judge for the District of Connecticut, passed away at the age of 62 from amyotrophic lateral sclerosis—Lou Gehrig’s Disease. We in the Judiciary remember Mark not only as a superlative trial judge, but as an extraordinary teacher, scholar, husband, father, and friend. He possessed the temperament, insight, and wisdom that all judges aspire to bring to the bench. He tirelessly volunteered those same talents to the work of the Judicial Conference, as chair of the Committee on Rules of Practice and Procedure, which oversees the revision of all federal rules of judicial procedure. Mark battled a tragic illness with quiet courage and unrelenting good cheer, carrying a full caseload and continuing his committee work up until the final days of his life. We shall miss Mark, but his inspiring example remains with us as a model of patriotism and public service.

I am privileged and honored to be in a position to thank all of the judges and court staff throughout the land for their continued hard work and dedication. In a certain sense they share the heritage of those sailors who stood on the decks of Old Ironsides. But they also share a vantage that was not yet within the sailors’ sight. Throughout its history, our Nation has

withstood daunting tests and always emerged strong, secure, and optimistic.

We can all look forward with confidence, beyond the pitch of dark waters, to more promising horizons. We know from experience that our durable Constitution provides the framework needed for able hands to overcome any obstacle, consistent with the rule of law.

Best wishes in the New Year.

Appendix

Workload of the Courts

In 2012, caseloads increased in the U.S. appellate courts and probation offices, but decreased in the U.S. district courts, bankruptcy courts, and pretrial services system. Filings in the regional courts of appeals grew four percent to 57,501. The number of persons under post-conviction supervision rose two percent to 132,340. Total case filings in the district courts, however, declined five percent to 372,563. Cases opened in the pretrial services system fell four percent to 109,242. Filings in the bankruptcy courts dropped 14 percent to 1,261,140.

The Supreme Court of the United States

The total number of cases filed in the Supreme Court decreased from 7,857 filings in the 2010 Term to 7,713 filings in the 2011 Term, a decrease of 1.8 percent. The number of cases filed in the Court's *in forma pauperis* docket decreased from 6,299 filings in the 2010 Term to 6,160 filings in the 2011 Term, a 2.2 percent decrease. The number of cases filed in the Court's paid docket decreased from 1,558 filings in the 2010 Term to 1,553 filings in the 2011 Term, a 0.3 percent decrease. During the 2011 Term, 79 cases were argued and 73 were disposed of in 64 signed opinions, compared to 86 cases argued and 83 disposed of in 75 signed opinions in the 2010 Term.

The Federal Courts of Appeals

Filings in the regional courts of appeals rose four percent to 57,501. Growth occurred in all types of appeals except civil appeals, which decreased one percent. Criminal appeals climbed 12 percent. Original proceedings and bankruptcy appeals also rose, and appeals of administrative agency decisions grew in response to higher filings related to rulings by the Board of Immigration Appeals.

The Federal District Courts

Civil case filings in the U.S. district courts fell four percent to 278,442. Cases involving diversity of citizenship (i.e., cases between citizens of different states) declined 15 percent, mainly because of a drop in multidistrict litigation filings.

Cases filed with the United States as plaintiff decreased as defaulted student loan cases, which had surged in 2011, declined this year. Cases with the United States as defendant rose in response to growth in Social Security cases and motions by prisoners to vacate their sentences.

Filings for criminal defendants (including those transferred from other districts), which had reached an all-time high in 2011, dropped nine percent this year to 94,121. Excluding transfers, reductions occurred in the number of defendants charged with nearly every major offense, including drug

crimes. Filings for defendants charged with immigration violations decreased 10 percent. The southwestern border districts once again accounted for 74 percent of the nation's total immigration defendant filings.

Growth was reported for defendants accused of firearms offenses. Filings for defendants prosecuted for regulatory offenses also increased.

The Bankruptcy Courts

Filings of bankruptcy petitions fell 14 percent to 1,261,140. Filings were lower in 89 of the 90 bankruptcy courts. Nonbusiness petitions declined 14 percent, and business petitions dropped 16 percent. Bankruptcy petitions decreased 16 percent under Chapter 7, 12 percent under Chapter 11, and 10 percent under Chapter 13. After the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 took effect, bankruptcy filings had a significant downturn. This was followed by a large influx of petitions from 2007 to 2010.

The Federal Probation and Pretrial Services System

The 132,340 persons under post-conviction supervision on September 30, 2012, represented an increase of two percent over the total one year earlier. Persons serving terms of supervised release after their departure from correctional institutions grew three percent to 108,372 and amounted to 82 percent of all persons under supervision.

Cases opened in the pretrial services system in 2012, including pretrial diversion cases, fell four percent to 109,242.