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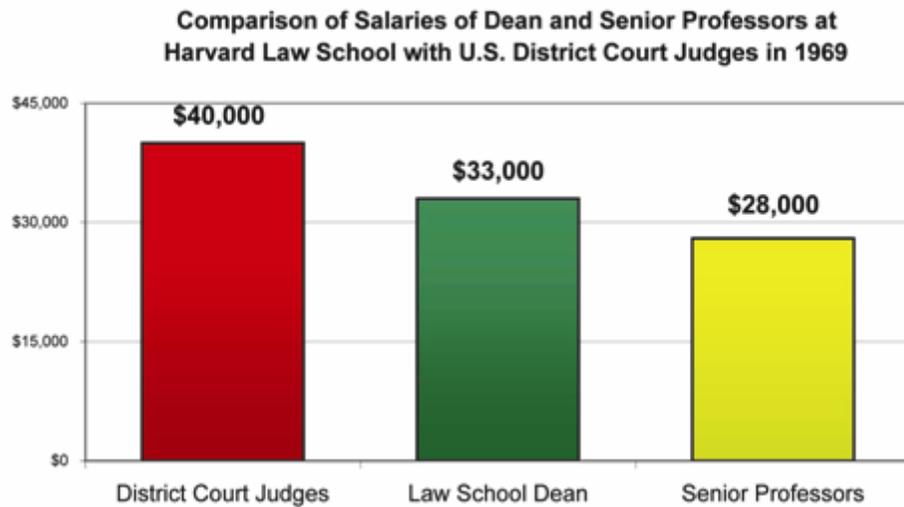
2006 Year-End Report on the Federal Judiciary

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.

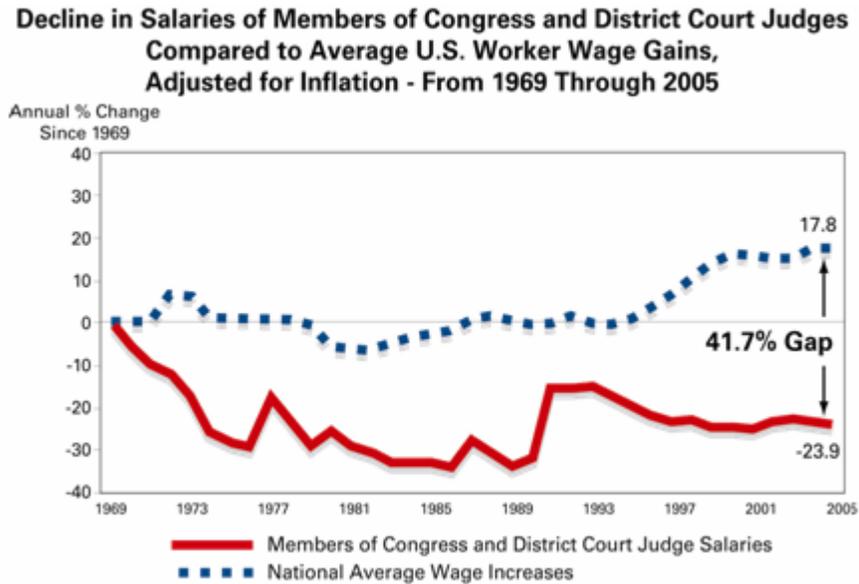
I am talking about the failure to raise judicial pay. This is usually the point at which many will put down the annual report and return to the Rose Bowl, but bear with me long enough to consider just three very revealing

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.



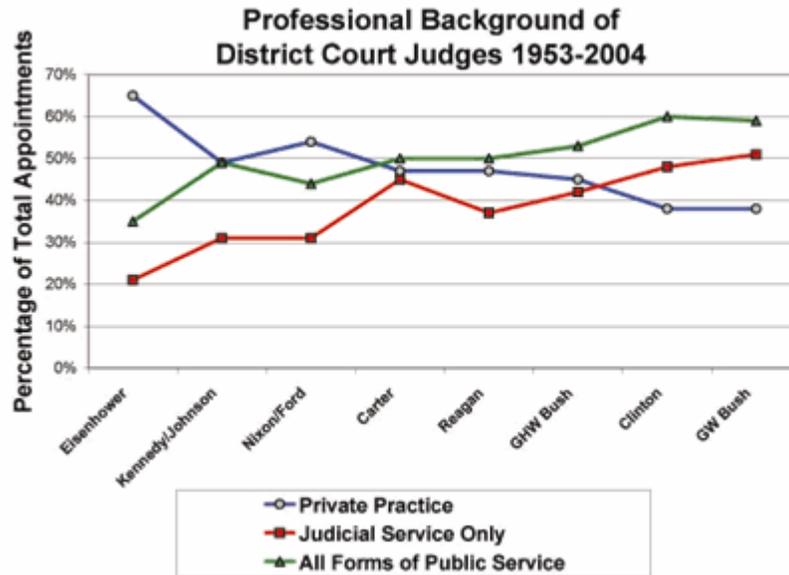
Today, federal district judges are paid substantially less than—about *half*—what the deans and senior law professors at top schools are paid. *See, e.g.*, Report of the National Commission on the Public Service, URGENT BUSINESS FOR AMERICA: REVITALIZING THE FEDERAL GOVERNMENT FOR THE 21ST CENTURY 22-23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