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2013 Year-End Report on the Federal Judiciary

The year's end brings predictable constants, including the revival of favorite phantoms—Scrooge's ghosts and George Bailey's guardian angel—who step out from the shadows for their annual appearance and then fade away. Who doesn't welcome the familiarity of the seasonal cycles, or retelling classic stories that, at their core, contain important truths? There are, however, some cycles from which we would all wish a break. At the top of my list is a year-end report that must once again dwell on the need to provide adequate funding for the Judiciary.

I would like to choose a fresher topic, but duty calls. The budget remains the single most important issue facing the courts. This year, however, let's take a page from Dickens and Capra. Let's look at what has made our federal court system work in the past, what we are doing in the present to preserve it in an era of fiscal constraint, and what the future holds if the Judiciary does not receive the funding it needs.

Through over two hundred years of committed effort, our federal court system has become a model for justice throughout the world. I know this first-hand from my conversations with foreign judges and judicial administrators, who visit our courts to gain insights, share ideas, and improve their own systems. Foreign jurists—especially those from emerging democracies who best understand the debilitating effects of injustice—uniformly admire the efficiency, fairness, and transparency of United States courts. They want to know the secret of our success. They are not surprised when I commend the intelligence and integrity of our federal judges, whose selfless commitment to public service is the core of our justice system. But they do raise an eyebrow when I also point out the vital role of the Legislative Branch of government.

The Framers of our Constitution created “one supreme Court,” but they vested Congress with the power to ordain and establish “inferior Courts.” Congress met that challenge through wise statesmanship wrapped in obscure legislation. Judges and lawyers recognize the importance of the Judiciary Act of 1789, which laid the foundation for our federal court system. But only legal historians appreciate the enduring significance of the Evarts Act of 1891, which created the regional courts of appeals; the Judiciary Act of 1925, which authorized the Supreme Court’s exercise of

discretionary review; or the Rules Enabling Act of 1934, which gave federal courts the power to promulgate their own rules of procedure. In each of these enactments, farsighted Members of Congress worked in close collaboration with Members of the Judiciary, improving the structure of the federal courts to meet the needs of the people they serve.

The past teaches a critical point that resonates beyond the din of pundits and polls: The United States courts owe their preeminence in no small measure to statesmen who have looked past the politics of the moment and have supported a strong, independent, and impartial Judiciary as an essential element of just government and the rule of law.

And what of the present? We in the Judiciary recognize what should be clear to all: The Nation needs a balanced financial ledger to remain strong at home and abroad. We do not consider ourselves immune from the fiscal constraints that affect every department of government. But, as I have pointed out previously, the independent Judicial Branch consumes only the tiniest sliver of federal revenues, just *two-tenths of one percent* of the federal government's total outlays. We nevertheless recognize our obligations and are committed to doing our part in reducing federal expenditures.

We began our cost-containment efforts nearly a decade ago, long before the talk of fiscal cliffs and sequestration came into vogue. As I

explained last year, the Judiciary adopted a plan in 2004 to contain rent payments, adopt space limitations for judicial personnel, and curtail new construction. It also launched a policy to control personnel costs by updating staffing formulas, eliminating unnecessary positions, and matching qualifications against pay. At the same time, the courts looked for creative ways to further curb expenses through innovative approaches to getting the work done. Over the past decade, the courts have become increasingly adept at leveraging available manpower through cost-effective deployments of information technology. Court administrators squeeze as much as they can from every dollar by carefully planning and timing upgrades of the computer systems the courts use to maintain court dockets, manage finances, and administer employee compensation and benefits programs. In recent years, the courts have focused on reducing redundancies and realizing economies of scale by sharing administrative services—such as financial and personnel management systems—among court units within and even across judicial districts and programs.

By its own initiative, the Judiciary had already achieved significant cost reductions when the sequester provisions of the Budget Control Act of 2011 went into effect on March 1, 2013. The five percent across-the-board sequestration cut reduced Judiciary funding by nearly \$350 million in fiscal

year 2013—a reduction on top of the cost savings that the courts had already achieved. The impact of the sequester was more significant on the courts than elsewhere in the government, because virtually all of their core functions are constitutionally and statutorily required. Unlike most Executive Branch agencies, the courts do not have discretionary programs they can eliminate or postpone in response to budget cuts. The courts must resolve all criminal, civil, and bankruptcy cases that fall within their jurisdiction, often under tight time constraints. And because many of the Judiciary’s expenditures, such as rent and judicial salaries, must be paid regardless of sequestration, the five percent cut that was intended to apply “across-the-board” translated into even larger cuts in discretionary components of the Judiciary’s budget.

The Executive Committee of the Judicial Conference—the judicial body responsible for funding allocations—responded to the sequester by adopting a number of emergency measures. Among its actions, the Executive Committee imposed a 10 percent reduction on funding allocations to court units, which resulted in further staffing losses in the courts. The combined effects since July 2011 of flat budgets followed by sequestration reduced on-board court staffing levels by 3,100 (14 percent) to about 19,000 employees—the lowest staffing level since 1997, despite significant

workload increases over that same period—and reduced federal defender offices staffing by 11 percent in fiscal year 2013 alone.

Sequestration cuts have affected court operations across the spectrum. There are fewer court clerks to process new civil and bankruptcy cases, slowing the intake procedure and propagating delays throughout the litigation process. There are fewer probation and pretrial services officers to protect the public from defendants awaiting trial and from offenders following their incarceration and release into the community. There are fewer public defenders available to vindicate the Constitution’s guarantee of counsel to indigent criminal defendants, which leads to postponed trials and delayed justice for the innocent and guilty alike. There is less funding for security guards at federal courthouses, placing judges, court personnel, and the public at greater risk of harm.

The Judiciary continues to look for ways to conserve funds in light of these constraints. For example, the Judicial Conference recently adopted a “No Net New” policy for courthouse space, in which any increase in square footage within a circuit must be offset by an equivalent reduction in square footage within the same fiscal year. The Conference has also targeted a three percent reduction in Judiciary space by the end of fiscal year 2018.

The only exceptions from these policies are new courthouses and repair and alterations projects specifically approved by Congress.

We in the Judiciary are grateful that Congress has recognized the special challenges the courts face. It restored a portion of the Judiciary's lost funding when it enacted a continuing resolution in mid-October to resolve the lapse in appropriations. We welcome Congress's initiative in passing the Bipartisan Budget Act of 2013, which establishes "top-line" budget caps for fiscal years 2014 and 2015. That legislation provides an opportunity for the Judiciary to receive some needed relief from sequestration in those years.

But what does the future hold for Congress's funding of court operations? On December 5, 2013, the Judicial Conference appealed to Congress to approve an appropriation of \$7.04 billion for the Judiciary for fiscal year 2014. The Conference calculated this amount, which again is less than two-tenths of one percent of total federal outlays, as needed for the federal courts to operate successfully. That amount strikes a fair balance. It is \$180 million less than the Judiciary's original budget request (we were optimistic), \$120 million less than the amount approved by the Senate Appropriations Committee in its version of the Judiciary's spending bill, and

only \$13 million more than the amount approved by the House Appropriations Committee in its bill.

The Judicial Conference's revised appropriation request includes \$5.05 billion for the salaries and expenses account that funds court operations nationwide, which is \$49 million above the House level, and \$41 million below the Senate level. That request would restore some staff positions in clerks of court and probation and pretrial services offices. It would also reverse cuts to drug and mental health testing and treatment services and restore funding for location monitoring of defendants awaiting trial and offenders on post-conviction release. And it would reinstate funding needed to maintain information technology systems and to invest in cost saving technologies.

What would be the consequence of forgoing this funding in favor of a hard freeze at the sequester level? The future would be bleak: The deep cuts to Judiciary programs would remain in place. In addition, faced with inflation-driven increases in the "must-pay" components of this account, the Judicial Conference would need to cut allocations to the courts nationwide by an additional three percent *below fiscal year 2013 levels*. Those cuts would lead to the loss of an estimated additional 1,000 court staff. The first consequence would be greater delays in resolving civil and criminal cases.

In the civil and bankruptcy venues, further consequences would include commercial uncertainty, lost opportunities, and unvindicated rights. In the criminal venues, those consequences pose a genuine threat to public safety.

The Judicial Conference also requests \$1.04 billion for its defender services account. That level of funding would support 210,000 defense representations in fiscal year 2014 and also pay deferred defense representation vouchers that, with the sequester, could not be paid in that year. The consequence of forgoing this funding in favor of a hard freeze at the sequester level would be increased delays of criminal trials. The Judiciary would also be forced to continue a temporary, emergency \$15 per hour rate reduction for private attorneys representing indigent criminal defendants that was necessitated by uncertainty regarding fiscal year 2014 funding.

The Judicial Conference seeks \$498 million for the court security account and \$54 million for the fees-of-jurors account. Each of those requests is *less* than the respective House and Senate proposed levels. A hard freeze at the sequester level for court security would result in a deepening threat to public safety at courts around the country. A similar hard freeze on juror fees would result in funding for juries running out two

months before the end of the fiscal year, again meaning potential delays for both criminal and civil trials.

Congress has set a target of January 15, 2014, to complete the appropriations process for fiscal year 2014. In the coming weeks, and into the future, I encourage the President and Congress to be attentive to the needs of the Judicial Branch and avert the adverse consequences that would result from funding the Judiciary below its minimal needs. The Judiciary continues to depend on the vision and statesmanship of our colleagues in the Executive and Legislative Departments. It takes no imagination to see that failing to meet the Judiciary's essential requirements undermines the public's confidence in all three branches of government. Both *A Christmas Carol* and *It's a Wonderful Life* have happy endings. We are encouraged that the story of funding for the Federal Judiciary—though perhaps not as gripping a tale—will too.

I am privileged and honored to be in a position to thank all of the judges, court staff, and judicial personnel throughout the Nation for their continued excellence and dedication. This past year, they have demonstrated admirable grit, fortitude, and creativity in matching the Judiciary's limited resources to the many demands of justice. In the face of

unprecedented challenges, the federal courts continue to discharge their responsibilities with wisdom, diligence, and care.

Best wishes in the New Year.

Appendix

Workload of the Courts

In 2013, caseloads increased in the U.S. district courts, remained relatively stable in the probation offices, and decreased in the U.S. appellate courts, bankruptcy courts, and pretrial services system. Total filings for civil cases and criminal defendants in the district courts grew one percent to 375,870. The number of persons under post-conviction supervision on September 30, 2013, fell less than one percent to 131,869. Filings in the regional courts of appeals declined two percent to 56,475. Cases opened in the pretrial services system dropped six percent to 103,003. Filings in the bankruptcy courts decreased 12 percent to 1,107,699.

The Supreme Court of the United States

The total number of cases filed in the Supreme Court decreased from 7,713 filings in the 2011 Term to 7,509 filings in the 2012 Term, a decrease of 2.6 percent. The number of cases filed in the Court's *in forma pauperis* docket decreased from 6,160 filings in the 2011 Term to 6,005 filings in the 2012 Term, a 2.5 percent decrease. The number of cases filed in the Court's paid docket decreased from 1,553 filings in the 2011 Term to 1,504 filings in the 2012 Term, a 3.2 percent decrease. During the 2012 Term, 77 cases were argued and 76 were disposed of in 73 signed opinions, compared to 79

cases argued and 73 disposed of in 64 signed opinions in the 2011 Term. The Court also issued five per curiam decisions during the 2012 Term in cases that were not argued.

The Federal Courts of Appeals

After rising four percent in 2012, filings in the regional courts of appeals dropped two percent to 56,475 in 2013. Appeals involving pro se litigants, which amounted to 51 percent of filings, fell one percent. Criminal appeals decreased 13 percent. Slight reductions occurred in appeals of administrative agency decisions and civil appeals. Original proceedings grew 20 percent, and bankruptcy appeals grew 12 percent.

The Federal District Courts

Civil case filings in the U.S. district courts rose two percent to 284,604. Cases involving diversity of citizenship (i.e., cases between citizens of different states) climbed four percent, largely as a result of increases in personal injury and product liability filings.

Cases filed with the United States as defendant increased four percent, driven by growth in Social Security cases. Filings with the United States as plaintiff fell 13 percent as cases involving defaulted student loans continued to decline.

Filings for criminal defendants (including those transferred from other districts) decreased three percent to 91,266. Excluding transfers, fewer defendants were reported for most types of major offenses, including drug crimes. Filings for defendants charged with immigration violations dropped five percent. The southwestern border districts accounted for 75 percent of the nation's immigration defendant filings.

Defendants prosecuted for sex offenses rose 10 percent. There also were increases in defendants charged with violent crimes and regulatory offenses.

The Bankruptcy Courts

Filings of bankruptcy petitions fell 12 percent to 1,107,699. Fewer petitions were filed in 86 of the 90 bankruptcy courts. Consumer (i.e., nonbusiness) petitions decreased 12 percent, and business petitions declined 17 percent. Bankruptcy petitions dropped 14 percent under Chapter 7, 10 percent under Chapter 11, and eight percent under Chapter 13.

After the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 took effect, a significant reduction in bankruptcy filings took place. Filings of petitions subsequently rose from 2007 to 2010. This year's total is 31 percent below that for 2010.

The Federal Probation and Pretrial Services System

The 131,869 persons under post-conviction supervision on September 30, 2013, was less than one percent below the total one year earlier. Persons serving terms of supervised release after leaving correctional institutions increased one percent to 109,379 and constituted 83 percent of all persons under supervision.

Cases opened in the pretrial services system in 2013, including pretrial diversion cases, declined six percent to 103,003.