

President's Message

LAWRENCE R. BACA

Appointing Judges and Paying Them a Proper Wage

JUSTICE STEVENS, THE last remaining member of the U.S. Supreme Court who was sitting when I graduated law school, has announced his retirement,¹ and President Obama has nominated Solicitor General Elena Kagan to replace him. Appointing judges is among the most important constitutional duties the President and the Senate have.

"The President ... shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law. ..." ² In addition, Article III of the Constitution provides that "Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office."³

This year, the Federal Bar Association has raised several issues with the President and the Congress concerning the federal judiciary. I thought I should take a look at the annual reports of Chief Justice John G. Roberts Jr. and highlight his concerns as well.⁴

Chief Justice Roberts began his 2005 report by declaring that the state of the judiciary was strong. Reflecting on the 250th anniversary of Chief Justice John Marshall's birth date, which had been celebrated earlier,⁵ Chief Justice Roberts observed that, if he were still alive, Marshall "would see in the work of the men and women who took the same judicial oath he did the same commitment to uphold the Constitution and to fulfill the Framers' vision of a judicial branch with the strength and independence 'to say what the law is,' without fear or favor."⁶ Chief Justice Roberts also raised four vital issues on which the FBA has also commented: violence directed at judges, the high cost of rent, the increasing caseloads of the courts, and judicial pay. According to the chief justice, "Our system of justice suffers as the real salary of judges continues to decline. Every time an experienced judge leaves the bench early, the judiciary suffers a real loss. Every time a judge leaves the bench for a higher paying job, the independence fostered by life tenure is weakened. Every time a potential nominee refuses to be considered, the pool of candidates from which judges are selected narrows."⁷

Addressing pay equity in his 2006 report, Chief Justice Roberts wrote that inflation and a failure to receive adequate cost-of-living increases has led to a 24

percent decrease in real judicial pay since 1969.⁸ The 2007 annual report promised increased communications between the judiciary and the other branches of government, renewed attention to continuing judicial integrity, and a focus on judicial salaries.⁹ The Chief Justice highlighted the many cost savings instituted by the federal judiciary in 2008 while pointing out that Congress had appropriated "a mere two-tenths of 1 [percent] of the United States' total \$3 trillion budget" to the federal judiciary: "Two-tenths of 1 [percent]! ... for one of the three branches of government—the one charged to guard the Constitution and the rights of individuals."¹⁰

I agree with all the issues raised by Chief Justice Roberts.¹¹ It is a national embarrassment that judicial pay has not kept abreast of the national pay norms.¹² Midway through 2010, I would add several concerns the FBA has to those addressed by the Chief Justice.

Swift presidential and Senate attention to the vacancies in the federal court system is needed. Those vacancies include 18 openings on federal circuit courts of appeals and 84 openings at the district court level. Filling these 102 judicial vacancies is just the first step, however. Backfilling those positions will merely bring an overworked system up to its current authorized strength. Congressional action is also necessary on a bill that will create 12 new circuit court judgeships and 51 new district court judgeships. The President and the Congress must act with urgency to avoid a crisis in our federal judicial system. **TFL**



A handwritten signature in black ink that reads "Lawrence R. Baca". The signature is fluid and cursive, with a large loop at the beginning and a long tail.

Endnotes

¹See *President's Message*, TFL March/April 2010.

²CONSTITUTION OF THE UNITED STATES, ART. II, § 2, Cls. 3.

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Section Spotlight

MICHAEL R. SKLAIRE

Criminal Law Section

On behalf of the Criminal Law Section, we are honored and appreciative that *The Federal Lawyer* has provided an opportunity for some of our section's members to share their insight and expertise in this issue. As exhibited by the diverse roster of authors, the Criminal Law Section is made up of prosecutors, defense lawyers, compliance lawyers, judges, government attorneys, and military lawyers who practice in federal and military courts. The Criminal Law Section provides an outlet for members to share ideas, review recent case law, and provide a geographic and subject-matter referral network. The section publishes a newsletter several times a year and provides Supreme Court and policy updates to our members on a periodic basis.

We hold an annual CLE conference, which will be incorporated as part of the Federal Bar Association's Annual Conference in New Orleans this year. The section will also sponsor two presentations, one on immigration and worksite enforcement and the other on corporate

fraud in the post-Madoff era. In addition, the Criminal Law Section hosts receptions and organizes programs throughout the year jointly with the local FBA chapters. In the next few months, we are looking to team up with chapters from around the country to host meet-and-greet sessions with the new U.S. attorneys.

The section's board of directors, which meets by telephone monthly and gets together once a year, consists of an assistant U.S. attorney, an assistant federal public defender, a U.S. magistrate judge from the District of Arizona, the federal public defenders for the Eastern District of Virginia and the Eastern District of Louisiana, and several attorneys in private practice. If you would like to learn more about the benefits of being a member of the Criminal Law Section, or if you wish to be more active and join the board, please contact me. **TFL**

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They are living, sentient beings. They are happy to see you when you get home after a long day at the office. They are intelligent and can learn to sit, speak, or catch a Frisbee. They are not children, but that should not be the only measure of who deserves protection. Slowly, courts are starting to recognize man's best friend as a member of the family. *Campbell v. Animal Quarantine Station*, 632 P.2d 1066 (Hawaii 1981) (granted damages for emotional distress for the loss of pet dog that was

left in a hot, unventilated state vehicle). More people are rallying to champion the status of animals. The welfare of animals will never serve a compelling government interest as long as they are not recognized as something more than personal property. That is why, in my opinion, *U.S. v. Stevens* was affirmed. **TFL**

Julie China is a member of The Federal Lawyer's editorial board.

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³*Id.*, Art. III, § 1

⁴The Chief Justice, sworn in on Sept. 29, 2005, has issued five Year-End Reports on the Federal Judiciary during his tenure.

⁵Sept. 24, 2005.

⁶2005 Year-End Report on the Federal Judiciary, Chief Justice John G. Roberts Jr., citing to *Marbury v. Madison*, 5 U.S. 137 (1803).

⁷*Id.*

⁸2006 Year-End Report on the Federal Judiciary, Chief Justice John G. Roberts Jr.

⁹2007 Year End Report on the Federal Judiciary, Chief Justice John G. Roberts Jr.

¹⁰2008 Year-End Report on the Federal Judiciary,

Chief Justice John G. Roberts Jr., citing to Alexander Hamilton, *Federalist No. 78*.

¹¹In 2009, the Chief Justice limited his report to little more than stating that the "courts are operating soundly, and the nation's dedicated federal judges are conscientiously discharging their duties. See, 2009 Year-End Report on the Federal Judiciary, Chief Justice John G. Roberts Jr. Each of the reports also contains several pages of appendices with the statistical breakdowns of the work of the federal courts.

¹²According to the 2006 Year-End Report the average U.S. worker's pay, adjusted for inflation, rose 17.8 percent creating a 41 percent gap between the judiciary and the average U.S. worker.