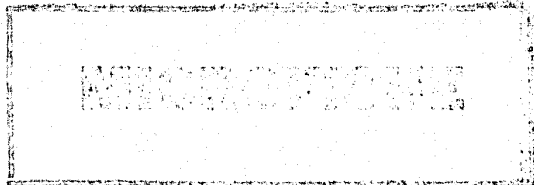


THE NEEDS OF THE FEDERAL COURTS

**Report of the
Department of Justice Committee
on
Revision of the Federal Judicial System**

JANUARY 1977.



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DEPARTMENT OF JUSTICE COMMITTEE
ON
REVISION OF THE FEDERAL JUDICIAL SYSTEM
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PREFACE

In his address to the Sixth Circuit Judicial Conference on July 13, 1975, President Gerald R. Ford expressed his deep concern about the problems confronting the federal judicial system. At the President's direction, Attorney General Edward H. Levi appointed within the Department of Justice a Committee on Revision of the Federal Judicial System. With Solicitor General Robert H. Bork serving as Chairman, the Committee conducted numerous studies and discussed various proposals through June 1976, at which time this Report was prepared. Since then some of the Committee's proposals have been modified to take account of recently-enacted laws and other developments. These changes are reflected in the recommendations offered in the Report.

REPORT ON THE NEEDS OF THE FEDERAL COURTS

Introduction

Our federal courts have served us so well for so long that we have come to take their excellence for granted. We can no longer afford to do so. The federal court system and the administration of justice in this nation need our attention and our assistance. Law and respect for law are essential to a free and democratic society. Yet without a strong and independent federal judicial system we can maintain neither the rule of law nor respect for it.

The central functions of the federal courts established under Article III of the Constitution of the United States are to protect the individual liberties and freedoms of every citizen of the nation, to give definitive interpretations to federal laws, and to ensure the continuing vitality of democratic processes of government. These are functions indispensable to the welfare of this nation and no institution of government other than the federal courts can perform them as well.

The federal courts, however, now face a crisis of overload, a crisis so serious that it threatens the capacity of the federal system to function as it should. This is not a crisis for the courts alone. It is a crisis for litigants who seek justice, for claims of human rights, for the rule of law, and it is therefore a crisis for the nation.

In this century, and more particularly in the last decade or two, the amount of litigation we have pressed upon our federal courts has skyrocketed. In the fifteen year period between 1960 and 1975 alone, the number of cases filed in the federal district courts has nearly doubled, the number taken to the federal courts of appeals has quadrupled, and the number filed in the Supreme Court has

doubled. Much of this litigation is more complicated because of the rising complexity of federal regulation.

Despite this rising overload, we are asking the judges of the federal courts to perform their duties as effectively as their predecessors with essentially the same structure and essentially the same tools. They are performing wonders in coping with the rising torrent of litigation, but we cannot expect them to do so forever without assistance. This Report sets forth proposals for legislation that will enable our federal courts, now and in the future, to continue to carry out their essential mission.

I. THE THREAT OF RISING WORKLOAD

Overloaded courts are not satisfactory from anyone's point of view. For litigants they mean long delays in obtaining a final decision and additional expense as court procedures become more complex in the effort to handle the rush of business. We observe the paradox of courts working furiously and litigants waiting endlessly. Meanwhile, the quality of justice must necessarily suffer. Overloaded courts, seeking to deliver justice on time insofar as they can, necessarily begin to adjust their processes, sometimes in ways that threaten the integrity of the law and of the decisional process.

District courts have delegated more and more of their tasks to magistrates, who handled more than one-quarter of a million matters in fiscal 1975 alone. Time for oral argument is steadily cut back and is now frequently so compressed in the courts of appeals that most of its enormous value is lost. Some courts of appeals have felt compelled to eliminate oral arguments altogether in many classes of cases. Thirty percent or more of all cases are now decided by these courts without any opportunity for the litigant's counsel to present his case orally. More disturbing still, the practice of delivering written opinions is declining. About one-third of all courts of appeals' decisions are now delivered without opinion or explanation of the results. See, *e.g.*, 538 F. 2d 307-348 (1976).

These are not technical matters of concern only to lawyers and judges. They are matters and processes that go to the heart of the rule of law. The American legal tradition has insisted upon practices such as oral argument and written opinions for very good reason. Judges, who must be independent and are properly not subject to any other discipline, are required by our tradition to confront the claims and the arguments of the litigants. They

must demonstrate to the public that they are not acting out of whim, caprice, or mere personal preference. Our tradition requires that judges explain their decisions and thereby demonstrate to the public that those decisions are supported by law and reason. Continued erosion of traditional practices could cause a corresponding erosion of the integrity of the law and of the public's confidence in the law.

These problems are only a few of the most visible symptoms of the damage that is being done to our federal court system by having more and more cases thrust upon it. There are others. Courts are forced to add more clerks, more administrative personnel, to move cases faster and faster. They are losing time for conference on cases, time for reflection, time for the deliberate maturation of principles. We are, therefore, creating a workload that is even now changing the very nature of courts, threatening to convert them from deliberative institutions to processing institutions, from a judiciary to a bureaucracy. This development, dangerous to every citizen in our democracy, must be arrested and reversed. And it must be done in ways that will preserve the quality of justice in our federal courts.

The solutions proposed in this Report are broad in concept and in effect. Remedies of smaller scope, remedies that tinker here and there for the sake of minor and temporary relief, are simply not adequate to meet a problem of broad scale. Caseloads will continue to increase dramatically according to almost all predictions. The solutions offered, therefore, are designed not only to afford immediate relief to the courts and the public but to provide for the future. Their adoption should at once preserve our federal courts for their central task of guarding human rights and democratic government while improving the quality of justice, as well as cutting the time and cost of securing it, for every person who goes to federal court.

II. REMEDIAL MEASURES

To cope with the crisis of volume, three basic approaches are recommended. First, we must enlarge the resources of the federal courts to handle the caseload—by adding judges and creating new tribunals. Second, we must lighten the load of work that falls upon the courts by reducing the categories of matters they must entertain and decide. With regard to the Supreme Court, this requires rescinding their obligatory jurisdiction in certain types of appeals. With respect to the district courts, it involves the elimination of diversity jurisdiction; it also requires that litigants exhaust alternative avenues of relief before bringing certain cases into the federal courts. Third, we must adopt measures to enhance the effectiveness and the efficiency of the system. This includes improving the way we select judges and creating a capability in the system to anticipate and deal with new developments in federal law that are likely to have serious impact upon the volume or nature of the federal courts' work.

A. Enlarging the Capacity of the Federal Judicial System

1. Additional judges, better selected

One response to the problem of overload is the appointment of more federal judges. Bills creating more judgeships for our district courts and courts of appeals (S. 286, 287) have been pending in Congress for several years. Provisions for more judgeships should be enacted without further delay.

The quality of federal justice depends on the quality of federal judges. There are currently 596 judgeships in the various federal court systems under Article III of the Constitution, including the Supreme Court, the Circuit Courts of Appeals, the District Courts, the Court of Claims, the Court of Customs and Patent Appeals.

and the Customs Court. Although the quality of the federal bench is in fact high and perceived to be high, few would deny that there is room for improvement on both the trial and appellate levels. Our efforts must be to assure excellence in judicial appointments.

The Constitution provides that federal judges are to be appointed by the President, "by and with the advice and consent of the Senate." In fact, however, there has developed over the years a system of judicial selection that has come to be known as "Senatorial courtesy." This term refers to a veiled selection process that is heavily political and grounded in outdated notions of senatorial patronage. This practice is consistent with neither the interests of the American public nor the needs of the federal judicial system.

For the purpose of reassessing the current selection procedures, the Committee recommends creation of a Commission on the Judicial Appointment Process. This group should include representatives of diverse segments of the legal community and the public at large. It should recommend: (1) standards to be utilized in the selection of candidates for judicial appointment; (2) useful roles for the various individuals and institutions concerned with the selection of federal judicial candidates; and (3) procedures and structures to attract and retain highly qualified judicial personnel.

Although it is clearly essential today that Congress increase the number of judges to cope with the rising tide of litigation, and that they be judges of high quality, such an approach does not promise a long-term solution. Swelling the size of the federal judiciary indefinitely would damage collegiality, an essential element in the collective evolution of sound legal principles, and diminish the possibility of personal interaction throughout the judiciary. These developments would be harmful

to the quality of judicial decision and would also increase the likelihood of conflicting decisions between district courts and between the courts of appeals for the various circuits. That would lessen public confidence in the courts, create confusion about legal rules, and increase the amount of litigation and its cost to the public.

Moreover, a powerful judiciary, as Justice Felix Frankfurter once observed, is necessarily a small judiciary. That is so for several reasons. Large numbers dilute the great prestige that properly attaches to a career on the federal bench and, given the low compensation that we provide for federal judges, that dilution will make it increasingly more difficult to attract first-rate men and women. We will never pay the incomes to judges that they could earn in other pursuits and we must not create conditions that require us to settle for second best in the federal courts.

Over the long run, therefore, we need more than additional judgeships. We cannot go on expanding the size of the federal judiciary indefinitely. We must also reexamine the responsibilities with which our courts are charged to ensure that this precious and finite resource can continue to function in the best interests of all our citizens.

2. Non-Article III Tribunals

The proposal with the most significance for the future of our federal court system is the creation of new tribunals to shoulder the enormous and growing burden of deciding the mass of technical or repetitious factual issues generated by federal regulatory and welfare programs.

Few changes in our government during the past 50 years have been so remarkable as the growth of federal welfare and regulatory programs. Federal legislation now addresses our most basic needs: air, water, fuel, electric power, medicines, food, education, and safety. Special federal

programs provide assistance for the poor, the jobless, the disabled, and other needy citizens. These crucial matters deserve special attention. Yet this vast network of federal law has been entrusted, in large part, to a judicial system little changed in structure since 1891. Review of agency action, and lawsuits arising directly under federal statutes, now constitute as much as one-fifth of the business of the federal courts, and litigation under new legislation will make the effect even more substantial. For example, the Mine Safety Act potentially could generate more than 20,000 full jury trials each year in the district courts, a burden that would overwhelm the courts and defeat rights the new legislative programs are designed to extend.

There is no immediate prospect that this process of adding new federal programs will end. Whatever we may think of that trend, we should at a minimum take care that we do not swamp the federal courts and with them the needs of the litigants. It can only be disheartening for a litigant whose claim requires no more than a thoughtful and disinterested factfinder to be forced into competition with all other civil and criminal business for the precious time of an Article III judge. Although Article III courts are uniquely qualified to protect individual freedoms, interpret federal laws, and preserve democratic processes of government—the indispensable functions of the federal courts—they are not unique in their ability to adjudicate relatively unsophisticated, repetitious factual issues. Many other kinds of tribunals perform that function as accurately and as well.

The Committee, therefore, proposes creation of a new system of tribunals that can handle claims under many federal welfare and regulatory programs as capably as the Article III courts and with greater speed and lower cost to litigants. The shifting of these cases to the new tribunals will also preserve the capacity of the

Article III courts to respond, as they have throughout our history, to the claims of human freedom and dignity.

The cases that should be transferred to new tribunals are those that involve repetitious factual disputes and rarely give rise to important legal questions. Among these are, for example, claims arising under the Social Security Act, the Federal Employers Liability Act, the Consumer Products Safety Act, and the Truth-in-Lending Act. These matters have great individual and social significance but the questions they raise could be handled as effectively and justly by trained administrative judges as by Article III judges burdened with the pressing business of a general criminal and civil jurisdiction.

None of the special competence of our present Article III courts would be lost to litigants in these new tribunals. If a substantial question of constitutional or statutory interpretation arose in the administrative system, that question could be referred to the appropriate Article III court for decision. Review of that legal determination could be sought by petition for certiorari in the Supreme Court. Litigants would retain every important right they now possess and would gain much in savings of time and money.

New administrative tribunals also could provide much needed flexibility. For example, an administrative court system could consist of an Article I trial division, in which all cases would be filed in the first instance, and an administrative court of appeals. The trial division could serve the function now served by administrative law judges in many cases, thereby compressing and expediting internal agency review. Procedures before the trial court would vary with the complexity of the case and the needs of the parties. Many cases could be handled informally and without counsel unless the claimant desired one, giving some of the advantages of

small claims courts. Other cases, involving technical matters, might require rigorous procedural and evidentiary rules, but could be more easily handled with the assistance of a permanent expert staff.

These proposals avoid a major pitfall of comparable proposals, for the administrative court would not be specialized by a single subject matter. The administrative judge would be able to maintain a broad perspective while developing increased familiarity and expertise in dealing with administrative cases. In addition, the caseload would be sufficiently general to attract judges of high caliber.

Specialized courts and boards already play an important role in our governmental system. The Tax Court, for example, has provided a useful alternative to suits in federal district courts. The Armed Services Board of Contract Appeals and other similar boards resolve the great majority of contract disputes involving the government. The Board of Immigration Appeals provides valuable service in the specialized matters within its jurisdiction. And administrative tribunals have long been accepted in foreign countries such as Belgium, Italy, and France. These tribunals may serve as useful models for creation of a system of administrative courts.

The gains for Article III courts would be substantial. Implementing this proposal now would relieve them each year of more than 20,000 cases, perhaps more than 30,000 cases. Avoiding a growing and ultimately crushing burden in the future is even more important. It is essential that litigation under future federal programs be directed to the tribunal in which it can be handled most effectively. For too long, Congress has ignored the effect of new federal programs on our overworked judicial system.

Although this proposal is simple in concept, implementing it will, of course, require much experimentation. For that reason, the Committee suggests that the proposal be referred to the Council on Federal Courts (proposed later in this Report) for development of additional details. The plan might then be implemented in stages, beginning with a pilot study conducted by assigning to these new tribunals a few categories of cases, such as Social Security disability claims and Mine Safety Act disputes, in a limited number of federal districts. The pilot effort could be reviewed carefully, both to ensure that no injustices occurred and to find the best procedures. The system of new tribunals should then be gradually expanded, both by subject matter and geographically, until it has attained its full potential.

B. *Reducing the Burdens on the Federal Judicial System*

Other measures must also be taken to curtail the flow of cases into the court system, or into particular courts where the pressures of excessive volume are most acute. The jurisdiction of the federal courts has been revised several times in the past, always with beneficial results. It is now necessary again. Approaches must vary, of course, depending on whether they relate to the jurisdiction of the Supreme Court, the courts of appeals or the district courts.

1. *Supreme Court: Elimination of Mandatory Appellate Jurisdiction*

The business of the Supreme Court, like that of the other federal courts, has expanded significantly in recent years. After growing steadily for three decades, the number of filings in the Supreme Court began to accelerate ten years ago, increasing from 2,744 cases in the 1965 Term to 4,186 in 1974. Fortunately, Congress has given the

Court discretionary (or *certiorari*) jurisdiction over much of its docket, enabling the Court to hold nearly constant the number of cases (150 to 160) it decides on the merits after oral argument. These are the cases that necessarily consume the bulk of the Justices' time. Nevertheless, despite the broad scope of its discretionary jurisdiction, the Supreme Court is needlessly burdened by appeals the Court has no power to decline. The Committee therefore recommends that the remaining mandatory appellate jurisdiction of the Supreme Court be abolished.

During the past several years Congress has taken significant steps to reduce the burden of the Supreme Court's mandatory docket, most notably by eliminating in large part the cases heard by three-judge district courts and appealed directly to the Supreme Court. The Court is still required, however, to consider on the merits cases from the state court systems in which a federal law has been invalidated or a state law upheld in the face of a federal constitutional attack. In addition, the Court must consider on the merits appeals from federal courts of appeals and, more significantly, from district courts when a federal statute has been held to be invalid.

Obligatory Supreme Court review of appeals from state courts and federal courts of appeals should be eliminated, as the Federal Judicial Center's Study Group on the Caseload of the Supreme Court concluded four years ago. While these cases have typically accounted for only a small percentage of the Supreme Court's business, the number of cases appealed from the federal district courts and courts of appeals will increase as a result of the virtual elimination of three-judge district courts. The Committee believes there is no reason why they should be subject to special treatment.

Nor is there sufficient reason to require the Supreme Court to review on the merits all cases in which the highest court of a state invalidates a federal law or upholds a state statute in the face of a federal constitutional attack. Mandatory Supreme Court review in these circumstances implies that we cannot rely on state courts to reach the proper result in such cases. This residue of implicit distrust has no place in our federal system. State judges, like federal judges, are charged with upholding the federal constitution. Indeed, the Supreme Court itself now summarily disposes of nearly all these state cases, deciding them without briefing or argument. In effect, the Supreme Court is exercising discretionary jurisdiction although the statute makes review mandatory. It is time to conform the law to the reality.

Congress should, therefore, eliminate those sections of the United States Code imposing mandatory review jurisdiction and make the certiorari practice applicable throughout the Supreme Court's jurisdiction. There is no reason to presume that issues raised on appeal are more important than issues raised on certiorari. We now trust the Supreme Court to decide important issues; we should trust it to decide which cases are most in need of review.

2. Relief for the Courts of Appeals and District Courts

In order to provide essential relief to the lower federal courts, (1) diversity jurisdiction should be abolished and (2) state prisoners should be required to exhaust their state remedies before starting a federal suit to attack prison conditions.

a. Elimination of Diversity Jurisdiction

Claims under state law are the basis of the vast majority of lawsuits in this country. When the litigants are residents of the same state, these cases are decided in state

tribunals, and no one objects to that. However, when the litigants are citizens of different states, such suits have long been allowed to enter the federal courts, even though they involve only questions of state law. These diversity cases account for a large part of the federal district courts' caseload.

More than 30,000 diversity cases were filed in the district courts during fiscal 1975, constituting almost one-fifth of the total filings. During the same year, diversity cases accounted for more than 25 percent of all jury trials and, notably, 68 percent of all civil jury trials. Appeals from diversity cases constitute slightly more than 10 percent of the filings in the courts of appeals.

The burden diversity jurisdiction imposes on the federal courts can no longer be justified. State courts, not federal courts, should administer and interpret state law in all such cases. Federal judges have no special expertise in such matters, and the effort diverts them from tasks only federal courts can handle or tasks they can handle significantly better than the state courts. Federal courts are particularly disadvantaged when decision is required on a point of state law not yet settled by the state courts. The possibilities both of error and of friction between state and federal tribunals are obvious.

The modern benefits of diversity jurisdiction are hard to discern. The historic argument for diversity jurisdiction—the potential bias of state courts or legislatures—derives from a time when transportation and communication did not effectively bind the nation together and the forces of regional feeling were far stronger. As the Chief Justice has remarked, “[c]ontinuation of diversity jurisdiction is a classic example of continuing a rule of law when the reasons for it have disappeared.” Other Justices of the Supreme Court, as well as prominent legal scholars and practitioners, agree. Diversity cases involving less than

\$10,000 have been left to the States for many years without noticeable difficulty. The additional burden on the state courts would be small since the cases would be distributed among the fifty state systems. What is needed therefore is full elimination of diversity jurisdiction.

b. *Requiring Exhaustion of State Remedies in Prisoner Civil Rights Act Cases*

Prisoner cases now constitute a significant part of the district courts' work. In fiscal 1975, prisoners filed 19,307 petitions, approximately 16 percent of the new civil filings. Of these, about 11,000 were *habeas corpus* petitions or motions to vacate sentence. The remainder consisted primarily of civil rights actions, which normally attack the deficiencies of prison conditions.

Most civil rights actions of this type are filed by state prisoners. The 6,000 filings by state prisoners are more than triple the number filed five years ago and 27 times the number filed in 1966. Only a small percentage go as far as an actual trial, but the burden on the federal courts from these cases is significant and it appears to be growing.

H.R. 12008, introduced on February 19, 1976, authorizes the Attorney General of the United States to institute suits on behalf of state prisoners, after notice to prison officials, and to intervene in suits brought by private parties upon a certification by the Attorney General "that the case is of general importance." The bill also provides that "[r]elief shall not be granted" in individual actions under 42 U.S.C. 1983 unless it appears that the individual has "exhausted such plain, speedy, and efficient State administrative remedy as is available. An exception is made when "circumstances [render] such administrative remedy ineffective to protect his rights."

When prisoner complaints are based on allegations of system-wide problems, representation by the Attorney General should correct the situation. Exhaustion of state administrative remedies would eliminate from the federal courts at least the cases decided favorably to the prisoner. Unsuccessful litigants might continue to press their claims in federal courts, but the court should have the benefit of a more complete record and more focused issues. The bill will also encourage the states to develop more responsive grievance procedures. It is the responsibility of the states to provide adequate penal facilities and treatment for state prisoners and, in the initial stages, the administrative process is better suited than a federal court to handle typical prisoner complaints. New procedures instituted by the Federal Bureau of Prisons seem to be supplying a useful grievance mechanism for federal prisoners and reducing the number of federal suits.

C. A Planning Capability for the Federal Judicial System

The work of the federal courts will continue to change rapidly and substantially. If we are to act responsibly, we must anticipate new problems and develop solutions before the difficulties confronting the courts reach an advanced stage.

To satisfy the immense demands on them, the federal courts need the very best structure and the most effective procedures the nation can provide. They must be able to respond as soon as trends in the volume and nature of the courts' work can be identified. To have this, the courts will need a permanent agency that has the responsibility for making proposals to the Congress and to the Judicial Conference of the United States.

The concept of creating a planning capability for the third branch of government is not novel. Six years ago Chief Justice Burger urged consideration of the idea of forming a Judiciary Council of six members, comprised

of two appointees of each of the three branches of Government. The Council would report to the Congress, the President and the Judicial Conference on the wide spectrum of developments that affect the work of the federal courts.

A slightly different version of the proposal was advanced in 1975 by the Commission on Revision of the Federal Court Appellate System, which supported creating a standing body to study and make recommendations regarding the problems of the federal courts.

Whatever its form, an agency is needed to project trends, foresee needs and propose remedial measures for consideration by the profession, the administration, the Congress and judicial groups. The judicial planning agency could draw on work done by Committees on the Judiciary of both Houses, the Federal Judicial Center, the Judicial Conference of the United States, the Department of Justice and private groups. The role of systematically auditing the functions of the federal courts must be an ongoing effort that permits the members of a permanent panel to develop deep, expert knowledge and a sure feel for what the courts need today and are likely to need tomorrow. This is not now being done in any coordinated or coherent way.

The Committee therefore recommends creation of a Council on Federal Courts.

III. THE NATIONAL COURT OF APPEALS

After extensive study and hearings the Commission on Revision of the Federal Court Appellate System proposed in 1975 creation of a National Court of Appeals, a new seven-member tribunal, standing between the present regional Courts of Appeals and the Supreme Court. The Commission viewed the purpose of the tribunal as filling the need to resolve conflicts in rulings among the courts

of appeals on issues of national law and to enlarge the capacity of the federal judicial system to make definitive declarations in significant cases of national law, whether or not intercircuit conflicts were involved. It was not a goal of the proposal—which is now under review by a Senate subcommittee in the form of two bills (S. 2762, S. 3423)—to provide relief for the very heavy workload of the Supreme Court. Under the current version of the plan the National Court of Appeals would get its docket from the cases referred to it by the Supreme Court, with the possibility of ultimate return to that Court.

While recognizing the thought and effort behind the Commission report, the Committee opposes creation of a new National Court of Appeals at this time.

Adding a National Court of Appeals almost surely would increase the already heavy burden on the Supreme Court. The Justices, experienced at simply accepting or declining to accept cases for review, would have to decide in addition whether cases should be reviewed initially by the Supreme Court or referred to the National Court of Appeals. That determination would require considerable study to identify the pivotal issues of cases and to understand their ramifications. There would, inevitably, be disagreements about which of three choices, rather than the present two, was best. The problems inherent in that process are considerable. The quite natural effect of expanding the options will be to increase the complexity of the choice and thereby increase the time needed for these threshold determinations, which the Supreme Court is now able to make rapidly. The large growth in Supreme Court filings would then become substantially more of a burden than it now is.

Moreover, each decision on the merits by the National Court of Appeals would have to be scrutinized very carefully by the Supreme Court to ensure that an issue had not been finally resolved, or even dicta pronounced, in a manner contrary to its own views. An erroneous decision by a National Court of Appeals obviously carries far graver consequences than a similar decision by one of the present courts of appeals. The necessity of granting plenary review of a decision of the National Court might arise frequently, particularly if the judicial philosophies of the two benches should differ to any significant degree. That would impose upon many litigants four separate stages of federal adjudication with the expense and delay we all want to avoid, and a still further increase in the burden upon the Supreme Court.

In light of these dangers and others, a new National Court should be created only if the current need is clear and compelling. It is not. Rather than giving relief to the Supreme Court, or the other existing courts of appeals, the National Court of Appeals is aimed at increasing national appellate capacity in order to decide cases that involve conflicts in the circuits and significant issues that the Supreme Court, at least for a time, would not address. But there is little evidence that the Supreme Court has refrained from resolving any significant number of inter-circuit conflicts that involve recurring issues or questions of general importance. Moreover, a high proportion of the other cases deemed suitable for the National Court of Appeals involve specialized areas of tax or patent law. If more nationally-binding decisions are needed in these fields, the proper approach is to create national courts of tax and patent appeals. This not only would increase national appellate capacity for tax and patent cases, but also would benefit the courts of appeals by relieving them of such cases. Any other important cases that the Supreme Court should, but cannot now, decide could be handled under the existing system as the Supreme Court is relieved of its mandatory appellate jurisdiction.

Before we create a new national court with power and prestige exceeded only by the Supreme Court itself, we must be able to say that we are taking this momentous step because other remedial measures have been found wanting and because the gains clearly offset the disadvantages. At this time, such a statement cannot be made. The subject may warrant further study after the other proposals in this Report have been implemented; until then the National Court of Appeals proposal should not be adopted.

CONCLUSION

In speaking about improving the federal courts, we are considering how we can make a great institution greater. The plain answer is to give the courts the capacity to do the vital work the country expects of them. The dramatic increase in the business of the federal courts shows that we as a people believe in the rule of law and trust our courts to give us justice under law. It also shows that in the 201st year of the country's life we are still devoted to the Constitution's basic concept that the judicial branch is an equal partner in our government.

The American people expect that the courts will be reasonably accessible to them if they have claims they want judged. They also expect that the courts will not be so costly that they price justice out of reach. And they expect, too, that the courts will not be so slow that justice will come too late to do any good. People also have a right to expect that when they go into the federal courts, whether as litigant, witness or juror, they will be treated with decency and dignity. In short, they are entitled to believe that the courts will be humane as well as honest and upright.

To ensure that the federal court system continues to meet these legitimate expectations, the Committee urges that serious consideration be given to the recommendations made here. They are necessary and will immeasurably strengthen our system of justice.

END