

Roberts' Annual Report Focuses on Threats to Judicial Independence

By Tony Mauro, New York Lawyer Legal Times - January 6, 2006

The year 2005 was a stormy one for the judiciary, not only because of the death of Chief Justice William Rehnquist, but because of clashes with Congress over the Terri Schiavo case, the politicking over judicial nominees, and issues such as Supreme Court citation of foreign laws and precedents.

Yet when Chief Justice John Roberts Jr. issued his first annual report on the state of the judiciary last week, he sidestepped those controversial questions and focused instead on what he saw as more bread-and-butter threats to judicial independence: low judicial salaries and high rental costs for courthouses. In doing so, he followed the precedent of predecessors Warren Burger and Rehnquist, who largely avoided controversial topics other than judicial salaries in their 30 years of annual reports.

Higher pay for judges and rent relief for courthouses, Roberts said, would have a "vanishingly small" impact on the overall federal budget but "would go a long way toward maintaining a strong and independent federal judiciary with the resources to administer justice efficiently and fairly. And that is priceless." Roberts also called for increased security for judges in the wake of violence aimed at federal and state judges last year.

Roberts issued the report three months into his tenure as chief justice, which he described as "a bit presumptuous," but said he did not want to break with the tradition of his predecessors.

Rep. Adam Schiff (D-Calif.), co-chair of the Congressional Caucus on the Judicial Branch, supports Roberts' appeals, but expressed the hope that Roberts and the rest of the judiciary will do more to build public support for a more broadly defined brand of judicial independence.

"He could set a completely new tone and make an outreach to Congress and to the public to help the people understand that the judge's role is not to be popular," said Schiff. "He did not focus on that aspect of judicial independence." Schiff's caucus comprises two dozen members of Congress interested in improving relations between the legislative and judicial branches. The caucus has not yet met with Roberts, Schiff said.

The salary issue raised by Roberts is a recurring theme for chief justices; in 2002, as Roberts noted, the late Chief Justice William Rehnquist said he was 'beating a dead horse' by raising it. But the situation has only gotten worse, Roberts said, with the real pay of federal judges declining almost 24 percent since 1969. With a raise that began on Jan. 1, the annual salary of the chief justice went to \$212,100. Associate justices are paid \$203,000, while appeals judges get \$175,100, and district court judges receive \$165,200.

"There will always be a substantial difference in pay between successful government and private sector lawyers," Roberts acknowledged in his written report. "But if that difference remains too large -- as it is today -- the judiciary will over time cease to be made up of a diverse group of the nation's very best lawyers." Roberts noted that increasing numbers of judges are leaving the bench -- nine in the last year. "Every time a judge leaves the bench for a higher paying job, the independence fostered by life tenure is weakened," Roberts said.

The rent complaint is a newer but growing problem. During the 2005 fiscal year, the judiciary paid \$926 million to the General Services Administration in rent, Roberts said, even though the GSA's actual cost of providing the space was \$426 million. "The federal judiciary cannot continue to serve as a profit center for GSA," Roberts said. In part because of rising rents, about 1,500 jobs in the judicial branch were eliminated in the last two years.

In testimony before Congress last June, GSA official F. Joseph Moravec defended GSA rental policies as "an honest accounting of the cost of occupancy" for high quality courtroom space. The judiciary is the GSA's largest customer, he said, occupying 2,159 courtrooms and 39 million square feet, a threefold increase in the last 30 years. "It is high quality, functional space with befitting public areas, modern technological functionality and enhanced security features," said Moravec, commissioner of public building services.