

The State of the Judiciary *Post* 1.1.75

THE YEAR END STATEMENT by Chief Justice Burger on the condition of the federal judiciary is not a cheerful document. It says the federal courts are in trouble, it lays the blame for a substantial part of this trouble directly on Congress, and it all but begs Congress to legislate quickly. A great deal of what the Chief Justice has to say is indisputably correct, and Congress—especially the Judiciary Committees—ought to give consideration of his requests a high priority in January.

Two of the Chief Justice's requests relate to the Supreme Court's growing work load. One of these—the creation of new national court of appeals—is quite controversial but the other—the elimination of three-judge special courts—is long overdue. The problem is that appeals from these courts go only to the Supreme Court, where they generally get less consideration than they deserve because of its other obligations. The Justices, it must be said, have been quite creative in meeting this problem by finding ways to send some of these cases into the regular appellate system but they have about exhausted the possibilities.

The other requests by the Chief Justice are aimed at the lower federal courts. He wants Congress to increase the salaries of federal judges, to act on a 2-year-old request for 63 additional judges and to define and broaden the responsibilities of the new U.S. Magistrates. Congress ought to do all these things, but it must give top priority to the salary question. Its refusal to increase the salaries of high-level government officials since 1969 is now beginning to cripple the judiciary.

Six federal judges have resigned in the last 13 months to return to private or corporate practice of law, a larger number than had resigned in the previous 30 years. And several of these judges resigned specifically because of the pay freeze. The highest paid judges in the United States are no longer the members of the Supreme Court, as was the case in 1969, but rather the members of the Court of Appeals of New York State. The highest paid trial judges are no longer the Federal District judges; some state court trial judges in California, Georgia, Michigan, New York and Virginia are paid more. There is no doubt that most of the federal judges could earn much more money as lawyers than they are

now earning as judges. One of those who resigned is thought to have more than tripled his \$40,000 income by leaving the bench. A continuation of the present situation is going to force more judges, particularly younger ones, off the bench and make it increasingly difficult to find first-rate replacements.

The judges, of course, are not the only ones caught in this pay freeze. The refusal of Congress to increase the salaries of its members has worked also to freeze the salaries of high level civil service employees. This is particularly unfair since Congress found some backdoor devices this year to raise the money available to its own members. It has found no such backdoor devices for civil servants or judges, and they are hurting. If Congress does not have the courage to accept a salary increase for its own members, it must then break the link between congressional salaries and those of civil servants and judges.

