

See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/298417441>

# THE CHIEF JUSTICE AS ADVOCATE-IN-CHIEF Examining the Year-End Report on the Federal Judiciary

Article *in* Judicature · May 2012

---

CITATIONS

8

---

READS

71

2 authors, including:



**Richard L. Vining Jr**  
University of Georgia

34 PUBLICATIONS 325 CITATIONS

SEE PROFILE

# HEINONLINE

Citation:

Richard L. Jr. Vinning; Teena Wilhelm, The Chief  
Justice as Advocate-in-Chief, 95 *Judicature* 267, 274  
(2012)

Provided by:  
UGA Law Library

Content downloaded/printed from [HeinOnline](http://heinonline.org)

Thu Oct 5 17:08:18 2017

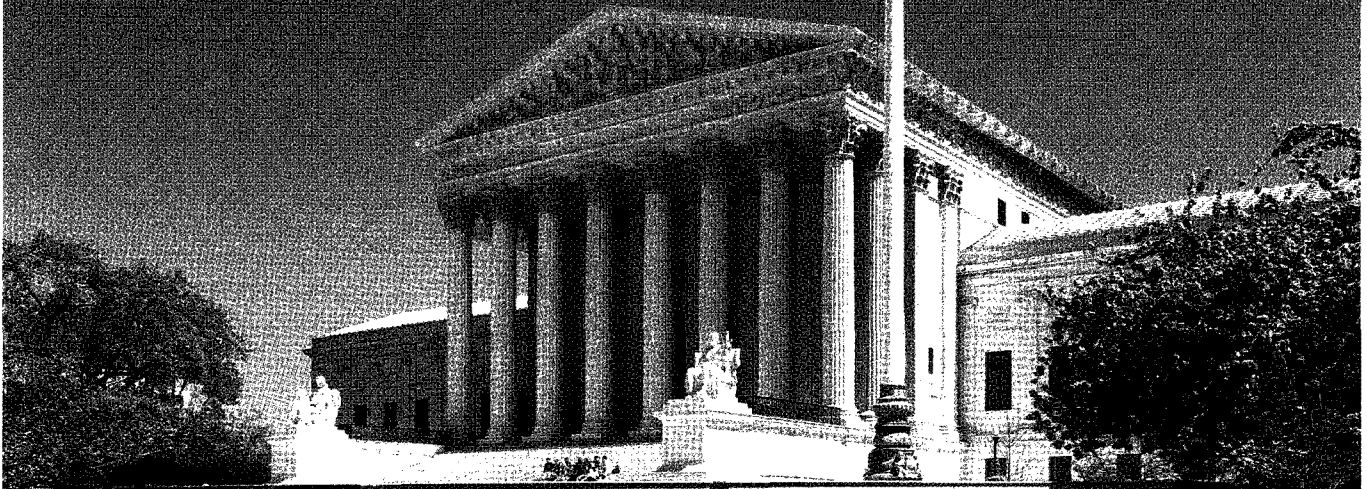
- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

## [Copyright Information](#)



Use QR Code reader to send PDF to  
your smartphone or tablet device

# THE CHIEF JUSTICE AS ADVOCATE-IN-CHIEF



CHIEF JUSTICE JOHN ROBERTS

CHIEF JUSTICE WILLIAM H. REHNQUIST

CHIEF JUSTICE WARREN BURGER

CHIEF JUSTICE WILLIAM H. TAFT



Steve Petteway, Collection of the Supreme Court of the United States

## Examining the Year-End Report on the Federal Judiciary



*Reviewing Roberts' record as an agent of judicial reform.*

by **RICHARD L. VINING, JR.** and **TEENA WILHELM**

On December 31, 2009, Chief Justice John G. Roberts, Jr., released the 2009 Year-End Report on the Federal Judiciary. For the first time in the history of this address, it included no requests for judicial improvements. Instead, Roberts acknowledged the public's hardship during economic recession and only mentioned that "critical needs of the judiciary... remain to

be addressed." Journalists regarded the paucity of proposals in the year-end report as unusual<sup>1</sup> and remarked that Roberts had "abandoned" standard practices by chief justices<sup>2</sup> and "left many people scratching their heads."<sup>3</sup> If these journalists are correct, to what extent did Roberts depart from tradition? Our understanding of the chief justice as an

The authors would like to thank Tara Stricko for her help with data collection efforts for this project.

1. Liptak, Adam. "A Busy Year for Judiciary, Roberts Says." *The New York Times*, January 1, 2010, p. A18.

2. Barnes, Robert. "Roberts Opts Not to Seek Judicial Raises; Chief Justice Breaks with Practice in Year-End Report." *Washington Post*, January 1, 2010, p. A3.

3. Greenhouse, Linda. "Calling John Roberts." *The New York Times*, October 21, 2010, available at <http://opinionator.blogs.nytimes.com/2010/10/21/calling-john-roberts/>.

advocate for judicial improvements is limited. No systematic assessment of the year-end report or its content has been conducted, nor have scholars examined whether its content changes over time. In addition, there is no evidence to suggest whether goals outlined in year-end reports are likely to be achieved. These observations prompt two interesting empirical questions. First, what judicial improvements reach the agenda of the chief justice? Second, to what degree do chief justices achieve the enactment of items on their reform agendas?

In this paper we examine the Year-End Report on the Federal Judiciary, the key agenda-setting tool of the chief justice. In doing so, we examine the role of the chief justice as the most visible advocate for judicial reform. We review the history of the Year-End Report on the Federal Judiciary and describe the evolution of the administrative leadership of the chief justice. We then analyze the content of year-end reports from 1970 to 2011 and summarize agendas over time and by chief justice. Finally, we discuss which proposals were enacted in the year following their inclusion in the year-end report.

### The Chief Justice and Improvements in the Federal Courts

The chief justice is the most prestigious judge in America. He has the bully pulpit associated with the office, is the leader of the Judicial Conference of the United States, and selects key appointees at the Administrative Office of the U.S. Courts and Federal Judicial Center.<sup>4</sup> The chief justice has more than 80 responsibilities mandated by federal statutes.<sup>5</sup> One result of the many roles fulfilled by the chief justice is that he is the most visible advocate for federal court improvements.

#### The Chief Justice as Communicator and Agenda-setter

The leadership of the chief justice is noteworthy both within and outside his court. He serves an important function as head of the federal judiciary, specifically with regard to

judicial improvements. Mark W. Cannon, the former administrative assistant to Chief Justice Warren E. Burger, emphasized the leadership of the chief justice in judicial reform:

Because of the typical low visibility of judicial improvement issues and the lack of support from powerful interest groups and electoral constituencies, few reforms in the administration of the federal court system have been effected in the absence of a chief justice who has been willing to use the status of the office to dramatize and promote the issues.<sup>6</sup>

Burger argued that “[s]omeone must make these problems real to the busy members of Congress overwhelmed as they are with a host of other more visible problems—pressed on them by skillful lobbyists”.<sup>7</sup> He explained that they must be “pressed forward by someone” with “[a] sense of urgency—to arouse the public and the legal profession to the advanced state of obsolescence of many parts of the judicial machinery.” An important tool available to the chief justice is the Year-End Report on the Federal Judiciary. In the following sections we discuss its origins, purpose, and content.

#### The Year-End Report on the Federal Judiciary

The Year-End Report on the Federal Judiciary is released at the end of each year and is analogous to the president’s State of the Union Address. Both include commentary about the prior year and explain goals for the year ahead. While the State of the

Union is mandated by Article II of the Constitution and has been delivered since 1790, the Year-End Report on the Federal Judiciary is a relatively recent innovation.

The earliest antecedent of the Year-End Report on the Federal Judiciary was Roscoe Pound’s address “The Causes of Popular Dissatisfaction with the Administration of Justice” delivered in 1906 to the annual convention of the American Bar Association (ABA). Pound’s address emphasized problems in judicial administration that needed urgent repair<sup>8</sup> (See this issue’s Viewpoint on page 251 for more on Pound’s speech). In the decades that followed chief justices and their judicial brethren took important steps to achieve judicial improvements.

After his appointment in 1921, Chief Justice William H. Taft encouraged intrabranched cooperation.<sup>9</sup> As a result, the Conference of Senior Circuit Judges was established in 1922 to advance the coordination of judicial administration. It included the chief justice and the senior circuit judge from each federal circuit court.<sup>10</sup> As its chairman, the chief justice wielded limited authority over the federal courts. Fish explains that “[t]he Act of 1922 provided Taft and his successors with an information and communication system, at first quite rudimentary, a policy-making institution with ready access to Congress and the media, and a vehicle for centralized supervision of the geographically remote district courts”.<sup>11</sup> Taft successfully lobbied

4. Wheeler. “Chief Justice Rehnquist as Third Branch Leader.” *Judicature* 89: 116-20. (2005).

5. Resnik, Judith, and Lane Dilg. “Responding to a Democratic Deficit: Limiting the Powers and the Term of the Chief Justice of the United States.” *University of Pennsylvania Law Review* 154: 1575-1664. (2006).

6. Cannon, Mark W. “Innovation in the Administration of Justice, 1969-1981: An Overview.” *675 Policy Studies Journal* 10: 668-79. (1982).

7. Cannon, Mark W., and Warren I. Calkins. “Interbranch Cooperation in Improving the Administration of Justice: A Major Innovation.” *38. Washington and Lee Law Review* 38: 1-20. (1981).

8. Graham, Cole Blease, Jr. “Reshaping the Courts: Traditions, Management Theories, and Political Realities.” In *Handbook of Court Administration and Management*, Steven W. Hays and Cole Blease Graham, Jr. (eds.), New York: Marcel Dekker, Inc. (1993).

9. Murphy, Walter F. “Chief Justice Taft and the Lower Court Bureaucracy: A Study in Judicial Administration.” *The Journal of Politics* 24: 453-76. (1962).

10. See Fish, Peter G. *The Politics of Federal Judicial Administration*. Princeton, New Jersey: Princeton University Press (1973), p. 40. The District of Columbia circuit was not represented. This omission was due to the wording of the statute authorizing the Conference of Senior Circuit Judges. It permitted the “senior circuit judge” of each circuit to attend, but in the D.C. Circuit this officer was referred as the “Chief Justice of the Court of Appeals for the District of Columbia.” Because no “senior circuit judge” was designated for the D.C. Circuit, none could attend.

11. Fish, Peter G. “William Howard Taft and Charles Evans Hughes: Conservative Politicians as Chief Judicial Reformers.” 136. *The Supreme Court Review* 1975: 123-45. (1975).

for the Judges' Bill of 1925 and other reforms.<sup>12</sup> Incremental improvements continued under Chief Justice Charles Evans Hughes.<sup>13</sup> He endorsed severance of the judicial budget from that of the Department of Justice and centralization of the judiciary's staffing and housekeeping in an institution other than the chief justice.<sup>14</sup> This led to the creation of the Administrative Office of the United States Courts (AO) and circuit judicial councils in 1939.<sup>15</sup> The Conference of Senior Circuit Judges became the Judicial Conference of the United States in 1948.<sup>16</sup>

By the 1950s, the need for a regular means to express the troubles of the judiciary was apparent.<sup>17</sup> Despite the consolidation of judicial leadership within the chief justice, Judicial Conference, and AO, the problems of the courts were substantial by the mid-1960s (Cannon 1982).<sup>18</sup> Chief Justice Burger began his tenure in 1969 with a two-pronged agenda for improving judicial administration. He intended to (1) remedy the "deferred maintenance" of the federal courts and (2) improve communication between the judicial branch, Congress, and state courts.<sup>19</sup>

In August 1970, Burger delivered a speech to the national conference of



## TO WHAT DEGREE DO CHIEF JUSTICES ACHIEVE THE ENACTMENT OF ITEMS ON THEIR REFORM AGENDAS?



the ABA considered the first "State of the Judiciary" address.<sup>20</sup> It was followed by an annual speech to the ABA. These were delivered in the summer until February 1975 when Burger spoke to the ABA's mid-winter meeting. Burger remarked that "[o]ne compensation" of a mid-winter speech "is that problems calling for legislative action may be pursued by you with the Congress early in its first session rather than at its end." Apparently learning from this experience, Burger issued the first Year-End Report on the Judiciary on January 3, 1976.<sup>21</sup>

In 1984, within a decade of the first year-end report, Burger explained their utility:

The Reports have become a tradition, serving as useful tools to communicate the concerns of the judiciary. The effort, as always, is to focus on the year's most important developments and on current and future needs. I have been encouraged to learn that Congressional leaders view the Reports as helpful in legislating.

Burger ultimately achieved many of his goals to improve the machinery of federal justice.<sup>22</sup> His successors, William H. Rehnquist and Roberts, have continued the tradition of releasing a Year-End Report on the Federal Judiciary. Although this practice is not mandated by statute, a year-end report has been delivered every year since 1976. The reports now receive coverage in news outlets, legal trade publications, law journals, and websites.

In addition to the Year-End Report on the Federal Judiciary, the federal courts also express their priorities via private communications, the yearly National Conference on the Judiciary, and the Annual Report of the Judicial Conference. The Judicial Conference is required by statute to report its work and views on legislation.<sup>23</sup> However, its lack of a permanent staff and infrequent meetings hamper its effectiveness as an advocacy organization.<sup>24</sup> In addition, the chief justice has the ability to steer the Judicial Conference and appoint the members of its committees.<sup>25</sup> As a result, the reported views of the Judicial Conference tend to reflect those of the chief justice. In terms of content, the Annual Report of the Judicial Conference and the Year-End Report on the Federal Judiciary are often "inseparable."<sup>26</sup>

12. Fish, *supra* n. 10; Gazell, James "Chief Justice Burger and the Administrative Side of Justice: A Retrospective." *William Mitchell Law Review* 13: 737-74 (1987).

13. Fish, *supra* n. 11; Ruger, Theodore W. "The Chief Justice's Special Authority and the Norms of Judicial Power." *University of Pennsylvania Law Review* 154: 1551-74. (2006).

14. *Id.*; Also see Fish, *supra* n. 10. Judicial administration was the responsibility of the Department of Justice after 1870. The federal judiciary was administered by executive branch agencies until 1939.

15. (53 Stat. 1223-1225).

16. Fish, *supra* n. 10.

17. See Cannon and Cikins, *supra* n. 7. Members of Congress urged the chief justice (then Earl Warren) to issue a report to a joint session of Congress as early as 1955.

18. However, the Federal Judicial Center was founded in 1967. Its establishment was urged by President Johnson, the Judicial Conference, Chief Justice Earl Warren, Justice Tom Clark, and a special committee chaired by retired Justice Stanley Reed. See Cannon, *supra* n. 6 and Wheeler, Russell R. "Empirical Research and the Politics of Judicial Administration: Creating the Federal Judicial Center." *Law and Contemporary Problems* 51: 31-53. (1988).

19. Cannon, *supra* n. 6.

20. Swindler, William F. "The Chief Justice and Law Reform, 1921-1971." *The Supreme Court Review* 1971: 241-64. (1971).

21. The title of the inaugural address was "The Condition of the Judiciary: Year-End Report." It was later called the "Year-End Report on the Judiciary" and eventually the "Year-End Report on the Federal Judiciary."

22. Gazell, *supra* n. 12.

23. 28 U.S.C. 331.

24. Cannon and Cikins, *supra* n. 7.

25. Wheeler, *supra* n. 18 explains that "... the chief justice enjoys influence in Conference operations way beyond his one vote" and that chief justices "have historically used their committee appointing authority to install in key positions judges in whom they have confidence and who share their general approach to the particular policy arena in question." Smith, Christopher. *Judicial Self-Interest: Federal Judges and Court Administration*. Westport, Connecticut: Praeger Press (1995) states that "[c]hief justices who are keenly interested in court administration can use the Judicial Conference's position and resources to educate and influence Congress. See Nixon, David. "Policy-Making by Different Means: The Chief Justice's Attempts to Shape Policy Through the Judicial Conference of the United States." *Rationality and Society* 15: 345-60. (2003) for evidence that Burger and Rehnquist "exploited their role on the Judicial Conference by strategically manipulating the roster of the Executive Committee in pursuit of a conservative policy agenda" (p. 356).

26. McDonough, Molly. "Beyond the Bench." *ABA Journal*, 29 November. (2005).

## Types of Proposals in the Year-End Report on the Federal Judiciary

In this section we investigate the frequency and kind of judicial improvements requested by chief justices. We identify the types of improvements requested and categorize them as described below.

**Budget.** The judiciary depends on Congress to allocate most of its operating funds. Chief justices request money to pay court staff, jurors, court-appointed defense attorneys, magistrate judges, and other personnel. The chief justice also requests appropriations for courthouse maintenance and construction as well as needed equipment. Since the mid-1960s, nearly all appearances by Supreme Court justices in congressional committees have addressed budgetary matters.<sup>27</sup>

**Regular housekeeping.** The chief justice sometimes requests legislation, often of a technical nature, to alter case processing and procedure in federal courts. The ability to adjust such rules rests with Congress.<sup>28</sup> For example, Burger requested in the 1985 year-end report that minimal qualifications be established for criminal attorneys in federal courts. More recently, Roberts used part of his first year-end report to endorse improvements in the safety and security of federal judicial employees.

**Judgeships.** Chief justices sometimes request the creation of judgeships. These requests are often paired with claims of excessive case-loads supported by statistical evidence. Although crowded dockets are a concern for the judicial branch, political strife often dooms these requests because presidents are likely to fill new seats with their partisan brethren.<sup>29</sup>

**Jurisdiction change.** The jurisdiction of a court determines the cases eligible to reach its docket. With the exception of the Supreme Court's original jurisdiction, which is defined by the Constitution, Congress establishes the jurisdiction of federal courts.<sup>30</sup> Both diversity jurisdiction and the Supreme Court's appellate jurisdiction were targeted for reform by chief justices. Diver-

sity jurisdiction is authorized in Article III, Section 2 of the Constitution, and provides that federal courts may hear cases in which the parties reside in separate states. Burger and Rehnquist argued that fears about out of state biases are outdated and diversity cases swelled the dockets of federal courts. Crowded dockets also caused chief justices to request more discretion for the Supreme Court to construct its appellate docket.

**Legislative policy.** Chief justices can endorse or speak out against proposed legislation, but both they and the Judicial Conference long resisted taking positions on what the latter called "legislative policy." Now both regularly address the wisdom of pending bills.<sup>31</sup> For example, Rehnquist used his year-end reports to announce opposition to Title III of the Violence Against Women Act.<sup>32</sup>

**Salaries and benefits.** Judges often stress the need for pay increases to prevent early departures and facilitate the recruitment of elite lawyers to the bench. As judicial pay loses value due to inflation, the topic frequently appears in year-end reports. These conditions suggest a recurring dissatisfaction with judicial compensation.

**Structural reorganization.** Chief justices have proposed or endorsed division of the Fifth and Ninth Circuits since Burger's tenure. The Fifth Circuit was divided in 1981 but splitting the Ninth Circuit remains a matter

of debate.<sup>33</sup> These efforts are controversial because of the likely impact of structural change on legal outputs, workload, and courts' capabilities within the affected geographic area.

**Study requests.** Chief justices occasionally request that problems in the federal courts be studied before a remedy is articulated or proposed. Requests for studies have appeared in state-of-the-judiciary reports since 1970 when Burger proposed that the entire structure of bankruptcy and receivership matters be evaluated for efficiency. Additional requests include Burger's 1971 appeal to study the use of smaller juries in federal civil trials and 1986 call for a study period before the implementation of federal sentencing guidelines.

**Vacancies.** Chief justices also use their annual reports to request that vacancies in the federal courts be filled quickly in light of delays in the confirmation process. For example, Rehnquist explained in the 1997 year-end report:

Judicial vacancies can contribute to a backlog of cases, undue delays in civil cases, and stopgap measures to shift judicial personnel when they are most needed. Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal judiciary.

This type of appeal urges Congress to take action so that the judicial branch operates at full capacity.

27. From 1972 to 1993, a justice addressed a congressional committee only once to discuss something other than appropriations for the federal judiciary. Chief Justice Rehnquist addressed the Post Office and Civil Service Committee of the House in 1989 to testify in favor of pay increases for judges. See Rishikof, Harvey, and Barbara A. Perry. "Separateness but Interdependence, Autonomy but Reciprocity: A First Look at Federal Judges' Appearances before Legislative Committees." *Mercer Law Review* 46: 667-95 (1995).

28. The Supreme Court confirmed this principle in *Hanna v. Plumer* 380 U.S. 460 (1964), stating "no doubt [exists about] the long-recognized power of Congress to prescribe housekeeping rules for federal courts." See Biden, Joseph R., Jr. "Congress and the Courts: Our Mutual Obligation." *Stanford Law Review* 46: 1285-1302 (1994) and Wheeler, Russell R., and Robert A. Katzmann. "A Primer on Interbranch Relations." *Georgetown Law Journal* 95: 1155-74 (2007).

29. See de Figueiredo, John M., and Emerson H. Tiller. "Congressional Control of the Courts: A Theoretical and Empirical Analysis of Expansion

of the Federal Judiciary." *Journal of Law and Economics* 39: 435-462.(1996) and also de Figueiredo, John M., Gerald S. Gryski, Emerson H. Tiller, and Gary Zuk. "Congress and the Political Expansion of the U.S. District Courts." *American Law and Economics Review* 2: 107-125 (2000).

30. See Posner, Richard. *The Federal Courts: Crisis and Reform*. Harvard University Press (1996) for a discussion of reforms to the jurisdiction of federal courts.

31. Resnik and Dilg, *supra* n. 5.

32. See Biden, *supra* n. 28. The civil damages provision of that legislation was struck down in *United States v Morrison* 529 U.S. 598 (2000). Resnik, Judith. "The Programmatic Judiciary: Lobbying, Judging, and Invalidating the Violence Against Women Act." *Southern California Law Review* 74: 269-293 (2000) documents the judiciary's skepticism regarding aspects of the Violence Against Women Act and the events culminating in the *Morrison* decision.

33. Barrow, Deborah J., and Thomas G. Walker. *A Court Divided: The Fifth Circuit Court of Appeals and the Politics of Judicial Reform*. New Haven: Yale University Press (1988).

**TABLE 1. Issue areas of agenda items requested by Chief Justices, 1970-2011**

Issue area	Enacted	Not enacted	Total
Budget	9 (45%)	11 (55%)	20 (100%)
Housekeeping	5 (22.7%)	17 (77.3%)	22 (100%)
Additional Judgeships	8 (19.5%)	33 (80.5%)	41 (100%)
Jurisdiction Change	2 (7.14%)	26 (92.86%)	28 (100%)
Legislative Policies	6 (30%)	14 (70%)	20 (100%)
Salary / Benefits	14 (42.4%)	19 (57.6%)	33 (100%)
Structural Reorganization	8 (36.4%)	14 (63.6%)	22 (100%)
Study Request	4 (36.4%)	7 (63.6%)	11 (100%)
Vacancies	7 (63.6%)	4 (36.4%)	11 (100%)
<b>Total</b>	<b>63 (30.3%)</b>	<b>145 (69.7%)</b>	<b>208 (100%)</b>

### Data

We examine all agenda items in “State of the Judiciary” reports from 1970 to 2011. These reports are available in a volume compiled by the former Librarian of the Supreme Court<sup>34</sup> and the website of the Supreme Court. The requests and endorsements of

the chief justices were obtained via content analysis of each report. We identify a total of 232 agenda items offered by chief justices, an average of 5.52 proposals per report (range = 0-13). Following recent research on presidential success in Congress, we also examined whether each request was achieved in the calendar year following the report.<sup>35</sup> For example, we examined the content of the 1990 year-end report issued on December 31, 1990, and determined whether the recommendations of the chief justice were enacted in 1991. Accordingly, our analysis includes only agenda items that could be enacted by the elected branches of government. This yields 208 agenda items. The remaining 24 statements

are excluded because they are symbolic, non-specific, or do not require extrajudicial authorization. These include, for example, Burger’s 1980 request for comprehensive corrections reform and Rehnquist’s 1986 call for interbranch cooperation. These statements are difficult to link to measurable policy outcomes.

We examined several sources to determine whether agenda items were enacted. These include the Congressional Record, the annotated U.S. Code, and commentary in the next year-end report. We now describe the content of the chief justices’ agendas for judicial improvements over time and by chief justice. We also provide information about the success and failure of proposals in the year-end reports.

### Results

We first examine the composition of all year-end reports and their antecedents. In order to assess longitudinal trends driven by factors other than turnover in the center seat, we also describe the agenda for judicial improvements in each decade. We anticipate that contemporaneous trends related to the activities of the federal courts, the political environment, and the economy influence the content of year-end reports. Therefore, we analyze the content of state-of-the-judiciary reports during each decade.<sup>36</sup> The interests and priorities of chief justices may differ, as might their individual outlooks with regard to active administrative leadership. For these reasons we examine the content of year-end reports during the tenure of each chief justice since 1970. We report the frequency of agenda items overall (Table 1), by decade (Table 2), and by chief justice (Table 3). We also indicate the percentage of requests enacted within one year.

The most common type of request (41 of 208; 19.7%) calls for additional judgeships. They are followed by proposals regarding salary or benefits (33), jurisdiction change (28), housekeeping (22), structural reorganization (22), budget issues (20), and legislative policy endorsements (20). Requests to conduct studies (11) or

34. Dowling, Shelley L. *State of the Federal Judiciary: Annual Reports of the Chief Justice of the United States*. Buffalo, New York: William S. Hein & Co., Inc. (2010).

35. Eshbaugh-Soha, Matthew. “The Importance of Policy Scope to Presidential Success in Congress.” *Presidential Studies Quarterly* 40: 708-24 (2010).

36. We recognize that there may be relationships between environmental/political factors and the agenda of the chief justice over time. However, causal analysis and hypothesis testing are beyond the scope of this paper.

fill judicial vacancies (11) were less common.

The figures in Table 1 show that about 30 percent of requests in year-end reports were enacted during the following year. Requests to fill vacancies were successful most often (63.6 percent) but are relatively rare. Budgetary and salary/benefits requests were above the overall rate of success (45 and 42.4 percent), as were requests for structural reorganization (36.3 percent) and studies (36.4 percent). Less successful agenda items included endorsements regarding legislative policies (30 percent), housekeeping proposals (22.7 percent), and requests for additional judges (19.5 percent). The rate at which requests for judgeships were enacted is similar under unified (2 of 9; 22 percent) and divided government (6 of 32; 18.8 percent); a t-test reveals no significant difference between these conditions ( $t = 0.23$ ). However, this relationship is sensitive to the party in power. During Democratic administrations, requests for judgeships are more likely to be enacted during unified government ( $t = 3.35$ ). This relationship dissipates during Republican presidencies, when we identify no statistically significant effect for divided or unified government ( $t = -1.31$ ). We note, however, that 0 of 9 requests for judgeships were granted during unified Republican government while 5 of 24 requests (20.8 percent) were enacted with a Republican president and Democrats controlling at least one chamber in Congress. It is likely there is a close relationship between the consistent failures of requests for judgeships and their frequent appearances in year-end reports.

We find evidence of change over time in the quantity of agenda items requested in year-end reports. The results in Table 2 demonstrate that the greatest number came during the 1980s (72) and 1970s (63). The number of requests declined sharply in the 1990s and 2000s. This tapering trend is evident in proposals related to housekeeping, which have been virtually non-existent since the

**TABLE 2. Issue areas of agenda items requested by chief justices, by decade**

Issue area	1970s				1980s				1990s				2000s			
	Number of requests (% enacted)				Number of requests (% enacted)				Number of requests (% enacted)				Number of requests (% enacted)			
Budget	2				4				5				9			
	(50%)				(50%)				(80%)				(22.2%)			
Housekeeping	15				5				1				1			
	(20%)				(40%)				(0%)				(0%)			
Additional Judgeships	12				16				7				6			
	(16.7%)				(25%)				(14.3%)				(16.7%)			
Jurisdiction Change	9				16				3				0			
	(0%)				(12.5%)				(0%)				(n/a)			
Legislative Policies	3				5				11				1			
	(0%)				(60%)				(18.2%)				(100%)			
Salary / Benefits	5				10				7				11			
	(40%)				(70%)				(28.6%)				(27.3%)			
Structural Reorganization	13				8				1				0			
	(38.5%)				(25%)				(100%)				(n/a)			
Study Request	4				7				0				0			
	(50%)				(28.6%)				(n/a)				(n/a)			
Vacancies	0				1				6				4			
					(100%)				(50%)				(75%)			
<b>Total</b>	<b>63</b>				<b>72</b>				<b>41</b>				<b>32</b>			
	(23.8%)				(34.7%)				(31.7%)				(31.3%)			

Note: Chief Justice Roberts made no specific requests for judicial improvements after 2008. Therefore, the exclusion of 2010 and 2011 from this table does not affect our results.

1980s. Requests regarding jurisdiction change, structural reorganization, and study proposals have also been rare or absent since the 1990s.

Not all types of proposals reflect the overall trend toward decline. Budgetary requests and legislative policy endorsements are more common in the past twenty years than before. In addition, requests to fill judicial vacancies were omitted in the 1970s and very rare in the 1980s but became ordinary in the last two decades. Other agenda items, especially budgetary requests, are a consistent presence in year-end reports.

This is not surprising given that Congress provides appropriations for the judicial branch each year.

In terms of the percentage of requests that were granted over time, only the 1970s had a success rate below 31 percent. Some types of proposals had similar rates of success over time (e.g., requests for additional judgeships, jurisdiction change proposals, and study requests), while others differed substantially by decade. For example, 80 percent of budgetary requests were granted in the 1990s, but only 22.2 percent in the 2000s. Likewise, 70 percent of salary/



**TABLE 3. Issue areas of agenda items by chief justice**

Issue area	Warren Burger (1970-1985)	William Rehnquist (1986-2004) Number of requests (% enacted)	John Roberts (2005-2011)
Budget	5 (40%)	14 (50%)	1 (0%)
Housekeeping	19 (21.1%)	2 (50%)	1 (0%)
Additional Judgeships	22 (18.2%)	19 (21.1%)	0 (n/a)
Jurisdiction Change	22 (4.5%)	6 (16.7%)	0 (n/a)
Legislative Policies	8 (37.5%)	12 (25%)	0 (n/a)
Salary / Benefits	12 (50%)	17 (41.2%)	4 (25%)
Structural Reorganization	19 (36.8%)	3 (33.3%)	0 (n/a)
Study Request	9 (33.3%)	2 (50%)	0 (n/a)
Vacancies	0	11 (63.6%)	0 (n/a)
<b>Total</b>	<b>116</b> (25.9%)	<b>86</b> (37.2%)	<b>6</b> (16.7%)

benefits requests were enacted in the 1980s but they were less successful in all other decades.

The content and quantity of proposals by each chief justice, as well as their rates of legislative success, are summarized in Table 3. Burger requested more judicial improvements than Rehnquist and Roberts combined. Burger made 116 rec-

ommendations in 16 reports, an average of 7.25 requests per year. Rehnquist's rate over 19 reports was 4.53 requests annually, and Roberts' rate after seven reports was only 0.86 items per year.

Burger and Rehnquist prioritized requests for judgeships, but Roberts has not. Instead, Roberts has dedicated most of his reform commentary to appeals for improved judicial compensation. Rehnquist shared Roberts' desire for salary increases; they were his second highest priority. Burger gave attention to judicial salaries and benefits, but his desire for jurisdiction change, housekeep-

ing reform, and structural reorganization took precedent. The emergence of judicial vacancies as a topic of concern in Rehnquist's year-end reports is consistent with the emergence of delay and discord in the confirmation process, especially since the 1990s.<sup>37</sup>

Among the chief justices in our data, Rehnquist was most likely to achieve his agenda items and Roberts least likely to do so. Only one of Roberts' six requests was enacted within a year. Rehnquist experienced the most success spurring the Senate to fill judicial vacancies (63.6 percent), while Burger was most successful with budgetary and salary requests (50 percent).

### Discussion and Conclusions

We have examined the agenda of the chief justice throughout the history of state-of-the-judiciary reports with a particular focus on the Year-End Report on the Federal Judiciary. Our investigation reveals that certain requests are made with greater frequency than others. Similarly, some requests are more likely to be enacted. We also find that both the number and type of requests vary over time. Finally, our findings reveal that the content of the year-end report varies depending on the occupant of the Supreme Court's center seat.

Additional judgeships are the most frequently requested item in the year-end reports. Interestingly, they are also the least likely to be enacted. We suspect that one has much to do with the other, as a chief justice will continue to request additional judgeships (and make appeals with regard to workload) while Congress continues to ignore him. A lack of repetition may partially explain why requests to fill judicial vacancies have high rates of success. Once a request to fill a cluster of vacancies is granted there is little reason to repeat the request in the short term.

Our findings reveal a steady overall decline in the number of requests made in the year-end reports, particularly in the last two decades. Several types of agenda items became

37. More recently, Chief Justice Roberts discussed judicial vacancies in his 2010 Year-End Report on the Federal Judiciary. He emphasized the "urgent need for the political branches to find a long-term solution to this recurring problem." However, this request is not specific enough to qualify as an "agenda item" for our purposes given the failure to propose a remedy.

more frequent in the last twenty years (e.g., legislative policy endorsements), as did others that were quite rare in the two decades prior (requests to fill judicial vacancies). This indicates a change in the judicial agenda in response to activities of the elected branches detrimental to judicial administration. Rehnquist openly criticized the politicization of the judicial appointment process and the obstruction that accompanied it. Burger, on the other hand, did not face such rampant delay or discord in the confirmation process. Rehnquist was also more inclined than Burger to address the propriety of legislative policies and their effect on the dockets of federal judges.

Differences among the chief justices, particularly Roberts and his predecessors, are stark. Burger made more requests each year than Rehnquist or Roberts. Given that Burger initiated year-end reports and had ample interest in judicial administration, this is consistent with the conventional wisdom. However, Rehnquist was the most successful at achieving his requests. This is true despite the fact that divided government was normal throughout his tenure. Rehnquist is also the only chief justice to include requests (and critical commentary) about filling judicial vacancies. Finally, Roberts has been the most reticent in terms of promoting his agenda, and also the least successful. This might be explained by the judiciary's recognition of alternative government priorities (e.g., social services and the military, including wars in Iraq and Afghanistan), deep federal budget deficits, and economic hardship suffered by American citizens. It is also feasible that Roberts does not embrace the administrative duties of the position like his predecessors. It remains to be seen whether Roberts will maintain this position when political and economic conditions shift.

This paper contributes to our understanding of the judiciary's agenda for improvements and the Year-End Report on the Federal Judiciary. We have supplied the first sys-

tematic assessment of the judiciary's program for improvements and established clear change in the reform agenda over time and between chief justices. Several important research questions remain to be addressed. Specifically, to what extent do political and economic conditions influence the agenda for judicial reform and the success of requests for judicial improvements? In addition, we also wonder about the effectiveness of the chief justice as an advocate and whether it is dependent on the context in which requests are made. By answering these questions we

can establish when judicial improvements are most likely to be requested and enacted, with the result being a more effective American judiciary. ★

**RICHARD L. VINING, JR.**  
is an assistant professor in the department of Political Science at the University of Georgia.  
(rvining@uga.edu)

**TEENA WILHELM**  
is an assistant professor in the department of Political Science at the University of Georgia.  
(twilhelm@uga.edu)

SAVE THE DATE

# AMERICAN JUDICATURE SOCIETY ANNUAL MEETING

THURSDAY, AUGUST 2, 2012

InterContinental Hotel  
505 North Michigan Avenue  
Chicago, Illinois

12:00 pm - 1:30 pm Annual Meeting and  
Election of Directors  
and Officers for 2012-2013  
9:00 am - 5:00 pm Board of Directors Meeting

To register for the meeting, or for additional information,  
visit [www.ajs.org](http://www.ajs.org) or call 800-626-4089.