Remarks on Federal Probation's Centenary

[*On March 4, 2025, as part of the centenary celebration of the federal probation system, Probation and Pretrial Services Office Chief John Fitzgerald introduced Judge Edmond Chang, District Judge from the Northern District of Illinois and chair of the Committee on Criminal Law of the Judicial Conference, and Supreme Court Justice Ketanji Brown Jackson (who appeared by video), who each spoke to the assembled federal probation and pretrial services chiefs about the significance of the occasion and of their profession. Below are their remarks, lightly edited.*]

Judge Edmond E. Chang:

Thank you to the FPPOA [Federal Probation and Pretrial Officers Association] for inviting me to share in this celebration of the 100th anniversary of the probation system.

One hundred years old. I must say, you do not look a day over 75.

One hundred years is an appropriate time to pause and to emphasize the importance of our oath of public service. It is also an appropriate time to honor our past and build toward our future. And so we gather here to retake the oath of service, and it'll be my privilege to administer that oath in a few minutes. But before I do that, I do want to emphasize the importance of oaths, honor our past, and build our future.

The importance of oaths, of federal government service, stretches back to the very birth of our nation. As you know, we started out—this nation started out—in a rocky and fragile way with the Articles of Confederation. And we were just that—just a loose confederation of separate states until the Founders realized that we needed to have a government and a design of government that would bind us together as a single nation and not be a loose affiliation of separate states.

And one of the ways—one of the most important ways—to bind us all together in federal service is by taking an oath. It is in the Constitution. Article VI of the Constitution requires all officers of the United States—and that's all of you, all officers of the United States—to take an oath to support the Constitution of the United States. And so it's no surprise that the very first federal law that was enacted, Statute 1, Section 1, contains the oath of federal service. It was signed by George Washington on June 1, 1789. This is before we needed 454 titles of the United States Code to organize our laws. The very first federal law contained the oath of federal service.

And it simply says that officers shall solemnly swear or affirm that I will support the Constitution. That is a simple but a profound oath. For one of the first times in the history of mankind, public servants swore an oath. Not to a person—not to a sovereign king or queen, and not even to the head of our branches of government. We do not swear an oath to the chief justice or the president of the Senate or the speaker of the House or the president.

No, we swear an oath to support the Constitution of the United States. It is an ideal, it is the ultimate law of our country. And that is the ultimate object of our oath. And when we take that oath together at the end of this ceremony, I hope that it reminds you of the story path of the probation system, as well as our duty to build toward our future, the path of the probation system.

It is now a long and storied tradition. And I know many of you know this by now, but I want to spend a little bit of time talking about the origin story of the probation system, because in some ways it is one of the first steps into the modern era of criminal justice. And so, as many of you know, the origin story begins with a young man from northern Ohio, James Hanahan. He worked for a bank in the early 1900s in the Toledo area. And he embezzled some money from the bank. He committed a federal crime and he was prosecuted. And he was subject to, at that time, a five-year mandatory prison sentence in Leavenworth. That was the mandatory minimum punishment for bank embezzlement at the time.

But as the sentencing judge noted, he had used the money for personal necessities. Just for living expenses. He had paid back the bank in full. The bank, his employers, his supervisors, none of them wanted him to go to prison. His family, his friends, his church congregation all continued to support him. And so the district court tried to suspend the sentence. And in doing so, the sentencing judge pointed out that up to that point, the sole purpose of criminal justice and sentences had been punishment, retribution. This was a first step towards this modern era of criminal justice. And the sentencing judge recognized that that cannot be the sole purpose of criminal justice. In picking a sentence, we do have to also consider rehabilitation as well as deterrent. It is not all about retribution.

But federal law, of course, did not mention probation or suspended sentences. And so the *ex parte United States* case came up to the Supreme Court in a writ of mandamus. And in 1916, the Supreme Court overturned the sentence and ordered the judge to impose the five-year mandatory sentence.

Now, passions ran deep on this subject as the country was starting to move into the modern era of criminal justice. And it actually took another two years for Judge Killits, the sentencing judge in northern Ohio, to obey.

So the *New York Times*, in a February 18,

1918, article, reported that the judge finally vacated the suspended sentence. He had actually been threatened with contempt. The Justice Department had filed a motion to hold him in contempt in the Supreme Court, and he ultimately relented and vacated the sentence. It is interesting to note that even as the criminal justice system was finally trying to move forward, some things never change.

So Judge Killits did have to impose the five-year mandatory sentence. And it shows how progress takes time, it takes perseverance. And finally, Congress did pass the Probation Act of 1925; it actually passed on March 3 and President Coolidge signed it on March 4. And the *New York Times* reported on this as well: in a March 3, 1925, article reporting on the passage of the Probation Act, and that it was on its way to the president, and that it would provide for one officer in each district. So thankfully we have moved on from that restraint now, to give you a sense of how well-established this probation system is now. And that you do really have this long tradition that you should be proud of.

In this same March 3, 1925, issue of the *New York Times*, there was an ad for the newly opened Mayflower Hotel—which many of the chiefs and deputies have just stayed in for the Chiefs and Deputies Administrative Meeting (CDAM) Conference the last couple of days—promoting this brand-new hotel and also extolling the virtues of the distinguished social life in the capital city.

So, federal probation is as old as the Mayflower Hotel. And just to give you another sense of what the times were like in 1925, in the same issue of the *New York Times*, Chevrolet was promoting the new closed car. What a revolutionary idea! Back then, you could get a Chevy for as low as $525. So we have certainly moved on from that. You can't get a new Chevy for that these days unless it's from someone who might end up in our federal criminal justice system.

So that's how long the probation system has been around.

And during this 100 years, the probation system has experienced many milestones and accomplishments. One important milestone was in 1940, when the probation system was moved from the Justice Department into the judicial branch, and that move brought with it the judicial branch values and the advantages of the judicial branch. And first and foremost among these, it's non-adversarial as to the defendant or the supervisee.

It is always difficult as pretrial and probation officers to impart this understanding to defendants and supervisees—that we're not adversaries, right? This is the neutral branch of government. And so just imagine how difficult it is when probation is part of the executive branch—literally part of the branch that is on the other side of the case. And so that important judicial branch value that we are not the adversaries of the accused and of the supervisees is an important value and helps us do our job.

The other important judicial branch value is that we are also the non-partisan branch. We do not act out of partisan reasons. And so when you all recommend a sentence or recommend bail or detention or length of supervised release or conditions and so on, partisanship does not enter into that thinking. And that is one of what some would say are "virtues" and others would say "vices" of the other branches. They are the partisan branches, and they act as they should accordingly; we are non-partisan.

And then lastly, we are an independent branch. We are not governed by the popular passions of the day. And that deliberation that we are able to continue to engage in because we are the independent deliberative branch is enormously important in our being able to implement and you all being able to implement the best practices when it comes to bail or detention, and the best practices when it comes to supervision, and the best practices when recommending sentences. So we ought not be affected by those popular passions, and we can remain deliberative. So that move to the judicial branch was a crucial step.

Another milestone is, of course, the creation of pretrial services agencies, first piloted as part of the Speedy Trial Act of 1974 and signed by President Ford according to the White House records on January 3 of 1975. That act revolutionized the progress and pace of federal criminal cases under the Speedy Trial provisions, but it also authorized the creation of a pilot project. Ten districts would be selected to stand up a pretrial Services agency, and that agency would go hand in hand with this new Speedy Trial Act.

If federal criminal cases are going to progress, the defendants need to appear. We need to ensure their appearance. And so the 10 pilot districts were selected, including Northern Illinois, where we are now, of course, headed by our wonderful chief, Amanda Garcia, who's done an amazing job there and works with our terrific chief probation officer, Marcus Holmes. And you know, Marcus, if it would not have put me on the wrong side of the law, I would have found your birth certificate and changed the year of birth by a couple of years so that we don't lose you so soon. But they've done a wonderful job.

This experiment was successful—that the federal courts could operate a pretrial services agency. And so in 1982, the Pretrial Services Act was signed by President Reagan and that expanded under federal law the authority of all districts to create a pretrial services agency.

That was 43 years ago, so pretrial services itself has a long and storied tradition. And to give you a sense of how long ago that was, in the *New York Times* on September 27, 1982, there was an ad for Western Union's telex machine. This was the precursor to the fax machine. And Western Union boasted that you can send text to other telex machines at only 34.75 cents per 66 words. So that's about $1.30 per tweet, I think, at this point. So this is a long, long time ago. And pretrial services should be proud of that tradition as well.

And then all the accomplishments along the way, the service to the federal judiciary and to the accused and their families and their communities and to victims and the public and public safety—it's astonishing what you all have done. And we rely on you at every step of the way.

The first contact that defendants and their family have with the federal court system is through pretrial services officers. They see the pretrial services officer before they see a judge. And you're meeting them at the lowest moment of their lives for most of them. For most, it's also a shock that it's happening. Yet you are still able to start forging that relationship with them to assess them for that really important decision about bail or detention. And as you know, if we can appropriately release someone, there are so many advantages and values to that, that they are able to remain connected with their family and their community, to remain employed, to get mental health treatment and medical care as well. And if they're convicted, also to start that rehabilitative process. So that decision is absolutely critical.

And then there's the supervision, ensuring public safety and their appearance, all in the context of the defendants and their families being subject to the shock of federal criminal prosecution and then moving forward to presentence investigations. The breadth of Section 3553(a) is breathtaking. We consider the nature and circumstances of the offense and the personal history and characteristics of the defendant. And then there are all these

abstract goals that we're trying to achieve: to promote respect for the law, to reflect the seriousness of the offense, to provide for just punishment, deterrence specific and general, protect the public, rehabilitative needs, medical needs, employment needs, avoiding unwarranted disparities. It is an enormous task, and we could not do it without your help and the invaluable assistance of the pretrial investigations and those presentence reports. You have distilled a life into writing. And I thank you on behalf of all my colleagues for doing that, because it is an enormously difficult task.

And I hope we don't ever think of any sentencing as being routine or any presentence report as being routine, because that is really and literally what you're doing in putting someone's life down on paper. And then, post-conviction supervision, when someone has exited prison, they've been separated—sometimes for a long time—from their family and their community. Reintegrating into society is enormously difficult.

Here you are again balancing those twin goals of ensuring public safety and at the same time promoting rehabilitation. And those goals, of course, don't compete with one another. They are right goals that can be and must be accomplished at the same time, because to promote rehabilitation is to promote public safety. So thank you for walking that tightrope as well.

This system really is a crown jewel of federal government and of public service. And please be proud of that. So we honor our past. We also, of course, have to continue to build toward the future. And, you know, here it is important to ask ourselves questions.

And that's what this conference is about as well as the meeting of chiefs and deputy chiefs. Thousands of years ago Socrates recognized that the unexamined life is not worth living. We have to constantly ask ourselves questions in order to grow and to improve. And what that has meant and will continue to mean for the future is to continue to look at evidence-based practices as a tool to aid us as judges and you also in exercising your judgment as well.

It is just a tool. It's not to replace your judgment or the judgment of judges. It is a tool, but it is crucial because it provides us with the ability to make an informed judgment. We use evidence-based practices so that we can have an objective assessment and constantly question our own assumptions. And it's even more important, in the decisions that you all are making and that judges are making in the criminal justice system, that we ask ourselves and review ourselves and examine ourselves, because unlike many other components of federal court cases, there is almost no review of the decisions we make. There is so much deference on appeal to bail decisions and sentencing decisions and detention and supervised release that there is not really much of an appellate check. (Now I say that and watch, next week I'll get reversed on a sentence! I've never had a sentence vacated. Most of them aren't even appealed.)

So with no one else reviewing us, we must review ourselves, and evidence-based practice tools are part of that examination, and part of that examination too is just keeping an eye on and asking questions about the differences in outcomes in our system.

We do have a national system, though of course we have to be responsive to local needs and even local cultures, which represent the practices of the local bar and the bench there. At the same time, we do face many of the same problems, and so we should be asking questions about why there are differences across the system. And maybe the answer will be, well, here's why. And that's perfectly well justified. And maybe the answer will be, wait, we need to move as a system toward a more uniform policy. And so again, that is part of our self-check, because no one else is there to do it, and none of us have achieved perfection, right? Because that's the idea: If we've achieved perfection, all right, we don't have to ask ourselves questions. But we have not achieved perfection.

So I do have confidence in the future of our system and that you, as the current leaders and future leaders, will build a future for this system that will continue to promote all of the important policy goals Congress has set for us. And I do want to highlight an image of public service that I think all of you embody. It's an image that George Bernard Shaw—a very famous Irish playwright—described in terms of public service and what that means.

Shaw was trying to push back against this concept of a life that is not full of meaning and not purposeful. In particular, the contrast was to what Macbeth said in the Shakespearean tragedy when he learned of the death of the queen, and he called life a brief candle. And he continued, "life's but a walking shadow, a poor player that struts and frets his hour upon the stage and then is heard no more. It is a tale told by an idiot, full of sound and fury, signifying nothing."

So that was the Macbeth view of the emptiness of life, and Shaw pushed back on that. And his idea was this: "I am of the opinion that my life belongs to the whole community, and as long as I live it is my privilege to do for it whatever I can. I want to be thoroughly used up when I die, for the harder I work the more I live. I rejoice in life for its own sake. Life is no 'brief candle' for me. It is a sort of splendid torch which I have got hold of for the moment, and I want to make it burn as brightly as possible before handing it on to future generations."

So I cannot wait to see what you—all you current leaders and future leaders—do with this crown jewel of the federal judiciary and what you do with the splendid torch.

Now for the moment we've really been waiting for, the retaking of the oath of office. Please do raise your right hands and repeat after me:

> I [and state your name], do solemnly swear or affirm that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office in which I have been serving. So help me God.

Congratulations, and thank you again!

Justice Ketanji Brown Jackson:

Hello everyone.

It is an honor to be here with you to celebrate the centennial anniversary of the federal Probation Act of 1925.

When President Coolidge signed the federal Probation Act into law 100 years ago, the Act not only authorized federal judges to impose a sentence of probation, it also prompted the creation of the federal probation system at large.

Over the course of my own legal career, I have been privileged to witness the critical role that federal probation and pretrial services officers play in the administration of justice. So to start, I would like to say, "Thank you" to the Probation and Pretrial Services Office of the Administrative Office of the U.S. Courts for organizing this special conference to celebrate 100 years of service and for inviting me to speak in appreciation of the work you do each day to support the federal judiciary.

As you may know, I once served as an

assistant federal public defender in the federal public defender's office in Washington, DC. And most of my tenure as a federal judge to date was spent sitting on the U.S. District Court in the District of Columbia. It was in these roles that I first bore witness to the important work of pretrial and probation officers in the criminal justice system. As an appellate defender, my interaction with pretrial officers occurred mostly through my review of the presentence reports they had authored on behalf of my clients. I must have reviewed hundreds of case records while working on appeals. And it quickly became evident to me how much effort it took to find and clearly convey the facts about a case and how the quality and thoughtfulness of the presentence reports had a very real impact on sentencing outcomes.

I was also privileged to work with probation officers in the field, as some of my clients had been sentenced to probation or supervised release following a term of incarceration. I was struck by the real difference probation officers make in the lives of defendants. For a person on probation or supervised release, a good probation officer can help them connect with educational programming, support their sobriety, or provide other socio-productive resources that are critical for their long-term success in society and helpful for the person as an individual—not to mention their sentence-related success before the court.

Years later, when I was appointed to the U.S. District Court, I relied heavily on the hard work of pretrial and probation officers in that new capacity. I sentenced more than 100 criminal defendants during my eight years as a trial judge. And in every criminal case, pretrial and probation officers were essential to help me satisfy the demands of justice, because—as you know—judges sentence on the basis of facts, and pretrial and probation officers are responsible for gathering those facts.

I saw firsthand the officers' tireless efforts when conducting comprehensive pretrial and presentence investigations, when preparing timely and accurate bail and presentence reports, and ultimately when making evidence-based and impartial recommendations to trial judges like me. I also saw the ways in which pretrial and probation officers protect the community by enforcing court-ordered conditions of supervision and by delivering interventions designed to reduce recidivism. And it was a great source of joy and pride for me when dedicated probation officers would report on and share in the successes of the defendants they had supervised, like when good behavior prompted them to request an early end to probation or supervised release. But, of course, I am only a member of the most recent generation of federal judges to interact with and benefit from the federal Probation Act.

As the 100-year anniversary of the Act demonstrates, the law that has given rise to the probation system has a storied history. And its role in our judicial system has evolved over time, shaped by a few prominent decisions that were handed down by my current court.

Turning to that history for a moment, it's important to recognize that the need for a federal probation system was identified decades before 1925, when the system was formally created. At first, historically, there was no such thing as probation or parole. But throughout the mid-nineteenth century, it became common practice for district judges to attempt to administer justice by suspending the execution of a sentence during the good behavior of the defendant. Now, this practice was generally informal, and it was widely criticized and challenged. And yet, there was also resistance to formalizing it through legislation. For over a decade prior to the Probation Act, the Department of Justice vigorously opposed several legislative proposals to authorize the practice.

In 1914, U.S. attorneys were actually instructed by the attorney general to argue in court that any and all suspended sentences imposed in federal courts were unlawful on the grounds that federal judges have no such power. The following year, a judge in the Northern District of Ohio nevertheless suspended a sentence over the government's objection, and the government appealed. That case made its way up to the Supreme Court. And in an opinion by then-Chief Justice White, the Court agreed with the government. But it also suggested two alternatives that it said would provide the benefits of suspended sentences while also likely satisfying the Constitution: pardons and probation legislation.

On March 4, 1925, after many prior attempts by Congress to pass legislation, and following the lead of a growing number of states, Congress enacted, and the president signed, the Probation Act, thus establishing the first iteration of the federal probation and pretrial services system.

It is interesting to note that first the probation system was administered by the Department of Justice, followed by a period in which the probation system was run by the Bureau of Prisons. But it quickly became evident to Congress that district judges viewed the roles of probation officers as more aligned with the administration of justice from the judicial perspective. So shortly after Congress created the Administrative Office of the U.S. Courts in 1939 to provide independent administration of the courts, it transferred the probation system to the federal judiciary. Since then, the probation and pretrial services system has remained under the administration of the U.S. courts and has flourished—protecting our communities and supporting equal justice under law.

I will note that, for its part, the Supreme Court continued to play a critical role in steering the trajectory of the probation and pretrial services system long after it was established and nestled within the Judiciary.

In a 1987 case called *United States v. Salerno*, for example, the Court upheld the constitutionality of the Bail Reform Act, which authorized courts to detain a defendant only if they posed a flight risk or a danger to the community. In its opinion, the Court clarified that, "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." Chief Justice Rehnquist also specifically noted the requirement that, when deciding whether to release or detain a person who has been accused of criminal wrongdoing, the judge must consider, among other things, the history and characteristics of the defendant. As you know, it is one of the key duties of the probation and pretrial services officers to provide this kind of crucial information to the court.

Two years later, in the 1989 case of *Mistretta v. United States*, the Supreme Court upheld the constitutionality of the Sentencing Reform Act, which had established the United States Sentencing Commission and the sentencing guidelines. The Sentencing Reform Act anticipated a unique and indispensable role for probation officers in the context of a guidelines sentencing system. That role continues to this day. The officers' presentence reports and preliminary guideline calculations serve as the starting point of all federal sentencing proceedings. Moreover, and notably, Congress specifically included the probation system as one of the entities it designated to provide advice and assistance to the Sentencing Commission.

I am personally fortunate to have been a direct beneficiary of that advice and assistance during my service as a vice chair of the

Sentencing Commission, a role I held before becoming a federal judge. I fondly recall that the Commission frequently received testimony from the Probation Officers Advisory Group. We called it "POAG." And when the commissioners undertook to make sometimes difficult policy decisions about thorny sentencing issues, I always appreciated the valuable insights POAG would provide. Its members had served on the ground as supervising officers and presentence report writers and had witnessed firsthand the ways that sentencing decisions affect the lives of individual defendants and their families. And in my experience, the Commission took their recommendations very seriously, because we knew that they always strove to carefully balance the demands of equal justice and public safety.

So on this very special anniversary, let me close by simply saying, "Thank you." I am privileged to be able to attest to the critical work of the pretrial and probation offices when it comes to ensuring both the integrity of our justice system and the safety of the American public. Please know that, as you guide individuals who are navigating the complexities of our system, your impact extends far beyond the courtroom. You are, in fact, setting the stage for both justice and rehabilitation.

While it is certainly true that sentencing lies in the discretion of the trial judge, as pretrial and probation officers you make fair and just sentencing possible, because you are responsible for ensuring that judges have all of the necessary facts and information to make the right decision. Your contribution to the pursuit of justice is truly indispensable. And for that, the federal judiciary owes you immense gratitude.

So on behalf of judges everywhere, I thank you for the work that you do and the role that you play in our system.