

STATEMENT OF JAMES C. DUFF, DIRECTOR
ADMINISTRATIVE OFFICE OF THE U.S. COURTS
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE
March 21, 2007

Introduction

Chairman Durbin, Senator Brownback, and members of the Subcommittee, I am pleased to appear before you this morning to present the fiscal year 2008 budget request for the Administrative Office of the United States Courts (AO) and to support the overall request for the entire Judicial Branch.

Before I begin, I would like to join Judge Gibbons in thanking you and your Committee for the support you provided the Judiciary in H. J. Res. 20, the final 2007 Continuing Resolution. We deeply appreciate the additional funding above a hard freeze provided the Judiciary. It will support current on-board staffing levels and base operating requirements, and allow some staffing increases in courts whose workload has been heavily impacted by immigration and other law enforcement initiatives.

While this is my first *official* appearance before Congress, from 1996 to 2000 I served Chief Justice Rehnquist as his Administrative Assistant and chief of staff and supported Justices Souter and Kennedy in their appearances before then-Chairman Gregg and the Commerce, Justice, State, and the Judiciary Appropriations Subcommittee. I look forward to working with you under the newly formed Financial Services and General Government Appropriations Subcommittee, to answer any questions you might have, and to represent as clearly as I can the important needs of the federal Judiciary.

Role of the Administrative Office

In July 2006, I accepted the appointment of Chief Justice Roberts to become the 7th Director of the Administrative Office of the U.S. Courts. Created by Congress in 1939 to assist the federal courts in fulfilling their mission to provide equal justice under law, the AO is a unique entity in government. Neither the Executive Branch nor the Legislative Branch has any one comparable organization that provides the broad range of services and functions that the AO does for the Judicial Branch.

Unlike most Executive Branch agencies in Washington, the AO is not the sole headquarters for the courts. The federal court system is decentralized, although the AO provides administrative, legal, financial, management, program, security, information technology and other support services to all federal courts. It provides support and staff counsel to the Judicial Conference of the United States and its 25 committees, and it helps implement Judicial Conference policies as well as applicable federal statutes and regulations. The AO also

coordinates Judiciary-wide efforts to improve communications, information technology, program leadership, and administration of the courts. Our administrators, accountants, systems engineers, analysts, architects, lawyers, statisticians, and other staff provide professional services to meet the needs of judges and staff working in the federal courts nationwide. The AO staff also responds to Congressional inquiries, provides information on pending legislation, and prepares Congressionally mandated reports.

The AO has evolved and matured over the years to meet the changing needs of the judicial branch. Service to the courts, however, has been and remains our basic mission. As its new Director, I want to ensure that the structure and services provided by the AO are appropriate and cost-effective and that they address the needs of the courts. I am assembling a small advisory group of judges and leaders from court personnel to assist me and our new Deputy Director – Jill Sayenga – in a review of our structure. Ms. Sayenga brings with her 18 years of experience in the federal court system and will be a great asset to the AO. We are currently engaged in an examination of our core mission as defined by statutes and directives from the Judicial Conference to determine if internal adjustments are needed within the AO to improve efficiency and responsiveness to the courts.

Working with Our Executive Branch Partners

Relations between the General Services Administration (GSA) and the AO in recent years have been strained. During the past eight months I have served as Director, I have met many times with Ms. Lurita Doan, the new GSA Administrator, and the new Commissioner of the Public Buildings Service, David Winstead, to work on solutions to the issues confronting our organizations and identify our mutual goals and responsibilities. I am pleased to report significant progress in the relationship between the AO and GSA . We are working together on our extensive nationwide effort to validate GSA space assignment and classification records, and to reconcile them with actual rent bills. In addition, we are currently working on significant changes in how GSA determines or calculates courthouse rents. We both recognize the important responsibility our agencies have in being good stewards of limited federal funds. Our negotiations reflect the partnership that is being forged and my firm belief that developing cooperative relationships and maintaining open lines of communication with our Executive Branch partners is crucial to our ability to solve problems as they arise. It is our mutual goal to present solutions to Congress to the issues facing us, and not delivering problems to you.

Judicial Security

Another important Executive Branch partnership we have is with the United States Marshals Service (USMS). By statute, and under a Memorandum of Agreement with the Attorney General, the Congress appropriates funds to the Judiciary to provide security inside federal courthouses, and these funds are administered by the USMS for the Judiciary through its judicial security program. A close working relationship between the AO and the USMS is essential to ensure the protection of the judicial process, including litigants, judges, and the public. In addition, it is critical that the Administration support, and Congress provide, the resources necessary for the USMS to fulfill adequately its statutory mission.

John Clark, a career U.S. Marshal, and relatively new Director of the USMS, has been very accessible to the AO and we are building a stronger working relationship with the USMS. Director Clark has attended each of the meetings of the Judicial Conference's Judicial Security Committee since it was created in January 2006 and has encouraged his senior staff to meet regularly with AO staff to discuss issues and implement policies regarding judicial security. This improved relationship with the USMS will enhance the security of the Judiciary.

Following the murders of two members of U.S. District Court Judge Joan Lefkow's family in their Chicago home, the Administrative Office worked with Director Clark and the Appropriations Committees – especially you Chairman Durbin – to obtain supplemental funding for the USMS to enhance the off-site security of federal judges. Part of the supplemental funding was used by the USMS to establish a home-intrusion detection systems program for all federal judges. The AO and the USMS worked together to develop a program to provide home alarm systems to federal judges who wanted one. To date, nearly 1,600 systems have been installed or are scheduled for installation in judges' homes by a USMS national security vendor.

The Administrative Office – In Service and Support

Each day, as judges and court employees across the country work to provide citizens with due consideration and equal justice under the law, the Administrative Office supports that commitment by designing and carrying out programs and initiatives in a manner that reflects good stewardship of public funds. From the implementation of cost-containment initiatives to carrying out congressional mandates, AO staff collaborate with the courts to design and implement smart business practices. I would like to highlight just a few.

Judiciary Internal Oversight and Review

The Administrative Office plays a vital role in the Judiciary's system of oversight and review to promote the stewardship of resources, effective program management, and the integrity of operations within the Third Branch. The AO has been conducting financial audits since Congress first authorized this function in 1975.

The AO's comprehensive audit program complies with generally accepted government audit standards. In 2006, the AO conducted 105 financial and administrative audits of Judiciary funds, financial activities, operations and systems. Financial audits covering all court units are conducted by an independent certified public accounting firm under contract with and the direction of the Office of Audit on a four-year cycle for most courts, and on a 2 ½ year cycle for larger courts. Other audits cover funds such as the Court Registry Investment System, Judiciary Retirement Trust Funds, Chapter 7 trustees, Criminal Justice Act (CJA) grantees, contracts and financial systems, and special audits such as when there is a change of court unit executive.

In addition, on-site programmatic reviews are conducted in the courts. These specific reviews may focus on things such as program operations and management, human resources management, procurement, information technology operations, security, continuity of operations

planning and disaster preparedness, as well as jury management and court reporting in district courts. During fiscal year 2006, on-site reviews covering program and technical operations were conducted in three appellate courts, seven district courts, four bankruptcy courts, 14 federal defender organizations, and 12 probation and pretrial services offices.

The AO provides investigatory services for addressing allegations of waste, fraud, or abuse. This program was approved by the Judicial Conference in 1988, and the Judicial Conference's Committee on the AO oversees the AO's performance of this function. In addition, the AO has a liaison with the Department of Justice's Criminal Division, the Government Accountability Office's FraudNet operation, and others for the referral and appropriate resolution of allegations of impropriety.

Ethics Compliance

The Judiciary also has mechanisms in place to address allegations of judicial misconduct or disability. Like Congress, the Judiciary addresses conduct and ethical matters with self-regulating policies and through committees of federal judges. Accountability is a core value of the Judiciary, and the Judiciary's self-imposed standards of conduct are stringent.

Last September, the Judicial Conference adopted two policies to aid judges in complying with established ethical obligations. The first requires all federal courts to use conflict-checking software to assist judges in identifying cases in which they could have a financial conflict of interest and should therefore recuse themselves. While automated screening is not foolproof, it is an efficient and effective supplement to a judicial officer's individualized review. The second outlines new disclosure requirements for those who provide privately-funded educational programs for judges and the judges who attend such programs. The policy requires seminar sponsors to disclose sources of funding, topics, and names of speakers. Judges are barred from accepting reimbursements unless the program providers have made the required disclosures. Judges must report their attendance within 30 days after the program. Disclosures already are available on the Internet. The Administrative Office is actively engaged in the implementation of these policies. Working closely with the relevant Judicial Conference committees, AO staff drafted guidelines, developed training programs, and created automated reporting systems to support these new Conference policy initiatives.

Remote Access for Officers Working in the Community

Through its Office of Probation and Pretrial Services, the AO continues to provide probation and pretrial services officers with various wireless technologies to enhance their productivity while in the community interacting with defendants and offenders. Officers now have all critical information about persons under their supervision at their fingertips via "smart phones" and wireless hand-held devices and laptops. Not only do officers working in the community have access to all of the information that is available in their offices, they also are able to transmit information from remote locations back to the office. These technologies save travel time and expenses and make it possible for officers to spend more time in the community supervising offenders. Using remote technology was imperative to our success in tracking offenders in the aftermath of the Gulf Coast hurricanes.

Case Budgeting

Recently issued Judiciary guidelines encourage courts to utilize case budgeting for high-cost Criminal Justice Act (CJA) panel attorney representations. These high-cost representations total less than three percent of the caseload but account for about one-third of the panel attorney expenses. To assist in this effort the Second, Sixth, and Ninth circuits were selected to participate in a pilot project and each will receive one position to support the case-budgeting process in courts within these circuits for up to three years. The AO has contracted with two expert litigators who have substantial case-budgeting experience to assist judges in assessing whether Criminal Justice Act case budget estimates are reasonable. The Defender Services appropriation is one of the fastest growing accounts within the Judiciary and we are hopeful that case budgeting will be helpful in controlling expenditures in high-cost – usually capital case – representations.

Report on the Impact of the Supreme Court Booker Case on the Judiciary's Workload

The Supreme Court, in *Blakely v. Washington*, 542 U.S. 296 (2004) (*Blakely*), invalidated a sentence imposed by a state court under the state's sentencing guidelines system. In doing so, it raised questions about the constitutionality of the federal sentencing guidelines system. The Supreme Court decision in *United States v. Booker* 543 U.S. 220 (2005) (*Booker*), issued a year later, rendered the federal sentencing guidelines advisory in nature, rather than mandatory.

In a June 2006 report requested by the House and Senate Appropriations Committees, the AO documented that the Supreme Court decisions in *Blakely* and *Booker*, had significantly impacted the workload of the federal courts, as thousands of convicted defendants filed appeals or habeas corpus petitions contesting the legality of their sentences and thousands of cases already on appeal were remanded back to the trial courts for resentencing. This detailed analysis of the impact the *Blakely/Booker* decisions have had on the workload of the appeals and district courts, federal defenders, and probation officers has been extremely helpful in determining resource needs and the allocation of appropriated funds.

Increased Productivity Through Information Technology Systems

Another key AO responsibility is to lead and manage the development, implementation, and support of new information technology systems that will enhance the management and processing of information and the performance of court business functions. By the end of 2006, the federal courts' Case Management Electronic Case Files (CM/ECF) system was operating in all bankruptcy courts, and 92 of 94 district courts, as well as the Federal Court of Claims and the U.S. Court of International Trade. The appellate courts' new case management system is scheduled to be fully deployed in nearly all regional courts of appeals by the end of this year.

The prototype system for what is now CM/ECF was launched in 1995 when a team from the AO helped the U.S. District Court in the Northern District of Ohio manage more than 5,000 document-intensive maritime asbestos cases. That court faced up to 10,000 new pleadings a week – a workload that quickly became unmanageable. Together, the team developed a system that

allowed attorneys to file and retrieve documents and receive official notices electronically. A year later, the Bankruptcy Court in the Southern District of New York began live operations with a similar system that the AO had tailored for bankruptcy court needs. That court faced some of the early mega-bankruptcies, and was inundated with paper. Those early prototype efforts led to the system that now provides information on 28 million federal court cases and serves hundreds of thousands of attorneys and litigants nationwide. Through the Judiciary's Public Access to Court Electronic Records (PACER) program most, if not all, appellate, district, and bankruptcy courts' websites contained the material now required by the E-Government Act of 2002 long before its enactment.

The implementation of CM/ECF is the largest system development and implementation effort ever undertaken in the Judiciary and is clearly one of our greatest success stories. More than 415,000 attorneys have registered and been trained in CM/ECF and on average, nearly 200,000 docket entries are made each workday. However, during one extraordinary period – the first weeks of October 2005 – that volume more than doubled. And through the PACER system, CM/ECF answers more than 1,000,000 queries per workday. The system provides lawyers, the media, and any interested party with access to important case documents from anywhere, at any time, and replaces what had previously been a burdensome, labor- and paper-intensive responsibility. Attorneys have praised the systems, noting that they are easy to use, reduce their service and copying expenses, and provide quick notice of actions. It is clear that a robust Information Technology program makes the federal Judiciary more accessible and efficient.

Veterans' Court of Appeals

Recognizing the success of the Judiciary's Case Management/Electronic Case Filing System and looking for the cost efficiency of adapting our new appeals court system to one that could serve their needs, the U.S. Court of Appeals for Veterans Claims approached the AO for assistance. After ensuring that our system could be adapted for their use without compromising our own security, and with the approval of the Judicial Conference, the AO entered into a Memorandum of Understanding to train and support the Court in its examination and implementation of the product. The Military Construction Appropriations Subcommittees and the Veterans Affairs Committees in the House and Senate were very supportive of this agreement and the savings this partnership can bring to the federal government.

IT Cost Containment Initiatives

During 2006, the AO also continued its efforts to assist the Judicial Conference Committees in developing and implementing cost containment strategies that will hold down costs while maintaining the quality of judicial services. Our efforts in the area of Information Technology are one example where we have been focusing on ways to leverage limited funds to deliver useful technologies while reducing operating costs.

The Information Technology Committee was asked by the Executive Committee of the Judicial Conference to examine how we deploy computer servers for running and backing up national applications – such as our accounting, probation case management, electronic case filing, email, and jury management systems. Our model had been to put servers in each court

headquarters for each of those national applications. From a technical standpoint, such a server deployment model was not always necessary.

So, under the direction of the IT Committee, the AO undertook a comprehensive study – working together with many program offices, a group of court unit executives, IT professionals and a judge – to determine how best to consolidate and share the thousands of servers deployed throughout our court system. The AO is now in the process of implementing some of their recommendations.

In the probation/pretrial services area, we are in the process of consolidating 95 servers into two locations, which is projected to save \$2 to \$3 million over four years in equipment, staff support, and maintenance costs. In jury management, the working group recommended eliminating separate servers for each court by consolidating jury management onto the courts' CM/ECF servers. This is projected to save about \$4 million over five years. We have also saved significant dollars in the courts by obtaining enterprise-wide licenses for such software as Adobe Acrobat Professional, instead of each court purchasing its own.

Administrative Office Cost Containment

Cost containment is also an important priority *within* the Administrative Office. When I became Director in July, in an effort to control staffing costs, I restricted recruitment actions for filling vacant positions to internal AO sources. Any exceptions for external recruitment are scrutinized carefully by an executive review committee and require my approval. And, as part of the larger comprehensive review of the AO now ongoing, we will also be looking at AO spending, staffing, and operations to ensure that the agency is carrying out the business of the Judiciary in the most efficient and effective manner.

In addition to tight staffing restrictions, during 2006 the AO implemented a number of other internal cost-containment initiatives such as: shifting many publications to electronic format whenever possible; reducing library materials in favor of electronic resources; and replacing desktop automation equipment based on necessity rather than on a cyclical basis.

Administrative Office Budget Request

The FY 2008 appropriations request for the Administrative Office of the U.S. Courts is \$78,536,000, representing an increase of \$6,159,000, or 8.5 percent, over fiscal year 2007 available appropriations. While the percentage increase in appropriations we are seeking may appear significant, overall it represents a no-growth, current services budget request.

The AO's appropriation comprises less than two percent of the Judiciary's total budget. In addition to the appropriation provided by this Committee, the AO receives non-appropriated funds from sources such as fee collections and carryover balances to offset appropriation requirements. The AO also receives reimbursements from other Judiciary accounts for

information technology development and support services that are in direct support of the courts, the court security programs, and defender services.

The principal reason for the large increase in appropriated funds requested for the AO in FY 2008 is to replace *non-appropriated* funds (fee/carryover) that were used to finance the FY 2007 financial plan, but which are expected to decline in FY 2008 mostly because of reductions in bankruptcy filings. Specifically, the AO requires \$6.2 million in base adjustments to maintain current services. This includes inflationary adjustments and increased costs for recurring requirements, such as communications, service agreements, and supplies. The AO requests no program increases, and during FY 2007, I expect our hiring freeze will result in the reduction of 10 FTE's below FY 2006 staffing. We will keep you apprised of actual fee collections and carryover estimates as the year progresses. If collections surpass our estimates, the amount we are requesting could be reduced. However, if declining fee and carryover projections materialize, and they are not replaced with direct appropriated funds, we will be forced to reduce current on-board staffing. These staffing losses would come on top of the 10 FTE's reduced in the hiring freeze this year. This would, in turn, adversely affect our ability to carry out the AO's statutory responsibilities and serve the courts.

Conclusion

Chairman Durbin, Senator Brownback, members of the Subcommittee, in the interest of time, I have shared with you only a few examples of the wide array of services and support the Administrative Office provides the federal Judiciary, but I hope you will understand more about the function and responsibilities of our agency during the coming months. In addition to our service to the courts, the AO works closely with the Congress, in particular, the Appropriations Committee and its staff, to provide accurate and responsive information about the federal Judiciary. I recognize that FY 2008 will be another difficult year for you and your colleagues as you struggle to meet the funding needs of the agencies and programs under your purview. I urge you, however, to consider the significant role the AO plays in supporting the courts and the mission of the Judiciary. Our budget request is one that does not seek new resources for additional staff or programs. I hope you will support it.

Thank you again for the opportunity to be here today.

I would be pleased to answer your questions.