

STATEMENT OF
HONORABLE JULIA S. GIBBONS, CHAIR
COMMITTEE ON THE BUDGET OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE SUBCOMMITTEE ON
TRANSPORTATION, TREASURY, HOUSING AND URBAN DEVELOPMENT,
THE JUDICIARY, DISTRICT OF COLUMBIA AND INDEPENDENT AGENCIES
OF THE
COMMITTEE ON APPROPRIATIONS OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

April 5, 2006

INTRODUCTION

Chairman Knollenberg, Representative Olver and members of the Subcommittee, I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals. Our court sits in Cincinnati, Ohio, and my resident chambers are in Memphis, Tennessee. Last year was my first appearance before this Subcommittee, and it is an honor to appear before you for a second time. As the Chair of the Judicial Conference Committee on the Budget, I come before you to testify on the judiciary's appropriation requirements. In doing so, I will also apprise you of some of the challenges facing the federal courts.

At the outset I want to note that we have enjoyed a productive relationship with the Subcommittee and its staff from the time the judiciary was placed within your jurisdiction last year. We are extremely appreciative that you made us a funding priority in the fiscal year 2006 appropriations process.

DIRECTOR MECHAM'S RETIREMENT

Appearing with me today is Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts. This will be Director Mecham's last appearance before this Subcommittee. After 21 years at the helm of the Administrative Office, he is taking a well-deserved retirement. He is the longest serving director of the Administrative Office and is only the sixth person to head that unique organization, which was established in 1939.

Director Mecham led the Administrative Office during two decades of unprecedented change in the federal courts. In 1985, when Director Mecham began his tenure, the federal courts still relied on electric typewriters. The operating budgets for the nearly 400 court units across the 94 judicial districts were largely managed from Washington, D.C. Federal court facilities were in poor shape due to decades of neglect and deferred maintenance. And the Administrative Office itself was scattered in multiple locations across Washington, D.C.

Twenty years later, the picture is quite different. The use of information technology has fundamentally changed the way the courts operate. Today we have a judiciary-wide data communications network that provides a secure infrastructure for numerous systems and applications. The judiciary's case management/electronic case files system has been implemented

in nearly all district and bankruptcy courts and is now moving into our appellate courts. Electronic courtroom technologies such as electronic presentation of evidence, digital court reporting, and videoconferencing are now routinely used.

Today, under the judiciary's budget decentralization policy, courts have the flexibility to address their unique needs and priorities at the local level. Yet they are also accountable for managing these funds wisely.

Under Director Mecham's leadership, 90 court building projects have been approved, providing space needed by the courts to house judges and support staff required to manage the judiciary's growing workload needs. The Administrative Office finally consolidated its scattered offices when it received its own building in 1992 – the Thurgood Marshall Federal Judiciary Building – which, in addition to the Administrative Office, houses the Federal Judicial Center, and the United States Sentencing Commission.

Director Mecham's superb leadership and vision have contributed significantly to the federal judiciary's management progress. We in the Third Branch will miss his dedicated service to the courts.

IMPROVED FISCAL YEAR 2006 OUTLOOK FOR THE COURTS

As you may recall, last year at this time the courts were reeling from the steady downsizing of probation and clerks' office staff in the 18-month period between October 2003 and March 2005, during which on-board court staffing levels declined by 1,800 positions, or 8 percent. The need to fund must-pay expenses such as judges salaries and GSA rent, within the constrained appropriations provided to the judiciary in fiscal years 2004 and 2005, resulted in essentially flat funding for the courts in those years. In fiscal year 2004, the courts lost 1,350 staff and in fiscal year 2005 additional positions were left vacant due to the delay and uncertainty surrounding the fiscal year 2006 congressional budget. These funding constraints forced courts to fire and furlough staff, offer early retirements, and leave vacant positions unfilled in order to pay basic operating costs like telephone and electric bills. Unfortunately, these staffing reductions came at a time when the courts, especially those along the southwest border, were experiencing historically high workload levels.

Now, a year later, I am happy to report that the financial outlook for the courts has improved. I raised our budget concerns with the Subcommittee during my appearance last year, and you responded by making the judiciary a high priority. We recognize that many agencies in your bill received little or no growth in fiscal year 2006, and yet you provided the courts' operating account with a 4.5 percent increase in appropriations for fiscal year 2006, after applying the government-wide 1 percent across-the-board rescission and excluding supplemental funding. This increase is consistent with those received in fiscal years 2004 and 2005 of 4.7 percent and 4.3 percent, respectively, and approximates the minimum amount we required to maintain on-board staffing levels in fiscal year 2006.

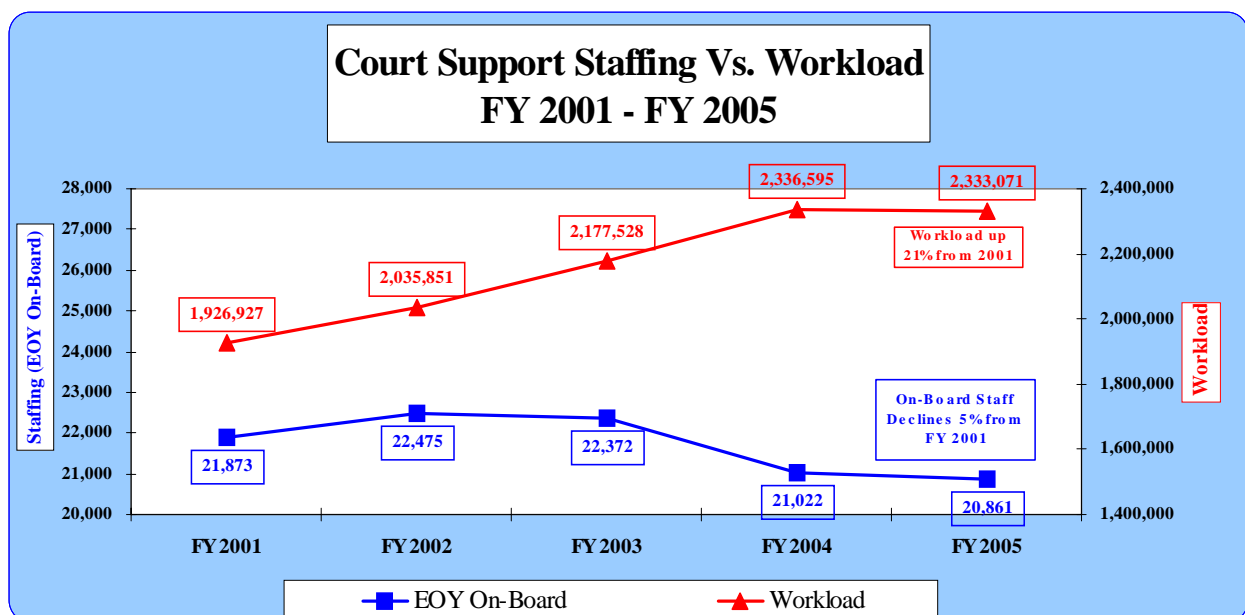
Fortunately, in addition to the appropriations provided by Congress, several other unanticipated factors made more funds available for the courts in fiscal year 2006. Actions outside the judiciary's control (e.g., fewer than anticipated judgeship confirmations), along with cost containment initiatives, such as the effort in New York to identify and recover GSA rental

overcharges – which I will discuss in more detail later in my testimony – resulted in higher than anticipated carryover from fiscal year 2005 and reductions in fiscal year 2006 must-pay requirements. These unanticipated, and likely one-time, factors resulted in the courts receiving an overall 6.9 percent increase in their funding allotments in fiscal year 2006, the first above-inflation increase for the courts since fiscal year 2002. This puts the courts in a position to backfill nearly half of the 1,500 probation and clerks’ office staff lost over the last two years.

The favorable outlook for fiscal year 2006 requires some perspective and a word of caution, however. After several years of operating under extremely tight funding levels, an increase in fiscal year 2006 funding for the courts in real terms (above inflation) is considered a significant achievement. While the courts are in better shape financially than in recent years, court staffing is still well below the level needed to address all workload requirements imposed on the courts. In fact, even with the enhanced funding provided to the courts in fiscal year 2006, we still anticipate end-of-year staffing levels in probation and clerks offices to be more than 800 positions below the benchmark of 22,372 staff that were on-board in October 2003, the level just prior to the courts having to downsize due to budget constraints. The emphasis placed on increased immigration enforcement efforts as well as other factors caused overall workload to increase eight percent during this same period.

COURT STAFFING LEVELS LAG BEHIND WORKLOAD GROWTH

Although caseload in the federal courts has begun to stabilize, it nonetheless remains at historic highs in most categories. While caseload has grown sharply in recent years, not only have court staffing levels failed to keep pace with that workload growth, but the courts have, in fact, been falling farther behind. As illustrated in the following chart, from fiscal year 2001 to fiscal year 2005 the courts’ aggregate workload increased 21 percent while on-board court staffing levels *declined* by a net 5 percent. The judiciary has made extensive use of electronic case management and case filing systems to make clerks’ offices more efficient, but reduced staffing levels and budget constraints have resulted in 30 percent of our district and bankruptcy clerks’ offices having to reduce the office hours they are open to the public.



Reduced staffing levels have also changed the way probation officers do their work. Probation officers have had to prioritize their supervision caseload to focus on higher-risk supervision cases and reduce the amount of supervision they provide to lower-risk offenders. This may be impacting public safety, as evidenced by a recent review of national data which revealed that the number of removals from supervision due to new criminal conduct increased by 9.4 percent in fiscal year 2005 over the number in fiscal year 2004. We are very concerned that any continued decline in court staffing may harm the public.

In evaluating our need for staff to accommodate workload growth, we have requested only the number of staff that can realistically be hired over the course of the year, not the number of staff that our workload statistics say we need. This is because we recognize that it takes more time to add staff than to reduce staff. Eliminating staff, while traumatic for managers and employees alike, can be done in a relatively short amount of time. Early retirement and buyout offers attract sizeable numbers of volunteers willing to leave the court rolls. Unfortunately, often these individuals are the most experienced and seasoned court employees. In other more difficult instances, staff have to be laid off due to funding constraints. For courts that are downsizing, staff need to be off the payroll early in the fiscal year in order to maximize budget savings. On the other hand, backfilling these positions takes much longer. With continuing resolutions and the hiring freezes that may accompany them, coupled with the lead-time it takes to advertise, interview, and make a selection, it can take months – and well into the fiscal year – to fill a vacancy. Candidates for probation officer positions require extensive background security checks and can take up to a year to bring on board.

The judiciary's budget request includes funding for 464 new probation and clerks' office staff to address the immediate workload needs of the courts. A request based on the full requirements identified by our staffing formulas would have resulted in an increase of more than 2,000 staff in fiscal year 2007.

It is vital that Congress understand that, while the courts require additional staff in order to perform their statutory duties, many have been reluctant to hire those staff for fear they will have to fire them almost immediately in fiscal year 2007. What the court community needs now is a clear message that, at the very least, funds will be available in fiscal year 2007 to maintain fiscal year 2006 year-end staffing levels and ultimately to address the recent workload growth that was not matched with additional staffing resources.

WORKLOAD IN THE COURTS

As I just mentioned, after years of steady growth the workload in the courts has begun to stabilize. I would like to highlight some areas of the judiciary's workload for the Subcommittee, but before I do so, I would like to discuss how judiciary work plays an indispensable role in our nation's homeland security efforts.

The Judiciary's Role In Homeland Security

Actions taken by the Department of Homeland Security and the Department of Justice have a direct and immediate impact on the federal courts. Whether it is costly high-profile terrorist cases or soaring increases in immigration cases and related appeals, this workload all ends up on court dockets, and sufficient resources are required in order to respond to it. In recent years, Congress and the Administration have significantly increased spending for homeland security. Non-defense homeland security spending has more than tripled since 2001. In sharp contrast, appropriations for

the courts' operating budget have increased by 29 percent and on-board court staffing levels have *declined* by 5 percent. Increased spending on homeland security is expected to continue, as evidenced by the President's fiscal year 2007 budget, which includes an 8 percent increase in non-defense homeland security spending. The judiciary cannot absorb the additional workload generated by homeland security initiatives within current staffing and resource levels.

Immigration Enforcement

Funding for border security and immigration enforcement has nearly doubled since 2001, and we have seen a direct impact on our workload as a result. Since the September 11, 2001 terrorist attacks, nearly 1,200 additional border patrol agents have been hired, and Congress recently funded an additional 1,500 agents. Furthermore, the President proposes to add 1,500 border patrol agents in fiscal year 2007 for a potential increase of more than 4,000 new agents since September 2001. This large influx of new border patrol agents has and will continue to generate considerable additional workload for judges and probation and clerks offices, especially in the five judicial districts along the southwest border with Mexico. Costs in our federal defender services program will increase as well. These southwest border courts currently account for nearly *one-third* of all criminal cases nationwide, up from 27 percent in 2001, and criminal immigration cases in these courts have increased by 68 percent since 2001.

The immigration-related workload also affects other areas of the judiciary. Criminal appeals involving immigration issues increased 64 percent from 2004 to 2005. Over this same period, nearly 12,000 appeals from decisions by the Department of Justice's Board of Immigration Appeals were filed in federal courts of appeals, a 19 percent increase. Furthermore, these immigration appeals are up nearly 600 percent since 2001. The President's fiscal year 2007 budget includes funding for the Department of Justice to increase the number of immigration judges and immigration appeal attorneys in order to adjudicate a larger percentage of detained immigrant cases and appeals. If funded, this will further increase the number of immigration appeals that will end up in the federal courts.

Bankruptcy Filings

Passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 resulted in a massive workload increase for bankruptcy courts as individuals rushed to file before the mid-October 2005 effective date of the legislation. Fiscal year 2005 bankruptcy filings totaled 1,782,643, an all-time record and a 10 percent increase over fiscal year 2004. In October 2005 alone, more than 600,000 bankruptcy cases were filed nationwide; by comparison, filings in October 2004 totaled 130,679. Managing this unprecedented level of filings required a truly herculean effort on behalf of bankruptcy clerks offices around the country. There are countless examples of clerks' office staff working nearly around the clock to ensure that those wishing to file for bankruptcy before the new law took effect could do so.

Given the landmark nature of this legislation, it is difficult to predict what filing patterns will emerge in 2006 and 2007. Bankruptcy filings are expected to decrease in the short-term, but the decline in filings will likely be due, in part, to the large number of people who filed just prior to the effective date of the new bankruptcy law. Filings are expected to return in significant numbers as attorneys and debtors become more familiar with the requirements of the new law. In addition, the new legislation creates additional duties for the bankruptcy courts. New duties were added in many areas including credit counseling, means testing, financial management, tax returns, reaffirmations,

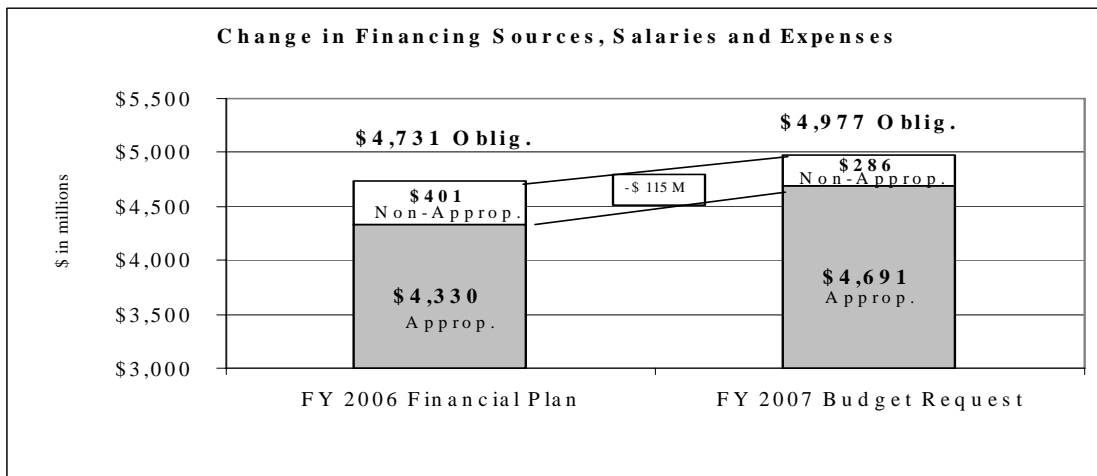
lease payments, and automatic discharges. Many of these areas have required the creation of new processes and operations in the clerks' offices. In addition, clerks' offices are experiencing a surge in motions and related activity and inquiries from the bar and public. As a result of the new demands imposed by the law on clerks' offices, it is unclear at this time whether reductions in bankruptcy filings will translate into reductions in workload and staff. Given these uncertainties, the fiscal year 2007 budget request does not include any change in bankruptcy clerks' office staffing levels.

Booker/Fanfan - Sentencing Guidelines

The judiciary is also facing the effect of the U.S. Supreme Court's decision in the consolidated cases, *United States v. Booker* and *United States v. Fanfan*. In fact, the courts began receiving increased filings almost six months before *Booker* was decided – immediately after the earlier Supreme Court decision in *Washington v. Blakely*. Since that decision in June 2004, the courts have received over 14,500 cases affected by issues raised in the *Booker* case, about 7,500 of these in the courts of appeals and the remaining 7,000 in the district courts, and the effects are not yet over. Habeas corpus petitions raising *Booker* issues filed between October 1, 2005 and January 12, 2006, when the statute of limitation for filing these petitions expired, are not yet reflected in the statistics. Nor do they include most *Booker*-related petitions that the federal courts may receive from prisoners sentenced in the state courts, as those prisoners must first exhaust all options in the state courts before they can bring their cases to the federal courts. The federal courts will likely continue to receive an increased level of state habeas corpus petitions for the next three or more years.

FISCAL YEAR 2007 BUDGET REQUEST

The federal judiciary is approaching a crossroads in fiscal year 2007 and Congress will determine which direction the courts take. It is imperative that Congress provide the courts with appropriations sufficient to build on the gains achieved in fiscal year 2006. It would be unfortunate to re-create the funding problems that the judiciary and Congress have worked so hard to remedy. We greatly appreciate that Congress made the federal courts a high priority in fiscal year 2006 and respectfully request that you continue to do so. An appropriations increase of 4 to 5 percent in fiscal year 2007 – although consistent with recent increases – will not achieve that goal. In fact, such an increase will not provide for a current services operating level in fiscal year 2007 and would likely require the courts to return to their downsizing ways of the last two years. The reason for this is reflected in the following chart and discussion.



The high carryforward balances utilized in the fiscal year 2006 financial plan were, in part, the result of rent credits from GSA and other one-time windfalls outside the judiciary's control that will likely not be available to finance fiscal year 2007 requirements. A lower amount of non-appropriated sources of funding, from \$401 million to a projected \$286 million, means that the courts' Salaries and Expenses account requires a higher appropriation increase in fiscal year 2007 just to stay even – about 7.7 percent over fiscal year 2006 to maintain current services – and an increase of 8.3 percent to fund our full request.

While the courts' Salaries and Expenses account requires an 8.3 percent increase for fiscal year 2007, the judiciary is requesting a 9.4 percent overall increase above fiscal year 2006 available appropriations. A summary table detailing fiscal year 2007 requirements by account is included at Appendix A. We believe this level of funding represents the minimum amount required to meet our constitutional and statutory responsibilities. While this may appear high in relation to the overall budget request put forth by the Administration, the judiciary does not have the flexibility to eliminate or cut programs as the executive branch does to achieve budget savings. The judiciary's funding requirements essentially reflect basic operating costs which are predominantly for personnel and space requirements. Of the \$540 million increase being requested for fiscal year 2007:

- \$160 million of the requested increase is needed just to pay for standard pay and benefit increases for judges and staff. This does not pay for any new judges or staff but rather covers the annual pay adjustment and benefit increases (e.g., health benefits) for currently funded judiciary employees. The amount budgeted for the cost-of-living adjustment is 2.2 percent for 2007.
- \$6 million is associated with increases in the number of active and senior Article III judges.
- \$140 million is a technical adjustment to cover the projected loss in non-appropriated sources of funding (\$115 million of which is for the courts' salaries and expenses account). In addition to appropriations, the judiciary receives revenue from fees and other items that can be used to offset appropriation needs in the next fiscal year. Revenue not needed during the year collected may be carried over. As I mentioned, the high carryforward balance from fiscal year 2005 and the rent credits from GSA will likely not be available as financing sources in fiscal year 2007, so the judiciary requires appropriated funds to replace them. The projected 20 percent decline in filing fee revenue in fiscal year 2007 due to fewer projected bankruptcy filings is also reflected in this requested increase. We will keep the Subcommittee apprised of any changes to these fee or carryforward projections as we move through fiscal year 2006.
- \$50 million is needed for space rental increases, including inflationary adjustments and new space delivery, and for court security costs associated with new space. An additional \$7 million is needed to pay for Federal Protective Service security equipment and building-specific surcharges for court facilities.
- \$43 million is required to support, maintain, and continue development of the judiciary's information technology program, which has allowed the courts to "do more with less" in absorbing workload increases while having to downsize staff.

- \$18 million is required to cover mandatory increases in contributions to the judiciary trust funds that finance benefit payments to retired bankruptcy, magistrate, and Court of Federal Claims judges, and spouses and dependent children of deceased judicial officers.
- \$14 million is necessary to pay costs associated with Criminal Justice Act representations. The Sixth Amendment to the Constitution guarantees that all criminal defendants have the right to counsel. The Criminal Justice Act provides that the courts shall appoint counsel for those persons who are financially unable to pay for their defense. The number of representations is expected to increase by 5,500 in fiscal year 2007, as the number of defendants for whom appointed counsel is required increases. An additional \$12 million will fund deferred panel attorney payments and shortfalls in fiscal year 2006 requirements.
- \$12 million of the increase will provide for several smaller base adjustments such as continued investments in the Supreme Court building modernization program and general inflationary increases for judiciary programs.

The increases described above total \$462 million, or 86 percent of the requested increase, and represent must-pay items for which little to no flexibility exists. This leaves a much smaller increase of \$78 million to address workload increases and for other program enhancements. Of this amount:

- \$24 million is requested for additional staff and associated expenses. The bulk of this increase (464 positions) would fund the most critical and immediate workload needs of the courts, which as I previously noted, is primarily immigration-related workload along the southwest border where those five district courts currently account for nearly one-third of criminal cases nationwide. The judiciary uses statistically-based formulas to determine the number of positions needed to address adequately the workload of the courts. In an effort to hold down the required increase in staffing, the judiciary's cost-containment measures included a reduction to the formula-driven staffing levels. As a result of these efforts, the judiciary's calculations for full staffing requirements were lowered by nearly 900 positions, or 4 percent. Even after this adjustment, based on the courts' projected workload, the staffing formulas indicate more than 2,000 additional positions are needed in probation and clerks offices over the level funded in fiscal year 2006. Recognizing that the courts would have great difficulty hiring that many new staff in a single year, the judiciary has reduced its staffing request to reflect a number that can realistically be hired in fiscal year 2007 (464) in order to address the most critical workload needs of the courts.
- \$24 million to increase the non-capital panel attorney rate to \$113 per hour. I will discuss this requested increase in more detail in a moment.
- \$23 million would provide for critical security-related requirements.
- Of the remaining \$7 million, \$1.2 million would provide for three additional magistrate judges and associated staff, \$2 million would fund information technology enhancements, and the remaining \$3 million is for smaller requirements in other judiciary accounts.

Appendix B includes an account-by-account description for accounts under the *Courts of Appeals, District Courts and Other Judicial Services* heading which includes Salaries and Expenses, Defender Services, Fees of Jurors, and Court Security.

INCREASE IN NON-CAPITAL PANEL ATTORNEY RATES

We believe that one program enhancement in our budget request deserves strong consideration in order to ensure effective representation for indigent criminal defendants. We are requesting \$24 million to increase the non-capital panel attorney rate to \$113 per hour effective January 2007. A panel attorney is a private attorney who serves on a panel of attorneys maintained by the district or appellate court and is assigned by the court to represent financially-eligible defendants in federal court. These attorneys are compensated at an hourly rate of \$92 for non-capital cases and up to \$163 for capital cases.

The judiciary requests annual cost-of-living adjustments – similar to the annual adjustments provided to federal employees – for two reasons. First, cost-of-living adjustments allow the compensation paid to panel attorneys to keep pace with inflation and maintain its purchasing power and, in turn, enables the courts to attract and retain qualified attorneys to serve on their CJA panels. Second, regular annual adjustments eliminate the need to request large “catch-up” increases in order to account for several years with no rate adjustments. The Subcommittee has recognized the importance of annual cost-of-living adjustments by providing one to panel attorneys in fiscal year 2006, and we are very grateful for your help.

Our request to increase the non-capital hourly rate amounts to a catch-up increase, which, as I just mentioned, we would prefer to avoid. The non-capital rate was increased to \$90 in May 2002 (from \$75 per in-court hour and \$55 per out-of-court hour in most districts) but no adjustments were made to that rate until this past January, when it was raised from \$90 to \$92. In comparison, since May 1, 2002, the Department of Justice has been paying \$200 per hour to retain private attorneys with at least five years of experience to represent current or former federal employees in civil, congressional, or criminal proceedings. There is a substantiated need for our requested increase for panel attorneys. In a 2004 survey of federal judges, over half of them indicated that their courts were currently experiencing difficulty identifying enough qualified and experienced panel attorneys. In the first statistically valid, nationwide survey conducted of individual CJA panel attorneys in March 2005, a significant percentage (38 percent) of the over 600 attorneys surveyed reported that since the hourly compensation rate had increased to \$90 per hour in May 2002, they had nevertheless declined to accept a non-capital CJA appointment. The surveys also confirmed that panel attorneys are reluctant to accept appointments in complex, high-cost representations at the \$90 rate.¹ Strikingly, after covering overhead costs for the predominantly solo and small-firm lawyers who take CJA cases, their net pre-tax income for non-capital CJA representations amounted to only about \$26 per compensated hour. A large proportion (70 percent) of the CJA attorneys surveyed in March 2005 reported that an increase to the \$90 hourly rate is needed for them to accept more non-capital cases.

¹Although rates have been raised to \$92 per hour since the survey was taken, this \$2 per hour increase would not have materially affected the survey responses.

The requested increase to \$113 per hour reflects the amount the Judicial Conference believes is needed to attract qualified panel attorneys to provide the legal representation guaranteed by the Sixth Amendment. Indeed, \$113 is the level that the judiciary was seeking in 2002 when Congress increased the rate to \$90. Recognizing fiscal realities, the \$113 rate being requested is well below the \$131 rate that a full catch-up increase would permit. I urge you to give this rate increase strong consideration.

SECURITY OF FEDERAL JUDGES

Mr. Chairman, I would like to update you on an issue in which I know the Subcommittee shares a strong interest: the security of federal judges and their families. As you recall, in February 2005 a federal district judge's husband and mother were killed in their Chicago home by a disappointed civil litigant. A month later, a judge, court reporter, and deputy were killed in the Fulton County, Georgia courthouse by a defendant in a criminal case. In response to this violence, Congress acted quickly and provided \$11.9 million in fiscal year 2005 supplemental appropriations to the United States Marshals Service (USMS) for the installation of an intrusion detection system in the homes of all 2,200 federal judges, and for additional positions in the USMS's Office of Protective Intelligence to improve the process of assessing potential threats against judges. Over 1,700 judges have indicated that they wish to participate in the Home Intrusion Detection System Program.

In September 2005, Congress approved the USMS's financial plan for spending the \$11.9 million, and in December 2005 the USMS awarded a contract to ADT to begin system installations. Subsequently, Congress approved an amended financial plan in which the USMS agreed to assume responsibility for the post-installation maintenance and monitoring of these systems. We are very appreciative of the efforts of John F. Clark, Director of the USMS, in moving this critically important project forward.

THE JUDICIARY'S RENT BURDEN

I now turn to an issue that has been a concern of the Judicial Conference for over 15 years: the rent that the judiciary pays to GSA. Before I do so, I would like to take a moment on behalf of our courts along the Gulf Coast to thank GSA for its prompt action in helping those courts to recover from last year's hurricanes. The courts and GSA worked well together, and GSA's help was essential.

While we appreciate GSA's hard work on our behalf, we do have serious concerns about its rental pricing policies for courthouses. Courthouses serve a critical role in our nation's system of jurisprudence. They enable the federal judiciary to ensure the swift, fair, and effective administration of justice, as is required by the Constitution. Our space needs are unique and unlike those of any other federal entity. One of our primary concerns is that courthouses are currently treated as commercial office space by GSA for rent assessment purposes when, in reality, there is no building that is commercially equivalent to a federal courthouse. The fact that the judiciary has added significantly to its space inventory over the last 10 years does not fully justify or explain our sharply escalating rent payments to GSA, which are expected to consume 20 percent of the courts' budget in fiscal year 2006 and will soon top \$1 billion per year.

The need to reduce the judiciary's enormous rent burden, which threatens judicial independence, is critical to the courts' financial well-being. Chief Justice John G. Roberts Jr., in his *2005 Year-End Report on the Federal Judiciary*, identified the GSA rent issue as one of ". . . two areas of concern that have come to the fore and now warrant immediate attention and action." Despite numerous appeals, GSA has repeatedly declined to provide the judiciary with any measure of rent relief, although in 2005 it provided rent relief to 14 other federal entities. As the Chief Justice stated, "The disparity between the judiciary's rent and that of other government agencies, and between the cost to GSA of providing space and the amount charged to the judiciary, is unfair. The federal judiciary cannot continue to serve as a profit center for GSA."

In the absence of any changes to GSA's current rent pricing structure for court-occupied space, the judiciary over the last year has been meeting with appropriations and authorizing committees in Congress to raise awareness of the detrimental impact GSA's rent pricing policies have had on the judiciary's core mission of administering justice. In those meetings, we have stressed that the judiciary's recent budget problems, particularly in 2004 where the courts lost 1,350 probation and clerks' office staff, were due at least in part to GSA's rent pricing policies that diverted to rent funds needed by the courts to perform their essential functions.

In the absence of rent relief, the judiciary has assumed the burden of minimizing its rent payments to GSA by scrutinizing rent bills and identifying overcharges. In New York, court staff spent months examining GSA billings and identified space rent overcharges, the cumulative effect of which resulted in savings or cost avoidance over three fiscal years totaling \$30 million. GSA has corrected these errors through rebates and rent credits. This was a time-intensive effort by the New York courts that involved 2,000 staff hours – the equivalent of one person working full-time for a year. The real impact is that it took clerk's office staff away from core duties of processing the court's caseload in order to validate, and eventually correct, the billings from another federal entity.

Because these overcharges may be happening elsewhere, the judiciary is expanding its effort to identify billing errors and has launched a nationwide initiative to train clerks' office staff on how to research and detect errors. Again, this effort will come with a cost. It is estimated that this nationwide effort will require a minimum of 13,000 staff hours – equivalent to six people working full-time for a year – in addition to \$4.3 million for training, travel, and contractor support costs, including professional real estate appraisal services. This is not work that clerks' office staff should have to do, and surely Congress did not intend that we would have to devote scarce resources to finding rent overcharges. But we are left with no choice. Given the judiciary's austere budget situation, we must pursue savings and economies whenever possible, even if we have to divert valuable court resources in order to do so. I would conclude my remarks on this topic by again quoting Chief Justice Roberts who said in his year-end report ". . . the judiciary must still find a long-term solution to the problem of ever-increasing rent payments that drain resources needed for the courts to fulfill their vital mission." The judiciary stands ready to work with Congress and the Administration on this very important issue.

COST-CONTAINMENT STRATEGY FOR THE JUDICIARY

The judiciary fully recognizes the fiscal situation facing the Congress and has made cost containment a major priority. As was reported to Congress last year, the Judicial Conference of the United States approved in September 2004 a cost-containment strategy of identifying and

implementing measures to economize and reduce costs while not adversely affecting the delivery of justice. Director Mecham will be discussing cost containment efforts in more detail in his testimony, but I would like to emphasize that these cost containment efforts are having a real and immediate impact on our resource requirements. As an example, the fiscal year 2007 budget request was lowered by \$80 million principally due to cost-containment efforts and productivity improvements in clerks' and probation and pretrial services offices. The judiciary is preparing a report, for release this spring, to update Congress on the status of various cost-containment initiatives.

RESPONSE TO RECENT HURRICANES ALONG THE GULF COAST

Director Mecham will be discussing emergency preparedness activities in his testimony today, but I would like to talk briefly about the recent hurricanes along the Gulf Coast and their impact on federal court operations. First, and most importantly, I am happy to report that the Third Branch suffered no loss of life due to the hurricanes, although some judges and court staff did lose their homes in Hurricane Katrina. I would also like to thank you for the \$18 million in fiscal year 2006 supplemental appropriations that was provided to help the courts deal with the aftermath of these natural disasters. This funding has paid for travel and per diem expenses for judges, court staff, and their dependents who were displaced by the hurricanes as well as for security, furniture, and operating expenses for the affected courts. If Congress had not provided this emergency funding, the judiciary would have been forced to absorb these expenses which in turn would have reduced the funding available to the courts in fiscal year 2006 for court support staff.

The hurricanes, particularly Katrina, caused significant disruption to court operations along the Gulf Coast. The damage caused by Hurricane Katrina forced the Fifth Circuit and its personnel to move to temporary duty locations in Houston, Texas, and Baton Rouge, Louisiana. District court personnel in the Eastern District of Louisiana were moved from New Orleans to temporary duty locations in Houma, Baton Rouge, and Lafayette, Louisiana, and in the Southern District of Mississippi, district court personnel were moved from Gulfport to temporary duty locations in Hattiesburg and Jackson, Mississippi. Hurricane Rita impacted court operations in the Eastern District of Texas. In that district, court personnel were moved from Beaumont to temporary space in Tyler and Lufkin, Texas. All of the courts affected by the hurricanes have resumed normal operations with the exception of the district court in Gulfport, which is expected to reopen in June 2006. Of course, for those who lost their homes in the hurricanes, a return to normalcy may be delayed for some time.

Quick action helped to minimize the cost of both bringing up court operations at the temporary locations and restoring operations at permanent locations. For example, court personnel in the Eastern District of Louisiana entered the courthouse in New Orleans soon after Hurricane Katrina hit and, under U.S. Marshals Service guard escort, retrieved computer and office equipment and transported it to temporary duty locations, thus reducing the need to replace equipment. GSA quickly moved into affected court facilities to repair damages and restore power and air conditioning. This saved millions of dollars that would have been needed to replace furnishings damaged by mold and mildew. After Hurricane Rita hit, courts around the country sent used computer equipment to the Eastern District of Texas district court for judges and staff to use at temporary duty locations, again minimizing the need to purchase new equipment.

The disruption caused by the hurricanes – especially Katrina – presented unique challenges, particularly for probation officers who had to locate displaced offenders under their supervision. I

would like to relate one story for you in particular that exemplifies the quick thinking and dedication of federal probation officers across the country.

Following Hurricane Katrina, probation officers in the Eastern District of Louisiana scrambled to locate all the offenders under their supervision, but gave special attention to convicted sex offenders. I am pleased to say that all were found and are again in treatment and under supervision. In one such case, however, an offender fled to his mother's house in Alabama, which happened to be next door to an elementary school. He did not contact his probation officer or local police as required of convicted sex offenders. He was found, however, thanks to the good work of a federal probation officer from the Northern District of Alabama. That officer recalled having briefly supervised a serious sex offender from the Eastern District of Louisiana while that offender was in Alabama, and, on a hunch, took it upon herself to drive by the offender's mother's house. There in the driveway was a car registered to the offender. Along with another officer, she confronted the offender who admitted he had not registered as a sex offender and had not tried to call his Louisiana Eastern probation officer. The probation officer called local police who took the offender into custody for failing to register. The offender is now back in Louisiana in a community corrections center.

This is only one of many stories I could give you that would demonstrate the commitment and dedication of our probation officers – not just during a crisis – but in the day-to-day conduct of their law enforcement duties.

CONTRIBUTIONS OF THE ADMINISTRATIVE OFFICE

The Administrative Office (AO) of the United States Courts has served and supported the courts in an exemplary manner in a very difficult fiscal year. The more the courts have to do, and the fewer resources with which they have to do it, the more challenging is the job of the AO. With only a fraction (1.2%) of the resources that the courts have, the AO does a superb job of advising us and supporting our needs.

The AO continues to serve as the central support agency for the federal courts, with key responsibility for judicial administration, policy implementation, program management, and oversight. It performs important administrative functions, but also provides a broad range of legal, financial, management, program, and information technology services to the courts. None of these responsibilities has gone away and new ones are continually added, yet the AO staffing level has been essentially frozen for ten years. Time spent on new initiatives and on assisting the courts in operating under fiscal constraints means basic support and infrastructure work has to be deferred.

Last year was a particularly challenging one. In 2005, the AO played a central role in assisting the courts to implement the bankruptcy reform legislation, as well as in helping those courts affected by Hurricanes Katrina and Rita deal with the myriad of space, travel, technology, and personnel issues that had to be addressed. The commitment of significant resources to these and other initiatives over the last year further stretched the AO's already strained resources.

In my role as Chair of the Judicial Conference Committee on the Budget, I have the opportunity to work with many staff throughout the AO. They are dedicated, hard working, and care deeply about their fundamental role in supporting this country's system of justice.

The fiscal year 2007 budget request for the Administrative Office is \$75.3 million, representing an increase of \$5.8 million. All of the requested increase is necessary to support adjustments to base, mainly standard pay and general inflationary increases, as well as funding to replace the anticipated lower level of fee revenue and carryover with appropriated funds in fiscal year 2007.

I urge the Subcommittee to fund fully the Administrative Office's budget request. The increase in funding will ensure that the Administrative Office continues to provide program leadership and administrative support to the courts, and lead the efforts for them to operate more efficiently.

CONTRIBUTIONS OF THE FEDERAL JUDICIAL CENTER

I also urge the Subcommittee to approve full funding for the Federal Judicial Center's request, which is only 7.5 percent over its 2006 level.

The Center's director, Judge Barbara Rothstein, has laid out in greater detail what the Center needs and why it needs it in her written statement. I want to add that the Center plays a vital role in providing research and education to the courts. The Judicial Conference and its committees request and regularly rely on research projects by the Center. These provide solid empirical information on which the judges, the judiciary, and Congress and the public, depend in reaching important decisions relating to litigation and court operations. Likewise, the Center's educational program for judges and court staff are vital in preparing new judges and employees to do their jobs, and in keeping them current so that they can better deal with rapid changes in the law, and in tools – like technology – that courts rely on to do their work efficiently.

The Center has made good use of its limited budget. It has made effective use of emerging technologies to deliver more information and education to more people, more quickly. The relatively small investment you make in the Center each year (less than one-half of one percent of the judiciary's budget) pays big dividends in terms of the effective, efficient fulfillment of the courts' mission.

CONCLUSION

Mr. Chairman, I hope that my testimony today provides you with a better appreciation of the challenges facing the federal courts. I realize that fiscal year 2007 is going to be another tight budget year, perhaps the tightest ever. With the gains you helped us achieve in fiscal year 2006, we are on the brink of setting a new course that will restore the financial health of the federal court system. But it will take the resources we seek in our fiscal year 2007 budget request to accomplish that goal and to avoid a repeat of the staffing losses that occurred in fiscal years 2004 and 2005. I know that you agree that a strong, independent judiciary is critical to our citizens, our economy, and our homeland security. I urge you to fund this request fully in order to enable us to maintain the high standards of the United States judiciary. Failure to do so could result in a significant loss of existing staff, dramatic cutbacks in the levels of service provided, and a diminishment in the administration of justice.

I would be happy to answer any questions the Subcommittee may have.

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| Judiciary Appropriation Funding (\$000) |
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| Appropriation Account | FY 2006 Available ¹ | FY 2007 Request | Change FY 2007 vs. FY 2006 | % Change FY 2007 vs. FY 2006 |
|---|-----------------------------------|--------------------|----------------------------------|---------------------------------------|
| U.S. Supreme Court | | | | |
| Salaries & Expenses | \$60,143 | \$63,405 | \$3,262 | 5.4% |
| Care of Building and Grounds | <u>5,568</u> | <u>12,959</u> | <u>7,391</u> | <u>132.7%</u> |
| Total | 65,711 | 76,364 | 10,653 | 16.2% |
| U. S. Court of Appeals for the Federal Circuit | 23,783 | 26,300 | 2,517 | 10.6% |
| U.S. Court of International Trade | 15,342 | 16,182 | 840 | 5.5% |
| <i>Courts of Appeals, District Courts & Other Judicial Services</i> | | | | |
| Salaries & Expenses | | | | |
| Direct | 4,308,395 | 4,687,244 | 378,849 | |
| Supplemental | 18,000 | 0 | (18,000) | |
| Vaccine Injury Trust Fund | <u>3,795</u> | <u>3,952</u> | <u>157</u> | |
| Total | 4,330,190 | 4,691,196 | 361,006 | 8.3% |
| Defender Services | 709,830 | 803,879 | 94,049 | 13.3% |
| Fees of Jurors & Commissioners | 60,705 | 63,079 | 2,374 | 3.9% |
| Court Security | 368,280 | 410,334 | 42,054 | 11.4% |
| Subtotal | 5,469,005 | 5,968,488 | 499,483 | 9.1% |
| Administrative Office of the U.S. Courts | 69,559 | 75,333 | 5,774 | 8.3% |
| Federal Judicial Center | 22,127 | 23,787 | 1,660 | 7.5% |
| Judiciary Retirement Funds | 40,600 | 58,300 | 17,700 | 43.6% |
| U.S. Sentencing Commission | 14,256 | 15,740 | 1,484 | 10.4% |
| <i>Direct</i> | \$5,698,588 | \$6,256,542 | \$557,954 | |
| <i>Supplemental</i> | \$18,000 | \$0 | (\$18,000) | |
| <i>Vaccine Injury Trust Fund</i> | \$3,795 | \$3,952 | \$157 | |
| Total | \$5,720,383 | \$6,260,494 | \$540,111 | 9.4% |

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| ¹ FY 2006 appropriated funds include the effect of the 1 percent across-the-board discretionary rescission where applicable (P.L. 109-148). |
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SUMMARY

The fiscal year 2007 appropriation request for the *Courts of Appeals, District Courts, and Other Judicial Services* totals \$5,968,488,000, an increase of \$499,483,000, or 9.1 percent, over fiscal year 2006 available appropriations. In addition to appropriated funds, the judiciary utilizes other funding sources to supplement our appropriations including fee collections, carry forward of fee balances from a prior year, and the use of no-year funds. When all sources of funds are considered, the increase in obligations for fiscal year 2007 is \$362,506,000 or 6.2 percent.

Of the \$499,483,000 increase in appropriations, 85 percent (\$425,742,000) is adjustments to the fiscal year 2006 base associated with standard pay and other inflationary increases as well as other adjustments that will allow the courts to maintain current services in fiscal year 2007. The remaining 15 percent (\$73,741,000) is needed to respond to increased requirements for magistrate judges, federal defender offices, an increase in panel attorney non-capital rate increases, court security systems and equipment, digital video equipment in all new courthouses, information technology upgrades and to fund additional court staff required to handle the most critical workload, particularly along the southwest border.

The requests for the principal programs are summarized below.

Salaries and Expenses

The salaries and expenses of circuit, district, and bankruptcy courts and probation and pretrial services offices account for most of our request. A total of \$4,691,196,000 in appropriations is required for this account, including funding for the Vaccine Injury program, an increase of \$361,006,000 above the fiscal year 2006 available appropriation. Funding totaling \$285,892,000 is expected to be available from other sources, including fee collections and carryforward balances to fund Salaries and Expenses requirements. Combined with our appropriations request, this results in obligations of \$4,977,088,000.

Of the \$361,006,000 increase in appropriations, 93 percent (\$335,553,000) is needed to fund adjustments to the fiscal year 2006 base including: pay and benefit increases for judges and chambers staff (\$13,168,000); increase in the number of senior, Article III, and magistrate judges and associated staff (\$5,771,000); pay and benefits for court personnel and programs (\$106,694,000); GSA space rental and related services (\$46,886,000); information technology related adjustments (\$42,595,000); financing adjustments to replace non-appropriated sources of funds with appropriated funds (\$115,082,000); and other operations and maintenance costs that are uncontrollable in nature (\$5,357,000).

The remaining 7 percent (\$25,453,000) will fund 3 additional magistrate judges and their staff to help Article III judges handle civil cases and the record number of criminal cases facing the courts (\$1,282,000); 257 court support FTE to address fiscal year 2007 workload requirements (\$22,109,000); and increases to support new information technology projects and upgrades (\$2,062,000).

Defender Services

An appropriation of \$803,879,000 is required for the Defender Services program to provide representation for eligible criminal defendants in fiscal year 2007. This is an increase of \$94,049,000 above the fiscal year 2006 available appropriation.

Of this increase, 74 percent (\$69,133,000) is needed for adjustments to the fiscal year 2006 base for inflationary and workload increases. Included in these adjustments are standard pay and inflation increases for federal defender organizations (\$19,310,000); a cost-of-living adjustment to the capital and non-capital panel attorney rates (\$1,717,000) and annualization costs of the 2006 panel attorney non-capital and capital rate adjustments (\$1,535,000); and other inflationary increases (\$2,849,000); increase in the projected number of representations (\$14,214,000); funding adjustments to replace carryforward funding with appropriated funds (\$17,644,000); funding for deferred panel attorney payments from fiscal year 2006 and unfunded fiscal year 2006 base requirements (\$12,464,000); and a reduction in non-recurring costs (-\$600,000).

Twenty-five percent (\$23,676,000) is requested to provide funding for the costs associated with increasing the panel attorney non-capital rate to \$113 per hour, effective January 1, 2007.

The remaining increase of 1 percent (\$1,240,000) will fund an increase for six new positions at the Administrative Office (\$640,000); and start-up costs of two new federal defender organizations expected to be opened in fiscal year 2007 (\$600,000).

Fees of Jurors and Commissioners

For the Fees of Jurors program, an appropriation of \$63,079,000 is required, an increase of \$2,374,000 from the fiscal year 2006 available appropriation. The Fees of Jurors request is a current services budget for fiscal year 2007 with no program increases. The adjustments to the fiscal year 2006 base include a net decrease in the projected number of juror days (-\$722,000); an inflationary adjustment (\$832,000); and a financing adjustment to replace carryforward funding with appropriated funds (\$2,264,000).

Court Security

For the Court Security program, an appropriation of \$410,334,000 is required, which is an increase of \$42,054,000 above the fiscal year 2006 available appropriation. Of this increase, 44 percent (\$18,682,000) is for adjustments to base including an increase for standard pay and benefit increases (\$292,000); a fiscal year 2007 Department of Labor wage rate adjustment for court security officers (CSOs) (\$10,250,000); annualization costs for 37 new fiscal year 2006 CSOs (\$889,000); 34 additional CSOs for new and existing space (\$2,626,000); inflationary adjustments (\$1,200,000); an increase for Federal Protective Service security charges (\$7,371,000); and a reduction for non-recurring security systems and equipment (-\$3,946,000).

The remaining increase of 56 percent (\$23,372,000) will fund security systems and equipment enhancements (\$16,778,000); the installation of digital video recorders (\$6,569,000); and a United States Marshals Service server replacement initiative (\$25,000).