

STATEMENT OF
HONORABLE JULIA S. GIBBONS, CHAIR
COMMITTEE ON THE BUDGET OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
OF THE
COMMITTEE ON APPROPRIATIONS OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

March 19, 2009

INTRODUCTION

Chairman Serrano, Representative Emerson, 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. As the Chair of the Judicial Conference Committee on the Budget, I come before you to testify on the Judiciary's appropriations requirements for fiscal year 2010. In doing so, I will apprise you of some of the challenges facing the federal courts. This is my fifth appearance before an appropriations subcommittee on behalf of the federal Judiciary and my third appearance before the Financial Services and General Government panel. Appearing with me today is James C. Duff, the Director of the Administrative Office of the United States Courts.

In addition to a discussion of our fiscal year 2010 request, my testimony will cover several policy issues that impact the federal courts. I will also update you on the Judiciary's efforts to contain costs as well as discuss several information technology innovations that are examples of the Judiciary's continual efforts to improve federal court operations.

STATEMENTS FOR THE RECORD

Mr. Chairman, in addition to my statement and Director Duff's, I ask that the entire statements of the Federal Judicial Center, the U.S. Sentencing Commission, the Court of Appeals for the Federal Circuit, and the Court of International Trade be included in the hearing record.

FISCAL YEAR 2009 FUNDING

Mr. Chairman and Representative Emerson, I begin today by thanking you and your colleagues for making the Judiciary a funding priority in the fiscal year 2009 appropriations cycle. The funding you provided, combined with greater-than-anticipated fee carryover balances and reduced requirements due to our cost-containment initiatives, will allow us to finance continuing operations in the courts and to address our most pressing workload needs. We are fully cognizant of the difficult funding choices you faced during conference on the omnibus bill and appreciate your willingness to support the needs of the Judiciary. We look forward to working closely with you and your staff in the future.

I again want to express our appreciation for the \$25 million in fiscal year 2008 emergency funding you provided the Judiciary to respond to workload associated with immigration enforcement initiatives being implemented by the Department of Homeland Security and the Department of Justice. That funding has allowed us to continue to hire critical staff while operating under a continuing resolution this year. I am pleased to say that our staffing levels are higher now than they were at the beginning of the fiscal year enabling us to meet our most urgent needs. This would likely not have been possible without the availability of the emergency funding. Finally, I would be remiss if I did not acknowledge your efforts to provide funding in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, for a new courthouse in Cedar Rapids, Iowa, funding that the devastating floods last year in the Midwest made necessary.

We also are grateful for several provisions included in the omnibus bill that will improve federal court operations. Of note are the increase in the non-capital hourly rate paid to private panel attorneys who represent eligible defendants under the Criminal Justice Act, which I will discuss later in my testimony; granting the Judiciary the same authority as the Executive Branch to contract directly for space alteration projects not exceeding \$100,000; making permanent certain cost-saving procurement authorities; and extending the temporary district judgeships in Kansas, the Northern District of Ohio, and Hawaii so that they do not expire when the next vacancy occurs.

ECONOMIC STABILITY

Mr. Chairman, the first topic I address is in the forefront of all of our minds and that is the state of our country's economy. As Chief Justice John G. Roberts, Jr. stated in his 2008 year-end report on the Judiciary "During these times, when the Nation faces pressing economic problems, resulting in business failures, home foreclosures, and bankruptcy, and when Congress is called upon to enact novel legislation to address those challenges, the courts are a source of strength. They guarantee that those who seek justice have access to a fair forum where all enter as equals and disputes are resolved impartially under the rule of law."

The Judiciary is devoted to preserving the rule of law, which is vital to sustain our free society. A court system that is adequately funded and operates efficiently can be an anchor in these uncertain times. The economic situation we face is far reaching and affects all aspects of the Judiciary's work. Courts provide a forum for individuals or companies who are forced to file bankruptcy proceedings, for those who have suffered losses and are seeking civil monetary remedies, and for those accused of crimes.

The impact of the deteriorating economy is already being felt by the courts. Many bankruptcy courts are experiencing significant increases in case filings compared to a year ago, and some have even returned to the high filing levels preceding the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. In addition to existing responsibilities, Congress has been considering giving bankruptcy judges additional authorities to help address the mortgage crisis.

The bankruptcy system also plays a proactive role in trying to prevent consumer bankruptcies by spreading the message of financial responsibility to the citizens of this nation. A program started by one judge, using his own time and money, has now grown into a national financial literacy program conducted by bankruptcy judges, bankruptcy trustees, private attorneys and court staff. The Credit Abuse Resistance Education program (CARE) teaches the wise use of consumer credit to the group most at risk for credit abuse -- high school seniors and college freshman. Today, CARE has a presence in all 50 states and the District of Columbia. Throughout the Judiciary, many courts conduct additional bankruptcy outreach programs, focusing on high school students in the community.

We also anticipate an impact on our criminal and civil workload as a result of the economic downturn. As was the case with the savings and loan crisis in the 1980s, the courts will be a key venue for parties to address some of the causes and effects of the current financial crisis. The FBI has reported that it has thousands of fraud investigations under way. The resulting litigation has the potential to dwarf the savings and loan crisis, when the federal courts experienced a significant workload increase associated with the failures. Finally, the financial hardship that many are facing also could result in a rise in crime.

COST-CONTAINMENT SUCCESS

In 2004, the federal Judiciary looked into the future and saw that its “must pay” requirements would increase at a pace that would exceed available funding within a few years. Massive layoffs seemed inevitable and would have resulted in drastic reductions in service to litigants and the public. In response, the Judiciary initiated a comprehensive strategy that included sweeping cost-containment measures, allowing us to request more modest budget increases from this subcommittee and the Congress.

The Judiciary adopted a cost-containment strategy that year and has since embraced and institutionalized its economy objectives. As the Chief Justice stated in his year-end report, “...the courts have undertaken rigorous cost- containment efforts, a process begun four years ago, long before the current economic crisis.” In fact, a substantial portion of the Chief Justice’s report is devoted to a discussion of the Judiciary’s cost-containment program, a reflection of the emphasis the Third Branch places on fiscal economy and stewardship.

Many of the initial ideas for constraining costs and growth have come to fruition; others are still in various phases of analysis and implementation. We are beginning to identify and explore new initiatives for the future. We have experienced great cooperation Judiciary-wide as we have moved forward on implementing policy and operational changes that reduce costs. Changes made to date have reduced future costs for rent, information technology, compensation, magistrate judges, law enforcement activities, law books, probation and pretrial services supervision work, and other areas. I would like to briefly recap what we have accomplished, summarize activities underway, and identify ideas in their initial stages of development.

Rent

In 2004, budget projections indicated that rental costs for existing and new facilities would increase six to eight percent annually, outpacing budget growth. The Judicial Conference recognized that controlling rent costs was absolutely critical to avoiding personnel reductions. The first step we took was imposing a national moratorium on courthouse construction from 2004 to 2006. The moratorium lasted 24 months and gave the Judiciary time to re-evaluate its space planning policies and practices and to enhance budgetary controls. Then, a national rent validation initiative identified discrepancies in General Services Administration (GSA) rent charges, giving the Judiciary rent credits, cumulative savings, and cost avoidance. This initiative resulted in improved quality control systems within both the GSA and the Judiciary.

The long-range facilities planning methodology for the Judiciary was re-evaluated to make cost a factor in whether a courthouse should be renovated or a new building should be constructed. The new asset management planning process approved by the Judicial Conference now examines costs, space needs, and functionality in assessing whether a new facility should be recommended at a particular location. It examines alternative space strategies and considers the costs and benefits of each to determine the best solution.

The Judicial Conference also established a cap of 4.9 percent in the average annual rate of growth for rent paid to GSA. To help maintain this rate of growth or less, each circuit judicial council is given a Circuit Rent Budget and must manage rent costs within its circuit. Councils decide which projects they can afford, and in some instances, deny requests for new space in order to stay within their allotment. Changes to the *U.S. Courts Design Guide* over the last two years also have contributed by reducing office size for staff and chambers space for judges. A new Memorandum of Agreement with the General Services Administration changes the way the Judiciary's rent is calculated for all federally-owned courthouses delivered in the future, providing the Judiciary with certainty about the amount of rent it will pay for a 20-year period. In fiscal year 2005 we projected our GSA rent bill would be \$1.2 billion in fiscal year 2010. I am pleased to report that, because of cost-containment, our current GSA rent estimate for fiscal year 2010 is now projected to be approximately \$200 million less, 17 percent below the amount projected in fiscal year 2005, due in large part to cost containment.

Courtroom Sharing

In furtherance of its aggressive cost-containment efforts, the Judicial Conference adopted at its September 2008 session a revised policy in which two senior district judges will share one courtroom in new courthouse construction projects. In addition, the Conference is taking steps to develop and implement a courtroom-sharing policy for magistrate judges. It will study the feasibility of an appropriate policy for sharing courtrooms by active district judges in large courthouses and also study courtroom use in bankruptcy courts to determine whether a sharing policy is needed.

Personnel

Turning to personnel costs, if caseload projections, staffing formulas, and compensation policies remain unchanged, by 2018 the Judiciary will spend almost \$1.4 billion above current

funding levels on existing court support staff. In addition, another \$100 million will be required to fund new staff as determined by projected caseload and current staffing formulas. While it may be necessary and appropriate to fund this increase, since anticipated future funding levels are unlikely to support that level of spending, the Judiciary is seeking ways to reduce our requirements or at least reduce our rate of growth. At its September 2007 meeting, based on a major court compensation study, the Judicial Conference approved recommendations that will slow the growth in personnel costs throughout the Judiciary. These recommendations altered the salary progression policy and established performance management guidelines as a fair and reasonable means to limit future compensation costs. In another action, the Judicial Conference adopted policies to reduce the personnel costs of judges' chambers staff. As part of the complement of chambers law clerks, judges are now limited to one career law clerk (who is typically paid more than a term law clerk), and the salary-setting policies for new law clerks were made more restrictive. We estimate these measures may save up to \$300 million from fiscal year 2009 through fiscal year 2017. Despite these cost-containment efforts, the growth in staffing costs is driven by the projected costs of existing staff rather than costs associated with staffing growth.

Information Technology

Information technology initiatives have enhanced efficiency and reduced costs. New technology and improvements in the Judiciary's national data communications network have allowed the consolidation of servers at a single location without compromising the performance levels of key applications. As a result of this initiative, the Judiciary reduced by 89 the number of servers needed to run the jury management program, producing savings of \$2.0 million in the first year and expected savings of \$4.8 million through fiscal year 2012. In addition, servers that run the case management system in the probation and pretrial services program were consolidated, with projected savings and cost avoidances of \$2.6 million through fiscal year 2012. The Judiciary expects expanded implementation of this initiative to result in significant information technology cost savings or cost avoidances. The recently completed consolidation of servers for the Judiciary's national accounting system will result in savings and cost avoidances totaling \$55.4 million through fiscal year 2012. The accounting system with consolidated servers also is faster, more responsive, and more secure.

Looking to the future in automation, the Judiciary is beginning to examine the next generation of electronic case filing and case-management systems in the courts. The current systems have already streamlined the case-filing process by allowing attorneys to file documents over the Internet and have freed up office space formerly used to house paper files. Next generation systems will use cutting-edge technology to provide a seamless case processing system between the bankruptcy courts, district courts, and courts of appeals. A new electronic voucher project for Criminal Justice Act vouchers has the potential for automating this paper-intensive process and enhancing the accuracy and timeliness of payments to private attorneys appointed under the Act.

The Judiciary looks at every aspect of a program to identify opportunities for improvement on an ongoing basis. Since its inception in 1993, the Bankruptcy Noticing Center

(BNC) has changed the process of noticing creditors by electronically retrieving data from participating courts' case management systems and automating the printing, addressing, batching, and mailing processes. The BNC generates notices in a fraction of the time and cost that would be required if produced by local courts. In addition to traditional mail noticing, the BNC offers a further enhancement to noticing with the Electronic Bankruptcy Noticing (EBN) program, which sends Bankruptcy notices via various electronic transmission methods. The EBN program, available to creditors who register for the service, eliminates the production and mailing of traditional paper notices and associated postage costs, while speeding public service. Through a new performance-based contract that went into effect in October 2008, further improvements are being made to this very successful initiative. The Judiciary could realize a ten-year reduction in contract rates of over \$50 million by providing financial incentives for the contractor to offer new features, more efficiencies, and improved customer service. The end result is a mechanism that encourages ongoing innovation and the adoption of new technology and processes by the BNC contractor.

INNOVATION IN THE FEDERAL COURTS

While we look to contain costs where feasible, we continue to make investments in technologies that improve federal court operations, enhance public safety, and increase public access to the courts. The Judiciary is a leader in taking state-of-the-market technology and adapting it to the courts' unique needs, and we continually look for innovative ways to apply new technologies to our operations. These investments are made possible through the funding we receive from Congress, and we are grateful for Congress's continuing support of our information technology program. Let me describe for you several of our innovations.

Electronic Reporting System Kiosks

Defendants and offenders must routinely submit reports on their status to their probation and pretrial services office as a condition of bail or post-conviction supervision. A three-month pilot project is currently underway in nine probation and pretrial services offices to test whether kiosks using the Electronic Reporting System (ERS) are a more effective way to gather routine information. When a client arrives in the office, he or she goes directly to the kiosk and touches the screen to begin. After a biometric fingerprint scan verifies identity, the client can update address and employment history and then is prompted through a series of questions in English or Spanish. After answering yes, no, or discuss with officer to each of the questions, the client is directed to take a seat. The ERS kiosk sends an e-mail to the probation or pretrial services officer alerting him or her that the client is waiting.

The Electronic Reporting System frees the officer to spend more quality time meeting with the client and focusing on supervision issues rather than on filling out paperwork. Not only does ERS gather the information electronically, but it downloads it into the Probation/Pretrial Services Automated Case Tracking System and automatically highlights for the officer any changes from the previous month's report. Ultimately, data from the kiosks and other electronic sources will provide the type of information needed for research and development of effective policies and procedures to optimize supervision methods and outcomes. This system is another

tool that can assist probation and pretrial services officers in performing more functions with fewer staff. It enhances efficiency and provides further opportunities to concentrate efforts on supervision.

On-Line eJuror System

Last December, the Judiciary began a pilot of an on-line eJuror system that gives potential jurors the option of submitting their juror qualification questionnaire and summons information forms electronically. Most members of the public called to jury duty will be able to visit the website of their federal court not only to submit their jury forms 24-hours a day and 7-days a week, but also to get updates on their jury service. Potential jurors still will receive print versions of the forms, but they will now have the option of either mailing in the print form or going on-line to complete it.

The eJuror system is a time- and cost-saver for both the courts and the public. Users can update personal information, submit a medical or other excuse, or request a deferral on-line. Jurors may also log into eJuror to learn their current juror status, whether they must report for jury duty or if they are excused. For those completing their jury service, they may use eJuror to print certificates of attendance, which may be required by employers, and to complete surveys about their experience. The courts will have fewer forms to process manually and less data to re-enter into the system, which will increase data reliability and save time.

Decision Support System

The September 2009 release of the first version of the Judiciary's new Decision Support System (DSS) puts an outcomes-based, data-driven system at the fingertips of probation and pretrial services officers. It gives them access to a warehouse of data with an array of tools to report and analyze information easily in a way that improves decision making. This version and future iterations will expand our capacity to measure outcomes and identify practices that are effective in reducing recidivism and enhancing the chances for long-term positive changes in the behavior of offenders supervised in the community by probation officers. Each district can look at its own trends and costs and compare them with other districts to determine if its performance is consistent with other districts and to identify what approaches work best. By consolidating information from the 94 districts into one database, probation and pretrial services officers, federal judges, and any federal court officer with a need for this information can access it. As DSS matures to identify best practices, it will be used to reshape our national policies and it will play a significant role in determining appropriate resource levels.

RETROACTIVITY OF CRACK COCAINE SENTENCING AMENDMENT

Mr. Chairman, last year I spoke at length about the U.S. Sentencing Commission's decision to make retroactive an amendment to the Sentencing Guidelines that reduced the base offense level for crack cocaine offenses. Retroactivity of the amendment became effective on March 3, 2008, which meant that incarcerated offenders became eligible to have their sentences

considered by the courts for a possible reduction and early release from prison. I would like to bring you up to date on how the courts have addressed this matter as well as the workload implications.

Well before the retroactivity effective date, courts were already preparing to address the expected surge in motions for reduced sentences. Court officials -- including judges, chief probation officers, clerks of court, and federal defenders -- along with federal prosecutors, met in Charlotte, NC and St. Louis, MO to conduct retroactivity summits and draft operational plans. This team effort and advance preparation was instrumental in providing for a smooth implementation on March 3, 2008, when 21,000 inmates became eligible for shorter prison sentences.

Three weeks after the Sentencing Guidelines amendment took effect, the sentences of more than 3,000 inmates nationwide had received court review and had been reduced. More than 1,000 inmates had been ordered released immediately into supervision in the community. Cases were prioritized so that those eligible for immediate release were considered first and then those eligible for early release in 2008 were processed before those eligible in 2009.

A preliminary report released by the U.S. Sentencing Commission shows that from March 2008 through January 21, 2009, judges granted 12,723 or 70 percent of the 18,109 applications for sentence reductions. Offenders whose motions to receive a reduction in sentence were granted, had been serving an average sentence of 136 months. The sentences were subsequently reduced by an average of 24 months, or 17 percent.

In 65 percent of the 5,386 denied motions, the courts determined that the offender was ineligible for a reduced sentence due to one of several factors, such as mandatory minimum statutes that controlled the sentence, the offender's status as a career offender, or because the quantity of crack cocaine involved in the case was very large. In another 11 percent of the denials, either the offense did not involve crack cocaine or the sentence was determined by a non-drug guideline. In 15 percent of the cases, the court denied the motion because the offender had benefitted from a downward departure or variance at the time of sentencing, because of other factors taken into consideration at the time of sentencing, because of post-sentencing or post-conviction conduct, or to protect the public. Denial in the remaining 9 percent of cases was for a variety of reasons, including the offender's ineligibility for a reduction, as previously determined by the U.S. Sentencing Commission.

The majority of granted motions, 82 percent, originated with defendants. Federal defenders met with their district's chief judge, chief probation officer, and United States attorney to work out procedures for handling the influx of cases. In most districts, the defender represented all of the eligible inmates, except in those cases where there were ongoing conflicts of interest. Private CJA panel attorneys represented former clients in some districts. Where appointed CJA counsel declined, or were unable, to resume their representation, in many cases the Federal Defender did so. Courts originated the motion in 18 percent of the cases, pursuant to their statutory authority to do so, after identifying potentially eligible defendants for whom reduction motions had yet to be filed. Court initiation was necessary in some cases which were

many years old and in districts with a large number of cases where it was impossible to locate and contact the original counsel.

In order to rule on the cases, judges relied on supplemental reports related to crack sentencing. Probation officers submitted 24,073 of these reports in fiscal year 2008. In preparing the supplemental reports for the courts, probation officers reviewed the original presentence reports, judgments, and statements of reasons to verify that defendants were eligible for reductions in sentence. For an eligible defendant, the officer would recalculate the guidelines offense level and identify the new imprisonment range for the court. To investigate a defendant's post-sentencing conduct, the officer would access records maintained in the Bureau of Prisons' (BOP) Sentry database, and in some cases contact the BOP case manager. The officer would also use this information to identify whether there were any remaining public safety considerations of which the court should be made aware.

By the end of fiscal year 2008, 4,969 inmates received reductions in their sentences and were released from imprisonment and began their terms of supervised release. Due to careful planning by probation staff, and close coordination with BOP officials, procedures were developed to facilitate the reentry of these offenders. Typically, probation officers are notified of an inmate's projected release date months in advance, and many inmates spend months at a community-based residential reentry center (RRC) before commencing supervised release. Shortly after the effective date of the amendment, however, many of these inmates were released within days or weeks of the reduction in their sentence. In response, probation officers were required to assess the offender's proposed living arrangements quickly and alert the BOP and the courts if a suitable residential plan was not in place. In some cases, the conditions of supervised release had to be modified to require the offender to reside in a RRC for a short time while alternative living arrangements could be put into place.

The workload impact of the early release of these inmates has been somewhat mitigated by the fact that these cases are spread across the country. By the end of fiscal year 2008, all but three districts had commenced supervision on an offender who had received a reduction in sentence. Only seven districts were required to commence supervision on more than 100 offenders. Because the most significant impact of the amendment was expected in the first year after it became effective, it appears the courts and the probation system have, thus far, absorbed the unexpected surge of workload without the need for additional resources. As these offenders continue to be released from imprisonment, adequate resources will be needed to facilitate their safe reentry into the community.

STAFFING INCREASES AND THE JUDICIARY'S CASELOAD¹

Our fiscal year 2010 budget request includes \$30 million for an additional 754 court support staff positions primarily in probation and pretrial services offices and bankruptcy and

¹Unless otherwise stated, caseload figures reflect the 12-month period ending in June of the year cited (i.e., 2009 workload reflects the 12-month period from July 1, 2008 to June 30, 2009).

district clerk's offices. The greatest increases are in the bankruptcy clerks' and probation and pretrial services offices where the most critical workload increases - in numbers and complexity - exist. While slight declines in criminal and civil filings are projected nationally, some district clerks' offices have increasing workloads and some others require additional staff to address staffing shortfalls caused by reduced allotments over a number of years.

As indicated in the caseload table in our fiscal year 2010 budget request, 2009 caseload projections are used to compute fiscal year 2010 staffing needs. Our projections indicate that caseload will increase slightly in probation (+3%), pretrial services (+3%), and increase substantially for bankruptcy filings (+27%). For 2009, we are projecting declines in civil (-3%), criminal (-4%), and appellate (-5%) filings. Let me discuss some recent trends and caseload drivers and offer some context for these projections.

Probation and Pretrial Services

Workload in our probation and pretrial services programs continues to grow. The number of convicted offenders under the supervision of federal probation officers hit a record 120,051 in 2008 and is expected to increase again in 2009 to 123,600. In addition to the increased workload, the work of probation officers has become significantly more challenging. In 1988, 27 percent of the offenders under supervision had served time in prison. By 2008, the percentage had climbed to 81 percent. As these figures indicate, probation officers deal with fewer individuals sentenced to probation in lieu of prison, reflecting the continued trend of increasingly challenging offenders being released to the community. The challenge is further apparent when one considers the offenses for which these persons are under supervision. For example, in 1998, 29 percent of these offenders were convicted of narcotics trafficking offenses and 9 percent were convicted of either violent, sex, or weapons offenses. In 2008, 46 percent were convicted in drug cases and 19 percent were convicted of either violent, sex, or weapons offenses.

Offenders coming out of prison on supervised release generally have greater financial, employment, and family problems than when they committed their crimes, and they often lack adequate life skills to transition back into society smoothly. Officers help offenders either to re-establish or secure for the first time appropriate housing, employment, and legitimate community relationships. Successful re-entry improves the likelihood that offenders will pay fines and restitution to victims and become law-abiding taxpaying citizens.

Using a variety of resources, whether it be working closely with a therapist to change the treatment approach for a sex offender, partnering with state and local agencies to sponsor a job fair for offenders, or spending a week in a forest performing community service with a group of offenders, probation officers utilize every means possible to change behavior. When offenders do not respond, and when there is a risk of harm to the community, probation officers take corrective steps that include seeking a change in release conditions or a revocation that may result in a return to prison.

In order to produce positive outcomes, the Judiciary is developing a results-based management and decision-making framework for its community supervision program. The goal is to collect, analyze, and use data from a variety of sources in order to employ the best methods for reducing recidivism and fostering long-term positive changes in individuals supervised. On an ongoing basis, the Judiciary wants to test underlying assumptions about the relationship between supervision practices and supervision outcomes.

Bankruptcy Filings

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), implemented in October 2005, initially reduced bankruptcy filings, but there have been large increases over the past two years. We forecast that filings will again exceed the one-million mark, with an increase of 27 percent in 2009 to 1,226,100. The state of the economy, particularly as it impacts home foreclosures and credit availability, is a major factor in the number of personal bankruptcies – which constitute the majority of bankruptcy cases. The economic downturn is also causing an increase in business bankruptcies, some of which are very large, complex Chapter 11 cases.

The number of filings alone is not the sole indicator of overall workload. BAPCPA created new docketing, noticing, and hearing requirements that make addressing the petitions far more complex and time-consuming. The actual per-case work required of the bankruptcy courts has increased significantly under the new law, and a new work measurement formula that reflects this additional work was used to develop the fiscal year 2010 budget request.

Appellate Filings

Appellate caseload increased slightly from 58,809 filings in 2007 to 59,406 filings in 2008. At the time the budget was transmitted to OMB, projections indicated filings could decline by 5 percent to 56,700 in 2009. More recently, we are seeing an upward movement in criminal appeals, primarily as a result of the crack cocaine sentencing amendments. The bulk of the crack cocaine sentencing appeals are filed pro se and have increased the work of appellate court staff attorneys. Pro se prisoner litigants usually file hand-written documents, which the attorneys have to decipher and interpret before appropriate action can be determined. During the year ending September 2008, pro se appellants filed 2,369 criminal appeals, an increase of 120% over the number of criminal appeals filed during the previous year. In addition to appeals arising from the crack cocaine sentencing amendments, appeals raising issues related to changes in sentencing guidelines law remain a complex and challenging portion of the appellate court workload.

Civil Filings

Civil filings in the district courts generally follow a more unpredictable filing pattern. In 2005 civil filings reached a record 282,758 filings, declined to 244,343 filings in 2006, then increased again to 272,067 filings in 2007. The increase in 2007 was due primarily to asbestos diversity case filings in the Eastern District of Pennsylvania. After adjusting for this spike in 2007, civil case filings will remain relatively steady with 249,800 filings projected in 2009.

Criminal Filings

Criminal filings in the federal courts increased in 2008 for the first time in the last several years. It now appears that the additional resources provided to fill Assistant U.S. Attorney positions, particularly in the five judicial districts along the southwest border with Mexico have had an impact on criminal case filings. Also, in fiscal year 2008, the Department of Justice received \$5 million to hire 40 additional AUSAs to prosecute sexual exploitation of children cases under the Adam Walsh Act. Since our 2008 criminal caseload projection did not take into account the impact additional AUSAs would have on criminal case filings, the \$45.4 million Congress provided the Judiciary over the last two years – \$20.4 million in fiscal year 2007 and \$25.0 million in fiscal year 2008 – to address immigration-related workload positioned the courts well in the short term to respond to the increased workload that materialized. With a new Administration in 2009 and accompanying personnel and prosecutorial policy changes, filings are projected to decline 4 percent in 2009 to 67,100 filings.

Naturalization Ceremonies

Mr. Chairman, I would like to talk briefly about one statistic that does not show up in our workload tables and that is the number of people who become naturalized citizens in federal court ceremonies. Last year federal judges naturalized 450,275 people. Sometimes we administer the oath of citizenship to just one individual standing before a judge, and sometimes hundreds or thousands take the oath in a large arena. Either way, judges and court staff put a good deal of effort into making naturalization ceremonies meaningful for the new citizens and their families. For example, as part of the ceremony, one federal judge regularly shares his story about coming to this country as a refugee and becoming a naturalized citizen. Other courts invite Members of Congress, distribute flags, have Boy Scout troops display the colors, or feature bands playing patriotic music.

The Judiciary makes every effort to provide the highest level of service. In the District of Puerto Rico, the Chief Judge has been known to make house calls to administer the oath when people were too sick or too old to come to the courthouse. In the Eastern District of New York, the court added 16 additional ceremonies to its original schedule to accommodate more citizens prior to the election. At many ceremonies, the courts work with the U.S. Citizenship and Immigration Services, the Social Security Administration, the county clerk's office and the U.S. Postal Service to have representatives on site to provide information and help process social security, voter registration, and passport applications.

FISCAL YEAR 2010 BUDGET REQUEST

For fiscal year 2010, the Judiciary is seeking an 8.7 percent overall increase above the fiscal year 2009 appropriations the Judiciary assumed when the budget was transmitted to OMB in October 2008. The courts' Salaries and Expenses account, which funds clerks and probation offices nationwide, requires a 7.6 percent increase. Having recently received an enacted appropriation, we will be revising our 2010 request and expect the overall requested increase will be reduced in light of the higher enacted level as well as other updated information. We will

work with you and your staff to update our requirements during the course of the year. Fiscal year 2010 appropriations requirements for each Judiciary account are included at Appendix A.

This fiscal year 2010 request includes modest staffing increases in the courts in order to address increased workload requirements, as well as to obtain funding for several much needed program enhancements. We believe the requested funding level represents the minimum amount required to meet our constitutional and statutory responsibilities. While this may appear high in light of the fiscal constraints under which you are operating, I would note that the Judiciary does not have the flexibility to eliminate or cut programs to achieve budget savings as the Executive Branch does. The Judiciary's funding requirements essentially reflect basic operating costs, of which more than 80 percent are for personnel and space requirements.

Eighty-six percent (\$482 million) of the \$562 million increase being requested for fiscal year 2010 funds the following base adjustments, which represent items for which little to no flexibility exists:

- 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., COLAs, health benefits, etc.) for currently funded Judiciary employees. The amount budgeted for the cost-of-living adjustment is 4.2 percent for 2010.
- An anticipated increase in the number of on-board senior Article III judges and average number of filled Article III judgeships.
- The projected loss in non-appropriated sources of funding due to the decline in carryover balances available in fiscal year 2010 versus the level available to finance the fiscal year 2009 financial plan (see discussion on the following page).
- Space rental increases, including inflationary adjustments and new space delivery, court security costs associated with new space, and an inflationary increase in Federal Protective Service charges for court facilities.
- Adjustments required to support, maintain, and continue the development of the Judiciary's information technology program which, in recent years, has allowed the courts to "do more with less" – absorbing workload increases while downsizing staff.
- 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.
- Inflationary increases for non-salary operating costs such as supplies, travel, and contracts.

- Costs associated with Criminal Justice Act (CJA) representations. The Sixth Amendment to the Constitution guarantees that all criminal defendants have the right to the effective assistance of counsel. The CJA provides that the federal courts shall appoint counsel for those persons who are financially unable to pay for their defense.

After funding these adjustments to base, the remaining \$80 million requested is for program enhancements. Of this amount:

- \$35 million is for additional staff and associated costs to address fiscal year 2010 workload requirements (401 FTE) and six additional magistrate judges and staff (26 FTE).
- \$26 million will provide for telecommunications and information technology enhancements, and courtroom technology improvements for the Court of Appeals for the Federal Circuit.
- \$10 million to increase the non-capital panel attorney rate from \$114 to \$142 per hour. I will discuss this requested increase in more detail in a moment.
- \$6 million is requested for the Supreme Court's perimeter security and roof system repairs.
- \$3 million would provide for necessary investments in court security, such as expansion of explosive trace detection systems; library renovations and new equipment at the Court of Appeals for the Federal Circuit; education and training enhancements at the Federal Judicial Center; new reimbursable positions (3 FTE) for the defender services program; and the start-up costs for one new federal defender organization.

Non-Appropriated Sources of Funding

I would like to discuss briefly the non-appropriated sources of funding that the Judiciary uses to partially finance its operations and how they impact our appropriations needs. In addition to appropriations from Congress, the Judiciary collects fees from bankruptcy and civil case filings, from users for on-line access to court records, and from other sources. By statute, a portion of the fees collected in any given year is available to lower the need for appropriated funds in that year. In addition, fees not utilized during the year they are collected may be carried over to the next fiscal year to offset appropriations requirements in that year. Every fee dollar collected that is not needed to finance current year needs represents a dollar less that the Judiciary must seek from Congress in the following year.

In formulating the Judiciary's fiscal year 2010 budget request, we made certain assumptions regarding the level of fees and carryover that would be available to finance fiscal year 2010 requirements. Because the projection for carryover balances are below the level that was available to finance fiscal year 2009 operations, the fiscal year 2010 request includes \$57 million to replace the anticipated decline in carryover balances. While it is premature for me to

identify a specific amount, I am confident that we will not need the full \$57 million we requested to replace carryover balances. This is due to several factors, including the courts' frugal spending while operating under a continuing resolution for five months and increasing bankruptcy filings which would result in higher than anticipated fee collections. As we did this past year, we will keep the Subcommittee apprised of changes to fee and carryforward projections that could impact our fiscal year 2010 appropriation needs as we move through fiscal year 2009. The Judiciary will submit the first of two fiscal year 2010 budget re-estimates to the Subcommittee in May 2009.

INCREASE IN NON-CAPITAL PANEL ATTORNEY RATE

We request your consideration of the program enhancement in our budget that will ensure effective representation for criminal defendants who cannot afford to retain their own counsel. We are requesting \$10.2 million to increase the non-capital panel attorney rate to \$142 per hour, effective January 2010. 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 in accordance with the Criminal Justice Act (CJA). In the fiscal year 2009 omnibus spending bill, the Subcommittee approved an increase in the non-capital rate paid to these panel attorneys from \$100 to \$110 per hour, and provided a cost-of-living adjustment to the capital rate from \$170 to \$175 per hour. These new rates took effect for work performed on or after enactment of the fiscal year 2009 appropriation.

While we are very appreciative of the increase to \$110 per hour for non-capital work, we believe a more significant increase is required to enable the courts to attract and retain enough qualified attorneys to accept appointments and to provide them a fair rate of pay. This is critical in order for the Judiciary to ensure that persons represented by panel attorneys are afforded their constitutionally guaranteed right to effective assistance of counsel.

We believe there is a direct relationship between the lack of qualified panel attorneys available to take CJA appointments and the significant financial difficulties panel attorneys encounter maintaining their legal practices. Predominantly solo and small-firm lawyers take on CJA cases, and these panel attorneys must first cover their overhead costs. With overhead costs of approximately \$70 per hour, at the \$110 rate, that leaves a net average of only \$40 per hour, before taxes. We believe that this net rate of \$40 per hour, when compared to the net national average "market rate" of \$176 per hour for non-CJA private criminal cases, prevents the courts from attracting sufficient numbers of qualified attorneys to take CJA appointments because those attorneys can obtain higher pay on non-CJA cases. Each time a panel attorney is asked by the court to accept a non-capital CJA appointment, he or she must consider the inherent "opportunity" cost associated with the higher hourly rate he or she could otherwise earn on a non-CJA case.

The CJA authorized the Judicial Conference to implement annual cost-of-living adjustments (COLAs) to panel attorney rates, subject to congressional funding. If the statutory COLAs provided to federal employees (the base employment cost index component only) had

been provided to panel attorneys on a recurring, annual basis since 1986, the authorized non-capital hourly rate for fiscal year 2010 would be \$142². The Judicial Conference is mindful of the constrained federal budget environment and, therefore, for last year's budget request it proposed attaining the authorized rate in two stages, an \$18 per hour increase in fiscal year 2009 from \$100 to \$118 per hour, with a second increase to the full authorized rate in fiscal year 2010. The Judiciary is committed to restoring fully the non-capital panel attorney rate in a cost-conscious manner by implementing the authorized rate over two years. The pending 2010 request reflects the second year of this two-step approach.

I will close on this topic by reiterating that the Judiciary greatly appreciates the \$110 non-capital rate Congress provided in fiscal year 2009, but the concern remains that, after overhead is considered, the rate still does not provide compensation that will attract enough qualified panel attorneys to take on the complex work involved in federal criminal cases. I urge the Subcommittee to provide the funding necessary to increase the non-capital panel attorney rate to \$142 per hour in fiscal year 2010.

CONTRIBUTIONS OF THE ADMINISTRATIVE OFFICE

I would like to briefly outline the important work performed by the Administrative Office (AO) of the United States Courts on behalf of the entire Judiciary. Year in and year out, the AO provides critical support to the courts. With less than 2 percent of the resources that the courts have, the AO does a superb job of supporting our needs.

The AO has key responsibilities for judicial administration, policy implementation, program management, and oversight. It performs important administrative functions, but also provides a broad range of legal, financial, program management, 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 is lower than it was 15 years ago. As an example, despite no new positions, the AO has been instrumental in implementing the Judiciary's cost-containment strategy which has achieved significant savings and cost avoidances.

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 role in supporting this country's system of justice.

The fiscal year 2010 budget request for the Administrative Office is \$84 million. The AO's request represents a current services budget, no additional staff or program increases are sought. All of the requested increase is necessary to support current services, mainly standard pay and general inflationary increases.

²In comparison, since May 1, 2002, the U.S. Department of Justice has paid \$200 per hour to retain private counsel, with five years of experience, to represent current or former federal employees in civil, congressional, or criminal proceedings (pursuant to 28 C.F.R. § 50.16).

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 to lead the effort for them to operate more efficiently. Director Duff discusses the AO's role and budget request in more detail in his testimony.

CONTRIBUTIONS OF THE FEDERAL JUDICIAL CENTER

I also urge the Subcommittee to approve full funding for the Federal Judicial Center's request of \$27.5 million for fiscal year 2010.

The Center's director, Judge Barbara Rothstein, has laid out in greater detail the Center's needs in her written statement. I simply add that the Center plays a vital role in providing research and education to the courts. The Center's research and its educational programs are highly respected and valued for their quality and objectivity. The Judicial Conference and its committees request and regularly rely on research projects by the Center. The Center's educational programs for judges and court staff have a well deserved reputation for relevance, balance, and quality and greatly help judges and court employees do their jobs well.

The Center has made good use of its limited budget. It uses several technologies to deliver information and education to more people more quickly and inexpensively. 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 some insight into the challenges facing the federal courts, the important role we play in providing stability in uncertain times, as well as what we are doing to contain costs and become more efficient. I realize that fiscal year 2010 is going to be a very tight budget year as increased spending to address the economic downturn will result in further constrained domestic discretionary spending. Our commitment to contain costs and to explore new and better ways of conducting our judicial business are unfailing. These initiatives have significantly reduced the Judiciary's appropriations requirements without adversely impacting the administration of justice. I know you agree that a strong, independent Judiciary is critical to our nation. I urge you to provide the funding needed to enable us to maintain the high standards of the United States Judiciary.

Thank you for your continued support of the federal Judiciary. I would be happy to answer any questions the Subcommittee may have.

**Judiciary Appropriations
(\$000)**

Appropriation Account	FY 2009 Assumed Appropriation	FY 2010 Request	Change FY 2010 vs. FY 2009	% Change FY 2010 vs. FY 2009
U.S. Supreme Court				
Salaries & Expenses	\$69,777	\$74,740	\$4,963	7.1%
Care of Building and Grounds	<u>18,447</u>	<u>14,568</u>	<u>(3,879)</u>	<u>-21.0%</u>
Total	88,224	89,308	1,084	1.2%
U. S. Court of Appeals for the Federal Circuit	30,933	36,981	6,048	19.6%
U.S. Court of International Trade	19,598	21,517	1,919	9.8%
<i>Courts of Appeals, District Courts & Other Judicial Services</i>				
Salaries & Expenses				
Direct	4,796,456	5,162,252	365,796	
Vaccine Injury Trust Fund	<u>4,253</u>	<u>5,428</u>	<u>1,175</u>	
Total	4,800,709	5,167,680	366,971	7.6%
Defender Services	848,971	982,646	133,675	15.7%
Fees of Jurors & Commissioners	59,802	63,401	3,599	6.0%
Court Security	428,858	463,642	34,784	8.1%
Subtotal	6,138,340	6,677,369	539,029	8.8%
Administrative Office of the U.S. Courts	79,049	83,963	4,914	6.2%
Federal Judicial Center	25,597	27,486	1,889	7.4%
Judiciary Retirement Funds	76,140	82,374	6,234	8.2%
U.S. Sentencing Commission	16,225	17,056	831	5.1%
<i>Direct</i>	\$6,469,853	\$7,030,626	\$560,773	
<i>Vaccine Injury Trust Fund</i>	\$4,253	\$5,428	\$1,175	
Total	\$6,474,106	\$7,036,054	\$561,948	8.7%