

STATEMENT OF JAMES C. DUFF, DIRECTOR  
ADMINISTRATIVE OFFICE OF THE U.S. COURTS  
BEFORE THE SUBCOMMITTEE ON  
FINANCIAL SERVICES AND GENERAL GOVERNMENT  
COMMITTEE ON APPROPRIATIONS  
HOUSE OF REPRESENTATIVES  
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**Introduction**

Chairman Serrano, Representative Emerson, and members of the Committee, I am pleased to appear before you again to present the fiscal year 2011 budget request for the Administrative Office of the United States Courts (AO) and to support the overall request for the Judicial Branch.

First, I join Judge Gibbons in thanking you and your Committee for the support you continue to provide the Judiciary. The funding provided to the Judiciary in the FY 2010 Consolidated Appropriations bill will allow court units experiencing workload increases – primarily district clerks, bankruptcy clerks, and probation and pretrial services offices – to hire additional staff this year to meet their needs.

We recognize the very tight fiscal constraints in which you will continue to operate and appreciate being able to work closely with the Committee throughout the process as the Judiciary's requirements change. This request was developed last fall based on assumptions at that time. To the extent we are able to identify unanticipated fee collections, additional carryover, and reduced requirements in the courts, we will advise the Committee and adjust our request accordingly. The Judiciary seeks only to obtain the funding necessary to meet its obligations and responsibilities to ensure the delivery of justice.

Let me also express my appreciation for your willingness to again include language providing one-year extensions for three temporary judgeships whose authorization had expired. Without these extensions, if a judicial vacancy were to occur in the districts of Hawaii, Kansas, or the Northern District of Ohio, it could not be filled. To maintain the needed complement of judges on these courts, new judgeships would have to be created. The new judgeships would be scored by the Congressional Budget Office and would require an offset.

Legislation that would extend temporary judgeships, as well as create new judgeships, is currently pending in both the House and the Senate. While I fully support the authorization process in creating and extending judgeships, if the judgeship bills do not move in a timely fashion, we may need to request your assistance once again. We must avoid losing judgeships because of the lack of an extension, as has already happened in the Eastern District of California – a court with the highest number of weighted filings per judgeship in the nation, as well as in the District of Nebraska. Restoring the judgeships once they lapse could prove difficult since it would require a PAYGO offset.

## **Role of the Administrative Office**

Created by Congress in 1939 to assist the federal courts in fulfilling their mission to provide equal justice under law, the AO is a unique entity in government. Neither the Executive Branch nor the Legislative Branch has any one comparable organization that provides the broad range of services and functions that the AO does for the Judicial Branch.

The AO does not operate as a headquarters for the courts. The federal court system is decentralized. The AO, however, provides administrative, legal, management, program, security, information technology, and other support services to all federal courts. It also provides support and staff counsel to the policy-making body of the Judiciary, the Judicial Conference of the United States, and its 25 committees, and helps implement Judicial Conference policies, as well as applicable federal statutes and regulations.

The AO is the focal point for communication and coordination within the Judiciary and with Congress, the Executive Branch, and the public on behalf of the Judiciary. Our lawyers, public administrators, accountants, systems engineers, analysts, architects, statisticians, security experts, and other staff provide professional services to administer Judiciary programs and meet the needs of judges and staff working in the federal courts nationwide. These services include:

- Performing core central payroll, personnel, and accounting functions;
- Developing and executing the Judiciary's budget and guiding local court budget execution;
- Collecting and analyzing statistics on court workload;
- Auditing court financial operations;
- Monitoring and reviewing program performance and use of resources;
- Developing and implementing cost containment initiatives;
- Developing and supporting automated systems and technologies throughout the courts, and managing public access systems;
- Coordinating construction and management of court facilities with the General Services Administration (GSA);
- Monitoring U.S. Marshals Service implementation of the judicial facility security program;
- Defining court resource needs through caseload forecasts and work measurement analyses;
- Providing program leadership and support for federal courts, judges, circuit executives, clerks of court, probation and pretrial services officers, federal defenders, and other managers; and
- Developing and conducting education and training programs on court administration, court operations, and information technology.

## **Courthouse Construction and Facilities Planning**

A major effort of the Judiciary over the last several years has been revising and strengthening the process for developing long-range space plans – in essence, the process by which a project is placed on the Five-Year Courthouse Project Plan. Following adoption of an

unprecedented cost-containment strategy by the Judicial Conference in 2004, a national moratorium on courthouse construction was imposed from 2004 to 2006. Thirty-five courthouse construction projects that had not yet received appropriated funding for site, design, or construction were subject to the moratorium and are currently being reevaluated. Only fifteen projects, many of which were shovel ready, have been allowed to proceed since 2004. The Judiciary's FY 2011 Five-Year Courthouse Project Plan includes funding through FY 2014 to complete the projects on the Plan.

During the time since the moratorium was imposed, the Judiciary has reevaluated its space planning policies and practices, and enhanced its budgetary controls. The Judicial Conference has adopted changes to the *U.S Courts Design Guide* that reduced the size of chambers space for judges and offices for staff. The Conference has also approved a courtroom sharing policy for senior judges and magistrate judges. In addition, the long-range facilities planning methodology has been replaced with a new asset management planning (AMP) process.

The AMP process significantly improves long-range planning with: (1) comprehensive physical and functional assessments of each courthouse throughout the country; (2) standardized planning assumptions; (3) strategies to address current and future space needs; (4) business rules that mandate first consideration of least costly real estate solutions; and (5) a method for establishing the order of precedence for which locations get major projects. The AMP process focuses on cost, and places a greater emphasis on the ability of an existing facility to accommodate additional space, than security or building condition, when determining whether to recommend a new courthouse or a renovation of that facility.

On February 12, 2010, the Executive Committee of the Judicial Conference of the United States, acting on behalf of the Conference, approved a new Five-Year Courthouse Project Plan for FY 2011- FY 2015. This plan takes into account enactment of the Consolidated Appropriations Act of FY 2010 in December 2009, and replaces the five-year courthouse plan included by the General Services Administration (GSA) in its FY 2011 budget justification. Specifically, the Judicial Conference is seeking \$447.9 million in FY 2011 to address the most pressing space requirements of the Judiciary. Those projects are located in Mobile, Alabama; Nashville, Tennessee; Savannah, Georgia; and San Jose, California.

As you know, funding for courthouse construction and major renovation and alteration projects is included in the GSA Federal Buildings Fund budget and not in the Judiciary's budget. In some years this has worked fine, when GSA has requested funding for courthouse projects as recommended in the Judicial Conference-approved five year plan. Unfortunately, that is not the case this year and was not the case last year either. The FY 2011 budget request for the GSA does not include any funding for new courthouse construction.

The GSA budget request does include \$50,900,000 in funding for two large courthouse renovation and alteration projects -- one at the Prettyman Federal Courthouse in Washington, D.C. and the other at the Moynihan Federal Courthouse in New York City -- which are important to the operation of those courts. But, the absence of funding for any new courthouse construction in the President's FY 2011 budget request is problematic for the Judiciary, particularly if it translates into a lower allocation for your Committee. A lower allocation means

that you will have greater difficulty coming up with the funding to support our request for the four construction projects proposed this year, all of which are critically needed to address major operational deficiencies at those locations.

As noted above, the Judiciary has taken strategic steps to improve its courthouse facilities planning with a focus on cost-containment. This effort has been significant and has resulted in only the most important project recommendations going forward. I urge you and your colleagues to consider the recommendations of the Judicial Conference with regard to courthouse project needs and include funding in your FY 2011 bill for the four new prospectus projects in Mobile, Alabama; Nashville, Tennessee; Savannah, Georgia; and San Jose, California. A copy of our Five-Year Courthouse Project Plan is included as an attachment to this testimony.

### **Southwest Border Judicial Security**

In March of last year, the Judicial Security Committee hosted a one-day border security meeting with federal judges situated in districts along the U.S./Mexico border to discuss the threat posed by Mexican drug cartels. At the meeting, the U.S. Marshals Service (USMS) and other law enforcement agencies briefed judges on the threats and violent activity in Mexico, and discussed possible security measures to improve the protection of judges. Concerned about the likelihood of spillover violence into Southwest border districts, as well as the serious overcrowding of prisoner holding cells and the lack of detention space, I wrote to your Committee seeking additional funding for the Judiciary and the USMS in the FY 2009 Emergency Supplemental.

In early June, the FY 2009 War Supplemental Appropriations Bill was sent to the President for his signature. Included in the bill was \$10 million in two-year supplemental funding for the Judiciary to meet increased workload resulting from additional resources provided to the Executive Branch agencies for immigration and other law enforcement initiatives. In addition, \$4 million was provided to the USMS specifically to enhance the personal security of judges and other judicial personnel along the Southwest border. No funding, however, was provided to the USMS to expand and improve prisoner holding and movement areas in existing court facilities – which is under the funding jurisdiction of the Commerce, Justice, Science, and Related Agencies Appropriations Subcommittee.

Seeking a firsthand assessment of the courts' workload and security needs in Southwest border districts, last July I joined the Director of the U.S. Marshals Service, John Clark, for site visits to Tucson, Arizona and El Paso, Texas. My on-site observation of the sheer magnitude of the work gave me a perspective you simply cannot get from reading reports or studying statistics. Both this Committee and taxpayers should be pleased with the efforts being made. Stepped up enforcement and prosecution efforts in Southwest border jurisdictions during the last several years have resulted in a significant increase in the number of drug, immigration, and weapons cases being filed in courts along the border. The Judiciary's resources must continue to keep pace with these workload increases.

Last year in the Tucson division of the district court for Arizona, felony cases and defendants increased by more than 65 percent from the previous year. Ninety percent of those

cases were drug and immigration related. There were 300,000 apprehensions during the first six months of FY 2009, and 1.2 million pounds of marijuana were seized. At one point, the court processed 323 detainees in a single day. The court facility is sized to handle no more than 120 detainees in a day. To handle the overload, a main courtroom was converted into a processing center. A new courthouse in Yuma, Arizona is desperately needed – and we are pleased to have learned that the GSA recently notified this Committee that it has identified available funds from the American Recovery and Reinvestment Act of 2009 to proceed with that project.

The district court in El Paso faces different challenges than the court in Tucson because of its location on the border. Judges in El Paso have had to empanel anonymous juries because of the high risk of intimidation or retaliation. Many jurors have family members who reside in Mexico, where threats are much greater. Criminal prosecutions in the district also are growing, even though Border Patrol apprehensions are down. For 2009, the office handled 4,027 criminal cases compared to 442 in 1994.

Seeing what the federal courts, the USMS, and the Border Patrol deal with on a daily basis is eye-opening. The federal courts along the Southwest border face significant and immediate challenges. But, they share workload challenges with districts across the country. As I mentioned earlier, the weighted filings per judgeship in the Eastern District of California are more than twice the national average of 472 (1,097 weighted filings per judgeship for the year ending September 30, 2009). Together with the AO, all of these courts are diligently working to find mechanisms within the Judiciary that will allow them to handle their workload increases until a more permanent solution comes from Congress, we urge in the form of new judgeships, facilities, and resources. Certainly, Mr. Chairman, your Committee has been most helpful to the Judiciary by allowing us the flexibility to use additional supplemental resources to address workload increases in the courts resulting from all manner of law enforcement initiatives.

### **Intercircuit and Intracircuit Assignments, and the Law Clerk Assistance Program**

The number of judicial vacancies and the need for additional judgeships has created an even more pressing need for visiting judge assistance in overburdened courts throughout the country. During FY 2009, the Chief Justice approved 221 intercircuit assignments for 127 Article III judges, including two retired associate justices. In addition to handling caseloads in their home courts, these judges volunteer to help other courts outside their circuits manage increasing dockets, to provide assistance in special circumstances such as a backlog of pending cases or motions, and to hear cases in which all of the judges in a circuit recuse themselves. Circuit chief judges are also very active in assigning judges from one district within the circuit to assist with the caseloads in other districts.

The Judiciary's Law Clerk Assistance Program (LCAP) also has become a practical way for a judge to help another court by assigning legal research and writing tasks electronically to a federal law clerk in another court with the lending judge's permission. Similar to intercircuit assignments for judges, the LCAP promotes the sharing of existing law clerk talent, which has become increasingly necessary as caseloads increase but the number of judgeships does not.

## **Working Together to Improve Service to the Public**

Each day, the federal courts work to deliver justice to the parties who come before them. Much of the work is behind the scenes and done in collaboration with court staff, court executives, judges, and staff at the AO. The AO partners with the courts in many ways during the year to address unique situations and maintain service to the public. Several examples of this partnership follow.

### **Automaker Bankruptcy Filings**

Last year, when rumors first surfaced that one or more American car makers would file for bankruptcy, the AO began to work with the Southern District of New York, the Eastern District of Michigan, and the District of Delaware bankruptcy courts to prepare for the potential filings that could affect one or more of them.

AO staff developed strategies to handle the burden a mega filing might have on the case management, electronic filing and public access systems, and to prepare for other workload impacts. Over the course of several months, the team worked with the three courts to help them plan for additional personnel needs, physical space demands, public and media inquiries, and security. The AO and the courts worked before any filings took place to address all the issues surrounding the filings.

The effective use of technology was critical to the courts' preparations for the filings without disruptions. Dedicated servers were set up and tested at an outside data center to avoid interference with daily court business. This planning was designed to reduce traffic on the internal data communications network and the public access systems at those courts.

When Chrysler, and later General Motors (GM), filed in the Southern District of New York Bankruptcy Court, the clerk of court contacted the AO court administration staff, and systems were monitored to be certain the servers could handle the increased electronic filing. Traffic was high, but the capacity was adequate in large part because of the advance planning by the courts and the AO.

Over 3,000 docket entries were made in each case the first month after the filing. Hundreds of people, including dozens of press, attended the hearing which the court accommodated with the use of videoconferencing units in overflow courtrooms. The court's Case Management/Electronic Filing System enabled the GM judge to file his decision on Sunday night of July 4<sup>th</sup> weekend and it was immediately accessible to the public.

At a visit to the Manhattan court in November, judges and court administrators provided me with more detail about the court's successful handling of the cases, their meticulous preparation, leveraging of technology, and the leadership from the Chief Judge, and their court's other judges, and court staff.

## **Simplifying Jury Service**

We in the Judiciary have long known that creating a positive experience for jurors leads to greater public enthusiasm for the important responsibility of jury service. Last year, Judge Gibbons described for the Committee a pilot the Judiciary had undertaken of an on-line eJuror system that would give potential jurors the option of submitting their juror qualification questionnaire and summons information forms electronically.

Clerk's office staff from 10 district courts worked with the AO over two years to develop and test the eJuror application. National deployment began in June and should be completed by April, 2010. As of this month, more than 60 courts had installed eJuror and, of those courts, 24 have gone "live".

Soon, 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. 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. Potential jurors still will receive print versions of the forms, but they will have the option of either mailing in the print form or going on-line to complete it.

While the primary benefit of the eJuror system is that it provides better and more timely service for jurors, the new application has also been a cost saver for the Judiciary, reducing work requirements for court staff in processing the paper forms and also decreasing postage costs. In fact, the eJuror system has been more successful than we first anticipated. Postage cost savings estimates were initially based on 20 percent on-line questionnaire use, while, to date, we have been experiencing an average of 25 percent on-line responses for questionnaires, as well as 35-50 percent on-line responses for Summons Information Forms. Eventual staffing resource savings are projected to exceed \$1 million a year and postage savings are projected to exceed \$500,000 a year for an overall savings of more than \$1.5 million when it is fully deployed and in use.

## **Case Management/Electronic Case Filing (CM/ECF)**

Perhaps one of the Judiciary's greatest collaborative efforts to improve court operations was the development of the Case Management/Electronic Case Filing System (CM/ECF) which was initially created by AO and court staff to manage maritime cases in the Northern District of Ohio in 1995. By 2003, the majority of the courts had implemented CM/ECF, and now the system is used in all district, bankruptcy and circuit courts, in the Court of Federal Claims and in the Court of International Trade. The volume of electronic filings continues to grow, with over 5 million documents filed each month and nearly 450,000 attorneys using the electronic filing feature. Attorney electronic filings now account for 40 percent of the docket entries in district courts. In the bankruptcy courts, attorneys electronically enter the majority of all docket entries and 90 percent of all case openings.

Now that the Judiciary has had over a decade of hands-on experience with CM/ECF and the progressive changes that it has enabled, the courts are evaluating comprehensively their business processes and their system needs for the future. This CM/ECF “Next Generation” project – endorsed by the Judicial Conference Committees on Court Administration and Case Management, Information Technology, and Administration of the Bankruptcy System – is now well underway. Integrated efforts in bankruptcy, district, and appellate communities are defining the requirements for a next generation system.

Judges, clerks, and court staff, are guiding the project with support from the AO. All judges and court staff will have numerous opportunities to shape a new system that will help them work more efficiently. We know the impact CM/ECF has had on the operation of the Judiciary to date and are excited about the future of CM/ECF Next Generation.

### **Administrative Office Fiscal Year 2011 Budget Request**

I will now turn to the fiscal year 2011 appropriations request for the Administrative Office of the U.S. Courts, which is \$87,255,000. This represents an increase of \$4,180,000 or 5 percent, over fiscal year 2010 enacted appropriations. The requested increase is primarily made up of base adjustments to maintain current services. Specifically, \$3.9 million of the requested increase is for salaries and benefit increases, as well as increased costs for recurring requirements, such as supplies, communications, service agreements, and travel. The budget request does, however, include an increase of \$287,000 to fund four new positions to address high priority program requirements critical to the operation of the courts. Mr. Chairman, this is the first request to fund additional staff from the AO’s appropriation in six years.

Two positions are requested to support a comprehensive modernization and consolidation of the Judiciary’s nationwide accounting system. This will be a multi-year effort that will provide the Judiciary with significant improvements in its accounting of appropriated funds. Once fully implemented, the AO will be able to assume disbursement functions currently performed by the courts. Included as part of this systems upgrade will be the ability to disburse individual vendor payments electronically, a major initiative of the Department of the Treasury. At present, the AO is not staffed to handle these new responsibilities. Specifically, two additional operating accountant positions are requested to develop and implement the new disbursing capability, which will strengthen internal controls and financial accountability.

A third position is for a database manager to oversee the replacement of the primary information technology system in probation and pretrial services, PACTS, which is reaching maximum capacity with 8,000 users and more than one million records. The PACTS system contains vital information to assist probation and pretrial services officers in supervising offenders and monitoring compliance with conditions of release. PACTS is critical to the probation and pretrial services systems’ ability to effectively protect public safety, reduce recidivism, and promote successful post-incarceration re-entry of offenders. This new position will be key to aiding in the security, accuracy, and usefulness of the data contained in PACTS Generation 3.

The fourth position we seek will ensure that workload demands in the high-profile and complex facilities and security functions at the AO are met in a timely and thorough manner. The critical functions of this office require close coordination between program offices throughout the AO, several executive branch agencies, Congress, and two Judicial Conference committees. The issues handled by this office are substantial, and usually of an urgent nature. They include court security, judicial protection, pandemic planning, and continuity of operations, emergency preparedness, courthouse construction, and space requirements.

In addition to the direct AO appropriation provided by this Committee, the AO receives a portion of Judiciary fee collections and carryover balances to offset appropriation requirements as approved by the Judicial Conference and the Congress. The AO also receives reimbursements from other Judiciary accounts for information technology development and support services that are in direct support of the courts, the court security program, and defender services.

The request for the AO reimbursable program includes funding for four new positions to address the effort anticipated in the development and support of the next generation Case Management/Electronic Case Files (CM/ECF) system. As I mentioned earlier in my testimony, CM/ECF is the core case management tool for judges and clerks' office staff. The next generation of CM/ECF is being developed to continue to meet the case filing and case management needs of judges, chambers, clerks' offices, the bar, debtors, litigants, claimants, trustees, and other users and to improve the current level of court efficiency in light of changing technology. This next generation system will incorporate new technologies and enhance functionality in the courts nationwide.

An additional reimbursable position is also requested to support the telecommunications program that the Judiciary is undertaking. A new contract has been awarded under the GSA's government-wide Networkx program that will replace the Judiciary's existing Data Communications Network (DCN) and provide opportunities to expand the current telecommunications services utilized by the courts. This network will allow the Judiciary to run voice, video, and data services over one network. In addition, the new telecommunications program offered by the AO will provide the courts with centralized services supporting telephone systems, video bridging, and data center hosting. The development, deployment, and management of these additional services will be the responsibility of the AO staff, and the workload associated with this effort will be substantial.

### **Conclusion**

The AO's appropriation comprises less than two percent of the Judiciary's total budget, yet the work performed by the AO is critical to the effective operation of the U.S. courts. Today I have shared with you a few examples of the diverse issues we handle and the types of services and support the AO provides. In addition to striving to perform its fundamental responsibilities in the most efficient and effective manner, the AO looks beyond the immediate day-to-day needs of the courts. It is our responsibility to anticipate and plan for changes in workload, workforce demographics, legislative mandates, resource limitations, and other trends and events so that we can serve the courts effectively in the years to come.

I fully recognize that fiscal year 2011 will be a difficult year for you and your colleagues as you struggle to meet the funding needs of the agencies and programs under your purview. I urge you, however, to consider the significant role the AO plays in supporting the courts and the mission of the Judiciary. The new staff requested – the first in over six years as we self-imposed a hiring freeze for cost containment – are critical to the AO’s ability to ensure the efficient and effective operation of the U.S. courts.

This concludes my remarks and I would be pleased to answer any questions you may have regarding the AO and the Judiciary. Thank you.