

**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 18, 2010

INTRODUCTION

Chairman Serrano, Representative Emerson, and members of the Committee 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 2011. In doing so, I will apprise you of some of the challenges facing the federal courts. This is my sixth appearance before an appropriations subcommittee on behalf of the federal Judiciary and my fourth 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 2011 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 several innovative initiatives we believe will improve the operations of the federal courts.

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 2010 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 2010 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 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.

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 in more detail later in my testimony; continuing the provision that grants the Judiciary the same authority as the Executive Branch to contract directly for space alteration projects not exceeding \$100,000; 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.

I also would like to express our appreciation for the \$10 million in fiscal year 2009 emergency funding you provided the Judiciary to respond to workload associated with immigration and other law enforcement initiatives being implemented by the Department of Justice and the Department of Homeland Security. That funding has allowed us to hire critical staff to meet our most urgent workload needs, especially along the Southwest border.

A CONSTRAINED FEDERAL BUDGET ENVIRONMENT GOING FORWARD

Mr. Chairman, all of us in the Third Branch remain concerned about the economic problems facing the country and understand the need to rein in federal spending in the face of historic budget deficits. In fact, this concern prompted the decision by the Judicial Conference to transmit a fiscal year 2011 request that reflects the lowest percentage increase sought by the Judiciary in more than 20 years. We are not only judges and staff supporting the Third Branch, we are also citizens and taxpayers and we recognize fully the need for fiscal austerity in a period of mounting federal debt. As a step in addressing the budget deficit, the President's 2011 Budget proposes freezing for the next three years overall discretionary non-security spending. I would note, however, that the President has requested increases for some Executive Branch agencies and programs, many of which would directly impact the Judiciary's workload.

To be frank, we are concerned about the impact of constrained federal spending on the Judiciary's appropriations for fiscal year 2011. Our request for a 6.8 percent increase may appear high in a tight budget environment but I assure the Committee that we are only seeking the resources needed to carry out the work of the courts. Our workload is increasing, nearly across the board, and if Congress approves the President's requests for the Department of Justice and the Department of Homeland Security, and if bankruptcy filings remain high, our workload will continue to grow.

We believe we have a strong case to justify full funding of our budget request and although that may be very difficult for Congress to do, at a minimum, we require sufficient resources to handle our growing workload. As I have mentioned in previous testimony before this Committee -- a point that bears repeating again today -- we do not determine our own workload in the federal courts: instead we must handle the cases that are brought to us. When a U.S. attorney decides to prosecute a case, the district court must hear it. And when the Department of Justice hires more assistant U.S. attorneys, that means more workload for the courts. When an appeal is filed, an appellate court must rule on it. When an individual or company files bankruptcy proceedings, the bankruptcy courts must work with debtors and creditors to resolve the case. When a criminal sentence requires a period of supervised release

for an individual, it is our probation officers who enforce those terms of release and ensure public safety.

As I mentioned, the President's 2011 Budget includes funding increases for the Department of Justice and the Department of Homeland Security that will have a direct impact on the workload of the federal courts. The President's Budget increases spending on border and immigration enforcement efforts, particularly along the Southwest border, as well as spending for prosecuting financial fraud and drug offenses. This influx of crime fighting resources will result in more criminal cases in our district courts, more work for our probation and pretrial services officers, and increased caseload in our defender services program, which provides assigned counsel to eligible defendants. We could also see additional cases in our courts of appeals as the Department of Justice adds immigration judges and staff to clear the backlog of cases in the immigration courts. The decisions of the Department of Justice's Board of Immigration Appeals may be appealed in federal court and 26 percent of these cases ended up on our appellate court dockets in 2009.

A growing area of our workload that is not driven by the priorities of the Administration or Congress, but by the economy at large, is the sharp increase in bankruptcy filings in recent years. In 2008, there was a 29 percent increase in bankruptcy filings, followed by a 35 percent increase in 2009. We expect to see another 20 percent increase in bankruptcy filings in 2010, to nearly 1.6 million filings. The bulk of these filings are Chapter 7 and Chapter 13 filings by individuals, but there are also a growing number of Chapter 11 business filings, some of which are very complex and time intensive to resolve, such as Lehman Brothers, General Motors, Chrysler, and several major airlines. Many economists expect the unemployment rate to remain high for several years and if that prediction materializes, we will continue to see workload growth in our bankruptcy courts which will necessitate funding to hire additional court staff.

In order to handle a growing workload and sustain a fair and expeditious delivery of justice, the federal courts must have the resources they need to do their work. We do not have programs that we can cut in response to a budget shortfall. Over 80 percent of our costs are salaries and space rent. This includes salaries for judges and chambers staff and rent payments to the General Services Administration that are fixed, must-pay costs in the short-term, although over the longer term we are able to slow the growth in rent costs through cost-containment initiatives. When faced with a budget shortfall, we have little flexibility other than reducing staffing levels in our clerks' and probation offices. This was the case in 2004 when on-board court staffing levels were reduced by 1,350 people due to a funding shortfall – a loss equal to a full 6 percent of the courts' workforce. This is not a position in which we wish to find ourselves again. Staff reductions in clerks' offices will affect the operating hours of the courts; delay case docketing and processing; limit the availability of assistance for jurors, litigants and the public; and impact the effective operation of technology. Our probation staff are responsible for supervising felons released from prison. Any reduction in their ranks will have a direct impact on public safety.

I will close on this topic by reiterating the importance of the Judiciary's receiving the resources needed to address its workload needs. This Committee, through annual and

supplemental appropriations, has enabled the Judiciary to keep pace with the workload growth stemming from new immigration and law enforcement initiatives and from increased bankruptcy filings resulting from the weak economy. I ask the Committee to continue this commitment to the federal courts by providing funding sufficient to allow us to perform our statutory duties.

HIGH-THREAT TRIALS IN THE FEDERAL COURTS

I would like to turn briefly to an issue that has been widely discussed in recent months: the issue of whether suspected terrorists should be prosecuted in federal court or by military tribunal. As a neutral party in our system of justice, the Judiciary, of course, has remained silent in this debate. The decision on the appropriate venue to prosecute suspected terrorists will be determined by the Administration and Congress, as is appropriate. My only comment on this topic is that high-threat trials in the federal courts present certain security and logistical challenges that must be addressed, such as those experienced with the *Moussaoui* case at the federal courthouse in Alexandria, Virginia, and the *Reid* (shoe bomber) case at the federal courthouse in Boston, Massachusetts. A case currently in federal court that has been widely publicized is the case of Umar Farouk Abdulmutallab, who has been charged with attempting to detonate an explosive device on a flight from Amsterdam to Detroit on December 25, 2009. He was indicted in federal district court in Detroit and is being held awaiting trial. As with any high-threat trial in federal court, the Judiciary works closely with local and federal officials as appropriate to provide a safe and secure venue for the proceedings.

The Judiciary's fiscal year 2011 budget request includes \$22 million for security, juror expenses, and court appointed defense counsel costs associated with high-threat trials. We will work closely with the Committee to refine this estimate once we have a better understanding of the number and location of high-threat trials that will take place in federal court.

EFFORTS TO REDUCE OFFENDER RECIDIVISM

One topic I would like to highlight in my testimony today is an initiative underway in our probation program that we believe will have a real impact on reducing recidivism rates among offenders under supervision and will also allow us to focus resources on programs that have proven results. Let me first say that the recidivism rate in the federal probation system is relatively low – about 15 percent of offenders are arrested for committing a new crime during their first year of supervision. This is in contrast to a 2002 study of recidivism rates in 15 states that found a recidivism rate of 44 percent in the first year. We believe that the federal probation system's individualized approach, tailored to the circumstances of each offender, along with adequate resources at the disposal of probation officers, are the reasons for the better results in the federal system. We are continually exploring ways to further reduce an already relatively low recidivism rate.

The goal of our probation program since it was established 85 years ago has been and continues to be providing offenders sentenced by a judge to a period of supervision by a probation officer with the tools they need to become productive, law-abiding citizens. Until recently, however, there has not been a body of research or data that identified proven methods

for reducing offender recidivism. Past approaches have focused on frequency of probation officer/offender contacts and compliance with conditions of supervision imposed by the judge. While compliance with conditions remains a major component of supervision, working with the offender to change his behavior will provide the best long-term value to the community. The expanding availability of data from law enforcement, correctional and other community agencies, as well as our own case management data, provides researchers with opportunities to determine better the effect probation officers have on offender behavior. The approach of determining what practices work best, based on quality research, is known as “evidence-based practices” (EBP). We recognize the need to evaluate our practices and support those that have been proven to produce specific, intended results consistently. EBP is an outcome-based approach that focuses on specific supervision and treatment strategies versus the more traditional contact-driven supervision approach.

As part of our EBP initiative, we have developed an automated system to gather and interpret criminal records from all 50 states to track recidivism for all persons currently and formerly under the supervision of a probation officer. We have also developed an assessment tool based on an analysis of more than 100,000 offender case files to help officers decide exactly how to approach each person. The tool will allow officers to identify which of the four leading factors that contribute to recidivism should be addressed first. The leading factors are: antisocial thinking patterns and values; a dysfunctional social network; lack of productive employment or education; and substance abuse.

We believe that the Judiciary’s evidence-based approach to offender reentry and our strong focus on achieving positive outcomes will reduce the high costs associated with recidivism. It costs the Bureau of Prisons \$71 per day to incarcerate an offender in a federal prison, including offenders whose supervision had been revoked and have been returned to prison after failing to make it in the community. It costs the Judiciary an average of \$10 per day for a probation officer to supervise an offender in the community. If that offender succeeds, the costs of further incarceration are avoided and the offender can become a productive member of society. This may not be possible in every case, but we believe there are ways to improve the chances that many more offenders will remain law-abiding, and we are proactively seeking to identify and implement them.

COST-CONTAINMENT SUCCESS

As I have done in previous testimony, I will update the Committee on various initiatives underway to contain costs. As you may recall, this effort was started over five years ago to control, and in many cases limit, the cost growth in Judiciary programs both large and small. In 2004, the federal Judiciary looked into the future and saw that its requirements would increase at a pace that would exceed projected funding levels within a few years. Without action, layoffs of court staff seemed inevitable as many of our must-pay costs, such as space rent, were growing at a rate that was unsustainable over the long-term given the pressures on the federal budget. In response to this challenge, the Judiciary initiated a comprehensive strategy that included sweeping cost-containment measures, allowing us to request more modest budget increases from this Committee and the Congress.

The Judiciary adopted a cost-containment strategy in 2004 and has since embraced and institutionalized its economy objectives. Many of the initial ideas for containing costs and growth have come to fruition; others are in various phases of analysis and implementation. Cost-containment is a dynamic process for the Third Branch as we are continually looking for ways to trim costs without adversely impacting the administration of justice. Changes made to date have reduced future costs for: rent, information technology, compensation of court staff and law clerks, magistrate judges, law enforcement activities, law books, probation and pretrial services supervision work, and other areas. I will summarize briefly what we have accomplished, discuss activities underway, and identify new ideas in their initial stages of development.

Space Rent

In 2004, our long-range budget projections indicated that rental costs for existing and new facilities would increase by 6 to 8 percent annually, outpacing anticipated budget growth. The Judicial Conference recognized that controlling rent costs was absolutely essential to avoiding personnel reductions in the future. In fiscal year 2005, we projected our General Services Administration (GSA) rent bill would be \$1.3 billion in fiscal year 2011. I am pleased to report that our current GSA rent estimate for fiscal year 2011 is now projected to be approximately \$1.0 billion, \$300 million, or 23 percent, below the earlier estimate, due in large part to the following cost-containment initiatives:

- The first step we took was imposing a national moratorium on courthouse construction from 2004 to 2006.
- A national rent validation initiative identified errors in GSA rent bills that resulted in rent credits, cumulative savings, and cost avoidances totaling over \$50 million to date for the Judiciary.
- To contain the rate of growth in rent, the Judicial Conference in 2006 established a cap of 4.9 percent in the average annual rate of growth in rent paid to GSA. Each circuit judicial council is given a circuit rent budget and must manage rent costs within that budget. Circuit councils decide which projects they can afford, and in some instances, deny requests for new space in order to stay within their allotment.
- A new long-range facilities planning process -- Asset Management Planning -- was approved by the Judicial Conference in 2008 that examines costs, space needs, and functionality in assessing whether a new facility should be recommended at a particular location.
- A memorandum of understanding between the Judiciary and the General Services Administration, signed in 2008, changed the way the Judiciary's rent is calculated for certain federally-owned courthouses. This will provide the Judiciary with certainty about the amount of rent it will pay annually over a 20-year period.
- Recent changes to the *U.S. Courts Design Guide* have lowered costs by reducing office size for chambers and court staff.

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. A year later, in September 2009, the Judicial Conference extended this 2-for-1 sharing policy to magistrate judges while accounting for circumstances to ensure that judges have adequate access to courtrooms for arraignments and other criminal case proceedings. A study is currently underway to look at courtroom use in bankruptcy courts to evaluate the feasibility of courtroom sharing in those courts. This study is expected to be completed in December 2010.

Personnel

Turning to personnel costs, we recognize that it may not be possible to obtain the funding needed to meet future staffing and compensation requirements and have been taking steps in recent years to control personnel costs. At its September 2007 meeting, based on a major court compensation study, the Judicial Conference approved recommendations to slow the growth in personnel costs throughout the Judiciary. These recommendations altered the salary progression policy for court staff 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. We estimate that all of our cost-containment measures in the personnel area will reduce compensation costs by nearly \$300 million through fiscal year 2019.

Information Technology

The Judiciary takes pride in its innovative use of information technology to enhance efficiency and reduce costs. New technology and improvements in the Judiciary's national data communications network have allowed for the consolidation of many of our computer servers at a single location without compromising the performance levels of several key applications. Prior to this initiative, the service delivery model provided court units with local servers as national information technology systems and applications were deployed. Local court staff were given responsibility for technical and administrative work associated with maintaining these systems, performing tasks such as backing up the systems and troubleshooting. Server consolidation takes this burden off of local court staff, allowing them to focus on other court priorities. We estimate that our server consolidation efforts thus far will result in savings and cost avoidances totaling \$65 million through fiscal year 2012.

The next phase of technology improvements will involve upgrades and enhancement of the Judiciary's data communications network with a focus on converged services (combining voice, video, and data traffic over a single, secure network) that is expected to result in improved services and additional cost avoidances.

Looking to the future in automation, the Judiciary is developing requirements for 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 and litigants 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.

STAFFING INCREASES AND THE JUDICIARY'S CASELOAD¹

Our fiscal year 2011 budget request includes \$40 million for an additional 942 court support staff positions in probation and pretrial services offices and bankruptcy and district clerks' offices to address growing workload needs. The greatest staffing need is in our bankruptcy clerks' offices which, as I mentioned earlier in my testimony, are handling significant increases in bankruptcy filings due to the economic downturn.

As indicated in the caseload table in our fiscal year 2011 budget request, 2010 caseload projections are used to compute fiscal year 2011 staffing needs. This approach allows us to estimate better the number of clerks' and probation office staff needed to meet workload demands, thus enabling us to provide Congress with a more accurate picture of our appropriations needs for the upcoming fiscal year. Overall, the Judiciary's workload for 2010 is expected to increase, as follows: criminal (+3%); probation (+3%); pretrial services (+2%); civil (+6%); and a substantial increase in bankruptcy filings (+20%). These increases come on top of the 2009 workload growth we experienced for each of these categories. The only caseload decrease we are projecting for 2010 is in our appellate filings (-5%). 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 123,839 in 2009 and is expected to increase again in 2010 to 127,100 supervision cases. 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 2009, 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.

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-

¹Unless otherwise stated, caseload figures reflect the 12-month period ending in June of the year cited (i.e., 2010 workload reflects the 12-month period from July 1, 2009 to June 30, 2010).

establish or secure for the first time appropriate housing, employment, and legitimate community relationships. Successful re-entry into the community 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 or partnering with state and local agencies to sponsor a job fair for offenders, probation officers utilize every means possible to facilitate successful re-entry of offenders into society. 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. We are hopeful that the evidence-based practices I discussed earlier will have an impact on reducing the incidence of offenders returning to crime.

Bankruptcy Filings

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), implemented in October 2005 initially significantly reduced the number of bankruptcy filings, but there have been large increases over the past two years. As I mentioned earlier in my testimony, we forecast that filings will continue to grow in 2010, increasing 20 percent to 1,570,000 filings. 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 that are time and labor intensive to resolve.

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 is now used to determine staffing needs in the bankruptcy courts.

Although not part of the Judiciary's budget request to the Congress, the workload placed on bankruptcy judges has resulted in a request from the Judicial Conference for additional judgeships. H.R. 4506 supports the Judicial Conference's recommendation for the creation of 13 new permanent bankruptcy judgeships, conversion of 22 existing temporary judgeships to permanent status, and extension of two existing temporary bankruptcy judgeships for an additional five years. The House passed H.R. 4506 on March 12, 2010 and the Judicial Conference supports the prompt passage of identical legislation in the Senate.

Criminal Filings

After several years of declining filings, our criminal workload has been growing for the past few years. Criminal filings decreased each year from 2004 to 2007, then increased 4 percent to 70,024 filings in 2008, and another 8 percent to 75,324 filings in 2009. We project 2010 filings to increase again, growing 3 percent to 77,300 filings, with immigration-related

offenses driving the increase. It now appears that the additional annual and supplemental appropriations provided to the Department of Justice in recent years to fill Assistant U.S. Attorney positions, particularly in the five judicial districts along the Southwest border, are resulting in additional criminal filings. The President's 2011 Budget continues the expanded funding for immigration enforcement activities on the border and elsewhere, and it is important that Congress provide the resources needed for the federal courts to keep up with that workload.

Civil Filings

Civil filings in the district courts generally follow a less predictable filing pattern. In 2005 civil filings reached a record 282,758 filings but were up and down for several years with 2009 having 257,204 filings. We are currently projecting a 6 percent increase in 2010 associated with asbestos case filings and anticipated class action litigation involving imported drywall from China that is suspected of causing health problems in homes in which it has been installed.

Appellate Filings

Appellate filings remained level from 2008 to 2009 (59,406 to 59,399 filings). We are currently projecting that appellate filings will decline by 5 percent to 56,700 in 2010, due in part to a decline in appeals related to recent changes in the federal sentencing guidelines for crack cocaine sentences. As I have discussed in previous testimony, the Sentencing Commission gave those changes retroactive effect which allowed eligible inmates sentenced under the harsher crack cocaine penalties to petition a federal sentencing court for a reduced sentence under the amended guidelines. Since the bulk of those petitions have now been decided by the district courts, we expect that appeals of those decisions will also decline in 2010. However, in *Dillon v. United States*, the U.S. Supreme Court currently is reviewing whether the district courts have broader authority than that authorized by the Sentencing Commission in deciding petitions of this type. The outcome of *Dillon* may affect how many appeals from these decisions are filed in the coming year.

We are also seeing fewer appeals in federal court resulting from Department of Justice Board of Immigration Appeals (BIA) decisions. BIA appeals peaked in 2006 but have declined in recent years and that trend could continue. However, the increased funding being requested in the President's 2011 Budget for the Department of Justice to add new immigration judges and staff to clear case backlogs could result in increased workload for the federal courts.

FISCAL YEAR 2011 BUDGET REQUEST

For fiscal year 2011, the Judiciary is seeking \$7,329,485,000 in appropriations, a 6.8 percent overall increase above the fiscal year 2010 enacted appropriations level. The courts' Salaries and Expenses account, which funds clerks' and probation offices nationwide, requires a 5.9 percent increase. We will work closely with you and your staff during the course of the year to provide periodic updates to the Committee on the Judiciary's fiscal year 2011 appropriations needs. Fiscal year 2011 appropriations requirements for each Judiciary account are included at Appendix A.

This fiscal year 2011 request includes staffing increases in the courts in order to address increased workload requirements, as well as funding requests 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 the requested increase may appear high in light of the fiscal constraints under which you are operating, 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 personnel and space rent requirements.

Eighty-two percent (\$385 million) of the \$469 million increase being requested for fiscal year 2011 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 January 2011 federal COLA is 1.4 percent.
- Inflationary increases for non-salary operating costs such as supplies, travel, and contracts.
- An anticipated increase in the number of senior Article III judges and average number of filled Article III judgeships.
- Annualization of new staff expected to be hired in fiscal year 2010.
- The projected loss in non-appropriated sources of funding due to the decline in carryover balances available in fiscal year 2011 versus the level available to finance the fiscal year 2010 financial plan (see discussion on the following page).
- Additional costs associated with high-threat trials anticipated in fiscal year 2011.
- 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 has allowed the courts to become more efficient and has moderated our funding requests for new staff to handle workload increases.
- 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.
- 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 \$84 million requested is for program enhancements. Of this amount:

- \$45 million is for additional staff and associated costs to address fiscal year 2011 workload requirements (483 FTE), 6 additional magistrate judges and associated staff, and additional police officers (9 FTE) at the Supreme Court.
- \$26 million will provide for telecommunications and information technology enhancements, and courtroom technology improvements for the Court of Appeals for the Federal Circuit.
- \$6 million is requested for Supreme Court roof repairs.
- \$5 million is to increase the non-capital panel attorney rate from \$126 to \$141 per hour, the statutorily authorized rate. I will discuss this requested increase in more detail in a moment.
- \$2 million would provide for necessary investments in court security, including a national contract for vehicle barrier maintenance at courthouses and a facial recognition pilot program; education and training enhancements at the Federal Judicial Center; 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 partially finances the Judiciary's operations and how they moderate 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 by the Judiciary 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 2011 budget request, we made certain assumptions regarding the level of fees and carryover that would be available to finance fiscal year 2011 requirements. Because the projection for carryover balances is below the level that was available to finance fiscal year 2010 operations, the fiscal year 2011 request includes \$20 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 \$20 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 the first three months of fiscal year 2010, and increasing bankruptcy filings which may result in higher than anticipated fee collections. As we do every year, we will keep the Committee apprised of changes to fee and

carryforward projections that could reduce our fiscal year 2011 appropriations needs as we move through fiscal year 2010. The Judiciary will submit the first of two fiscal year 2011 budget re-estimates to the Committee in May 2010.

INCREASE IN NON-CAPITAL PANEL ATTORNEY RATE

We request your support for 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 \$4,776,000 to increase the non-capital panel attorney rate to the statutorily authorized rate of \$141 per hour, effective January 1, 2011. 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 2010 omnibus spending bill, Congress approved an increase in the non-capital rate paid to these panel attorneys from \$110 to \$125 per hour, and provided a cost-of-living adjustment to the capital rate from \$175 to \$178 per hour. These new rates took effect for work performed on or after January 1, 2010.

Let me reiterate our appreciation for the \$125 panel attorney rate you provided in fiscal year 2010. This \$15 per hour increase represents a significant step in closing the gap between the previous \$110 rate and the statutorily authorized rate of \$141 per hour rate that we are seeking for 2011. The Judicial Conference believes that the \$141 hourly rate 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. We have sought the statutorily authorized rate as an ultimate goal for several years and believe that achievement of this level of compensation is critical to ensuring that criminal defendants receive their constitutionally guaranteed right to effective assistance of counsel.

In understanding our request, it is important to note the significant financial difficulties that panel attorneys encounter maintaining their legal practices. Predominantly solo and small-firm lawyers are appointed in CJA cases, and these panel attorneys must first cover their overhead costs. With overhead costs of approximately \$70 per hour, at the \$125 rate, that leaves a net average of only \$55 per hour, before taxes. We believe that this net rate of \$55 per hour, when compared to the net national average "market rate" of \$176 per hour for non-CJA private criminal cases, deters qualified attorneys from taking 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. Thus, an adequate compensation rate is essential to attract qualified panel attorneys.

The complex nature of federal criminal law necessitates that defense attorneys maintain a significant federal practice in order to ensure the effective representation of their clients. And it is in the interest of the court, the defendant, and the prosecution, that panel attorneys accepting CJA cases be highly experienced in federal criminal law. While experienced panel attorneys may be willing to work at the non-capital CJA rate in a limited number of cases, it often is not

financially possible for them to take a large number of CJA cases. This dynamic may limit the pool of available qualified counsel for eligible defendants.

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 2011 would be \$141.² The \$141 hourly rate requested approximates the \$139 rate approved by this Committee and included in the 2010 House-passed bill (H.R. 3170). If the Committee were to approve the \$141 hourly rate for fiscal year 2011, the Judiciary in future years would only seek annual COLAs to that rate in order to keep pace with inflation, thus avoiding the large “catch up” increases needed when annual COLAs are not provided – the situation we find ourselves in today.

I will close on this topic by reiterating that the Judiciary greatly appreciates the \$125 non-capital rate Congress provided in fiscal year 2010, 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 Committee to provide the funding necessary to increase the non-capital panel attorney rate to \$141 per hour in fiscal year 2011.

CONTRIBUTIONS OF THE ADMINISTRATIVE OFFICE

I would like to outline briefly 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. 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 Nation's system of justice.

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).

The fiscal year 2011 budget request for the Administrative Office is \$87,255,000. The AO's request represents essentially a current services budget with a modest increase for four new positions (2 FTE). This is the first request for new AO staff in 6 years. These positions are needed to address high priority court support functions at the AO including modernization and consolidation of the Judiciary's national accounting system, updating the case management system used in our probation and pretrial services program, and enhancing the AO's court security and emergency preparedness programs.

I urge the Committee to fund fully the Administrative Office's budget request. The increase in funding will ensure that the AO 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 Committee to approve full funding for the Federal Judicial Center's request of \$28,694,000 for fiscal year 2011.

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 impact of Administration priorities and the weak economy on our workload, as well as what we are doing to contain costs and become more efficient. I realize that fiscal year 2011 is going to be a very tight budget year as non-security federal spending is more closely scrutinized. Our commitment to contain costs and to explore new and better ways of conducting our judicial business is unfailing. These initiatives have significantly reduced the Judiciary's appropriations requirements without sacrificing the quality 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 Committee may have.

**Judiciary Appropriations
(\$000)**

Appropriation Account	FY 2010 Enacted Appropriation	FY 2011 Request	Change FY 2011 vs. FY 2010	% Change FY 2011 vs. FY 2010
U.S. Supreme Court				
Salaries & Expenses	\$74,034	\$77,758	\$3,724	5.0%
Care of Building and Grounds	<u>14,525</u>	<u>14,788</u>	<u>263</u>	<u>1.8%</u>
Total	88,559	92,546	3,987	4.5%
U. S. Court of Appeals for the Federal Circuit	32,560	35,859	3,299	10.1%
U.S. Court of International Trade	21,350	22,268	918	4.3%
<i>Courts of Appeals, District Courts & Other Judicial Services</i>				
Salaries & Expense Direct	5,011,018	5,309,781	298,763	
Vaccine Injury Trust Fund	<u>5,428</u>	<u>4,785</u>	<u>(643)</u>	
Total	5,016,446	5,314,566	298,120	5.9%
Defender Services	977,748	1,081,195	103,447	10.6%
Fees of Jurors & Commissioners	61,861	64,108	2,247	3.6%
Court Security	452,607	495,038	42,431	9.4%
Subtotal	6,508,662	6,954,907	446,245	6.9%
Administrative Office of the U.S. Courts	83,075	87,255	4,180	5.0%
Federal Judicial Center	27,328	28,694	1,366	5.0%
Judiciary Retirement Funds	82,374	90,361	7,987	9.7%
U.S. Sentencing Commission	16,837	17,595	758	4.5%
Direct	\$6,855,317	\$7,324,700	\$469,383	
Vaccine Injury Trust Fund	\$5,428	\$4,785	(\$643)	
Total	\$6,860,745	\$7,329,485	\$468,740	6.8%