

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 SENATE

March 21, 2007

INTRODUCTION

Chairman Durbin, Senator Brownback, 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 2008, speaking on behalf of the 33,000 employees of the Judiciary – judges, court staff, and chambers staff. I feel privileged to represent the Third Branch. In doing so, I will also apprise you of some of the challenges facing the federal courts.

This is my third appearance before an appropriations subcommittee on behalf of the federal Judiciary and, of course, my first appearance before this newly created Financial Services and General Government panel. We look forward to a productive relationship with the Subcommittee and its staff as we begin the fiscal year 2008 budget cycle.

Mr. Chairman, you have been a great friend to the federal Judiciary through your work on the Judiciary Committee and the Appropriations Committee. I know you were personally involved in efforts to provide \$12 million in supplemental funding to the United States Marshals Service for the installation and monitoring of security systems in judges' homes. I speak for all judges when I say we greatly appreciate Congress's continued concern with the safety of judges and their families.

ADMINISTRATIVE OFFICE DIRECTOR JAMES C. DUFF

Appearing with me today is James C. Duff, the new Director of the Administrative Office of the United States Courts. He succeeds Leonidas Ralph Mecham who retired last year after a record 21 years leading the Administrative Office. Director Duff was appointed by the Chief Justice in April 2006 and took office in July 2006. Jim brings much experience and knowledge of the Judiciary to his position.

FISCAL YEAR 2007 FUNDING

Mr. Chairman and Senator Brownback, on behalf of the entire Judicial Branch I want to thank you and your colleagues, especially Chairman Byrd, for making the Judiciary a funding priority in the just completed fiscal year 2007 appropriations cycle. The fiscal year 2007 process was certainly atypical in concluding with a joint resolution providing full year funding for the nine unfinished appropriations bills. Although we were very concerned about the prospect of a hard freeze for the courts in fiscal year 2007, Congress responded to those concerns and provided funding for the Judiciary sufficient to maintain current on-board staffing levels in the courts as well as to address some of our immigration-related workload needs. We are aware that hundreds of Executive Branch programs were funded at or below fiscal year 2006 levels, and we are very appreciative for the funding level we received. I assure you that we will use these resources wisely.

While I will discuss the fiscal year 2008 budget request for the Judiciary later in my testimony, I would like to mention that, like some federal agencies, we had to make certain assumptions about our fiscal year 2007 funding levels when we were finalizing our 2008 budget request several months ago. We assumed that Congress would provide the midpoint of the House-passed and Senate-reported appropriations bills from the 109th Congress, less 1 percent for a possible across-the-board rescission. The final enacted fiscal year 2007 appropriations level is \$44 million below the fiscal year 2007 funding assumption we used to construct the fiscal year 2008 request. In order to provide you with our latest budget estimates, we recently updated the Judiciary's fiscal year 2008 request based on fiscal year 2007 enacted appropriations, other financing adjustments, and changes in requirements that have occurred since our 2008 budget was submitted. Our preliminary analysis indicates that the Judiciary's fiscal year 2008 appropriations requirements have declined by \$80 million from the original request level. A chart identifying, by account, the revised appropriations request for fiscal year 2008 is provided at Appendix A. We will provide a complete budget re-estimate package to the Subcommittee in May.

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 Sentencing Commission, the Court of Appeals for the Federal Circuit, and the Court of International Trade be included in the hearing record.

ROLE OF THE FEDERAL JUDICIARY

Before I detail the specifics of our 2008 budget request, I will review various factors that shape the federal Judiciary's budget. First and foremost is the role of the courts in our system of democratic government. Among our three independent, co-equal branches of government, the Judiciary is the place where the people go to resolve their disputes peacefully and according to the rule of law. We are protectors of individual rights. Through trying those accused of crimes and sentencing those who are convicted, we also uphold societal values as expressed in the laws

you pass. It may seem obvious, but it is worth noting that every item in our budget request relates to performing the functions entrusted to us under the Constitution. We have no optional programs; everything ultimately contributes to maintaining court operations and preserving the judicial system that is such a critical part of our democracy.

COST CONTAINMENT EFFORTS

The Judiciary is cognizant of the budget challenges facing our nation and I want to assure the Subcommittee that the federal Judiciary is doing its part to contain costs. We are well aware that, with the conflicts in Iraq and Afghanistan and the investments being made to improve security here at home, non-security domestic spending has been flat for several years. And, looking forward, we know that the projected increase in mandatory entitlement spending in the coming years as baby boomers begin to retire will only add to federal budget pressures. The Judiciary recognizes that the Administration and Congress are rightfully concerned about overall federal spending and budget deficits and that you face tough choices.

The Judicial Conference has always sought ways to reduce costs and enhance productivity. In fact, the Budget Committee which I currently chair has, since 1993, had an Economy Subcommittee whose sole purpose is to make funding recommendations to the full Budget Committee based on its independent analysis of the efficiency and effectiveness of Judiciary programs. The Economy Subcommittee is in effect the Third Branch's counterpart to the Office of Management and Budget. In fiscal year 2004 we retooled and enhanced our efforts to control costs. In that year, the Judiciary received a significant reduction to its budget request, primarily due to across-the-board cuts applied during final conference on our appropriations bill. This funding shortfall resulted in staff reductions of 1,350 employees, equal to 6 percent of the courts' on-board workforce. Of that number, 328 employees were fired, 358 employees accepted buyouts or early retirements, and 664 employees left through normal attrition and were not replaced.

The 2004 situation made clear that the Judicial Conference had to take steps to contain costs in a way that would protect the judicial process and ensure that budget cuts would not harm the administration of justice. In March 2004, the late Chief Justice William H. Rehnquist charged the Judicial Conference's Executive Committee with leading a review of the policies, practices, operating procedures, and customs that have the greatest impact on the Judiciary's costs, and with developing an integrated strategy for controlling costs. After a rigorous six-month review by the Judicial Conference's various program committees, the Executive Committee prepared, and the Judicial Conference endorsed, a cost-containment strategy. The strategy focused on the primary cost drivers of the Judiciary's budget, which included an examination of the number of staff working in the courts, the amount they are paid, and the rent we pay to the General Services Administration for courthouses and leased office space. To be frank, cost containment is not the most popular initiative in all quarters of the Judiciary. But the courts realize it is necessary, and we have had great cooperation Judiciary-wide as we have moved forward on cost containment initiatives. Pursuing the implementation of cost containment initiatives will continue to be a top priority of the Judicial Conference.

Rent Validation Project

The amount of rent we pay to GSA has been a matter of concern to the Judiciary for more than 15 years. Our GSA rent bill consumes about 20 percent of the courts' operating budget, and we project the rent bill will exceed \$1 billion in fiscal year 2008. Our relationship with GSA, though strained in recent years, has become more productive as Director Duff will discuss in more detail in his testimony. In addition, we remain vigilant in our efforts to control our rent costs, and at present GSA and the Judiciary are working cooperatively to this end.

The Judiciary's rent validation project has achieved significant savings. This initiative originated in our New York courts where staff spent months scrutinizing GSA rent bills and found rent overcharges. The cumulative effect of this discovery was savings and cost avoidance over three fiscal years totaling \$30 million. The Administrative Office expanded this effort nationwide by training all circuit executive offices to research and detect errors in GSA rent billings. Although it is quite time consuming, detailed reviews of GSA rent billings are now a standard business practice throughout the courts. Through the rent validation effort we recently identified additional overcharges totaling \$22.5 million in savings and cost avoidance over three years. GSA has been very responsive to correcting billing errors that we bring to their attention. By identifying and correcting space rent overcharges we are able to re-direct these savings to other Judiciary requirements, thereby reducing our request for appropriated funds.

Rent Caps

To contain costs further, the Judiciary is establishing budget caps in selected program areas in the form of maximum percentage increases for annual program growth. For our space and facilities program, the Judicial Conference approved in September 2006 a cap of 4.9 percent on the average annual rate of growth for GSA rent requirements for fiscal years 2009 through 2016. By comparison, the increase in GSA rent in our fiscal year 2005 budget request was 6.6 percent. This cap will produce a GSA rent cost avoidance by limiting the annual amount of funding available for space rental costs, and courts will have to further prioritize space needs and deny some requests for additional space.

Other Cost Containment Initiatives

The Judiciary has adopted and is pursuing a number of measures to contain costs and improve efficiency throughout the federal courts. These initiatives include redefining work requirements for probation officers, imposing tighter restrictions on appointing new magistrate judges, consolidating computer servers, and modifying courthouse space design standards. I would encourage members of the Subcommittee to read a compendium of these initiatives in our report entitled *Innovation in Lean Times: How Federal Court Operations Are Changing to Meet Demands*. This report was prepared by the Administrative Office in July 2006 and distributed to the House and Senate Appropriations Subcommittees in the 109th Congress. I have asked Administrative Office staff to provide the report to the current Appropriations Subcommittees as well.

THE JUDICIARY'S ROLE IN HOMELAND SECURITY

The role of the Judiciary in the nation's homeland security is often overlooked. Actions taken by the Department of Homeland Security and the Department of Justice have a direct and immediate impact on the federal courts. Whether it is costly high-profile terrorist cases or soaring increases in immigration cases and related appeals, much of the workload ends up on federal court dockets, and sufficient resources are required in order to respond to it. In recent years, Congress and the Administration have significantly increased spending for homeland security through the annual and supplemental appropriations processes. Non-defense homeland security spending has more than tripled since 2001. In sharp contrast, appropriations for the courts' operating budget have increased only 33 percent and on-board court staffing levels have *declined* by 5 percent. Increased spending on homeland security is expected to continue, as evidenced by the President's fiscal year 2008 budget, which includes a 9.5 percent increase in government-wide non-defense homeland security spending. The President's budget includes an unprecedented \$13 billion to strengthen border security and immigration enforcement, a component of our workload in which we have seen dramatic growth in recent years. In fact, immigration-related cases now account for 25 percent of the district courts' criminal caseload, up from 18 percent in 2001, and surpass all other offense categories except drug cases. This President's request includes funding for 3,000 new border patrol agents to achieve the goal of doubling the force by the end of 2008 (18,000+ agents) from the 2001 level (9,100 agents). The Judiciary cannot absorb the additional workload generated by homeland security initiatives within current resource levels.

THE JUDICIARY'S WORKLOAD¹

I turn to a discussion of the workload facing the courts. As indicated in the caseload table in our fiscal year 2008 budget request, 2007 caseload projections, which are utilized to compute fiscal year 2008 staffing estimates, increase slightly in probation and pretrial services, and decline slightly in appellate, civil, and criminal filings. There is a steep decline in projected bankruptcy filings. While our caseload has begun to stabilize after a decade of steady growth, it nonetheless remains at near-historic levels in most categories. I will discuss some recent trends and caseload drivers and try to offer some context for these workload figures.

Probation and Pretrial Services

Workload in our probation and pretrial services programs continues to grow. The number of people under the supervision of federal probation officers hit a record 113,697 in 2006 and is expected to increase in 2007 to 114,600. In addition to the increased workload, the work of probation officers has become significantly more difficult. In 1985, fewer than half of the offenders under supervision had served time in prison. By 2006, the percentage had climbed to

¹Unless otherwise stated, caseload figures reflect the 12-month period ending in June of the year cited (i.e., 2006 workload reflects the 12-month period from June 30, 2005 to June 30, 2006).

nearly 80 percent. As these figures indicate, probation officers no longer deal primarily with individuals sentenced to probation in lieu of prison. Offenders coming out of prison have greater financial, employment, and family problems than when they committed their crimes. In addition, offenders under supervision have more severe criminal histories than in the past. Between 1995 and 2005, there was a 78 percent increase in the number of offenders sentenced with more severe criminal backgrounds. Offenders re-entering the community after serving time in prison require close supervision by a probation officer to ensure they secure appropriate housing and employment. Successful re-entry improves the likelihood that offenders will pay fines and restitution and become taxpaying citizens.

Recent legislation will also increase our probation workload. The Adam Walsh Child Protection and Safety Act of 2006 is expected to increase significantly the number of sex offenders coming into the federal probation and pretrial system for supervision. Monitoring the behavior of sex offenders is very challenging and requires intense supervision on the part of probation and pretrial services officers to protect the community.

Appellate Filings

Appellate filings hit an all-time high of 68,313 in 2006 and are expected to decline to 67,000 filings in 2007. The recent growth in the appellate docket has been due to more Board of Immigration Appeals (BIA) decisions from the Department of Justice (DOJ) being challenged in the appellate courts, particularly in the Second and Ninth Circuits. In fiscal year 2006, 33 percent (11,911) of all BIA decisions were appealed to the federal courts, up from 6 percent (1,757) in fiscal year 2001. These BIA appeals often turn on a credibility determination by a DOJ immigration judge thus requiring close judicial review of a factual record by the appellate courts.

Along with the increase in BIA appeals, the courts have seen significant increases in criminal appeals resulting from the Supreme Court rulings in *United States v. Booker* and *United States v. Fanfan* in which the Court held judge-found sentencing factors unconstitutional in a mandatory sentencing scheme and made federal sentencing guidelines advisory. Criminal appeals are currently 29 percent higher than they were prior to the decisions in those cases. The Supreme Court will decide two cases this term related to the appellate review of post-*Booker* sentences which may also impact the number of criminal appeals.

Civil Filings

Civil filings in the courts generally follow a more up and down filing pattern. In 2005 civil filings reached a record 282,758 filings followed by 244,343 filings in 2006 and 241,300 filings projected for 2007. The record filings in 2005 were largely due to the Homegold/Carolina Investors fraud case in North Carolina and a spike in personal injury liability lawsuits.

Criminal Filings

Criminal filings for 2007 are projected to total 67,200, down slightly from the 2006 level, but still within 5 percent of the all-time high set in 2004 of 71,098 filings. We understand that criminal filings may be depressed due to significant vacancies in Assistant U.S. Attorney positions nationwide. As these vacancies are filled, we expect criminal filings to increase again.

Although overall criminal caseload in the federal courts has begun to level off, caseload in the five district courts along the southwest border with Mexico has soared since 2001 as a result of border and law enforcement initiatives undertaken by the Department of Homeland Security and Department of Justice. Those five districts – out of a total 94 judicial districts – account for nearly one-third of all criminal cases nationwide. Particularly hard hit is the District of New Mexico where criminal filings have nearly doubled since 2001 (up 92 percent) and the Southern District of Texas where filings are up 40 percent.

Bankruptcy Filings

The sharp decline in bankruptcy filings projected for 2007 clearly reflects the impact of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) that went into effect October 17, 2005. The Administrative Office projects bankruptcy filings will decline by more than 500,000 filings from 2006 to 2007. Although filings have started to rebound, no consensus exists among bankruptcy experts as to when, or if, filings will return to pre-BAPCPA levels. Of course, the root causes of bankruptcy – job loss, business failure, medical bills, credit problems, and divorce – were not affected by the legislation and are expected to continue to be the primary drivers of filings. The number of filings alone, however, should not be viewed as the sole indicator of overall workload. BAPCPA created new docketing, noticing, and hearing requirements that make addressing the petitions more complex and time-consuming. Preliminary information from 10 courts now being studied suggests that the actual per-case work required by the bankruptcy courts has increased significantly under the new law, at least partially offsetting the impact on the bankruptcy courts of lower filings.

CASELOAD AND STAFFING: A HISTORICAL PERSPECTIVE

It is useful to examine Judiciary workload and staffing from a historical perspective. The chart below details Judiciary staffing and aggregate caseload for fiscal year 1984 through fiscal year 2006. Aggregate caseload is a composite of criminal, bankruptcy, appellate, and civil case filings as well as our probation and pretrial services programs. This chart illustrates several things. First, it shows the steady growth in the courts' caseload over the last 20 years. The chart also shows the cyclical nature of the courts' caseload when viewed in the aggregate: caseload peaks, declines slightly, then tends to peak again. Lastly, it shows that staffing resources have lagged well behind the increase in caseload for the last decade.

From fiscal year 1984 to fiscal year 2006, the courts' aggregate caseload increased by 195 percent while total court staffing – which includes judges, chambers staff, and staff in our clerks and probation and pretrial services offices – increased by only 92 percent. Staffing levels generally kept pace with caseload growth through the mid-1990's. But over the last decade caseload began to outpace court staffing levels and, to date, the courts have not had the resources needed to catch up. And the gap has widened in recent years. Between fiscal years 2001 and 2006 the courts' aggregate caseload increased by 23 percent while staffing resources increased by only 1 percent.

What has been the impact of this resource gap? The Judiciary has sought to narrow the gap through the implementation of automation and technology initiatives, improved business practices, and cost-containment efforts, but we have not been able to close it entirely. Our statistics indicate that the courts are struggling to meet workload demands. Pending cases carried over from one year to the next indicate a lack of judge and court staff resources. From fiscal year 1996 to 2006, the number of criminal cases pending per filing increased 55 percent, appeals cases pending per filing increased 13 percent, bankruptcy cases pending per filing increased 13 percent, and civil cases pending per filing increased 4 percent. If courts do not have the judges and staff needed to address workload adequately, civil cases are delayed as the district courts must focus on the criminal docket to meet provisions of the Speedy Trial Act, clerks offices must reduce office hours for the public in order to focus on case management activities, and probation officers have to reduce supervision for some offenders in order to focus on the more dangerous supervision cases. These are just a few examples.

The Judiciary uses regularly updated staffing formulas for determining the number of staff required in clerks and probation and pretrial services offices. Each formula incorporates multiple workload factors, but case filings are a primary determinant of the courts' staffing needs. Based on these staffing formulas, to be fully staffed we would need an additional 2,000 people in fiscal year 2008 above current on-board levels to address the courts' workload needs. Of

course I am not suggesting that Congress provide the Judiciary with funding for such a dramatic increase in staff. But I am making the point that the courts are currently understaffed. With the resources Congress provided the Judiciary in fiscal year 2007, the courts are in a position to fill more than 200 new positions to address our most critical workload needs, particularly for immigration-related workload in the district and appellate courts. Because fiscal year 2007 funds were not made available to the courts until halfway into the fiscal year, all of these new staff may not be on-board until 2008. For this reason, and as a cost containment measure, our revised budget estimates for fiscal year 2008 no longer include funding for new positions in clerks and probation/pretrial offices. It is therefore critical that the courts be funded at a current services level in fiscal year 2008 in order to sustain the staffing gains funded in fiscal year 2007. The fact that the courts' caseload has stabilized after a decade of steady growth affords us the opportunity to begin closing the gap between our staffing levels and our workload. The funding provided in 2007 will enable the courts to begin to do so.

FEDERAL PROTECTIVE SERVICE

An issue of increasing concern to the Judiciary is the expense and quality of security provided the courts by the Federal Protective Service (FPS). FPS provides, on a reimbursable basis, exterior perimeter security for federal agencies. FPS security charges are of two types: the mandatory "basic" security charge which is a fee assessed to each tenant agency based solely on the space occupied; and a "building-specific" security charge that is assessed against each tenant agency to pay for the acquisition, maintenance and repair of security equipment provided by FPS. Examples of building-specific security include the posting of FPS contract security guards at a facility and perimeter cameras that view the exterior areas of federal buildings. Both the basic and building specific charges are paid to FPS out of our Court Security appropriation. The Judiciary does not have control over the increases charged by FPS for the mandatory basic security charge. According to an FPS estimate, the Judiciary will incur a \$4 million increase for basic security charges in fiscal year 2008 because FPS is increasing the rate by approximately 46 percent, from 39 cents to 57 cents per square foot.

We have received reports from several courts that perimeter security equipment provided by FPS has not been maintained or repaired, thus compromising security in those courthouses. A district judge, who is the chair of the court security committee at a major metropolitan courthouse, wrote Director Duff last month detailing his concerns regarding perimeter security deficiencies at his courthouse. He wrote of inoperative FPS-provided exterior cameras and the absence of cameras at key locations resulting in "dead zones" with no camera surveillance. Another district court reported that after pellets were fired at the courthouse one night, the court learned there was no surveillance footage to review because FPS cameras were not recording any exterior views.

These and similar situations nationwide during fiscal year 2006 resulted in a number of courthouses with serious security vulnerabilities. In order to help ensure that the courts have

adequate security, the United States Marshals Service (USMS) assumed responsibility for repairing or replacing FPS-provided perimeter cameras at a number of courthouses where it was apparent that FPS was not able to do so. This resulted in the Judiciary's paying for the same services twice: once to FPS in the building-specific security charge and also to the USMS in the funding we transfer to it for systems and equipment for interior and perimeter courthouse security.

FPS continues to be unable to provide the Judiciary with adequate cost-effective services, working equipment, detailed billings records, and timely cost projections. FPS has chronic financial management and billing problems evidenced by the \$60 million funding shortfall it reported in November 2006 and which recent reports indicate has since grown to \$80 million. In response to these shortcomings, the USMS has initiated a nationwide survey to assess the status of perimeter security at court facilities. The Judiciary greatly appreciates its proactive efforts in this area. Because of on-going FPS performance issues, the Judicial Conference last week endorsed a recommendation to support the efforts of the USMS, through legislative means if necessary, to assume security functions currently performed by FPS at court facilities (where the Judiciary is the primary tenant) and to receive the associated funding. The USMS has the expertise and provides excellent service with low administrative expenses. It takes responsibility for its work. FPS on the other hand has chronic funding problems that hamper its ability to maintain its security equipment adequately.

Ensuring the safety of judges, court employees, attorneys, jurors, defendants, litigants, and the public in court facilities is of paramount importance to the Judiciary. For this reason, we support expansion of the USMS's current mission to include the perimeter security of court facilities nationwide. We look forward to working with the Subcommittee on this very important issue.

FISCAL YEAR 2008 BUDGET REQUEST

As I mentioned earlier in my testimony, we constructed our fiscal year 2008 budget request based on actions in the 109th Congress on fiscal year 2007 appropriations bills. Specifically, we assumed for each Judiciary account that Congress would provide the midpoint of the House-passed and Senate-reported appropriations bills from the 109th Congress, less 1 percent for a possible across-the-board rescission. The final enacted fiscal year 2007 appropriations level is \$44 million below the fiscal year 2007 funding assumption we used to construct the fiscal year 2008 request. Over the last several weeks, Administrative Office staff have been working with the various Judicial Branch entities to update fiscal year 2008 funding requirements for each account based on enacted fiscal year 2007 appropriations as well as other financing adjustments and changes in requirements that have occurred since our 2008 budget was finalized. Our preliminary analysis indicates that the Judiciary's fiscal year 2008 appropriations requirements have declined by \$80 million from the request level of \$6.51 billion, resulting in a revised appropriation requirement of \$6.43 billion. A summary table detailing the original and revised fiscal year 2008 appropriations request for each Judiciary account is included at Appendix A. The appropriations increase the Judiciary is seeking for fiscal year 2008, which I

will describe briefly, is reflective of these revised requirements. As I mentioned earlier, we will provide a complete budget re-estimate package to the Subcommittee in May.

As a result of our recent update of requirements, the Judiciary is requesting a 7.6 percent overall increase above fiscal year 2007 enacted appropriations. The courts' Salaries and Expenses account requires a 6.7 percent increase for fiscal year 2008. We believe this level of funding represents the minimum amount required to meet our constitutional and statutory responsibilities. While this may appear high in relation to the overall budget request submitted by the Administration, 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 which are predominantly for personnel and space requirements. Eighty-six percent (\$390 million) of the \$452 million increase being requested for fiscal year 2008 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 3.0 percent for 2008.
- An increase in the number of on-board active and senior Article III judges and the annualization of new magistrate judge positions.
- The projected loss in non-appropriated sources of funding. In addition to appropriations, the Judiciary collects fees that can be used to offset appropriation needs. Fee collections not utilized during the year may be carried over to the next fiscal year to offset appropriations requirements. We will keep the Subcommittee apprised of changes to fee or carryforward projections as we move through fiscal year 2007.
- Space rental increases, including inflationary adjustments and new space delivery, court security costs associated with new space, and an increase for 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 "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. The number of CJA representations is expected to increase by 8,200 in fiscal year 2008, as the number of defendants for whom appointed counsel is required increases.

After funding these adjustments to base, the remaining \$62 million requested is for program enhancements. Of this amount:

- \$22 million to increase the non-capital panel attorney rate from \$96 to \$113 per hour. I will discuss this requested increase in more detail in a moment.
- \$11 million would provide for critical security-related requirements.
- \$10 million will provide for investments in new information technology projects and upgrades, and courtroom technology improvements.
- \$11 million will provide for unfunded fiscal year 2007 recurring court operating expenses that were not funded in fiscal year 2007 but are necessary requirements in fiscal year 2008.
- Of the remaining \$8 million, \$1 million would provide for two additional magistrate judges and associated staff; \$1 million will pay for the Supreme Court's exterior landscape renovation project; \$2 million is needed for staffing increases for the Supreme Court (+7 FTE), Federal Circuit (+6 FTE), and the Federal Judicial Center (+7 FTE). The remaining \$4 million is for smaller requirements in other Judiciary accounts.

INCREASE IN NON-CAPITAL PANEL ATTORNEY RATE

We believe that one program enhancement in our budget request deserves strong consideration in order to ensure effective representation for criminal defendants who cannot afford to retain their own counsel. We are requesting \$22 million to increase the non-capital panel attorney rate to \$113 per hour effective January 2008. A panel attorney is a private attorney who serves on a panel of attorneys maintained by the district or appellate court and is assigned by the court to represent financially-eligible defendants in federal court. These attorneys are currently compensated at an hourly rate of \$92 for non-capital cases and up to \$163 for capital cases. The hourly non-capital rate will increase to \$94 per hour effective April 1, 2007 as a result of the \$2 per hour cost-of-living adjustment you provided in fiscal year 2007. We are very grateful for this modest rate adjustment. The Judiciary requests annual cost-of-living adjustments for panel attorneys – similar to the annual adjustments provided to federal employees – for two reasons. First, cost-of-living adjustments allow the compensation paid to panel attorneys to keep pace with inflation to maintain purchasing power and, in turn, enable the courts to attract and retain qualified attorneys to serve on their CJA panels. Second, regular annual adjustments eliminate the need to request large “catch-up” increases in order to account

for several years with no rate adjustments. The Subcommittee recognized the importance of annual cost-of-living adjustments by providing one to panel attorneys in fiscal year 2007. I would note that the previous Subcommittee provided a cost-of-living adjustment in fiscal year 2006.

Our request to increase the non-capital hourly rate to \$113 amounts to a partial catch-up increase. The non-capital rate was increased to \$90 in May 2002 but no adjustments were made to that rate until January 2006, when it was raised to \$92, and which will increase to \$94 in a few weeks, on April 1, as I just mentioned. In comparison, since May 2002, the Department of Justice has been paying \$200 per hour to retain private attorneys with at least five years of experience to represent current or former federal employees in civil, congressional, or criminal proceedings. The Judiciary requested a panel attorney rate of \$113 per hour in fiscal years 2002, 2003, and 2004. In report language accompanying the fiscal year 2004 appropriations bill, the Subcommittee with jurisdiction over our funding at the time said the Judiciary was not presenting a strong case for the \$113 rate and suggested we survey the courts and gather data to make a more compelling case. Thus, we did not request the \$113 rate in fiscal years 2005 and 2006 while the Administrative Office conducted surveys of judges and panel attorneys and analyzed the responses.

In a 2004 survey of federal judges, over half of them indicated that their courts were currently experiencing difficulty identifying enough qualified and experienced panel attorneys to accept appointments in non-capital cases. In the first statistically valid, nationwide survey of individual CJA panel attorneys conducted in March 2005, a significant percentage (38 percent) of the over 600 attorneys surveyed reported that since the hourly compensation rate had increased to \$90 per hour in May 2002, they had nevertheless declined to accept a non-capital CJA appointment. Strikingly, after covering overhead costs for the predominantly solo and small-firm lawyers who take CJA cases, their net pre-tax income for non-capital CJA representations amounted to only about \$26 per compensated hour. A large proportion (70 percent) of the CJA attorneys surveyed in March 2005 reported that an increase to the \$90 hourly rate is needed for them to accept more non-capital cases.²

The requested increase to \$113 per hour reflects the minimum amount the Judicial Conference believes is needed to attract qualified panel attorneys to provide the legal representation guaranteed by the Sixth Amendment. Indeed, \$113 is the level that the Judiciary was seeking in 2002 when Congress increased the rate to \$90. Recognizing fiscal realities, the \$113 rate request is well below the \$133 rate authorized by the CJA. I urge you to give this rate increase strong consideration.

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

CONTRIBUTIONS OF THE ADMINISTRATIVE OFFICE

Year in and year out, the Administrative Office (AO) of the United States Courts serves and provides critical support to the courts. The more the courts have to do, and the fewer resources with which they have to do it, the more challenging the job of the AO becomes. With only a fraction (1.6%) 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 has been essentially frozen for 10 years.

The AO played a central role in assisting the courts to implement the bankruptcy reform legislation, as well as in helping those courts affected by Hurricanes Katrina and Rita and the myriad of space, travel, technology, and personnel issues that had to be addressed.

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 2008 budget request for the Administrative Office is \$78.5 million, representing an increase of \$6.2 million. All of the requested increase is necessary to support adjustments to base, mainly standard pay and general inflationary increases, as well as funding to replace the anticipated lower level of fee revenue and carryover amounts with appropriated funds in fiscal year 2008.

I urge the Subcommittee to fund fully the Administrative Office's budget request. The increase in funding will ensure that the Administrative Office continues to provide program leadership and administrative support to the courts, and lead the efforts for them to operate more efficiently. 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 \$24.5 million for fiscal year 2008.

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 Judicial Conference and its committees request and regularly rely on research projects by the Center. These provide solid empirical information on which judges, the Judiciary, and Congress and the public, depend on in reaching important decisions relating to litigation and court operations. Likewise, the Center's educational programs

for judges and court staff are vital in preparing new judges and court employees to do their jobs and in keeping them current so that they can better deal with changes in the law, and in tools – like technology – that courts rely on to do their work efficiently.

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

CONCLUSION

Mr. Chairman, I hope that my testimony today provides you with a better appreciation of the challenges facing the federal courts. I realize that fiscal year 2008 is going to be another tight budget year as increased mandatory and security-related spending will result in further constrained domestic discretionary spending. The budget request before you recognizes the fiscal constraints you are facing. Through our cost-containment efforts we have significantly reduced the Judiciary's appropriations requirements without adversely impacting the administration of justice. I know that you agree that a strong, independent Judiciary is critical to our nation. I urge you to fund this request fully in order to enable us to maintain the high standards of the United States Judiciary. A funding shortfall for the federal courts could result in a significant loss of existing staff, dramatic cutbacks in the levels of services provided, and a diminution in the administration of justice.

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

Judiciary Appropriation Funding (\$000)

Appropriation Account	FY 2007			President's Budget (Feb. 5, 2007)	FY 2008		% Change
	Assumed Appropriation ¹ (Oct. 15, 2006)	Enacted Level P.L. 110-5 ² (Feb. 15, 2007)	\$ Change: Enacted vs. Assumed		Revised Budget Estimates (March 21, 2007)	\$ Change: Revised Estimates vs. Pres. Budget	% Change: FY 2008 Revised vs. FY 2007 Enacted
U.S. Supreme Court							
Salaries & Expenses	\$62,792	\$62,576	(\$216)	\$66,526	66,526	0	6.3%
Care of Building and Grounds	12,829	11,427	(1,402)	12,201	12,201	0	6.8%
Total	75,621	74,003	(1,618)	78,727	78,727	0	6.4%
U. S. Court of Appeals for the Federal Circuit	25,407	25,311	(96)	28,538	28,442	(96)	12.4%
U.S. Court of International Trade	16,037	15,825	(212)	16,727	16,632	(95)	5.1%
<i>Courts of Appeals, District Courts & Other Judicial Services</i>							
Salaries & Expenses	4,527,194	4,476,550	(50,644)	4,854,455	4,774,757	(79,698)	6.7%
Direct Injury Trust Fund	<u>3,971</u>	<u>3,971</u>	<u>0</u>	<u>4,099</u>	<u>4,099</u>	<u>0</u>	3.2%
Total	4,531,165	4,480,521	(50,644)	4,858,554	4,778,856	(79,698)	6.7%
Defender Services	747,987	776,283	28,296	859,834	859,834	0	10.8%
Fees of Jurors & Commissioners	62,448	60,945	(1,503)	62,350	63,081	731	3.5%
Court Security	<u>395,045</u>	<u>378,663</u>	<u>(16,382)</u>	<u>421,789</u>	<u>421,789</u>	<u>0</u>	11.4%
Subtotal	5,736,645	5,696,412	(40,233)	6,202,527	6,123,560	(78,967)	7.5%
Administrative Office of the U.S. Courts	73,326	72,377	(949)	78,536	78,536	0	8.5%
Federal Judicial Center	23,211	22,874	(337)	24,835	24,475	(360)	7.0%
Judiciary Retirement Funds	58,300	58,300	0	65,400	65,400	0	12.2%
U.S. Sentencing Commission	15,266	14,601	(665)	16,191	15,477	(714)	6.0%
Direct	\$6,019,842	\$5,975,732	(\$44,110)	\$6,507,382	6,427,150	(80,232)	

<i>Vaccine Injury Trust</i>	\$3,971	\$3,971	\$0	\$4,099	4,099	0	
<i>Total</i>	\$6,023,813	\$5,979,703	(\$44,110)	\$6,511,481	6,431,249	(80,232)	7.6%

¹Reflects the assumed FY 2007 appropriation level that was used in developing the FY 2008 President's Budget. It was based on the House/Senate midpoint less 1 percent for an assumed across-the-board rescission.

²The bottom line total is consistent with the FY 2007 amount appropriated to the Judiciary in H.J. Res. 20 (P.L. 110-5).