

Statement of Hon. Barbara J. Rothstein, Director, Federal Judicial Center  
March 21, 2007

Senate Committee on Appropriations  
Subcommittee on Financial Services & General Government

Hon. Richard J. Durbin, Chairman  
Hon. Sam Brownback, Ranking Member

### **Introduction**

Mr. Chairman and Members of the Subcommittee:

My name is Barbara J. Rothstein. I have been a U.S. district judge since 1980 and Director of the Federal Judicial Center since September 2003. The Center is the federal courts' agency whose statutory mandate is to provide continuing education of judges, education of court employees, and research and analysis of federal judicial processes and procedures.

I appreciate the opportunity to provide you this statement in support of our 2008 appropriations request. Because the Center, like the other judiciary accounts, is new to the subcommittee. I am taking this opportunity to provide a detailed description of our work.

I must stress at the outset that while the Center continues to perform its basic statutory duties, the combination of budget shortfalls and the staff reductions which the shortfalls have necessitated is colliding with an increase in new requirements. In recent years we have been asked by the Judicial Conference to undertake several large research projects, most of which have been to enable the Conference to respond to proposals and inquiries from Congress. For example, in response to a congressional request that the federal judiciary "document how often courtrooms are actually in use," we are conducting a national study of how courtrooms are scheduled and actually used by federal district and magistrate judges. In response to recent congressional proposals to streamline the processing of habeas corpus appeals of state capital convictions, the Center was asked by six committees of the Judicial Conference to conduct an extensive empirical study of all state prisoner capital habeas corpus petitions pending in the federal courts. We are also in the midst of a multi-year study of the impact of the Class Action Fairness Act of 2005 (CAFA) on the resources of the federal courts. The Center was asked to conduct this study by the Advisory Committee on Civil Rules as it considers whether rules changes may be needed in response to CAFA. In education, last year we were asked to provide enhanced training for judges and staff on new ethics-related guidance and on immigration cases in the circuit courts of appeals. Along with all of these tasks is the need to provide continuing education and study in connection with the changes brought about by the passage of a new bankruptcy statute.

Our ability to meet specific requests like these and, at the same time, continue our regular education and research programs will be jeopardized without at least a small increase in our staff.

## **2008 Request**

Our 2008 request is for \$24,475,000, a 7% increase: \$1,066,000 for standard adjustments to base to cover increases in compensation and benefits and inflationary increases in operating costs, and \$535,000 for additional staff (7 FTE) to support the services the Center provides to the Judicial Branch.

The Center's Board, which the Chief Justice chairs, considered our proposed request at its November 2006 meeting and approved it for submission to Congress. I am confident that you will find it responsible and well grounded.

Our 2008 request seeks what is essentially a "current services" budget. The Center has been struggling with having received only one full current services increase since the early 1990s. Over these years, to compensate for appropriations that did not provide full adjustments to base, we reduced our staff 20% from 158 to 125. Even as our staff declined, the courts' need for our services has continued to grow. For this reason we are requesting funds to restore 10 (7 FTE) of the most critically needed of the 23 positions we have lost since 2003. Our budget submission provides greater detail on why these positions are needed and the services they will help provide.

The Center is proud of its work to promote improved judicial administration in the courts of the United States, even as its resources have declined. To make the most of our limited resources, we have made great use of educational technologies that reduce the need for travel, and we have carried out rigorous cost controls, internal staff and operational adjustments and reallocations, and personnel cuts. We have reached the point where such measures are no longer viable without impacting the quality of the services we provide. I respectfully urge you to find a way to provide the Center with the modest 7% increase it needs in 2008 to continue to provide the educational and analytical services for which judges and their staffs look to the Center.

## **About the Federal Judicial Center**

Below I highlight Center activities in 2006, focusing primarily on our education for federal judges and the staffs of the courts and our research on court and case management. Much of this work involves coordination, cooperation, and consultation with committees of the Judicial Conference of the United States, with the Administrative Office, and with the U.S. Sentencing Commission.

The Center provides orientation programs on substantive legal issues, ethics, and trial and case-management techniques to groups of newly appointed judges.

The Center provides timely information and continuing instruction to help federal judges and court staff comply with new legislation, Judicial Conference policies, and Supreme Court decisions. We also help courts apply effective leadership and management principles and engage in strategic planning for their near-term and future needs. Examples in this report include expanded ethics training for judges and staff, resources and programs on effective case management, an annual review of cases decided by the Supreme Court, programs for court units on strategic workforce planning, and a courtroom use study, conducted at the behest

of the Judicial Conference in response to a congressional request that the federal judiciary “document how often courtrooms are actually in use.”

### Education & Training

More than 2,000 federal judge participants, 10,000 court staff participants, 40 circuit mediators, and 1,100 federal defenders and their staff attended Center educational programs in 2006. Those programs included orientation and continuing education programs delivered by a variety of methods. Programs for judges, circuit mediators, federal defenders, and court unit executives are traditionally in-person presentations, affording interaction on court-management and case-management issues, as well as on substantive and procedural matters. Court staff programs, designed for larger audiences, are typically not travel-based and include audio, video, and online conferences, as well as local training programs that are taught in the court units by Center-trained court staff or individuals with training experience using Center curriculum materials. We provided additional education through satellite broadcasts, streaming audio and video programs, web-based training programs, monographs and manuals, and videocassettes and audiocassettes. Advisory committees of court of appeals, district, magistrate, and bankruptcy judges, as well as court unit executives and staff, help in planning and producing Center education programs and publications.

### Education Programs and Materials for Judges and for Legal Staff

#### *Seminars & Workshops for Judges, Jan. 1–Dec. 31, 2006*

	Number of Programs	Number of Participants
Orientations for newly appointed district judges	3	31
Orientations for newly appointed bankruptcy judges	3	73
Orientations for newly appointed magistrate judges	3	54
Conference for chief district judges	1	94
Conference for chief bankruptcy judges	1	69
Workshops for district and circuit judges	2	90
National workshops for district judges	3	377
National workshops for bankruptcy judges	2	262
National workshops for magistrate judges	2	368
National sentencing policy institute	1	72
Special-focus workshops	17	416
In-court seminars	15	199
TOTAL	53	2,105

The Center also held six programs for 1,107 federal defenders and staff and one program for 43 circuit mediators.

Continuing education programs in 2006 included these national workshops:

- three for district judges on judicial ethics and the Code of Conduct for U.S. Judges, recent developments in federal jurisdiction, a review of pertinent decisions from the 2005–2006 Supreme Court term, prosecution of terrorists in federal courts, 42 U.S.C. § 1983 qualified immunity, management and trial of patent cases, information technology for judges, sentencing post-*Booker*, complex criminal case management, the science of drug addiction, an update on the Federal Rules of Evidence, and an update on employment discrimination law;
- two for bankruptcy judges that discussed the Code of Conduct; model rules and practice under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), judicial security, issues involving U.S. trustees under the new BAPCPA, judicial independence and accountability, recent developments in Chapter 7, 11, and 13 cases, U.S. Judicial Conference privacy policy, the dynamics of small business Chapter 11, Chapter 15 issues;
- two for magistrate judges on judicial ethics and the Code of Conduct, electronic discovery, legal and management issues in patent cases, media and the law, IT issues, cell site information and electronic surveillance law, electronic filing, privacy and protective orders, the science of drug addiction, and updates on the Federal Rules of Evidence, habeas corpus issues, Social Security law issues, and 42 U.S.C. § 1983 case law.

Seminars for small groups of judges on particular topics covered case management, intellectual property, international law and litigation, employment law, emerging issues in neuroscience, law and terrorism, advanced mediation strategy, law and genetics, managing capital construction projects, environmental law, immigration law, law and society, and law and science. We conduct many of these programs in collaboration with law schools or other educational institutions, which helps us leverage our funds.

Our conferences for chief district judges and chief bankruptcy judges focused on the roles and responsibilities of the chief judge in financial management and strategic resource planning, judicial security, the courtroom usage study, public attitudes towards the courts, and a program for new chief judges. We conducted both conferences in cooperation with the Administrative Office.

Programs for defender personnel included a national seminar and an appellate writing workshop for federal defenders, a seminar for federal defender investigators and paralegals, and a law and technology workshop for federal defender staff.

The Federal Judicial Television Network (FJTN) is a satellite broadcast network that reaches over 300 court locations. In 2006, we produced

- *Supreme Court: The Term in Review (2005–2006)*, which analyzed cases likely to affect federal court dockets;
- *Implementing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Early Experience*;
- *A New Mandate: Use of Conflicts Screening Software*;

- *The Sentencing Guidelines Statement of Reasons Form* (with the U.S. Sentencing Commission);
- reviews of key bankruptcy decisions in 2005 in the Fourth, Eighth, and Ninth Circuits;
- *The Fundamentals of Criminal Pretrial Practice in the Federal Courts*; and
- an orientation series for new law clerks, including a program on the basics of employment discrimination law.

Web-based resource pages are available to judges on a variety of topics, such as:

- managing habeas corpus review of capital convictions, including case-law summaries, case-management procedures, and sample case-management plans, orders, and forms (a similar resource page on federal death penalty cases has been available for several years);
- electronic discovery and evidence, including materials from Center workshops, relevant local rules and sample orders, and a bibliography of case law and articles;
- courtroom technology, including our manual on *Effective Use of Courtroom Technology*, and our research on videoconferencing in criminal proceedings and animation, simulations, and immersive virtual environmental technology;
- safeguarding personal information in electronic transcripts;
- selected appellate decisions on sentencing post-*Booker*;
- the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, with materials and streaming video and audio formats of our television broadcasts and audio conferences on the Act;
- non-prisoner civil pro se litigation, a collection of information from district courts regarding their practices with pro se litigants; and
- streaming videos of recent FJTN broadcasts.

We also have a Web-based resource page of materials to help law clerks learn about their duties and the ethical responsibilities of their position. This includes a new e-learning tutorial.

We released or had in production the following judicial and legal education publications in 2006:

*The Bail Reform Act of 1984, Third Edition*

*Copyright Law, Second Edition*

*The Elements of Case Management: A Pocket Guide for Judges, Second Edition*

*Managing Discovery of Electronic Information: A Pocket Guide for Judges  
Mediation & Conference Programs in the Federal Courts of Appeals: A  
Sourcebook for Judges and Lawyers, Second Edition*

*Patent Law and Practice, Fifth Edition*

*Post-Booker Sentencing—Selected Issues from Appellate Case Law* (online only)

*The Use of Visiting Judges in the Federal District Courts: A Guide for Judges and Court Personnel (updated 2006)(on line only)*

**Education Programs for Judges and Court Staff**

In 2006 we offered several programs that judges and court staff attend together, including

- a policy institute for district judges, probation and pretrial services officers, and prosecutors and defenders, held in cooperation with the Judicial Conference's Criminal Law Committee, the Sentencing Commission, and the Administrative Office, which included discussions on sentencing policies with representatives of the legislative, executive, and judicial branches;
- our Program for Consultations in Dispute Resolution, which provides on-site assistance to courts that wish to begin or revise alternative dispute resolution programs;
- a two-day executive team-building program for new chief judges and their clerks of court in conjunction with the Center's national conferences for chief district and bankruptcy judges;
- four strategic planning workshops to help courts develop policy and operational plans specific to their courts;
- an executive leadership seminar for chief judges and their court unit executives;
- a workshop produced in collaboration with the Administrative Office and the General Services Administration to help court teams plan for capital construction projects; and
- at the request of a circuit court, *Using Technology to Serve the Appellate Process*, an in-court program developed with the Administrative Office, for judges, court unit executives and their staff, federal defenders, and members of the bar.

### Education Programs and Materials for Court Staff

The table below summarizes our programs for the staff of the courts.

*Education & Training Programs for Court Staff, Jan. 1–Dec. 31, 2006*

	Number of Programs	Number of Participants
Seminars and Workshops (national and regional)		
Clerks of court, clerk’s office personnel, circuit executives, bankruptcy administrators, senior staff attorneys, court librarians	7	893
Probation and pretrial services officers and personnel	11	508
Personnel in several categories*	15	598
<b>TOTAL</b>	<b>33</b>	<b>1,999</b>
In-Court Programs (programs using curriculum packages, training guides, and computer-assisted instructional programs)		
Clerks of court, clerk’s office personnel, circuit executives, bankruptcy administrators, senior staff attorneys, court librarians	76	1,876
Probation and pretrial services officers and personnel	100	2,967
Personnel in several categories	90	1,205
<b>TOTAL</b>	<b>266</b>	<b>6,048</b>
Technology-based Programs (videoconferences, audio conferences, online conferences, but not including FJTN broadcasts)		
Clerks of court, clerk’s office personnel, circuit executives, bankruptcy administrators, senior staff attorneys, court librarians	6	1,881
Probation and pretrial services officers	8	186
Personnel in several categories	1	33
<b>TOTAL</b>	<b>15</b>	<b>2,100</b>
<b>GRAND TOTAL</b>	<b>314</b>	<b>10,147</b>

\*Includes team management workshops for judges and court unit executives.

2006 programs for clerks of court and their staffs included

- a biennial National Conference for District Court Clerks and Chief Deputy Clerks, which emphasized strategic planning, succession planning, implementing new Judicial Conference policies, management issues, and electronic case filing;
- two management training workshops for supervisors and managers in appellate, district, and bankruptcy courts—a program for those new to the position discussed such topics as performance management, while the program for those with three or more years of experience examined staff development and leadership during a crisis;
- several programs with the Administrative Office on Case Management/Electronic Case Filing were facilitated with our staff: three forums—one for district court staff and two for bankruptcy court staff—as well as two web-audio conferences and two audio conferences for bankruptcy courts; and

- an online conference conducted over several months for jury administrators on customer communications and a web-audio conference on best practices.

Conferences and workshops for probation and pretrial services offices included

- a biennial National Conference for Chief Probation and Pretrial Services Officers on succession planning, management issues, optimizing efficiency through technology, offender supervision methods, and coping with limited budgets;
- an executive team workshop for chief probation and pretrial services officers and their chief deputies that helps leaders analyze district operations and create a strategic plan;
- five regional symposia for experienced supervising officers that dealt with supervision skills, staff motivation, change management and other topics; and
- two in-person workshops for new supervising officers participating in a two-year supervisors development program that also comprises completion of a 40-hour self-study course and attendance at several web-audio conferences.

New FJTN programs in 2006 for officers included *Cyber Crime Investigation and Supervision* and *Substance Abuse: Methamphetamine*, the fourteenth program in a series. The cyber crime program and a rebroadcast of our *Financial Investigation* series were supplemented with five web-audio conferences.

The Center offers extensive leadership and management education through its Professional Education Institute (PEI). PEI includes courses, programs, web-based resources, and self-development tools to aid leaders and managers at all levels.

The Center has a variety of curriculum packages that Center-trained court staff or staff with training experience use to conduct training in local courthouses. Recent packages for managers in all court units include *Planning for Fiscal Management*, *Planning for Strategic Workforce Management*, and *Developing a Strategic Court Web Site*. A new training guide, *Mentoring in the Courts*, was published electronically on the Center's intranet site.

New FJTN programs for all court personnel included a program on challenges and possibilities facing the courts, an orientation video on the Center's Federal Court Leadership Program, and a program on mentoring relationships. Four editions of the *Court to Court* video magazine spotlighting innovative court practices aired in 2006.

## Research

The Center conducts empirical and evaluative research on federal judicial administration and case management, mostly at the request of committees of the Judicial Conference. The results of most of our research are available in print, on our web sites, or in both formats. In 2006, we completed ten major research projects and continued work on thirty-three others. This research included:

- developing and implementing a research design and training protocols for a major study of courtroom use in the district courts as requested by a committee of the Judicial Conference in response to a request from the chair of the Subcommittee on Economic Development, Public Buildings and Emergency Management of the House Committee on Transportation and Infrastructure. This extensive study of how federal courtrooms are scheduled and actually used is scheduled to be completed in June 2008. The study focuses on courtroom use in a random sample of twenty-four districts during two three-month time periods in 2007. Three additional districts are included in the study because they face unusual circumstances involving their courtrooms;
- producing a handbook to assist judges in managing class actions under the Class Action Fairness Act of 2005 (CAFA). *Managing Class Action Litigation: A Pocket Guide for Judges* concisely describes the most important and relevant practices for managing class action litigation as set out in the Center's *Manual for Complex Litigation, Fourth*. The handbook is a product of the Center's multi-year study of the impact of CAFA on federal judiciary resources as requested by the Advisory Committee on Civil Rules;
- examining a sample of class action activity, including appeals, before and after CAFA went into effect, with the goal of measuring its impact on various stages of litigation, including remand, ruling on pretrial motions, ruling on class certification, trial, settlement, and appeals;
- conducting research and interviews with federal judges who have recently been assigned terrorism cases in order to develop educational materials to for judges related to managing terrorism cases;
- assisting the Advisory Committee on Civil Rules as it considers a number of possible amendments to the rules of civil procedure;
- conducting a survey of a sample of district court judges and attorneys involved with recently terminated patent cases to identify the case management techniques that judges employed to strengthen the claim construction process;
- following up on research to our 2003 study of eleven courts' experiences as pilots in providing remote public access to electronic criminal case records. The follow-up research included an assessment of remote public access to criminal, civil, and bankruptcy electronic records in the district courts. The research focused on related issues such as redacting prohibited information in documents that are filed in the federal courts;
- examining a sample of over seven hundred capital habeas appeals of state convictions in response to perceived delay and backlog issues in the processing of these cases;
- developing and publishing a pocket guide to help federal judges manage the discovery of electronically stored information: *Managing Discovery of Electronic Information: A Pocket Guide for Judges*;
- conducting on-going research to support the Judicial Conference's use of the recently developed statistical case weights for the district courts to as-

sess judgeship needs, including major research to develop new statistical case weights for the bankruptcy courts; and

- supporting the Judicial Conduct and Disability Act Study Committee, appointed by Chief Justice Rehnquist and chaired by Justice Breyer, as it prepared its final report. Earlier work for the committee included reviewing a stratified national sample of complaints filed under 28 U.S.C. § 351.

We also responded to more than fifty informational requests for research-related assistance from the courts, Judicial Conference committees, state and federal agencies, individuals from academic institutions and associations, and others.

### **Programs for Foreign Judicial Officials**

In 1992, the Center's implementing legislation was amended to include a mandate to support the U.S. government's efforts with promoting the rule of law abroad by providing information about judicial administration and education to the courts of other countries and also to obtain information from foreign judiciaries that might assist U.S. judges manage transnational litigation. To that end, in 2006, the Center:

- conducted 43 briefings for more than 226 foreign judges, court officials, scholars, and students from over 68 different countries;
- hosted visiting foreign judicial fellows from Brazil and Russia, who studied case management, intellectual property and treaty law, and judicial independence;
- provided technical assistance abroad, including conference presentations, in Argentina, Jordan, Kazakhstan, Kosovo, Russia, and Serbia.

No funding for these projects came from the Center's appropriation; they were supported with funds from U.S. government agencies and host countries (or organizations within them). The Center's two-person International Judicial Relations Office coordinates this activity. The Center also held a conference on international law and litigation for U.S. judges, in collaboration with the American Society of International Law.

### **Federal Judicial History**

Congress has told us to conduct, coordinate, and encourage programs related to the history of the federal judicial branch. Our three-person federal judicial history office does so by making available the results of our own historical research, helping judges and the courts with court history projects, and encouraging research and education projects about the judiciary. We have completed six units in our project to develop web-based curriculum materials to help educators teach about the history of the federal courts, and we have conducted summer institutes that bring together teachers, judges, and scholars to study judicial history. We continue to update and expand the widely used *History of the Federal Judiciary* Web site, including the *Federal Judges Biographical Directory*.

## **Publications**

Most Center publications are available in print and electronically. In addition to the judicial and legal education publications listed on pages 5–6 above, the Center also released the following research reports:

*The Impact of the Class Action Fairness Act of 2005: Second Interim Report to the Judicial Conference Advisory Committee on Civil Rules* (on line only)

*Interim Progress Report on Class Action Fairness Act Study* (on line only)

*Research on Appeals of Attorney-Fee and Merits Decisions (Fed. R. Civ. P. 58(c)(2)) As Presented to the Advisory Committee on Civil Rules in May 2006* (on line only)

*Roundtable on the Use of Technology to Facilitate Appearances in Bankruptcy Proceedings*

## **Federal Judicial Television Network**

The Center operates the Federal Judicial Television Network (FJTN), a satellite broadcast network with viewing sites in more than 300 federal court locations, making it the second largest nonmilitary television network in the federal government. It transmits Center educational programs as well as those of the Administrative Office and the U.S. Sentencing Commission. In 2006, the FJTN broadcast 98 programs, including 8 live programs. The Center produced 62 of these programs, 4 of which were live. The online *FJTN Bulletin* is a bimonthly program guide with broadcast schedules, program descriptions, and other news about the network. The Center is also streaming videos to enable judges and court staff to easily access information on their computers.

## **Media Library**

The Center's media library contains some 4,000 audio and video programs, including Center programs and almost 800 commercially produced video programs. In 2006, the media library loaned more than 600 programs to federal judges and judicial branch personnel and sent some 2,000 media programs directly to the courts for them to keep and use in local education and training programs.

## **Information Services**

The Center serves as a national clearinghouse for information on federal judicial administration. In 2006, Information Services Office staff answered hundreds of requests for information from judges and court staff, congressional staff, other government agencies, academics, researchers, the media, and the public.

### **Federal Judicial Center Foundation**

Congress created the Foundation to receive gifts to support Center work in certain specialized areas. Its seven-person board is appointed by the Chief Justice, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. In 2006, Foundation funds helped support our project on alternative dispute resolution and programs for judges on advanced mediation strategy, environmental and natural resources law, emerging issues in neuroscience, law and science, and humanities and science.

### **Conclusion**

Again, I appreciate the opportunity to submit this statement and stand ready to answer any questions you may have.