

**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**

April 6, 2011

INTRODUCTION

Chairwoman Emerson, Representative Serrano, 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 2012. In doing so, I will apprise you of some of the challenges facing the federal courts. This is my seventh appearance before an appropriations subcommittee on behalf of the federal Judiciary and my fifth 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. Director Duff also serves as Secretary to the U.S. Judicial Conference.

STATEMENTS FOR THE RECORD

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

FISCAL YEAR 2011 FUNDING

I appear before the Committee today to discuss fiscal year 2012 funding without final enacted fiscal year 2011 appropriations in place. In formulating the fiscal year 2012 budget request last Fall, the Judiciary assumed a fiscal year 2011 appropriations level based on the full-year continuing resolution (H.R. 3082) passed by the House of Representatives on December 8, 2010.

We remain concerned about final fiscal year 2011 funding levels for the Judiciary. The Judiciary requires \$75 million above a fiscal year 2010 hard freeze to support on-board court staffing levels and maintain current operations. If funded at a fiscal year 2010 hard freeze, the Judiciary will lose 200 on-board staff in clerks of court and probation and pretrial services offices, payments to private panel attorneys representing indigent defendants in our Defender Services program would have to be suspended for the last five weeks of the fiscal year, and

funding in our Court Security program would be insufficient to support minimum security requirements. We ask that Congress provide the funding needed to maintain base operations in the federal courts.

PROPOSALS TO SHRINK THE SIZE OF THE FEDERAL GOVERNMENT

All of us in the Third Branch are concerned about historic budget deficits and a growing national debt and we understand the need to rein in federal spending. This concern prompted the decision by the Judicial Conference to transmit a fiscal year 2012 budget that reflects the Judiciary's smallest requested percentage increase on record, an increase of 4.3 percent over the fiscal year 2011 assumed appropriations level.

As a step in addressing the budget deficit, the President's 2012 Budget proposes a five-year freeze on overall discretionary non-security spending. I would note, however, that the President has requested increases for the Department of Justice and the Department of Homeland Security that, if funded by Congress, will further increase the workload of the federal courts.

Chairwoman Emerson and Representative Serrano, we are very concerned about the impact on the Judiciary of various proposals being offered by some Members of Congress to shrink the size of the federal government through deep spending cuts. One proposal would reduce federal spending to fiscal year 2008 levels. Another would reduce spending to fiscal year 2006 levels. Such a budget cutting approach may prove effective in some areas of federal spending, but it would have a devastating impact on the federal court system and the administration of justice in this country. Unlike many Executive Branch entities, we do not have programs or grants that we can cut in response to a budget shortfall, so deep funding cuts would not reduce the scope or volume of our work unless dramatic reductions are made in law enforcement programs. We do not have the discretion to decline or defer cases based on resource constraints. In fact, the opposite is true – we are required to adjudicate the cases that are brought to us regardless of staffing and resource levels in the federal courts.

Through new laws enacted and resources provided for law enforcement programs, Congress and the President determine the jurisdiction and, to a large extent, the workload of the federal courts. Hundreds of new federal laws have been enacted over the last 30 years that have increased significantly the jurisdiction of the federal courts. This includes several major crime bills and significant changes to the bankruptcy code in 1978 and 2005. In turn, we have seen rapid workload growth over this period with criminal filings, criminal defendants, appellate filings, and probation workload all more than doubling since 1980. Over the same period, bankruptcy filings have more than quadrupled, pretrial services workload is up six-fold, and criminal defense representations in our Defender Services program is five times higher.

Over 80 percent of our costs are for salaries and space rent. A large funding shortfall would result in significant staffing losses in our clerks of court and probation and pretrial services offices nationwide. 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. The impact of this staffing loss was delays in case processing, reduced levels of

probation supervision for felons released from prison, and a scaling back of services to the public. This is not a position in which we wish to find ourselves again.

I will close on this topic by asking that Congress take into account the impact of the legislative process and law enforcement on the jurisdiction and workload of the federal courts, and ensure that the Judiciary continues to have the resources required to perform its statutory duties and to address a growing workload.

STAFFING INCREASES AND THE JUDICIARY'S CASELOAD¹

Our fiscal year 2012 budget request includes \$21 million for an additional 257 court support staff FTE in probation and pretrial services offices (82 FTE), and bankruptcy (143 FTE) and district (35 FTE) clerks of court offices to address growing workload needs. (Staffing in appellate clerks' offices declines by 3 FTE in the Judiciary's request.) The greatest staffing need is in our bankruptcy clerks' offices which are handling significant increases in bankruptcy filings due to the economic downturn. I will discuss our bankruptcy workload in more detail in a moment.

As indicated in the caseload table in our fiscal year 2012 budget request, 2011 caseload projections are used to compute fiscal year 2012 staffing needs. This approach allows us to estimate better the number of clerks of court and probation and pretrial services 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 is at or near record levels in most filing categories. Following is a discussion of the greatest workload challenges in the federal courts today: increasing bankruptcy case filings; workload on the Southwest Border; and workload in our probation and pretrial services offices.

BANKRUPTCY FILINGS REMAIN AT NEAR RECORD LEVELS

Although there have been signs of economic recovery, bankruptcy filings in the federal courts remain at near record levels. Our experience is that bankruptcy filings are a lagging indicator of the economic conditions in the country, so we often do not see a sharp growth in filings until an economic downturn is underway. Conversely, we do not see a decline in filings until after the economy begins to recover.

The recent growth in bankruptcy filings has been staggering: a 29 percent increase in 2008, a 35 percent increase in 2009, followed by a 20 percent increase in 2010 to 1,572,597 filings, the fourth highest filing year ever. Compounding the bankruptcy courts' workload are the additional duties and responsibilities created by enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act in 2005. The bulk of bankruptcy filings are Chapter 7

¹Unless otherwise stated, caseload figures reflect the 12-month period ending in June of the year cited (i.e., 2011 workload reflects the 12-month period from July 1, 2010 to June 30, 2011).

and Chapter 13 filings by individuals, but there have also been a large number of Chapter 11 business filings, some of which are very complex and labor intensive to resolve, such as Lehman Brothers, General Motors, Chrysler, and more recently Blockbuster video and film studio MGM.

We project bankruptcy filings will grow by 1 percent in 2011, a modest increase, but a 1 percent increase translates into 20,000 additional case filings for bankruptcy courts across the country. We attribute the slower projected growth in filings to lower consumer debt levels and an improved employment picture. Changes in consumer spending and higher unemployment, however, could result in another spike in bankruptcy filings.

WORKLOAD ON THE SOUTHWEST BORDER CONTINUES TO RISE

After several years of steady growth, our criminal workload nationally is projected to decline 2 percent, from 78,213 filings in 2010 – an all-time high – to 76,500 filings in 2011. Criminal case filings nationally grew 25 percent between 2000 and 2010 with immigration prosecutions in the five judicial districts along the Southwest Border fueling that growth. Immigration caseload now accounts for 36 percent of all criminal prosecutions nationwide and has surpassed drug and fraud prosecutions *combined*. These immigration prosecutions are separate from the immigration actions handled administratively by the Department of Homeland Security and Department of Justice.

The most startling statistic is that of the 78,213 total criminal case filings in 2010, 31,863 cases (41 percent) were prosecuted in the Southwest Border districts. In other words, five out of 94 federal judicial districts nationwide are handling 41 percent of all federal criminal cases. It is very clear that the additional annual and supplemental appropriations provided to the Department of Homeland Security and Department of Justice for zero tolerance border security initiatives, such as Operation Streamline, are resulting in additional criminal filings on the Southwest Border. We are grateful for the \$20 million in emergency funding this Committee provided over the last two years. This one-time funding allowed us to address, in the short-term, our most urgent workload needs, particularly along the Southwest Border.

The President's 2012 Budget for the Executive Branch 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. I would note that immigration cases are prosecuted throughout the country and are not limited to the Southwest Border. Although nearly three-quarters (20,682) of all criminal immigration cases are prosecuted along the Southwest Border, there were also nearly 7,500 immigration cases prosecuted in the remaining 89 federal district courts across the country.

PROTECTING THE PUBLIC

Few people are aware that the Judiciary employs 5,900 law enforcement officers who play an important role in ensuring public safety. These are our probation and pretrial services officers who supervise individuals in the community after they have been convicted of a crime as well as defendants awaiting trial. 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 126,642 in 2010 and is expected to increase again in 2011 to 131,000 supervision cases. Pretrial supervision caseload also hit an all-time high in 2010 with 110,671 cases activated, and that caseload is projected to grow to 113,900 in 2011.

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 2010, the percentage had climbed to 82 percent. Offenders coming out of prison on supervised release generally have greater financial, employment, and family problems than when they committed their crimes. Another trend is the increase in the number of sex offenders under federal probation supervision. These cases represent the fastest growing segment of post-conviction supervision, growing nearly 30 percent from 2006 to 2010. Although sex offenders are a relatively low percentage of the total supervision population – about 5 percent – sex offenders require specialized supervision techniques and enhanced monitoring of their activities.

Our probation and pretrial services officers do a great job. They are highly educated – more than half have a master’s degree or doctorate – and they average 10 years of community corrections experience. Not only do probation officers protect the community, they work hard to facilitate successful re-entry of offenders into society including assisting offenders with employment and housing needs. Successful re-entry into the community improves the likelihood that offenders will pay court-ordered fines and restitution to victims and become law-abiding, taxpaying citizens. But a probation officer’s first priority is protecting the public. When an offender does not follow release conditions and there is a risk to the community, corrective steps are taken that may include probation revocation resulting in a return to prison.

Our officers produce positive results: a recent study found that 75 percent of persons supervised in the federal system remain arrest-free within the first three years of their supervision term. Comparative figures for state systems are significantly lower.

UPDATE ON JUDICIARY COST-CONTAINMENT INITIATIVES

The Judiciary is in its seventh year of a comprehensive cost-containment program for the federal courts. These efforts have positioned the courts to face the fiscal challenges of today without adversely impacting the delivery of justice. Given the current fiscal climate, we believe cost-containment today is perhaps more important than ever and we will continue our efforts to control costs. Even with our laser focus on controlling costs, however, we still require the resources needed to do our work. As Chief Justice John G. Roberts, Jr. said in his 2010 Year-End Report on the Federal Judiciary, “. . . the courts are committed to working closely with the President and Congress to shoulder our share of the burdens of reducing the federal deficit. We will strive to reduce costs where possible, but we ask in return that our coordinate branches of government continue to provide the financial resources that the courts must have to carry out their vital mission.”

The Judiciary's biggest cost-containment success has been in limiting the growth in space rent costs. Through a number of process improvements and redesigns, our projected rent payments to GSA are nearly \$400 million below the 2012 rent projection made prior to initiating our cost-containment efforts.

To control personnel costs, we have altered the salary progression policy for court staff and established performance management guidelines as a fair and reasonable means to limit future compensation costs. We estimate that our cost-containment measures will reduce compensation costs for Judiciary staff by a cumulative \$300 million through fiscal year 2019.

The Judiciary has also taken steps to reduce its need for new staff. Beginning with the fiscal year 2012 budget submission to Congress, the number of additional court support staff requested will be based on a staffing formula that incorporates how the most efficient courts – as opposed to the average – perform similar work. This approach reduces the number of new court support staff in the request by over 900 positions, and reduced the Judiciary's fiscal year 2012 budget request by approximately \$67 million on an annualized basis.

We are containing information technology costs without sacrificing the long-term benefits of investing in technology. 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 resulting in savings and cost avoidances totaling \$65 million through fiscal year 2012.

This summarizes our major accomplishments in the area of cost-containment. We will continue to keep the Committee updated on our efforts to control costs throughout the Judiciary.

FISCAL YEAR 2012 BUDGET REQUEST

For fiscal year 2012, the Judiciary is seeking \$7.3 billion in appropriations, a 4.3 percent overall increase above the fiscal year 2011 assumed appropriations level. As I mentioned at the outset of my testimony, because final action on fiscal year 2011 appropriations bills was delayed, the Judiciary assumed a fiscal year 2011 appropriations level based on the full-year continuing resolution (H.R. 3082) passed by the House of Representatives on December 8, 2010. The Judiciary will advise the Committee of its updated fiscal year 2012 appropriations requirements after final fiscal year 2011 appropriations have been enacted. I will summarize the 2012 requests for our three largest accounts.

The Judiciary's largest account, courts' Salaries and Expenses, funds the bulk of federal court operations including the regional courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. This account requires a 3.8 percent increase for fiscal year 2012. The request includes the court staffing increases I discussed earlier in my testimony, as well as increases for new magistrate judges and information technology improvements.

The Defender Services program, which provides criminal defense services to indigent defendants under the Criminal Justice Act, requires a 5.2 percent increase for fiscal year 2012 to handle 206,200 defense representations. I emphasize that final fiscal year 2011 funding for this account will have a direct impact on fiscal year 2012 appropriations needs. Fiscal year 2012 requirements will increase above the request level if 2011 funding for Defender Services is insufficient to make full year payments to panel attorneys, thus forcing those payments to be deferred and paid in fiscal year 2012. I also note that our 2012 request does not include any pay adjustments to the hourly rates paid to panel attorneys.

Our Court Security account funds protective guard services and security systems and equipment at federal courthouses and requires a 5 percent increase for fiscal year 2012. The request will provide for additional court security officers, higher Federal Protective Service costs, and several initiatives that will improve security at federal courthouses across the country.

A summary of fiscal year 2012 adjustments to base and program increases, and appropriations requirements for each Judiciary account are included at Appendix A.

We believe the requested funding level represents the minimum amount required to meet our Constitutional and statutory responsibilities. We understand the fiscal constraints under which you are operating, but I reiterate the points I made earlier in my testimony that the Judiciary does not have the flexibility to eliminate or cut programs to achieve budget savings as the Executive Branch does.

CONCLUSION

Chairwoman Emerson and Representative Serrano, I hope that my testimony today provides you with some insight into: the impact of funding cuts on the federal courts; how new laws, Administration priorities, and the weakened economy impact our workload; and our efforts to contain costs and become more efficient. I realize that fiscal year 2012 is going to be a very tight budget year as federal spending is more closely scrutinized. We are committed to containing costs and exploring new and better ways of conducting our judicial business. Our 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.

SUMMARY OF THE JUDICIARY'S FISCAL YEAR 2012 REQUEST

The Judiciary's fiscal year 2012 appropriation request totals \$7,293,950,000, an increase of \$299,318,000 (4.3 percent) over the fiscal year 2011 assumed appropriations levels.

Eighty-six percent (\$258 million) of the increase requested for fiscal year 2012 funds the following base adjustments, which represent items for which little to no flexibility exists:

- Standard pay adjustments (step increases and promotions) for staff, and benefits increases for judges and staff. The Judiciary's request does not include funding for a January 2012 ECI or locality pay adjustment for judges or staff, consistent with the Administration's elimination of these adjustments for 2011 and 2012.
- 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 2011 (based on the fiscal year 2011 assumed appropriations level which reflects funding above a 2010 hard freeze).
- The projected loss in non-appropriated sources of funding due to the decline in carryover balances available in fiscal year 2012 versus the level available to finance the fiscal year 2011 financial plan.
- 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 \$41 million requested is for program enhancements. Of this amount:

- \$21 million is for additional staff in clerks of court and probation and pretrial services to address fiscal year 2012 workload requirements (257 FTE).
- \$14 million will provide for telecommunications and information technology enhancements.
- \$2 million will fund four additional magistrate judges and associated staff (16 FTE).
- \$1 million is requested for 12 additional police officers at the Supreme Court to staff new visitor entrances and a new command center (9 FTE), and new positions associated with care of the Supreme Court's building and grounds (1 FTE).
- \$2 million will provide for necessary investments in court security, including a national contract for vehicle barrier maintenance at courthouses, a facial recognition pilot program, a pilot program to improve response times to duress alarms, and new Judiciary-funded positions at the U.S. Marshals Service (4 FTE).
- \$1 million for education and training enhancements at the Federal Judicial Center (1 FTE), and for new positions at the Administrative Office of the U.S. Courts to support a new, nationwide Judiciary accounting system (1 FTE) and for an initiative to address Internet threats against judges (1 FTE).
- \$0.3 million for start-up costs for opening one new federal defender organization in one of the three federal court districts (out of 94) not currently served by a federal defender organization. This would address the need to improve the quality of representation available to eligible defendants in the district.

**Judiciary Appropriations
(\$000)**

Appropriation Account	FY 2011 Assumed Appropriation ¹	FY 2012 Request	Change FY 2012 vs. FY 2011	% Change FY 2012 vs. FY 2011
U.S. Supreme Court				
Salaries & Expenses	\$76,257	\$75,551	(\$706)	-0.9%
Care of Building and Grounds	<u>8,353</u>	<u>8,504</u>	<u>151</u>	<u>1.8%</u>
Total	84,610	84,055	(555)	-0.7%
U.S. Court of Appeals for the Federal Circuit	34,125	35,139	1,014	3.0%
U.S. Court of International Trade	22,182	22,891	709	3.2%
Courts of Appeals, District Courts & Other Judicial Services				
Salaries & Expenses - Direct	5,042,168	5,236,166	193,998	
Vaccine Injury Trust Fund	<u>4,785</u>	<u>5,011</u>	<u>226</u>	
Total	5,046,953	5,241,177	194,224	3.8%
Defender Services	1,044,072	1,098,745	54,673	5.2%
Fees of Jurors & Commissioners	52,410	59,727	7,317	14.0%
Court Security	488,436	513,058	24,622	5.0%
Subtotal	6,631,871	6,912,707	280,836	4.2%
Administrative Office of the U.S. Courts	85,982	88,455	2,473	2.9%
Federal Judicial Center	28,087	29,029	942	3.4%
Judiciary Retirement Funds	90,361	103,768	13,406	14.8%
U.S. Sentencing Commission	17,414	17,906	492	2.8%
Direct	\$6,989,847	\$7,288,939	\$299,092	
Vaccine Injury Trust Fund	\$4,785	\$5,011	\$226	
Total	\$6,994,632	\$7,293,950	\$299,318	4.3%

¹ For FY 2011, the assumed appropriations level is based on the funding for the Judiciary included in the FY 2011 full-year continuing resolution (H.R. 3082) passed by the House of Representatives on December 8, 2010.