S. HRG. 110–457

RESPONDING TO THE GROWING NEED FOR FEDERAL JUDGESHIPS: THE FEDERAL JUDGESHIP ACT OF 2008

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

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TUESDAY, JUNE 17, 2008

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee was scheduled to meet, pursuant to prior notice, at 2:30 p.m., in room SD–226, Dirksen Senate Office Building, with the Hon. Dianne Feinstein, presiding. The hearing was suspended because of an objection by the Minority Leader made on the Senate floor. As of the time of the scheduled hearing, statements for the record had been submitted by members of the Committee, written testimony had been submitted by witnesses scheduled to testify, and additional materials had been submitted for the record. After the date of the scheduled hearing, witnesses scheduled to testify submitted answers in writing to questions that had been submitted in writing by members of the Committee.

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QUESTIONS AND ANSWERS

COMMITTEE ON JUDICIAL RESOURCES
of the
JUDICIAL CONFERENCE OF THE UNITED STATES

July 9, 2008

Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for inviting me to testify for the Senate Judiciary Committee hearing on "Responding to the Growing Need for Federal Judgeships: The Federal Judgeship Act of 2008," and to answer written questions from Senators Specter, Grassley, Sessions, and Cardin. I write on behalf of the Judicial Conference to transmit answers.

Several of the Senators' questions implicate the respective roles of the Judicial Conference of the United States and the Administrative Office of the United States Courts. I therefore wish to clarify the responsibility of the Judicial Conference of the United States, how the Conference conducts its work, and the role of the Administrative Office of the United States Courts. As you know, the Judicial Conference is the policy-making body for the Federal Judiciary. It is led by the Chief Justice of the United States, and it is comprised of the chief judge and a district judge representative from each judicial circuit, the Chief Judge of the Federal Circuit, and the Chief Judge of the Court of International Trade. The Conference conducts its work through a formal structure of committees made up of federal judges appointed by the Chief Justice. The Administrative Office does not set policy, but carries out the policies of the Federal Judiciary as established by the judges of the Judicial Conference.

The jurisdiction of the Judicial Resources Committee of the Judicial Conference of the United States relates to issues of human resource administration, including the need for additional Article III judges. Several of the questions relate to issues that are within the jurisdiction of another Judicial Conference committee, the Committee on Space and Facilities, chaired by Judge Joseph F. Bataillon. In answering the Senators' space and facilities questions, I have consulted and relied upon the expertise of Judge Bataillon. In

addition, Judge Bataillon has requested that his attached letter be included in the hearing record.

With this context as background, answers to the Committee members' questions follow. I respectfully request that this letter be made a part of the hearing record as well.

Sincerely,

George Z. Singal

George Z. Singal

Answers To Senator Specter's Questions

1. Question:
The GAO has stated that the adjusted case filings as a measure for the case-related workload of courts of appeals judges is inaccurate, given that it assumes all cases require the same amount of judge time (except *pro se* cases). How do you suggest we assess the accuracy of adjusted case filings as a measure of the case-related workload of courts of appeals judges?

Answer:
Adjusted case filings, and the standard of 500 adjusted filings per panel as the threshold for considering recommendations for additional appellate judgeships, is a useful and appropriate standard that is based on the experience of appellate judges. It is recognized as appropriate outside the Judiciary as well. Professor Arthur Hellman of the University of Pittsburgh School of Law, a noted expert on federal court issues, testified before a House Judiciary Subcommittee in 2003 that the 500 adjusted filings standard, based on historical data on filings and terminations, is "quite defensible," and that the "Judicial Conference has indeed taken a conservative approach in assessing courts of appeals requests for new judgeships." In addition to the historical basis, Professor Hellman's examination of typical workloads led him to conclude that the Judicial Conference baseline of 500 adjusted filings per panel is "reasonable."

Indeed, if the caseload of 500 adjusted filings per panel was the only factor in making circuit judgeship recommendations, the Conference could recommend several more circuit judgeships on many courts than it has recommended. The Conference considers recommending judgeships for a court only if that court submits a request, and then examines all the factors for recommending judgeships (as discussed in written testimony) before making a recommendation. The fact that the Conference minimizes its judgeship requests demonstrates the Conference commitment to controlling growth.

2. Question:
The GAO criticized the Conference's proposed research design because it did not included [sic] "actual data on the noncourtroom time that judges spend on different types of cases", but rather consensus estimates from a group of experienced judges.

(a) Doesn't noncourtroom time represent the majority of judge time used in developing the case weights?

Answer:
With respect to criminal case weights, with a few exceptions, courtroom time accounted for the majority of time included in the case weights. The exceptions were alien smuggling, other immigration, and espionage and terrorism case types. With respect to civil case weights, courtroom time accounted for significantly less time than in the criminal case weights. The event type that contributed most heavily to civil case weights was judicial work involved in deciding and writing opinions on a substantive or time-intensive motion.

(b) If so, how can we assess the accuracy of the new case weights if the data collected is partly based on an estimate and not actual data?

Answer:
Raw case weight values developed from traditional time studies are an arithmetic mean computed from many individual time entries. Standard errors, which the GAO desired as a means of estimating how representative the sample data are, provide information about the data collected, but cannot by themselves indicate how accurate those data are. They cannot tell you whether the computed mean value compares favorably to the true mean value of time expended. What contributes to the accuracy of the mean value is a nationally representative sample and correct recording of time entries. The design and execution of the study has substantial effect on both of these dimensions through sample selection, training of participants, control of factors such as seasonal variations that can skew representativeness, and adherence to consistent definitions of case types and case events.

An evaluation of whether a study has properly managed such factors, therefore, is a good way to assess the likely accuracy of the resulting weights. The FJC's 2003-2004 case weighting study was carefully designed and executed. It received input from an advisory group of judges to define the case types to be weighted, the major case events, and the case characteristics to be included in the computations. It used empirical data from over 297,000 cases from across the nation to develop national event frequencies; it used empirical data from all districts to determine time measures for trials and other evidentiary hearings. It developed consensus time expenditure information under controlled conditions from more than 100 experienced judges representing districts in all circuits. These consensus estimates were derived from a research technique developed by the Rand Corporation. A notable feature of the raw weight calculations is that they include a self-adjustment feature: events that occur frequently – thus arguably the ones participants had most experience with – have greater impact on the calculations than those that occur rarely and might therefore have been harder to estimate.

In addition, the integrity of the 2004 case weight methodology is demonstrated by the similarity of the findings using the case weights that resulted from the two different 1993 and 2004 methodologies. When total weighted caseload for 2003 filings was computed on the basis of both case weights, the national average of weighted filings per judgeship was ***5 percent lower*** using the 2004 case weights than using the 1993 case weights. For approximately two-thirds of the district courts, the difference in weighted filings per judgeship between the old and new case weights was less than 10 percent.

3. Question:
The GAO has suggested the advisability of a time study conducted concurrently with this new methodology to "identify potential shortcomings of the event-based methodology and to assess the relative accuracy of the case weights produced using that methodology." Do you have plans to implement this suggestion? Why or why not?

Answer:
No, we are not planning to implement a time study because the Judiciary believes that the resource-intensive costs of a time study in the district courts are not justified.

The event-based methodology used to develop the 2004 case weights incorporated *both* empirical docketing data from the courts' case management reports and time data from statistical reports that the district courts prepare, *and* the consensus time expenditure information from experienced judges. The process drew on data from more than 297,000 cases recorded in the courts' case management databases, and information from more than 100 district judges on 89 of the 91 district courts. The type of empirical data that was used is recorded contemporaneously with the events and regularly and carefully checked for accuracy because it is actively used by the courts for multiple administrative purposes. The portion of the study that incorporated judges' consensus time expenditure information was derived from a research technique developed by the Rand Corporation.

The accuracy of the 2004 case weights is demonstrated by the similarity of the findings using the case weights that resulted from the two different 1993 and 2004 methodologies. When total weighted caseload for 2003 filings was computed on the basis of both case weights, the national average of weighted filings per judgeship was ***5 percent lower*** using the 2004 case weights than using the 1993 case weights. For approximately two-thirds of the district courts, the difference in weighted filings per judgeship between the old and new case weights was less than 10 percent.

By drawing on, and combining, judicial experience and docketing time data, the event-based method provided a rigorous research protocol that includes the benefit of being easily updated based on electronic data input. In addition, this method has advantages noted by the GAO: reduced judicial burden (so judges can focus on cases), cost savings, and faster development of the case weights.

Answers To Senator Grassley's Questions

1. Question:
Could you give an update of the status of the federal courthouse facilities in Iowa, specifically how the massive flooding has impacted both the Cedar Rapids and Des Moines courthouse facilities? Do you have a projection on when they will be back up and running?

Answer:
The Des Moines courthouse was not impacted by the recent floods.

In Cedar Rapids, thanks to the extraordinary efforts of the Cedar Rapids judges and local staff, AO staff, and the GSA, service to the public was minimally affected. The court maintains electronic access capabilities, so the public was able to continue filing and conducting research electronically without interruption. Within 3 business days of implementing emergency operation plans, the court was functioning in its temporary location. Other courthouse tenants are also functioning in their temporary locations. While these temporary locations are by no means ideal, they are serviceable on an interim basis.

The Cedar Rapids courthouse is being cleaned and dehumidified. Furniture and debris have been cleared from the basement and first floor, which had the most damage. GSA currently anticipates that the first floor and basement might be able to be re-occupied within one year.

2. Question:
I understand the notion of having a priority list for courthouse construction. Cedar Rapids has been on the list for several years. The current courthouse was built in 1931, and doesn't adequately serve the current needs of the Northern District of Iowa. Plus, security and safety have been an issue for those who work there. Now, the courthouse is under water. We've waited our turn. But it's time for the federal judiciary to reconsider the courthouse construction priority list in the wake of the disasters in the Midwest. In the past, the AO has moved up courthouses in the priority list because of emergencies. This is clearly an emergency. We can't wait another year. Will the federal judiciary review the list and reconsider its request to the Appropriations Committee, to make sure that Cedar Rapids is at the top of the fiscal year 2009?

Answer:
Yes, the Federal Judiciary is reviewing several options for Cedar Rapids, including whether or not to designate the Cedar Rapids courthouse an emergency based on the substantial damage caused by the flood. The Federal Judiciary will carefully and fully assess the situation in Cedar Rapids. As new information is provided on a daily basis, the first priority will be to ensure that the court tenants and the public will be able to safely continue business. The Judiciary will keep the Senator informed of the situation in Cedar Rapids.

3. Question:
Is there a need for any legislation to help the federal judiciary in Iowa carry out its duties during this emergency situation?

Answer:
Additional legislation is not necessary at this time. After Hurricane Katrina struck New Orleans and surrounding areas in 2005, Congress quickly passed legislation previously sought by the Judicial Conference to allow circuit, district, and bankruptcy courts to conduct special sessions of court outside of the geographical boundaries of their circuit or district when the court determines that no location within that circuit or district is reasonably available because of emergency conditions. It has not been necessary to use such authority in Cedar Rapids. The court in Cedar Rapids has been and is expected to continue its management of filings and the processing of cases, using existing statutes and rules to deal with any problems or delays. There has been no significant impact on the operations in Des Moines or other federal court facilities in Iowa.

4. Question:
Do you agree that case-related workload measures should be as accurate as possible? Since it is not possible to objectively assess the accuracy of the 2004 case weights, shouldn't the Judicial Conference as a matter of practice err on the high side when using these case weights when requesting additional judgeships to compensate for potential errors in the measure used?

Answer:
Our case-related workload measures should be as accurate as practicable. The integrity of the 2004 case weight methodology is demonstrated in part by the similarity of the findings using the case weights that resulted from the two different 1993 and 2004 methodologies. When total weighted caseload for 2003 filings was computed on the basis of both case weights, the national average of weighted flings per judgeship was *5 **percent lower*** using the 2004 case weights than using the 1993 case weights. For approximately two-thirds of the district courts, the difference in weighted filings per judgeship between the old and new case weights was less than 10 percent.

Moreover, weighted filings are not the only factor considered by the Judicial Conference in making judgeship recommendations. The standard of 430 weighted filings per judgeship after accounting for an additional judgeship is the Judicial Conference's threshold for considering recommendations for new judgeships. It is not the exclusive indicator of each court's needs – it is the starting point, not the ending point. The Judicial Conference recommendations are the product of an extensive six-step review that involves the individual courts, the circuit councils, the Judicial Conference Committee on Judicial Resources and its Subcommittee on Judicial Statistics, and ultimately the Conference itself. Within this process, the Conference considers several workload factors in addition to weighted filings, including assistance from senior, visiting, and magistrate judges, unusual caseload complexity, geographical characteristics of the court, and temporary caseload increases or decreases. The Conference makes every effort to maximize existing resources before requesting additional judgeships. For example, more

conservative criteria for determining when to recommend creation of additional judgeships were recently adopted by the Conference, courts requesting judgeships must demonstrate that they are utilizing senior, visiting, and magistrate judges, and the Conference recommends a temporary rather than permanent judgeship when it is not clear that a court's high caseload will persist.

The Conference process demonstrates a commitment to controlling growth, and shows that judgeships are not requested merely on numerical criteria, but are requested only after a highly critical analysis of caseload data and many other factors.

5. Question:
Did the final methodology used to develop the 2004 case weights include any changes to the proposed design to address GAO's concerns about the consensus estimates to be used for estimating out-of-court time for cases? If so, what changes were made and how did they improve the accuracy of the final case weights and the ability to determine the potential error in the final weights?

Answer:
The Judiciary determined that it was more appropriate to pursue a rigorous event-based study rather than an expensive and resource-intensive time study.

6. Question:
Why did the Judicial Conference decide to abandon the time-study methodology for district courts in 2004? The time-study methodology was utilized by the Judicial Conference to assess the workload measures for both the bankruptcy and district courts (in 1993), and was considered to be relatively acuate and objective by the GAO. In developing the 2004 case weights, why would the judiciary use a method that did not rely on actual time data to measure the majority of time that judges spend on cases – out of court time? What measure was used to assess the accuracy of the out-of-court time estimates used to develop the 2004 case weights?

Answer:
As the Federal Judicial Center (the body that conducts case weight studies for the Federal Judiciary) explained in a February 19, 2008 letter to the Chairman and Ranking Member of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts,"[t]here are several different, and accepted, ways to compute case weights." In conducting the 2004 case weighting study, the Federal Judicial Center used an event-based method. "Event-based designs have been used in several state case-weighting efforts." The Federal Judicial Center further explained,

"The Federal Judicial Center has conducted four case-weighting efforts in the federal district courts over the last 38 years. . . . The design of each study was different from the previous one and each strove to (a) to address issues that had come up in the previous design, (b) to deal with inherent limitations, and (c) to take advantage of new developments. This does not mean that older designs were "worse" or newer designs "better," only that each design tried to meet as best it could the situation in which the study was executed. [Time studies] obtained good empirical data but were very resource intensive, demanding substantial time and effort from participating judges, court staff, and research staff. Because of the effort and time involved, these studies were conducted only once every ten years or more, a time frame that sometimes led to concerns that the weights had become outdated before new weights could be calculated."

"Over the past 15 years, the federal courts have implemented automated case-management systems in each of the district courts. These systems maintain detailed docketing information on all cases filed in the courts. This information is empirical, recorded contemporaneously with the occurrence of the events, and, because it is in active use by the courts for multiple administrative purposes, regularly and carefully checked for accuracy. These automated records provide a level of information about case processing that was unavailable to previous case weighting studies."

"The 2003-2004 case-weighting study in the district courts took advantage of this new data source."

"The event-based method not only had beneficial implications for the 2003-2004 study, but the method also affects case-weighting efforts going forward. Because so many components of the case-weight calculations are driven by data routinely collected in the courts' case-management databases, additions and enhancements to those database systems are available to be incorporated when computing future revisions of the weights. In addition, . . . targeted additions and revisions to the weights can be made without the need to recompute all weights. Thus the weights can be modified between major case-weighting studies to adjust to new case types or changes in case-management procedures in a way that past weights derived from time studies could not. This keeps the weights more up-to-date and more representative of current court practice."

The fact that the study produced reasonably accurate case weights is clear from both the study process and its results. First, in looking at the study process, it must be understood as a threshold matter that raw case weight values developed from traditional time studies are an arithmetic mean computed from many individual time entries. Standard errors, which the GAO desired as a means of estimating how representative the sample data are, provide information about the data collected, but cannot by themselves indicate how accurate those data are. They cannot tell you whether the computed mean value compares favorably to the true mean value of time expended. What contributes to the accuracy of the mean value is a nationally representative sample and correct recording of time entries. The design and execution of the study has substantial effect on both of these dimensions through sample selection, training of participants, control of factors such as seasonal variations that can skew representativeness, and adherence to consistent definitions of case types and case events. An evaluation of whether a study has properly managed such factors, therefore, is a good way to assess the likely accuracy of the resulting weights.

The FJC's 2003-2004 case weighting study was carefully designed and executed. It received input from an advisory group of judges to define the case types to be weighted and the major case events, as well as the case characteristics to be included in the computations. As noted above, it used empirical data from over 297,000 cases from across the nation to develop national event frequencies; it used empirical data from all districts to determine time measures for trials and other evidentiary hearings. It developed consensus time expenditure information under controlled conditions from more than 100 experienced judges representing districts in all circuits. These consensus time estimates were derived from a research technique developed by the Rand Corporation. A notable feature of the raw weight calculations is that they include a self-adjustment feature: events that occur frequently – thus arguably the ones participants had most experience with – have greater impact on the calculations than those that occur rarely and might therefore have been harder to estimate.

Second, the integrity of the 2004 case weight methodology is demonstrated by the similarity of the findings using the case weights that resulted from the different 1993 and 2004 methodologies. When total weighted caseload for 2003 filings was computed on the basis of both case weights, the national average of weighted filings per judgeship was 5 percent lower using the 2004 case weights than using the 1993 case weights. For approximately two-thirds of the district courts, the difference in weighted filings per judgeship between the old and new case weights was less than 10 percent.

By drawing on, and combining, judicial experience and docketing time data, the event-based method provides a rigorous research protocol that has the virtue of being easily updated based on electronic data input, with additional advantages noted by the GAO: reduced judicial burden (so judges can focus on cases), cost savings, and faster development of the case weights.

7. Question:
A 2001 Federal Judicial Center report noted that the distinct characteristics of administrative agency cases that in 1996-1997 occurred almost exclusively in the D.C. Circuit made adjusted case filings an inappropriate measure of judge workload in that circuit. However, because no information was available on judges' actual time expenditures, there was no empirical basis for suggesting a specific alternative formula for assessing judgeship needs in that circuit. So, if the difference among the courts of appeals in case processing techniques have made it impossible to develop a more accurate case-related workload measure for all courts of appeals, has the Judicial Conference carefully studied the feasibility for developing more accurate case-related workload measures that reflect these unique practices for each individual court of appeals?

Answer:
The FJC report on the D.C. Circuit concluded, in part, that the caseload of the D.C. Circuit was sufficiently different in composition from the other circuits that the threshold value of 500 adjusted filings used in the other circuits when considering requests for additional judgeships might not be appropriate to be used for the D.C. Circuit when assessing judgeship needs. The Judicial Resources Committee Subcommittee on Statistics has considered alternate ways to assess the caseload burdens of judges in the courts of appeals. Any assessment, however, must be based on a nationally-applicable standard to ensure uniform treatment of the courts of appeals in the allocation of judicial resources. While several factors have contributed to the difficulty in developing appellate case weights, measuring each circuit by its own standard instead of a nationally-applicable standard would encourage arbitrary allocation of national judicial resources and subject the system to political influence instead of adherence to a workload baseline.

Inherent in any attempt to create a set of case weights that could be applied consistently across the circuit courts are difficulties stemming from differences among the circuits. First, cases of the same type (e.g., drug prosecutions) at the district court level raise vastly different issues on appeal, with varying degrees of complexity. Second, different circuits have different procedures and precedents. Varying mixes of cases across circuits means that even cases that raise the same issues on appeal will take less time in a circuit that has many precedents on an issue, and more time in a circuit that has little or no precedent on an issue. Third, different circuits have different practices. For example, at least one circuit affords oral argument to all parties (other than prisoner or pro se litigants) unless the parties waive oral argument, while other circuits rely more on submissions on briefs. Also, some circuits issue one-word affirmances for certain cases, while other circuits tend to provide a statement of reasons for almost all merits decisions. A set of nationally-applicable appellate case weights has thus eluded development.

Answers To Senator Sessions' Questions

1. Question:
Magistrate judges are one means of reducing the workload of Article III judges. Moreover, they are more flexible and less expensive judicial resources because they can be part-time or full-time.

(a) How does the Judicial Conference measure whether individual district courts are fully utilizing all their judicial resources, including magistrate judges?

Answer:
With regard to magistrate judges, each court that requests judgeships must provide detailed information on the range of duties of its magistrate judges, such as whether they handle preliminary matters in civil and criminal felony cases, conduct settlement conferences, or may be selected for direct assignment of civil cases. The Conference asks each court that requests an additional Article III judgeship why its need for judicial resources cannot be met by additional magistrate judges and, when appropriate, whether the court has considered a change in how it utilizes magistrate judges as an alternative to requesting an additional Article III judgeship. The use of magistrate judges in each court is reviewed by the Judicial Conference Committee on the Administration of the Magistrate Judges System every five years, the results of which are incorporated into the Conference process for recommending Article III judgeships.

Case weights were developed for the work that Article III judges perform. Because districts utilize magistrate judges differently in accordance with their own needs and priorities, and because magistrate judges are not authorized to handle many duties of Article III judges, the use of district court case weights would not accurately measure magistrate judges' work.

With regard to senior judges, the Conference calculates, for each court that requests additional judgeships, the number of active judge equivalents provided by the court's senior judges. The Conference also considers the age of the current senior judges and the number of currently active judges that will become eligible to take senior status in the near future in order to assess whether the contributions from senior judges will likely increase, decline, or stay the same.

(b) Has the Resources Committee ever rejected or reduced the judgeship request of a district court because it was not fully using its magistrate judges?

Answer:
The Committee has not rejected or reduced a court's judgeship request based solely on how the court utilizes its magistrate judges. The use of magistrate judges is one of several factors that the Judicial Conference takes into consideration when developing its judgeship recommendations.

(c) If not, under what circumstances would the Resources Committee do so?

If the Judicial Resources Committee believes that a court is not maximizing the use of all available judicial resources, including senior, magistrate, and visiting judges, it may reject or reduce the court's request. There is no single national model for the efficient utilization of magistrate judges. Efficient utilization depends on such local conditions and factors as the degree to which individual litigants in civil cases are willing to consent to having a magistrate judge try their cases, the volume of case filings, the types of cases, the number of court locations, and the geography of the district.

2. Question:
Since the 1993 district court case weights were developed, the Judiciary has implemented various measures to settle civil cases, such as mediation programs. To the extent these programs are successful, they can potentially reduce both the calendar and judge-time required to dispose of these cases.

(a) How is the effect of these programs reflected in the case weights for district court judges?

Answer:
Mediation and other programs that settle cases reduce the case weight for case types that are referred to the programs in significant numbers. This is because the frequency of docketed events handled by a district judge has a major influence on the case weight computation. When cases settle, they suppress the frequency of such docketed events - most notably trials, but also hearings and conferences. When trial frequency for a certain case type is depressed because large numbers of those cases settle, the contribution of trial time to that particular case weight is reduced. Thus, savings in judge time that occur as a result of settlement programs are reflected in the case weights.

(b) Has the effect of these programs on judges' time been systematically assessed? If not, why not?

Answer:
Both the academic community and the Federal Judiciary have conducted numerous studies to assess the impact of alternative dispute resolution ("ADR") programs. Those studies focus on the rate of settlement and litigant satisfaction rather than judge time. Still, as noted above, the case weights reflect the judicial time that is saved by such programs by taking account of the programs' effects.

(c) Compare the percentage of cases settled short of trial in 1987 with the percentage settled in 2007?

Answer:
In 1987, 95 percent of civil cases were closed short of trial, compared to 96 percent of civil cases in 2007.

3. Question:
Approximately one year before the Judicial Conference decided to forego another time study to update the 1993 district court weights, it had approved a new two-phase study for updating the bankruptcy court case weights. Phase one would be a new time study that would be used to develop revised weights whose accuracy could be statistically assessed. Phase two would be research to assess whether it was possible to develop "event profiles" that would allow future updating of the weights without the necessity of conducting a time study for each update. This approach would have provided a valid basis for assessing the accuracy of an event-based approach. Why wasn't this approach used for updating the district court case weights instead of moving directly to an event-based approach?

Answer:
The Judiciary considered a number of case-weighting alternatives, including a time study, and ultimately endorsed an event-based case weighting design that blended elements of two proposals. The benefits of the event-based design included the following: it incorporated substantial empirical data from the courts' administrative databases and standard reports, shortened execution time, made updates to the weights easier, and reduced the burden on participating judges.

As the Federal Judicial Center ("FJC") (the body that conducts case weight studies for the Federal Judiciary) explained in a February 19, 2008 letter to the Chairman and Ranking Member of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts,"[t]here are several different, and accepted, ways to compute case weights." "Event-based designs have been used in several state case-weighting efforts." The FJC further explained,

> "The Federal Judicial Center has conducted four case-weighting efforts in the federal district courts over the last 38 years. . . . The design of each study was different from the previous one and each strove to (a) to address issues that had come up in the previous design, (b) to deal with inherent limitations, and (c) to take advantage of new developments. This does not mean that older designs were "worse" or newer designs "better," only that each design tried to meet as best it could the situation in which the study was executed. [Time studies] obtained good empirical data but were very resource intensive, demanding substantial time and effort from participating judges, court staff, and research staff. Because of the effort and time involved, these studies were conducted only once every ten years or more, a time frame that sometimes led to concerns that the weights had become outdated before new weights could be calculated."
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filed in the courts. This information is empirical, recorded contemporaneously with the occurrence of the events, and, because it is in active use by the courts for multiple administrative purposes, regularly and carefully checked for accuracy. These automated records provide a level of information about case processing that was unavailable to previous case weighting studies."

"The 2003-2004 case-weighting study in the district courts took advantage of this new data source. . . . The new study used the docketed event information and other case information available from the courts' case-management databases . . . . [including data from approximately 297,000 cases]. [This information was combined with consensus time expenditure information from more than 100 experienced judges. The portion of the study that incorporated the information from judges was derived from a research technique developed by the Rand Corporation.]

"The event-based method not only had beneficial implications for the 2003-2004 study, but the method also affects case-weighting efforts going forward. Because so many components of the case-weight calculations are driven by data routinely collected in the courts' case-management databases, additions and enhancements to those database systems are available to be incorporated when computing future revisions of the weights. In addition, . . . targeted additions and revisions to the weights can be made without the need to recompute all weights. Thus the weights can be modified between major case-weighting studies to adjust to new case types or changes in case-management procedures in a way that past weights derived from time studies could not. This keeps the weights more up-to-date and more representative of current court practice."

4. Question:
In commenting on the GAO's 2003 report on case-related workload measures used for the courts of appeals, the Chair of the Judicial Resources Committee stated that the workload of the courts of appeals entails important factors that have defied measurement, including significant differences in case processing techniques between circuits.

(a) If developing a common workload measure across the courts of appeals has defied all attempts to do so, why does the Judicial Conference believe that adjusted filings is an appropriate and reasonably accurate measure to use in considering additional courts of appeals judgeships?

Answer:
"Adjusted filings" represents filings with each pro-se case counted as one third of a case rather than one whole case. Data from the FJC support the figure. Professor Arthur Hellman of the University of Pittsburgh School of Law, a noted expert on federal court issues, testified before a House Judiciary Subcommittee in 2003 that because only a very small percentage of pro se cases receive oral argument or a published opinion, it is reasonable to conclude that pro se cases contribute significantly less to the judicial workload. Professor Hellman further explained that in a world of limited resources, it is not necessary to carry out direct empirical research to support this reasonable figure, especially with the FJC's data. Professor Hellman calls the one-third adjustment of pro se cases "justified."

The standard of 500 adjusted filings per panel as the threshold for considering recommendations for additional appellate judgeships, is a useful and appropriate standard that is based on the experience of appellate judges. It is recognized as appropriate outside the Judiciary as well. Professor Hellman testified that the 500 adjusted filings standard, based on historical data on filings and terminations, is "quite defensible," and that the "Judicial Conference has indeed taken a conservative approach in assessing courts of appeals requests for new judgeships." In addition to the historical basis, Professor Hellman's examination of typical workloads led him to "conclude" that the Judicial Conference baseline of 500 adjusted filings per panel is "reasonable."

(b) Is this not just using the lowest common denominator to measure case-related workload?

Answer:
No, because in developing judgeship recommendations, the Conference considers numerous other factors in assessing the actual workload created by filings. In both the circuit and district courts, the Conference considers recommending judgeships for a court only if that court submits a request. Filings are the starting point for the analysis, not the ending point. The Conference examines all the factors for recommending judgeships before making a recommendation, which in the courts of appeals includes factors such as the mix of cases, the number of appeals terminated after oral hearings vs. submissions on briefs, and the assistance provided by senior and visiting judges. If the caseload of 500 adjusted filings per panel was the only factor in making circuit judgeship

recommendations, the Conference could recommend several more circuit judgeships on many courts than it has recommended. The fact that the Conference minimizes its judgeship requests demonstrates the Conference commitment to controlling growth.

5. Question:
The GAO also noted concerns with the new methodology of measuring court room time, specifically that the new design assumes that time spent on a particular case may be measured by the number of individual tasks the case requires.

(a) How has the Judicial Conference addressed this concern and if it has not, why did it decide not to take this concern into consideration when developing the district court weights?

Answer:
The 2003 GAO report did not question whether relative time spent on particular types of cases may be measured by the number and type of tasks cases require, which is what event-based methods of case weighting are designed to do. To the extent that the GAO in 2003 was concerned about obtaining accurate event frequency and time counts from two different case management database systems that were in use in the federal courts at the time of the study (with some courts utilizing one system and other courts utilizing another system), the GAO did not question the FJC's strategy for addressing these issues, which is described in greater detail below.

(b) Also, the new system has [sic] not been implemented in every district court system. Why did the Judicial Conference decide to use this new method even after the technical advisory group hired to assess the new case weight design raised some concerns with the calculation of data between the different court systems?

Answer:
At the time of the study, two different database systems were in use in the federal courts. In order to obtain event frequency counts that represented national practice, the study had to extract information from both systems. This was addressed in the study in several ways: (1) obtaining advice and assistance from a technical advisory group of Administrative Office and court staff, (2) surveying each court about its specific case management procedures, (3) building data extraction and processing programs to handle information from the two systems equivalently, and (4) converting system information to a common standard used in the study. The technical advisory group provided critical information, assistance, and advice to the project team on how to extract and use the data from the different systems – they did not advise against processing data from both systems, but rather helped the project team to do so.

6. Question:
In the District of Arizona and other border districts where immigration cases are a sizable part of the docket, please detail the time expenditure for the routine immigration case and how much of that time is expended by magistrate judges as opposed to a U.S. district judge.

Answer:
Immigration cases are not designated as routine or non-routine. Because different courts utilize magistrate judges differently, it is difficult to quantify time expended by magistrate judges as opposed to district judges across courts in any consistent way. For misdemeanor and petty immigration cases, magistrate judges may handle the entire case from filing to disposition. For felony immigration cases, magistrate judges may handle preliminary matters and district judges often handle most other aspects of the case, such as trial and sentencing.

Answers To Senator Cardin's Questions

1. Question:
Chief Judge Singal, in your written testimony you state that "the Administrative Office of the U.S. Courts has previously provided detailed justifications for the additional judgeships in each court."

(a) What are the main criteria you use for making recommendations for new, permanent judgeships?

Answer:
The Judicial Conference makes judgeship recommendations on the basis of workload factors. For the district courts the initial factor is weighted filings per authorized judgeship, and the standard for considering judgeship recommendations is 430 weighted filings per judgeship after accounting for an additional judgeship. The initial factor for courts of appeals is adjusted filings, which represent filings with each pro se case counted as one-third of a case, and the standard for considering judgeship recommendations is 500 adjusted filings per panel. These standards are not the exclusive indicators of each court's judgeship needs. They are the starting point at which the Conference begins to consider requests for additional judgeships, not the ending point. The Conference also considers several other factors in developing its judgeship recommendations, such as the amount of assistance from senior, visiting, and magistrate judges, unusual caseload complexity, temporary caseload increases or decreases, and geographic considerations, as you noted in your May 23, 2008 letter to James Duff, Director of the Administrative Office of the U.S. Courts ("AO").

(b) What weight does the Administrative Office of the Courts give to the amount of available courthouse space?

Answer:
The Judicial Conference judgeship recommendations are based on each court's workload factors. It would not make sense to deny citizens the judgeships their courts need to efficiently process their cases based on space factors, when space needs can be accommodated in various ways. When developing future space needs, anticipated judgeship needs are taken into account.

(c) What weight does the AO give to the quality of available courthouse space?

As noted, the Judicial Conference judgeship recommendations are based on each court's workload factors.

(d) What are the existing unmet needs for courthouse space for the existing federal judges that are sitting?

Answer:
All current sitting judges have chambers and in some cases are sharing courtrooms. Space projects have recently been approved to address space needs in the near future for senior judges and/or their replacements.

(e) What new needs would be created if we approved these 66 new judgeships?

Answer:
As detailed in AO Director James Duff's June 13, 2008 letter to you, the Judiciary has estimated the additional space and funding needs associated with S. 2774. Based on an assessment of space available in the likely locations for these new judges, we estimate that 33 chambers would need to be constructed. In addition, 15 courtrooms would need to be constructed for district judges. No additional courtrooms would need to be constructed for appellate judges. No additional courthouses would need to be constructed as a function of the judgeships in the bill. The Judiciary estimates the cost of the judgeships contained in the bill to be $51.3 million in one-time start-up costs requiring a discretionary appropriation, and $52.4 million in annual recurring costs of which $40.1 million is for discretionary costs and $12.3 million is the mandatory appropriation needed for judges' compensation. Space requirements and start-up and recurring costs are discussed in more detail below.

Start-up Costs: Start-up costs include space buildout costs as well as phones, lawbooks, and furniture expenses. Space buildout costs comprise the bulk of the $51.3 million in estimated start-up costs – $43.2 million – with other one-time costs accounting for the remaining $8.1 million. In formulating a cost estimate for S. 2774, Administrative Office staff worked closely with the circuit and district courts to determine the availability of courtroom and chambers space needed to house the 66 new judgeships. Based on our analysis, courtroom and chambers space is currently available to house 5 of the 14 circuit judgeships, and 37 of the 52 district judgeships. The remaining 9 circuit judgeships would necessitate the acquisition of resident and visiting chambers space at an estimated one-time cost of $11.0 million (approximately $900,000 per resident chamber, approximately $321,000 per visiting chamber). The remaining 15 district judgeships would require space buildout for courtrooms and chambers at an estimated one-time cost of $32.3 million (approximately $1.4 million per courtroom, approximately $750,000 per chambers).

Recurring Costs: Recurring costs associated with each new judgeship include the salaries and benefits for the judge and support personnel, space rent and operating costs, and court operation costs. Total annual recurring costs for the 14 circuit judgeships are projected to be $11.2 million ($797,500 per judgeship). Total annual recurring costs for the 52 district judgeships are estimated to be $41.2 million ($793,200 per judgeship).

There are no additional costs to the Judiciary associated with the conversion of temporary judgeships to permanent judgeships in the Districts of Hawaii, Kansas, Arizona, New Mexico, and Missouri Eastern, or the extension of the temporary judgeship in Ohio-Northern to November 2011.

2. Question:
On May 23, 2008, I wrote a letter to James C. Duff, Director, Administrative Office of the U.S. Courts. He sent me a response on June 13, 2008. I have attached these letters for your reference, which will be made part of the hearing record.

(a) In the June 13 letter to me, the AO stated that the cost estimate for this bill is "$51.3 million in one-time start-up costs requiring a discretionary appropriation, and $52.4 million in annual recurring costs of which $40.1 million is for discretionary costs and $12.3 million is the mandatory appropriation needed for judges' compensation." His letter continues: "Discretionary appropriations for start-up costs would be required soon after enactment of S. 2774 to provide sufficient lead time to perform space buildout for those courts in which new courtrooms and chambers are needed." What happens if this legislation passes, and Congress does not appropriate the funds needed to implement this legislation? What effect would this have on judicial efficiency?

Answer:
If Congress enacts S. 2774, authorizing 66 new judgeships – 14 appellate and 52 district – but does not appropriate the discretionary funding needed for space buildout and recurring expenses, the Judiciary would be forced to absorb these costs. Providing sufficient space and staff resources to judges is a top priority for the Judiciary. If additional appropriations are not provided, the Judiciary would have to absorb $51.3 million in projected one-time start-up costs, the bulk of which is for space buildout for chambers and courtroom space. The Judiciary would also have to absorb $40.1 million in annual recurring costs. (The $12.3 for recurring judge salaries and benefits would by funded through direct/mandatory spending.)

Absorbing a $91.4 million expense – $51.3 million in one-time costs and $40.1 million in recurring costs – would be very difficult for the Judiciary. Approximately 60 percent of the Judiciary's budget is for must-pay costs such as judges' salaries and benefits and space rent payments to GSA. The bulk of any funding shortfall to the Judiciary's budget is applied to the remaining 40 percent of the budget, which is primarily funding allotments to clerks and probation offices for salary and operating costs.

It is difficult to predict with certainty the operational impact of absorbing a $91.4 million expense. The specific impact on the courts and the judicial process would be dependent upon overall funding made available to the Judiciary in a given fiscal year and the magnitude of the reductions made to court funding allotments. In past years when we have faced significant budget reductions, we had to reduce our court support staff -- Probation Officers and clerks office staff. For example, FY 2004 budget cuts forced us to cut court staffing by 6 percent -- we reduced our on-board staff by 1,350 employees. While most of this was accomplished through retirements and buy-outs, we did have to fire about 250 employees.

(b) How would this legislation affect the existing, unmet needs for courthouse space?

Answer:
This legislation will not affect any existing unmet needs for construction of a new courthouse or major repair and alteration projects that has been approved by the Judicial Conference. These types of projects would be funded by the General Services Administration, not the Judiciary.

3. Question:
The AO letter to me says that, "based on our analysis . . . the remaining 9 circuit judgeships would necessitate the acquisition of resident and visiting chambers space at an estimated one-time cost of $11.0 million . . . the remaining 15 district judgeships would require space buildout for courtrooms and chambers at an estimated one-time cost of $32.3 million . . . recurring costs associated with each new judgeship include the salaries and benefits for the judge and support personnel, space rent and operating costs, and court operation costs . . . based on an assessment of space available in the likely locations for these new judges, we estimate that 33 chambers would need to be constructed. In addition, 15 courtrooms would need to be constructed for district judges [sic] *No additional courthouses would need to be constructed.*" (emphasis supplied).

(a) Why does the AO rule out the need for new courthouses, given the large fiscal and space costs for this bill?

Answer:
No additional courthouses would need to be constructed *because of the judgeships in this bill.* This is because in many cases, only one or two judges need to be housed in a given location. In response to Congressional budgetary pressures and because the Judiciary recognizes the tight budgetary constraints within which the government must operate, and to be a good steward of public funds, the Judiciary has taken the position that new courthouses should not be built if space is available in existing courthouses. To house one or two new judges, it is fiscally prudent and operationally efficient to alter existing space wherever possible.

(b) Aren't there certain situations where it is actually better (and in the long-run cheaper) to build a new courthouse, rather than continue to incur costs for maintenance and repair for a deficient and aging courthouse that has exceeded its useful life span?

Answer:
The Judicial Conference and the GSA have, through experience, developed a comprehensive process for determining when building upgrades can most effectively be met through renovation or repair of existing space versus construction of a new facility. In response to Congressional budgetary pressures and because the Judiciary recognizes the tight budgetary constraints within which the government must operate, and to be a good steward of public funds, the Judiciary considers the feasibility and costs of alternatives for short and long term needs so that the most appropriate and cost-effective space solution is identified. The Judiciary then transmits it to the GSA for further study. The GSA's process likewise examines feasibility and cost of housing alternatives. The GSA considers the Judiciary's input and subsequently takes into account the most fiscally prudent use of federal inventory.

The ultimate decision to retain or dispose of an existing building is made by GSA.

(c) How much more costly is leased space for the Judiciary, in cases where there is not space available in the permanent courthouse for new courtrooms or chambers space?

Answer:
The costs for building out leased privately-owned space, and the rent, depend on the size, scope and location of the project. Building out privately-owned space is not necessarily more expensive than building out similar space in a federal building or courthouse, and leasing privately-owned space is not necessarily more expensive than the rent charged by GSA for similar space in a federal building or courthouse. Whether for privately-owned leased space or a federal building, buildout and rent can rise or fall depending on factors such as the condition of the space to be altered, the availability of space, code compliance issues, the age of the building, availability of materials, competition in the labor market, and local market rates. The alternative to leasing privately-owned space where there is no space available in the existing courthouse is the cost of new construction, including both the associated capital costs and the higher rent costs that must be paid to GSA for space in a new building.

4. Question:
AO Director Duff's letter uses an estimate and assumption regarding senior judges, which states that "approximately 1.7 million additional square feet may be needed to accommodate these judges' chambers and courtrooms. For the district judges, this assumes one-third of the judges will need a chambers built, and one-fourth of the judges will need a courtroom constructed . . . . With regards [sic] to these estimates, it is impossible to predict with precision the space needs of senior judges. That is because it is impossible to determine in advance exactly how many judges among those eligible will take senior status, the exact locations of their circuit or district and duty stations, and the caseload they will carry."

(a) Doesn't the AO have the ability, and the affirmative duty, to poll the judges who are eligible for senior status in the next decade (identified in Enclosure 3 of the AO letter to me) using a questionnaire, and ask them to answer these questions?

Answer:
No. As a practical matter, many judges do not make plans for their service in senior status until they actually take senior status, and even if they do, they have the prerogative to change their plans at any point. Any poll that might be taken would, therefore, be meaningless. As a matter of principle, because Article III judges are Constitutional officers with life tenure, a judge's decision to take senior status or any plans regarding such a decision are not governed by the Judicial Conference.

Having been nominated by the President, Article III judges, as a matter of courtesy, notify the President when they elect to take senior status. The data that the Judiciary maintains is the date at which a judge becomes eligible to take senior status under applicable statutes. The Judiciary can also project, based on historical trends, approximate percentages of all Article III judges that will likely take senior status.

(b) How many courts already poll their judges regarding their intentions for senior status and projected workload and space needs?

Answer:
As noted, the data that the Judicial Conference maintains is the date at which a judge becomes eligible to take senior status under applicable statutes. As a matter of courtesy, some judges may share in advance with their courts their plans regarding their service in senior status, but not all judges on a given court would necessarily do so and even if a judge elects to share his or her plans, such plans may change.

(c) Do you have an intention on polling judges to obtain this information?

Answer:
No, because any such plans that may be shared as a matter of courtesy may change, and because a judge's decision to take senior status or any plans regarding such a decision are not governed by the Judicial Conference.

(d) Don't senior judges who have little or no caseload still require court staff, chambers, and office space?

Answer:
Under Judicial Conference policy, senior judges must perform substantial judicial work to be entitled to staff, chambers, and office space.

(e) What happens if Congress does not provide the funds needed to build these new chambers and courtroom space for the senior judges?

Answer:
As noted in the response to Question 2(a) above, providing sufficient space and staff resources to judges is a top priority for the Judiciary. If Congress does not provide the funding needed to build chambers and courtroom space for senior judges, the Judiciary would be forced to absorb these costs at the expense of funding for clerks and probation offices nationwide.

(f) What happens if more senior judges retire and keep courtroom and chamber space that [sic] you have estimated?

Answer:
In some cases, it would be necessary to construct chambers and courtrooms for these judges if existing space is not adequate.

5. Question:
The CBO estimates that the judicial pay raise, S. 1638, would increase direct spending by $1.9 billion over the next decade, and would increase revenues by $321 [sic] over that same period. Implementing the legislation would result in additional discretionary spending of $166 million over the 2009-2013 period, and $418 million over the next 10 years, assuming appropriation of necessary amounts.

(a) What happens if Congress passed [sic] the judicial pay raise, but does not fully fund the needed discretionary spending? What steps would the Judiciary take to make up for this deficit? What effect would that have on needed courthouse space for judges?

Answer:

The Judiciary has already identified in its FY 2008 financial plan sufficient funding to cover the discretionary spending associated with S. 1638, so enactment of judicial pay restoration legislation would have no effect on needed courthouse space for judges. The Judiciary is able to offset the discretionary costs due to savings realized through its cost containment program which has been in effect since 2004.

6. Text:
Judge Singal, the AO recently produced a draft entitled "Long Range Facilities Plan for the District of Maryland," dated June 2008? [sic]. AO Director Duff referred to this report in his letter to me. He stated that he "understands [sic] that the U.S. District Court for the District of Maryland has provided [my] staff with a copy of the most recent draft report reflecting this analysis.

Response:
The draft report was developed at the direction of the Judicial Conference using Asset Management Planning assumptions that had been approved by the Conference.

7. The draft report does concede that "a new courthouse was recommended in the court's previous Long-Range Facilities Plan," but that "improvements completed since then have enhanced the building's condition and functionality." This is a highly misleading statement from the AO. My interpretation is that the Baltimore courthouse is being penalized for performing emergency triage to keep the courthouse operating, after they were promised a new courthouse, and the AO changed the rules in the middle of the game. The AO analysis is fundamentally flawed because it only looks at the quantity of courthouse space available, and not the quality of that space. Even the AO report concedes that the federal courthouse in Baltimore does not have the capacity to actually host the Probation Office, the Federal Public Defender, and the U.S. Attorney's Office. The Court tells me they may have to lose other facilities over the next few years due to space and other problems with the courthouse.

(a) As a Chief Judge of the Federal District Court in Maine, what problems would you foresee in having these facilities outside of your courthouse? Does that cause you concern as the Chairman of the Judicial Resources Committee of the Judicial Conference of the United States?

Answer:
The AO did not "change the rules," and the Baltimore courthouse is not being "penalized." As stated, the current draft report was developed at the direction of the Judicial Conference using Asset Management Planning assumptions that had been approved by the Conference. In response to Congressional budgetary pressures and because the Judiciary recognizes the tight budgetary constraints within which the government must operate, and to be a good steward of public funds, the Judiciary adopted a cost containment program in 2004. As part of this program, the Judicial Conference placed a moratorium on all new courthouse construction projects with the exception of those that had already received some funding from Congress. The moratorium enabled the Judicial Conference to develop and implement an extensive Asset Management Planning process that provides a more detailed analysis of costs and benefits. This new approach studies a number of housing strategies so that limited resources are put to their best use.

With regard to the housing of various offices, Judicial Conference policy is that the Federal Public Defender should not typically be housed in the courthouse. Indeed, it is often the preference of Public Defenders' offices to be housed outside the federal courthouse so that their clients will not interpret the defenders' courthouse location as an indication that they represent anyone other than the client. The Probation Office is often housed outside the courthouse but usually within close proximity. The US Attorney's Office is part of the Department of Justice and while we understand its preference is to be housed in a courthouse, the US Attorneys are also often housed outside the courthouse due to cost considerations and space constraints.

In Portland, Maine, in the Gignoux courthouse, the Probation Office, the U.S. Attorney's Office, and the Public Defender's Office are housed outside the courthouse. When I became Chief Judge in the District, I discussed the location of the Probation Office and the U.S. Attorney's Office with probation officers and members of the U.S. Attorney's staff, and found that the outside locations were a small inconvenience and in no event did the location seriously impact the ability of the two offices to provide superb service to the court. Each location is different, and the location of each agency is an issue for every individual court that needs to be addressed within available resources.

(b) What would the additional costs be for moving out a Bankruptcy Judge or several Judges to leased space outside the courthouse?

Answer:
Bankruptcy courts are often housed in locations separate from district courts. In addition, new courthouses are often constructed to house only Article III courts, with bankruptcy courts backfilling the old courthouse as a cost-savings measure. When the bankruptcy and Article III court(s) are co-located in a building and additional space is needed to house district judges, the Judiciary and the GSA assess how best to accommodate the space needs. The alternative to leasing privately-owned space where there is no space available in an existing federally-owned building is the cost of new construction, including both the associated capital costs and the higher rent costs that must be paid to GSA for space in a new building.

If it is determined that space needs can best be met by leasing privately-owned space for bankruptcy judges, the additional costs would be the rent for the leased space and the buildout costs for the chambers and courtroom. A typical chambers build-out for bankruptcy court would be less than the cost of a district judge chambers ($900,000), and courtroom ($1.4 million) with locality variables. Costs would also be incurred for moving and telecommunications. As noted, the costs for building out leased privately-owned space, and the rent, depend on the size, scope and location of the project. Building out privately-owned space is not necessarily more expensive than building out similar space in a federal building or courthouse, and leasing privately-owned space is not necessarily more expensive than the rent charged by GSA for similar space in a federal building or courthouse.

(c) What are the potential security concerns and costs for this option?

Answer:
Security accommodation can be challenging in either leased privately-owned space or in federally-owned space. As is the case with buildout and rent costs discussed earlier, security costs in leased privately-owned space are not necessarily more expensive than security costs in an existing federal building or courthouse. The costs would vary depending on the scope of the project.

(d) Shortly after the 9/11 terrorist attacks, the Baltimore Courthouse was moved up to #1 for site and design in FY 2005 on the FY 2003-FY 2007 Five-Year Courthouse Construction Plan. The Baltimore Courthouse remained #1 on this list for 3 years. However, a November 2004 AO Memorandum advised that only four courthouse construction projects would be funded in FY 2005, and that Baltimore was not among the projects. The US Attorney's office moved out of the Baltimore Courthouse in January 2005, and in May 2005 the AO announced the development of a new process for evaluating space needs. In your view, have the security concerns of the Baltimore Courthouse increased, decreased, or remained the same since 2001?

Answer:
In response to Congressional budgetary pressures and because the Judiciary recognizes the tight budgetary constraints within which the government must operate, and to be a good steward of public funds, the Judiciary adopted a cost containment program in 2004. As part of this program, the Judicial Conference placed a moratorium on all new courthouse construction projects with the exception of those that had already received some funding from Congress. The moratorium enabled the Judicial Conference to develop and implement an extensive Asset Management Planning process that provides a more detailed analysis of costs and benefits. This new approach studies a number of housing strategies so that limited resources are put to their best use.

The Judiciary takes security concerns very seriously, and thus understands your concern. To address security needs, the Judiciary and GSA must consider the availability of limited resources where needs nationwide far exceed available funds. The Conference's Asset Management Planning process was thus used to examine the physical security situation at the Baltimore courthouse. As a result of this on-site review, we were able to document the existence of several major components of physical security. Judges have a separate, restricted elevator and secure parking, the public has separate circulation, and the Marshals Service has prisoner elevators and a sallyport for prisoner movement. In addition, the United States Marshals Service has replaced or upgraded all of its cameras and the monitoring system, and has replaced vehicle barriers. This latest draft study reflects updated information and clarifications which address many of the concerns identified in 2001.

8. Question:
On June 1, 2004, our Chief Judge of the Federal District Court in Maryland, Benson E. Legg, send [sic] a letter to Judge Henry Morgan – one of your predecessors, I believe, as an administrator in the Judicial Conference – and highlighted the problems with the Baltimore courthouse. Let me highlight some points from this letter to Judge Morgan regarding the Baltimore courthouse. Chief Judge Legg advises me he has no objection to sharing the points made by this letter. [Please specifically respond in detail to each of the concerns raised by Chief Judge Legg's letter that was written over 4 years ago.]

(a) This is a 1970's era courthouse, which the Baltimore Sun in 1996 opined was "one of the worst-designed, most horribly constructed halls of justice in the country," due to poor architectural planning and budget cuts.

Answer:
The Edward A. Garmatz U.S. Courthouse was constructed in 1976 and reflects the architectural style of the period. The layout, including courtrooms and chambers, adjacencies, and separate circulation patterns generally conform to current Judicial Conference space standards.

(b) The security problems in the Baltimore courthouse are what originally drove Baltimore to the top of the list in terms of getting a new courthouse. Chief Judge Legg wrote that the courthouse is highly susceptible to bomb threats, and unlike modern buildings was not designed to prevent progressive collapse. It is a similar design to the Murrah Building in Oklahoma City.

Answer:
The Judiciary takes security concerns very seriously. Unfortunately, many existing federal buildings and courthouses do not meet all current security criteria such as progressive collapse, blast criteria and setbacks. To address these measures in existing buildings, the Judiciary and GSA must consider the cost-benefit of retrofitting, factors that cannot be changed (such as setback), and availability of limited resources where needs nationwide far exceed available funds.

Security concerns in existing buildings can often be addressed through other means rather than building a new courthouse. Every effort is made to mitigate security vulnerabilities wherever possible. Security barriers and bollards, and security equipment such as exterior cameras, can be installed. At the Baltimore courthouse, the U.S. Marshals Service advises that there are adequate wedge barriers and stationary bollards in place as well as other standard security measures such as screening stations, cameras, and court security officers.

(c) The courthouse has insufficient parking and places to unload prisoners, so prisoners must walk through a garage where they can encounter court personnel, witnesses, and the like.

Answer:
Generally, the existing sallyport provides secure access for the U.S. Marshals Service to transport, unload and load prisoners. In circumstances when a vehicle cannot be accommodated in the sallyport, the U.S. Marshals Service takes all necessary security precautions.

(d) The Baltimore courthouse only has one courtroom that can handle multi-defendant trials, which are increasingly needed to handle large gang and drug cases. Smaller courtrooms force defendants, witnesses and jurors to sit in very close proximity, and we know that this can lead to tragic and violent results.

Answer:
Judicial Conference policy permits only one special proceedings courtroom and only at district headquarters if there are at least four district judge courtrooms. This policy was adopted as a cost control measure, because of Congressional budgetary pressures and because the Judiciary recognizes the tight budgetary constraints within which the government must operate, and to be a good steward of public funds. The Baltimore Courthouse comports with this policy. If a multi-defendant proceeding must be conducted in a courtroom other than the special proceedings courtroom in the Baltimore courthouse or in other courthouses across the country, the U.S. Marshals Service provides for any additional security needs. While the courtrooms in the Baltimore courthouse are smaller than Judicial Conference *Design Guide* standards, this is the case in many courts across the country that were built before the *Design Guide* was adopted.

(e) Jury deliberation rooms are tiny and are not ventilated.

Answer:
Jury deliberation rooms in the Baltimore courthouse are ventilated and air-conditioned and are within an acceptable range of Judicial Conference *Design Guide* standards.

(f) Jury rooms exit into courtroom vestibules, where jurors may run into attorneys, witnesses, and families of criminal defendants.

Answer:
Operationally, jurors in Baltimore exit into public areas. Jurors can be escorted by court security officers to avoid improper contact and, where appropriate, may be provided access to restricted, secure circulation via the judges' elevator and corridor. While not optimal, these practices are employed in other courthouses that have similar constraints.

(g) Due to the building design and structural problems with the courthouse, the Baltimore courthouse is not able to construct new courtrooms.

Answer:
A new bankruptcy courtroom is currently under construction at the Baltimore courthouse. A conversion of two unused hearing rooms and chambers into an appropriate-sized magistrate judge courtroom and chambers is also planned for the future. While these courtrooms may have a lower ceiling height than the Judicial Conference *Design Guide* standard, it is not always possible in existing buildings to meet *Design Guide* standards due to structural limitations. At this time, the Judiciary does not anticipate that the Baltimore courthouse would be eligible for any other additional courtrooms until 2025 at the earliest.

9. Question:
Do you factor in security concerns at all when deciding when to recommend building a new courthouse? What weight do you give this factor?

Answer:
Yes. Under current Judicial Conference policy, however, a new courthouse is not recommended when space needs 15 years into the future can be met in the existing facility. If it is determined that a new project will be pursued, security is one of the criteria used to prioritize the project. It is currently 25% of a project's priority score.

10. Question:
What weight do you give to the factor that the Baltimore courthouse handles the largest petty offense and misdemeanor document [sic] in the country, because of the large number of federal facilities in Maryland, as well as the Baltimore-Washington Parkway, a federal highway?

Answer:
A court's aggregate workload factors, not a particular subset, determine the number of judges needed in a particular district; a determination is then made as to whether additional space is needed. The workload in the District of Maryland currently does not meet the Judicial Conference criteria for additional judgeships. While the District of Maryland may have a high petty offense and misdemeanor docket, it is not the highest in the country as of 2007, and those cases are handled primarily in the Greenbelt courthouse.

11. Question:
How much is the estimated cost in terms of reinvestment to bring the building to a good conditional level?

Answer:
GSA has shared a rough, preliminary estimate of approximately $80 million to address building conditions, but this information is dated. Because GSA has primary responsibility for determining the feasibility and costs of undertaking such projects, more current data can be obtained from GSA.

12. Question:
How much is the estimated cost in terms of mitigating a progressive collapse at the courthouse?

Answer:
GSA has shared a very rough, preliminary estimate of approximately $1.5 million to address progressive collapse mitigation, but this information is dated. Because GSA has primary responsibility for determining the feasibility and costs of undertaking such a project, more current data can be obtained from GSA.

13. Question:
How much is the estimated cost in terms of mitigating window blast loads?

Answer:
GSA has shared a rough, preliminary estimate of approximately $9.8 million to address window blast mitigation, but this information is dated. Because GSA has primary responsibility for determining the feasibility and costs of undertaking such a project, more current data can be obtained from GSA.

Jenkins

Questions for the Record from Senator Charles Grassley

1. In the GAO's 2003 report on district and appellate judges workload measures, you commented favorably on the design for updating the bankruptcy court case weights and suggested that it be used for updating the district court case weights as well. What did that bankruptcy judge design suggest and why did you think that it worked? Did the Judicial Conference take the GAO's suggestion?

   Answer:

   There were two reasons that we suggested the Judicial Conference use the bankruptcy court design for updating district court case weights. First, rather than moving immediately to the type of event-based study that was used for the 2004 district court case weights, the approved bankruptcy court methodology would have used a new time study to develop new bankruptcy case weights whose accuracy could be statistically calculated. Second, a subsequent research phase would have used the new weights as an anchor for assessing the feasibility of developing future weights using an event-based methodology. The development of new case weights based on a new time study could provide a sound foundation on which to assess the merits of a future event-based study to update the weights resulting from the time study. The Judicial Conference did not adopt this approach for developing the 2004 district court case weights. Instead, it implemented its original event-based research design that did not include data on the actual non-trial time that judges spent on specific types of cases.

2. Did the FJC ever suggest that the Judicial Conference utilize a time-based methodology when assessing court needs? Did the Judicial Conference ever [accept] the FJC's advice? Why or why not?

   Answer:

   We know of no documentation that directly indicates whether the FJC did or did not suggest a time-study for updating the 1993 district court case weights. However, one year prior to approving the design for updating the district court case weights, the Judicial Conference had adopted a time-study approach for updating the bankruptcy court case weights. In its 2005 final report on how the 2004 district court case weights were developed,[1] the FJC states that in June 1999 the Subcommittee on Judicial Statistics asked the FJC to investigate options for a new case-weighting study. The report goes on to state: "Over the next several years, FJC staff provided the Subcommittee with information about various approaches to case weighting and the options for conducting a study in the district courts . . . In December 2002, the Subcommittee considered proposals for a new case-weighting study in the federal district courts. Written materials, prepared

[1] Federal Judicial Center, *2003-2004 District Court Case Weight Study: Final Report to the Subcommittee on Judicial Statistics of the Committee on Judicial Resources of the Judicial Conference of the United States* (Washington, D.C., 2005)

by the FJC and AO, presented different options for conducting a study. The Subcommittee wanted a study that could produce case weights in a relatively short period of time without imposing a substantial record-keeping burden on district judges." The event-based approach that was adopted fulfilled the Subcommittee's requirement. A time study would have required more judge time to complete, but would also have resulted in weights whose accuracy could be objectively assessed.

3. In your testimony, your principal point about the workload measures used to assess judgeship needs is that it is not possible to compute a statistical measure of their accuracy. Why is this important?

The case weights are intended to represent the national average amount of judge time that specific types of cases require. It is important to have some valid means of measuring how representative the data from the cases of each type used in the study are of the data from the universe of cases of each type filed in the district courts as a whole. For example, the FJC report (p. 6) on the development of the new weights notes that the weight for espionage and terrorism (1.08) may underestimate the average burden associated with espionage and terrorism cases because the weight is based on a small sample of cases (12) that probably does not represent the range of case-processing activity found in a larger sample size. However, the data used for the new case weights does not permit the FJC to statistically estimate what that error may be.

4. Just how accurate are adjusted case filings as a measure of courts of appeals judges' workload?

Neither we nor the judiciary have any empirical basis for assessing the accuracy of adjusted case filings as a measure of courts of appeals judges' case-related workload. Adjusted filings include all cases filed in the courts of appeals, with the exception of reinstatements, which are excluded. The adjusted filings workload measure assumes that all cases filed in the courts of appeals, with the exception of *pro se* cases, require the same amount of judge time. This is simply not the case, and the Judicial Conference recognizes this. For example, some cases result in published opinions, others do not; some are scheduled for oral argument, and some are not. It is likely that *pro se* cases take less judge time than non *pro se* cases. However, the judiciary has offered no empirical data to indicate that *pro se* cases generally require one-third as much judge time as non *pro se* cases, as assumed in the adjusted filing workload measure. As we stated in our 2003 report and in our testimony statement, adjusted case filings essentially reflect a policy decision regarding the level of appellate court case filings that are appropriate for assessing judgeship needs in the courts of appeals. It is not a discrete, empirically-based measure of the judge time that different types of cases may require. The Judicial Conference uses adjusted filings because it has been unable to reach consensus on any alternative method of measuring the case-related workload of courts of appeals judges.

Questions for the Record from Senator Jeff Sessions

1. I am particularly interested in the use of magistrate judges as a way to make a court more efficient. I would note, as an example, Arizona's 2007 filings show that approximately 47% of all filings were immigration related and prisoner petitions. That's a large number and is exactly the sort of cases that Arizona's 12-full-time magistrate judges can assist a court in handling.

    a. Is it possible to quantitatively measure the contribution of magistrate, and even senior judges, in reducing the workload of Article III district judges in specific districts?

    Yes, it is. First, data can be obtained on the cases assigned to and disposed by magistrate and senior judges. Using the case weights for the assigned cases, it is possible to calculate the weighted caseload disposed by magistrate and senior judges. This is a conservative measure of magistrate judges' contribution to reducing the workload of Article III district judges for two reasons. First, magistrate judges may handle some judicial functions for criminal felony and some civil cases, but not be responsible for the entire case from beginning to end. For example, magistrate judges have limited authority in criminal felony proceedings. They can preside at the initial arraignment and bond-setting hearings, but cannot preside at trial, or sentence those convicted of felonies. Magistrates may also preside over many aspects of civil cases, such as depositions, but cannot preside over civil trials without the consent of the parties to the case. Although these contributions cannot be adequately measured using the case weights, they do reduce the workload on article III district judges.

    b. Has GAO ever assess the contribution of magistrate and senior judges using the case weights?

    Yes, we have. In 1999, we used the case weights for 1997 case filings to estimate the contribution of magistrate and senior judges for 21 of the districts that had judgeship requests pending before Congress at that time.[2]

    The weighted filings assigned to senior district and magistrate judges varied widely among the 21 districts--ranging from about 3 percent to about 50 percent of the total weighted filings per authorized judgeship in each district. Under the policies of the Judicial Conference at the time, a district court could generally be considered for additional judgeships if its weighted filings were at least 430 per authorized judgeship.

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[2] GAO, *Federal Judiciary: Information on the Weighted Filings Assigned to Senior District and Magistrate Judge in Fiscal Year 1997 in 21 District Courts*, GAO/GGD-99-37R (Washington, D.C.: March 26, 1999).

Deducting the weighted filings assigned to senior district judges and magistrate judges brought the fiscal year 1997 weighted filings per authorized judgeship below this general 430 threshold in either 3 or 6 of the 21 district courts, depending upon the case weight value assigned to certain categories of cases that had 2 possible case weights. District courts have some discretion in how they use magistrate judges to manage their caseload. Magistrate judges may be full or part-time and are a less expensive and more flexible resource than Article III judges who have life tenure. There is no minimum number of cases that senior judges are required to accept, and there is no guarantee that the contribution of senior judges will remain constant over time. Age, for example, is one factor that may affect the number of cases filings that senior district judges are willing and able to accept. However, such calculations can provide another useful analysis in assessing the need for additional district court judgeships and how courts are using the totality of the judicial resources in the district.

2. In your opinion, what are the merits and limitations of the methodology used by the Judicial Conference to develop the current district court case weights? Also, why should we care whether some statistical measure of accuracy cannot be calculated? Of what value is it?

Answer:

First, let me say that we have not reviewed in detail the FJC's report on how the 2004 weights were actually developed. Our comments are based on our 2003 review of the research design and a quick review of the FTC documentation on the actual study.

The FJC described the methodology used to develop the 2004 case weights as an "event-based" study. In other words, that the total judge time spent on cases could be viewed as a function of the number and types of events during the course of a case from filing to disposition that required judge time. As described by the FJC in its 2005 report on the method used to develop the case weights, the study required three types of information:

- *case characteristics*—used to organize individual cases into case types and to identify civil and criminal cases with special characteristics that place additional demands on judges' processing time;
- *event frequency*—used to profile the frequency of activities requiring judicial attention in each of the defined case types; and
- *judicial time*—estimates of the average time required for judges to handle the events leading to disposition of various case types.

The data used for both case characteristics and event frequency were obtained from databases maintained by the Administrative Office of the U.S. Courts and based on data reported to the AO by individual district courts. Overall, using these data was reasonable, although we did not review how the FJC assessed the reliability and accuracy of the data in these databases. The virtue of using these data was that it did not require statistical sampling.

Another merit of the study approach was that it included data on judge time for in-court trial proceedings for a very large number of trials from all 94 districts for the period 1996 through 2002.—37,010 civil trials, 37,576 single defendant criminal trials, and 11,460 multidefendant criminal trials. Generally, trial proceedings are defined for reporting purposes in the database as contested proceedings before a court or jury at which evidence is introduced. However, detailed data were not available for non-trial proceedings, including arraignments/pleas, sentencing hearings, motion hearings, pretrial conferences, and supervision revocation hearings. As the FJC report noted: "These data were reported in aggregate form, which does not permit a direct accounting of the time spent on different type of proceedings in different types of cases. Only the total time that a judge spends each day in non-trial proceedings is reported, along with a count of the non-trial proceedings by category." (FJC report, p. 19) Nor were data available on the amount of time that judges spent on different types of cases in chambers. The source of judicial time spent on these non-trial and in-chambers activities came from "judgment-based estimates provided by district judges." (FJC report, p.11).

Principal Limitations. Our principal concern is that the data on the majority of time that judges spend on cases--nonevidentiary court proceedings and all out-of-court time—is based on the estimates of a selected group of about 100 judges who met in 12 separate groups for structured discussions to develop those estimates. These judges were chosen for their experience and not because they were representative of all district court judges. The accuracy of the time estimates of this non-trial judge time is dependent upon the experience and knowledge of the participating judges and the accuracy and reliability of the judges' recall about the time required for different events in different types of cases. It is asking a lot of anyone, even experienced judges, to recall with any precision how much time they spent on average on specific types of cases. And, in fact, feedback received from the two early meetings of the judges indicated that they found it easier to make adjustments to the default times developed by the FJC in percentage terms rather than in hours or minutes (p. 32 of FJC report on 2004 case weights). This suggests there may have been some difficulty in estimating the judge time not captured by the standard monthly reports on in-court time. Generally, the "Delphi" technique used to develop these estimates is most appropriate when more precise analytical techniques are not feasible and the issue could benefit from subjective judgments on a collective basis. However, more precise analytical techniques are and were available to develop the 2004 district court case weights—namely, a time study in which judges recorded the time they spent on different types of cases.

The Value of a Statistical Measure of Error. It is important to have an objective, empirical measure of the potential error in the final weights for each case type. The number of cases of each type varies from a relatively few (such a large antitrust cases) to thousands (immigration cases). Data are not usually available for the universe of all cases of each type. A statistical measure of error is a means of estimating how representative of the whole population the sample data used for analysis may be. For example, the FJC report (p. 6) on the development of the new weights notes that the weight for espionage and terrorism (1.08) may underestimate the average burden

associated with espionage and terrorism cases because the weight is based on a small sample of cases (12) that probably does not represent the range of case-processing activity that would be found in a larger sample size. However, the data used for the new case weights does not permit the FJC to statistically estimate what that sampling error may be.

3. The Judicial Conference has stated that developing a more precise, common workload measure for the circuit courts is difficult for many reasons, including the wide variation in the way that each court processes its caseload. Do you believe that adjusted filings are the best we can do?

Answer:

We agree that developing a common case-related workload measure for the courts of appeals is difficult, given the variety of ways that the individual courts of appeals process their cases. However, adjusted case filings is an almost meaningless measure of the case-related workload of courts of appeals judges, based as it is on the unrealistic assumption that all cases filed in the courts of appeals (excluding reinstatements and *pro se* cases) require the exact same amount of judge time. As the Judicial Conference recognizes, judge time clearly varies based on such variables as whether the case is scheduled for oral argument, there is a published opinion, or the case is settled as part of a court's settlement procedures.

District courts are not uniform in their case handling procedures either. Some have more aggressive case settlement programs than others, for example, and the proportion of civil cases tried by magistrates varies among districts. These variations can affect the time that Article III district judges spend on specific types of cases. A time study that calculates the "average" relative time that judges spend on cases reflects these differences. In some courts, the average time for a specific type of case will be less than the average reflected in the case weight, and in other courts, it will be more, reflecting differences in the processes used for case disposition.

However, if the differences among the courts of appeals are so great that no method could reasonably be applicable to all, then perhaps the judiciary could consider developing separate case-related measures for each court, reflecting its specific structure and procedures. An FJC study in 2001 suggested this may be appropriate, at least with regard to the D.C. Circuit. The FJC found that the D.C. Circuit received the vast majority of administrative agency appeals filed in the United States and that the time required for these cases was different than for other types of cases, and thus the adjusted filings measure may not be an appropriate measure for assessing judgeships in that Circuit. However, because no information was available on judges' actual time expenditures, there was no empirical basis for suggesting a specific alternative to adjusted case filings for assessing the D.C. circuit's judgeship needs. However, developing separate workload measures for each of the courts of appeals could make it very difficult to reliably compare workload across the courts of appeals, and using a separate measure for each

court would in effect "embed" their existing case processing procedures in the resulting workload measure, regardless of how inefficient those processes may be.

4. In the District of Arizona and other border districts where immigration cases are a sizeable part of the docket, please detail the time expended for the routine immigration case and how much of that time is expended by magistrate judges as opposed to a U.S. district judge.

Answer:

We do not have any data on the comparative time spent by magistrate judges and Article III district court judges on immigration cases in this or any other district. The 2004 case weights are designed to reflect only district court judge time spent on cases. The average case nationally is weighted at 1.0 (firearms and "all other felonies" are the two case types with weights of 1.0). The weights are relative to one another. For example, a case with a weight of 0.50 would be expected to take half as much time as the average case with a weight of 1.0. The 2004 case weights assign a weight of 0.47 for the following immigration offenses: illegal entry and re-entry; subsequent illegal entry; fraudulent citizenship, and "other" immigration offenses. Thus, immigration cases with a weight of 0.47 would be expected to take about one-quarter less time than the average case with a weight of 1.0. In describing its development of the 2004 weights, the FJC said that the median case (half required more time and half less) required 442 minutes of judge time. Thus, on the basis of these data, an immigration case with a weight of 0.47 would require on average about 208 minutes of district judge time (442 * 0.47). Alien smuggling cases, including "bringing in and harboring aliens" and "aiding or assisting certain aliens to enter [the U.S.] are weighted at 0.57, and would require on average about 252 minutes of district judge time (442 * 0.57).

Q

Questions for the Record from Senator Arlen Spector

1. In your testimony you stated that neither the GAO nor the Conference can assess the accuracy of the adjusted case filings measure of the case related workload of courts of appeals judges because there is no empirical data available. What do you think a good alternative to the adjusted filings measure should be?

Answer:

Adjusted case filings is a gross measure of court of appeals judges case-related workload. It assumes that despite the differences in the judge time required for cases for which there

is oral argument or which result in published opinions, all cases, other than *pro se* cases, require an identical amount of judge time. A variety of alternatives have been considered by the Federal Judicial Center, but none have been adopted by the Judicial Conference because of concerns about their applicability to all courts of appeals.

In our view, it is not the specific measure but the method by which it is developed that is most important. The measure should be based on sound research methods, using actual data on the time courts of appeals judges expend on different types of cases and could be based on multiple year data if it is believed that required judge-time varies significantly over time. The method should permit an objective measure of the accuracy of the resulting workload measure(s). If the differences among the individual courts of appeals are so great that no method could reasonably be applicable to all, then perhaps the judiciary could consider developing separate case-related measures for each court, reflecting its specific structure and procedures. An FJC study in 2001 suggested this may be appropriate, at least with regard to the D.C. Circuit. The FJC found that the D.C. Circuit received the vast majority of administrative agency appeals filed in the United States and that the time required for these cases was different than for other types of cases, and thus the adjusted filings measure may not be an appropriate measure for assessing judgeships in that Circuit. However, because no information was available on judges' actual time expenditures, there was no empirical basis for suggesting a specific alternative to adjusted case filings for assessing the D.C. circuit's judgeship needs. It is worth noting that developing separate case-related workload measures for each court of appeals could make it extremely difficult, if not impossible, to reasonably and reliably compare their workloads and the relative efficiency with which they dispose of their case filings.

The report states that the new approved research design by the Judicial Conference's Subcommittee on Judicial Statistics would not develop an accurate statistical measure of the final case weights because it would be based on consensus estimates. Can you expand on why consensus estimates are an inaccurate measure?

Answer:

To develop the 2004 district court case weights, the data used to measure the time that judges expend on different types of cases involved two types of data. The first was actual data from monthly reports on the time spent in trial proceedings—defined as contested proceedings before a court or jury at which evidence is introduced. Second, the amount of non-trial time expended on different types of cases, including time in chambers, was based on the estimates of a selected group of about 100 judges who met in 12 separate groups for structured discussions to develop those estimates. These judges were chosen for their experience and not because they were representative of all district court judges. The accuracy of the time estimates of this non-trial judge time is dependent upon the experience and knowledge of the participating judges and the accuracy and reliability of the judges' recall about the time required for different events in different types of cases. It is asking a lot of anyone, even experienced judges, to recall with any precision how much time they spent on average on specific types of cases. And, in fact, feedback received from the two early meetings of the judges indicated that they found it easier to make adjustments to the default times developed by the FJC in percentage terms rather than in hours or minutes (p. 32 of FJC report on 2004 case weights). This suggests there may have been some difficulty in estimating the judge time not captured by the standard monthly reports on in-court time. Generally, the "Delphi" technique used to develop these estimates is most appropriate when more precise analytical techniques are not feasible and the issue could benefit from subjective judgments on a collective basis. However, more precise analytical techniques are and were available to develop the 2004 district court case weights—namely, a time study in which judges recorded the time they spent on different types of cases. These consensus data for non-trial time were not based on a collection of actual data regarding the non-trial time that judges spent on specific types of cases, which is the majority of time that judges spend on cases. Thus, it is not possible to use these consensus estimates to calculate a measure of confidence in the accuracy of the 2004 case weights.

2. The report states: "For the purposes of applying the national weights to individual districts, the methodology [used to develop the 1993 district court case weights] assumed two things: (1) that the district's judges were typical of district judges as a whole and (2) that the district's case of any given type were typical of that case type as a whole. This may or may not be true, but these are reasonable assumptions given the purpose of the study—to develop weights based on national averages, not to develop weights for individual districts or judges.

Why are these reasonable assumptions? Developing case weights for individualized judges may be a lengthy process, but, why not develop weights for each district?

Answer:

These are reasonable assumptions based on accepted statistical sampling techniques designed to minimize any potential bias in the selection of the judges or cases included in the study. A properly designed and implemented sampling methodology minimizes the probability that the cases and judges in the study are atypical. The methodology used to develop the 1993 case weights was appropriately designed to ensure all district judges and all case types could potentially be included in the sample. The staggered entries of districts into the study ensured the selection of cases included in the sample were taken throughout the year, reducing or eliminating bias due to seasonal variation in case filings. Every district court judge could potentially have been a participant in the study.

There are a couple of reasons why it may be desirable to develop case weights that reflect the national average judge time required for different types of cases rather than develop case weights for each of the 94 district courts. First, a single national measure provides a common basis for reasonably comparing courts across the nation when assessing their workload. If each district court had its own caseload measure, it would be very difficult, if not impossible, to compare courts across the nation. This is also a disadvantage of potentially developing separate workload measures for each of the courts of appeals. Second, a case weight based on the national average can potentially encourage efficiency in those courts whose judges may spend more than the national average amount of time processing their caseload. Developing case weights for each individual court essentially would reflect and "embed" in each court's case weights their individual methods of processing their caseload, regardless of how inefficient it may be.

SUBMISSIONS FOR THE RECORD

Committee on Space and Facilities
Judicial Conference of the United States

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Frank M. Hull
William P. Johnson
Alan Kay
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July 8, 2008

Honorable George Z. Singal
Chairman, Committee on Judicial Resources
Judicial Conference of the United States
Edward T. Gignoux Federal Courthouse,
2nd Floor
156 Federal Street
Portland, ME 04101-4152

Dear Judge Singal:

Thank you for consulting me regarding space and facilities questions that were submitted by members of the Senate Judiciary Committee in conjunction with the Committee's hearing "Responding to the Growing Need for Federal Judgeships: The Federal Judgeship Act of 2008." As you submit the answers to the questions, I ask that you also submit this letter for inclusion in the hearing record.

I am concerned that several of the space and facilities questions incorrectly attribute to the Administrative Office of the United States Courts decisions and actions of the Judicial Conference. As the Judicial Conference Committee on Space and Facilities has dealt with the space concerns of various courts, I, as Chairman, have had numerous conversations with Federal Judges across the country including those who sit in the Garmatz Courthouse in Baltimore (which is the focus of many of the questions). As the courts are aware, space and facilities decisions are made by the Committee and the Conference, and implemented by the Administrative Office of the United States Courts at the direction of the Committee and the Conference.

Issues that have been stated in several questions as concerns with the Administrative Office of the United States Courts appear in fact to be concerns with the policy of the Judicial Conference and its Committee on Space and Facilities. They have thus been addressed in this manner.

Sincerely,

Joseph F. Bataillon
Chair

BENJAMIN L. CARDIN
UNITED STATES SENATOR
MARYLAND

United States Senate
Washington, DC 20510–2004

May 23, 2008

James C. Duff
Director
Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE
Washington, DC 20544

Dear Director Duff:

I am writing regarding S. 2774, the Federal Judgeship Act of 2008.

I voted against this legislation during our Senate Judiciary Committee markup on May 15, 2008. Several Senators, including myself, expressed serious misgivings about this legislation during its markup. Given these concerns, Judiciary Committee Chairman Patrick Leahy agreed not to seek floor time on this measure until we held a public hearing on this measure before our Subcommittee on Administrative Oversight and the Courts.

I am therefore requesting additional information from your office – in writing for the public record – before the Senate Judiciary Committee holds this hearing.

I understand that under current budget rules, the cost of this bill is purported to equal only the salaries to be earned by the new judges.

First, therefore, please provide me with: 1) the cost of creating each new District judgeship in the bill, and 2) the cost of creating each new Circuit judgeship in the bill. In each case please provide the breakdown of the costs by salary, support personnel, court operations, security, facilities, and any other major categories. Please distinguish between first-year costs of creating a judgeship and the annual, permanent recurring costs for the life of judges under this bill. Please break down any differences in cost between permanent, temporary, temporary made permanent, and extension of temporary judgeships in the pending legislation.

I also understand that the recommendations made by the Judicial Conference of the United States are largely based on the caseload of judges, and also consider factors such as senior and magistrate judge assistance, geographical factors, unusual caseload complexity, and temporary caseload increases or decreases. The Judicial Conference does not appear to consider as a factor the space available for new chambers in its courthouses.

Reply To:
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www.cardin.senate.gov

Reply To:
☐ Tower 1 Suite 1710
100 S. Charles Street
Baltimore, MD 21201
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Second, therefore, please provide me with: 1) an analysis of the total amount of new chambers and other space required for the new judgeships in this legislation; 2) an analysis of the space available in existing courthouses to meet these new space needs for new judgeships created by this legislation; and 3) an analysis of courthouses that would have to be substantially renovated in order to meet the new space needs of new judgeships in a particular District or Circuit; and 4) an analysis of new courthouses that would have to be constructed in order to meet the new space needs of new judgeships in a particular District or Circuit. Please provide an estimate of the percentage of new space these new chambers would constitute as a proportion of existing courthouse space and facilities. Please provide an estimate of how much of other types of spaces beyond the courtroom (i.e. support staff, security) must expand to accommodate these new judgeships, and an estimate of this figure in proportion to existing courthouse space.

Third, please provide me with an analysis of the number of federal judges eligible for senior status in the next decade. Please perform an analysis as to the impact these retirements will have on courthouse space and capacity, and an estimate as to the amount of new courthouse space will be needed to accommodate senior judges (both for those that retain chambers, and those that do not).

Finally, please provide me with a detailed analysis of the existing space needs of the federal courthouses for the U.S. District of Maryland – for both the Baltimore Division and the Greenbelt Division – and the projected space needs of these courthouses to accommodate judges taking senior status over the next decade.

I trust you will agree with me that Congress must have the information it needs to render an independent judgment on the request of the Judicial Conference.

Please feel free to contact me or Bill Van Horne, my Judiciary Committee Counsel, at (202) 224-4524 regarding this request.

I look forward to your timely response.

Sincerely,

Ben Cardin

Benjamin L. Cardin
United States Senator

Cc: Senator Patrick Leahy
Senator Arlen Specter
Senator Charles Schumer
Senator Jeff Sessions

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

June 13, 2008

Honorable Benjamin L. Cardin
United States Senate
Washington, DC 20510

Dear Senator Cardin:

I write in response to your letter of May 23, 2008, regarding S. 2774, the Federal Judgeships Act of 2008, in which you requested information about the costs of judgeships in the bill, the impact of the new judgeships on the Judiciary's space and facilities needs, and space and facilities needs in the District of Maryland.

First, in requesting information about the cost of each new district and circuit judgeship in the bill, you have asked for the Judiciary's estimate of both mandatory and discretionary start-up and recurring costs. The Judiciary estimates the cost of the judgeships contained in the bill to be $51.3 million in one-time start-up costs requiring a discretionary appropriation, and $52.4 million in annual recurring costs of which $40.1 million is for discretionary costs and $12.3 million is the mandatory appropriation needed for judges' compensation. The cost estimate is based on the 66 new judgeships proposed in the bill – 14 circuit and 52 district. There are no additional costs to the Judiciary associated with the conversion of temporary judgeships to permanent judgeships in the Districts of Hawaii, Kansas, Arizona, New Mexico, and Missouri Eastern, or the extension of the temporary judgeship in Ohio Northern to November 2011. Accordingly, our cost estimate addresses only the 66 new judgeships proposed in S. 2774.

Discretionary appropriations for start-up costs would be required soon after enactment of S. 2774 to provide sufficient lead time to perform space buildout for those courts in which new courtrooms and chambers are needed. Appropriations for recurring expenses would not be needed until at least one year after enactment because of the lengthy process associated with filling new judgeships.

Start-up Costs: Start-up costs include space buildout costs as well as phones, lawbooks, and furniture expenses. Space buildout costs comprise the bulk of the $51.3 million in estimated start-up costs – $43.2 million[1] – with other one-time costs accounting for the remaining $8.1 million. In formulating a cost estimate for S. 2774, Administrative Office staff worked closely with the circuit and district courts to determine the availability of courtroom and chambers space needed to house the 66 new judgeships. Based on our analysis, courtroom and chambers space is currently available to house 5 of the 14 circuit judgeships, and 37 of the 52 district judgeships. The remaining 9 circuit judgeships would necessitate the acquisition of resident and visiting chambers space at an estimated one-time cost of $11.0 million (approximately $900,000 per resident chamber, approximately $321,000 per visiting chamber). The remaining 15 district judgeships would require space buildout for courtrooms and chambers at an estimated one-time cost of $32.3 million (approximately $1.4 million per courtroom, approximately $750,000 per chambers).

Recurring Costs: Recurring costs associated with each new judgeship include the salaries and benefits for the judge and support personnel, space rent and operating costs, and court operation costs. Total annual recurring costs for the 14 circuit judgeships are projected to be $11.2 million ($797,500 per judgeship). Total annual recurring costs for the 52 district judgeships are estimated to be $41.2 million ($793,200 per judgeship).

Detailed information on start-up and recurring costs is included in Enclosure 1.

Second, you have requested information regarding the space and facilities needs that would result from the new judgeships in the bill. Based on an assessment of space available in the likely locations for these new judges, we estimate that 33 chambers would need to be constructed. In addition, 15 courtrooms would need to be constructed for district judges. No additional courtrooms would need to be constructed for appellate judges. No additional courthouses would need to be constructed. Space for support staff, such as judicial assistants and law clerks, is included in the estimates for chambers, and space for jurors, attorneys, courtroom assistants, and the like are included in the estimates for courtrooms. Other staff, such as clerks' office staff or security staff, generally do not need additional dedicated space as a result of a new judgeship.

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[1] The construction costs are necessarily current nationwide estimates only. They may change based on market conditions at the time of the buildouts (including construction cost estimates and rent estimates), and the exact duty station of the judge once identified. These are the one-time costs. All costs are in present-day dollars.

These new chambers and courtrooms would increase our space inventory of 39 million square feet, which includes both courthouses and leased facilities and leased space, by approximately 203,000 square feet, or 0.5 percent. The costs associated with the construction discussed here are included in the cost estimates provided above.

With regard to these estimates, in certain circuits and districts (i.e., those with more than one court facility or those that cover a very wide geographical area), it is impossible to predict with certainty where a judge will be stationed, because the duty station depends largely on where the individual appointed to the judgeship resides. Detailed information about these space requirements by circuit and city is included in Enclosure 2. That table reflects the chambers and courtrooms currently available in the locations affected and any new spaces that would need to be constructed.

Third, you have requested information regarding senior judges. Within the next decade, there will be 639 federal judges eligible for senior status, including the 82 active judges that are eligible for senior status as of the beginning of this year. We estimate that approximately 1.7 million additional square feet may be needed to accommodate these judges' chambers and courtrooms. For the district judges, this assumes one-third of the judges will need a chambers built and one-fourth of the judges will need a courtroom constructed. For the appellate judges, this assumes one-third of the judges will need a non-resident and resident chambers constructed and no additional courtrooms will be needed.

With regard to these estimates, it is impossible to predict with precision the space needs of senior judges. That is because it is impossible to determine in advance exactly how many judges among those eligible will take senior status, the exact location of their circuit or district and duty station, and the caseload they will carry. The chambers and courtroom space that a senior judge requires may be determined in part by the caseload the senior judge carries, and whether additional space must be built to accommodate that senior judge depends on whether the space required by that judge is already available at the duty station where the judge performs his work. Detailed information about the number of judges eligible to take senior status and the estimates of their space needs is included in Enclosure 3.

Finally, you have requested a detailed analysis of the existing and projected space needs for the federal courthouses in the U.S. District Court for the District of Maryland. I understand that the Court has provided your staff with a copy of the most recent draft report reflecting this analysis.

I hope this information is helpful. If the Administrative Office can be of further assistance, please contact Cordia A. Strom, Assistant Director for Legislative Affairs, at 202-502-1700.

Sincerely,

James C. Duff
Director

Enclosures

JUDICIARY COST ESTIMATE FOR S.2774, THE FEDERAL JUDGESHIP ACT OF 2008

Enclosure 1

		START-UP COSTS PER JUDGESHIP		TOTAL, START-UP	ANNUAL RECURRING COSTS PER JUDGESHIP				TOTAL, RECURRING
Type of Appropriation		Discretionary	Discretionary	Discretionary	Mandatory	Discretionary	Discretionary	Discretionary	Mand./Disc.
P=Permanent Judgeship T=Temporary Judgeship	# of Judgeships	Phones, Lawbooks, Furniture	Space Buildout[1]	Total Start-up Costs Per Judgeship	Judge Salary and Benefits	Support Staff Salaries and Benefits	Court Operations	Space Rent & Operating Costs	Total Recurring Costs Per Judgeship
CIRCUIT JUDGESHIPS									
First Circuit (P)	1	$ 132,257	$ 1,221,461	$ 1,353,718	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
Second Circuit (P)	1	$ 132,257	$ 1,221,461	$ 1,353,718	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
Second Circuit (P)	1	$ 132,257	$ 1,221,461	$ 1,353,718	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
Third Circuit (P)	1	$ 132,257	$ -	$ 132,257	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
Third Circuit (P)	1	$ 132,257	$ -	$ 132,257	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
Sixth Circuit (P)	1	$ 132,257	$ 1,221,461	$ 1,353,718	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
Eighth Circuit (P)	1	$ 132,257	$ 1,221,461	$ 1,353,718	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
Eighth Circuit (P)	1	$ 132,257	$ 1,221,461	$ 1,353,718	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
Ninth Circuit (P)	1	$ 132,257	$ 1,221,461	$ 1,353,718	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
Ninth Circuit (P)	1	$ 132,257	$ 1,221,461	$ 1,353,718	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
Ninth Circuit (P)	1	$ 132,257	$ 1,221,461	$ 1,353,718	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
Ninth Circuit (P)	1	$ 132,257	$ -	$ 132,257	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
Ninth Circuit (T)	1	$ 132,257	$ -	$ 132,257	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
Ninth Circuit (T)	1	$ 132,257	$ -	$ 132,257	$ 195,116	$ 399,078	$ 83,566	$ 119,722	$ 797,482
TOTAL CIRCUIT	**14**	**$ 1,851,598**	**$ 10,993,149**	**$ 12,844,747**	**$ 2,731,624**	**$ 5,587,092**	**$ 1,169,924**	**$ 1,676,108**	**$ 11,164,748**
DISTRICT JUDGESHIPS									
New York-Eastern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
New York-Eastern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
New York-Eastern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
New York-Western (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
New Jersey (T)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
South Carolina (P)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Virginia-Eastern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Texas-Eastern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Texas-Southern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Texas-Southern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Texas-Western (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Indiana-Southern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Iowa-Northern (T)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Minnesota (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Missouri-Western (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Nebraska (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Arizona (P)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Arizona (P)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Arizona (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226

Enclosure 1

		START-UP COSTS PER JUDGESHIP		TOTAL, START-UP	ANNUAL RECURRING COSTS PER JUDGESHIP				TOTAL, RECURRING
Type of Appropriation		Discretionary	Discretionary	Discretionary	Mandatory	Discretionary	Discretionary	Discretionary	Mand./Disc.
P=Permanent Judgeship T=Temporary Judgeship	# of Judge-ships	Phones, Lawbooks, Furniture	Space Buildout[1]	Total Start-up Costs Per Judgeship	Judge Salary and Benefits	Support Staff Salaries and Benefits	Court Operations	Space Rent & Operating Costs	Total Recurring Costs Per Judgeship
Arizona (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Arizona (T)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
California - Eastern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
California - Eastern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
California - Eastern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
California - Eastern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
California-Central (P)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
California-Central (P)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
California-Central (P)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
California-Central (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
California-Central (T)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
California-Northern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
California-Northern (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
California-Northern (T)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Idaho (T)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Nevada (T)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Oregon (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Oregon (T)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Washington-Western (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Colorado (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Colorado (T)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
New Mexico (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
New Mexico (T)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Utah (T)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Alabama-Middle (T)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Florida-Middle (P)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Florida-Middle (P)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Florida-Middle (P)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Florida-Middle (P)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Florida-Middle (T)	1	$ 119,178	$ -	$ 119,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Florida-Southern (P)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Florida-Southern (P)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
Florida-Southern (T)	1	$ 119,178	$ 2,150,000	$ 2,269,178	$ 184,876	$ 422,547	$ 57,265	$ 128,538	$ 793,226
TOTAL DISTRICT	52	$ 6,197,230	$ 32,250,000	$ 38,447,230	$ 9,613,552	$ 21,972,444	$ 2,977,780	$ 6,683,976	$ 41,247,752
TOTAL	66	$ 8,048,828	$ 43,243,149	$ 51,291,977	$ 12,345,176	$ 27,559,536	$ 4,147,704	$ 8,360,084	$ 52,412,500

[1]Space buildout is needed only in the circuits/districts without sufficient courtrooms and/or chambers for new judgeships.

Enclosure 1 - Page 2 of 2

Space Requirements for Proposed New Judges - S. 2774
Cost Estimates for Space Requirements as of June 2008

Category/Work Description	Estimate
Estimated Number of Additional Appeals Chambers Needed (permanent & visiting)	18
Estimated TI Build out for Appeals Chambers (factor $1.2M for permanent and visiting combined)	$10,993,148
Estimated Number of Additional District Chambers Needed	15
Estimated TI Build out for Chambers (factor $.75M each)	$11,250,000
Estimated Number of Additional Courtrooms Needed	15
Estimated TI Build out for Courtrooms (factor $1.4M each)	$21,000,000
TOTAL Estimated one time costs	$43,243,148

RSF to be built out for Proposed new Judges	202,863
Percentage of Judiciary Total Rentable Square Footage	0.51%

General Notes:

Costs are current nationwide estimates only. They can change based on market conditions at the time of the build-outs (including construction cost estimates and rent estimates), and the exact location of the judgeship.

These are one time costs: Costs do not include additional rent, telephone costs, technology costs, furniture costs or support staff space costs (unless otherwise noted on detail sheet).

Convention: Costs to construct new chambers and courtrooms are included in these estimates in all cases if construction appropriations for a new courthouse have not been provided at all or have only been partially provided (Ft Pierce, Cedar Rapids, Salt Lake City). Where a new courthouse (Buffalo, Las Cruces) is under construction, it is assumed the new courthouse will accommodate the new judge.

The term Rentable Square Feet is defined as space that includes the tenant's space including the tenant's proportional share of the common areas such as rest-rooms, exits, stairs, lobbies and related spaces.

Enclosure 2

Space Requirements for New Judges as proposed under S. 2774

CIR	DIST	Proposed Judgeships	Type of Appointment	City	State	Description	Estimated TI Buildout for Chambers	Estimated TI Buildout for Courtroom factor $1.4M ea	Total Project One Time Costs
1	Circuit	1	(1) permanent	TBD	TBD	Requires 1 new resident and non-resident chambers	$1,221,461	$0	$1,221,461
2	Circuit	2	(2) permanent	TBD	TBD	Requires 2 new resident and non-resident chambers	$2,442,922	$0	$2,442,922
2	NYE	3	(3) permanent	Brooklyn	NY	3 Courtrooms & chambers available	$0	$0	$0
2	NYW	1	(1) permanent	Buffalo	NY	1 Courtroom & chambers available in new courthouse under construction	$0	$0	$0
3	Circuit	2	(2) permanent	TBD	TBD	2 Chambers available	$0	$0	$0
3	NJX	1	(1) new temporary	Camden or Trenton	NJ	1 Courtroom & chambers available	$0	$0	$0
4	SCX	1	(1) permanent	Greenville	SC	Requires 1 new courtroom and chambers	$750,000	$1,400,000	$2,150,000
4	VAE	1	(1) permanent	Alexandria	VA	1 Courtroom & chambers available	$0	$0	$0
5	TXS	2	(2) permanent	Laredo	TX	1 Courtrooms & chambers available	$0	$0	$0
				McAllen	TX	1 Courtrooms & chambers available	$0	$0	$0
5	TXE	1	(1) permanent	Sherman	TX	1 Courtroom & chambers available	$0	$0	$0
5	TXW	1	(1) permanent	Del Rio or El Paso	TX	1 Courtroom & chambers available	$0	$0	$0
6	Circuit	1	(1) permanent	TBD	TBD	Requires 1 new resident and non-resident chambers	$1,221,461	$0	$1,221,461
6	OHN	-	Extended Temp	Cleveland	OH	Temporary currently using existing courtroom and chambers	$0	$0	$0
7	INS	1	(1) permanent	Indianapolis	IN	1 Courtroom & chambers available	$0	$0	$0
8	Circuit	2	(2) permanent	TBD	TBD	Requires 2 new resident and non-resident chambers	$2,442,922	$0	$2,442,922
8	NEX	1	(1) permanent	Omaha	NE	1 Courtroom & chambers available	$0	$0	$0
8	MNX	1	(1) permanent	St Paul	MN	1 Courtroom & chambers available	$0	$0	$0

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Enclosure 2

Space Requirements for New Judges as proposed under S. 2774

CIR	DIST	Proposed Judgeships	Type of Appointment	City	State	Description	Estimated TI Buildout for Chambers	Estimated TI Buildout for Courtroom factor $1.4M ea	Total Project One Time Costs
8	MOE	-	(1) temporary to permanent	St. Louis	MO	Temporary currently using existing courtroom and chambers	$0	$0	$0
8	MOW	1	(1) permanent	Kansas City or Springfield	MO	1 Courtroom & chambers available	$0	$0	$0
8	IAN	1	(1) new temporary	Cedar Rapids (new courthouse pending)	IA	Requires 1 new courtroom and chambers	$750,000	$1,400,000	$2,150,000
9	Circuit	6	(4) permanent (2) new temporary	TBD	TBD	Requires 3 new resident and non-resident chambers. 3 Chambers available.	$3,684,383	$0	$3,684,383
9	AZX	5	(4) permanent (1) new temp (1) temporary/ permanent	Phoenix	AZ	1 Courtroom & chambers available	$0	$0	$0
				Tucson	AZ	2 Courtrooms & chambers available	$0	$0	$0
				TBD	AZ	Requires 2 new courtrooms and chambers	$1,500,000	$2,800,000	$4,300,000
9	CAE	4	(4) permanent	Sacramento	CA	2 Courtrooms and chambers available	$0	$0	$0
				Fresno	CA	2 Courtrooms and chambers available	$0	$0	$0
9	CAC	5	(4) permanent (1) new temporary	Los Angeles	CA	2 Courtrooms and chambers available	$0	$0	$0
				TBD	CA	Requires 3 new courtrooms and chambers.	$2,250,000	$4,200,000	$6,450,000
9	CAN	3	(2) permanent (1) new temporary	San Francisco	CA	2 Courtrooms and chambers available	$0	$0	$0
				San Jose	CA	1 Courtroom & chambers available	$0	$0	$0
9	HIX	-	(1) temporary to permanent	Honolulu	HI	Temporary currently using existing courtroom and chambers	$0	$0	$0
9	IDX	1	(1) new temporary	Boise	ID	1 Courtroom & chambers available	$0	$0	$0
9	ORX	2	(1) permanent (1) new temporary	Portland	OR	2 Courtrooms & chambers available	$0	$0	$0

3

Enclosure 2

Space Requirements for New Judges as proposed under S. 2774

CIR	DIST	Proposed Judgeships	Type of Appointment	City	State	Description	Estimated TI Buildout for Chambers	Estimated TI Buildout for Courtroom factor $1.4M ea	Total Project One Time Costs
9	NVX	1	(1) new temporary	Las Vegas or Reno	NV	Requires 1 new courtroom and chambers	$750,000	$1,400,000	$2,150,000
9	WAW	1	(1) permanent	Seattle	WA	1 Courtroom & chambers available	$0	$0	$0
10	COX	2	(1) permanent (1) new temporary	Denver	CO	2 Courtrooms & chambers available	$0	$0	$0
10	KS	-	(1) temporary to permanent	TBD	KS	Temporary currently using existing courtroom and chambers	$0	$0	$0
10	NM	2	(1) permanent (1) new temp (1)	Las Cruces	NM	2 Courtrooms & chambers available in new courthouse under construction	$0	$0	$0
10	UTX	1	(1) new temporary	Salt Lake City (new courthouse pending)	UT	Requires 1 new courtroom and chambers	$750,000	$1,400,000	$2,150,000
11	ALM	1	(1) new temporary	Montgomery	AL	1 Courtroom & chambers available	$0	$0	$0
11	FLM	5	(4) permanent (1) new temporary	Ft. Myers	FL	1 Courtroom & chambers available	$0	$0	$0
				Ocala	FL	1 new courtroom and chambers will be available, currently under construction	$0	$0	$0
				Tampa	FL	Requires 1 new courtroom and chambers	$750,000	$1,400,000	$2,150,000
				Jacksonville	FL	Requires 1 new courtroom and chambers	$750,000	$1,400,000	$2,150,000
				TBD	FL	Requires 1 new courtroom and chambers	$750,000	$1,400,000	$2,150,000
11	FLS	3	(2) permanent (1) new temporary	Miami	FL	Requires 1 new courtroom and chambers (within existing space)	$750,000	$1,400,000	$2,150,000
				Ft Pierce (new courthouse pending)	FL	Requires 1 new courtroom and chambers	$750,000	$1,400,000	$2,150,000
				W. Palm Beach	FL	Requires 1 new courtroom and chambers	$750,000	$1,400,000	$2,150,000
Totals		66					$22,243,148	$21,000,000	$43,243,148

Enclosure 3

Analysis of Senior Judge Requirements through 2018 [1]

Court	Eligible in Next Ten Years	Eligible Before 2008	Additional Chmbrs SqFt Required	Additional Ctrm SqFt Required	Additional Total RSF Required
Appeals	94	33	228,896		228,896
District	449	44	545,587	857,820	1,403,407
Int'l Trade [2]	7	1	8,853		8,853
Fed Circ	7	4	19,826		19,826
Total	**557**	**82**	**803,162**	**857,820**	**1,660,982**
		639			

Assumed RSF per Judge [3]	
Appeals Chmbrs RSF	5,407 [4]
Dist Chmbrs RSF	3,320 [5]
Dist Ctrm RSF	6,960 [6]

[1] Assumes one-third of Judges will need chambers to be acquired and one-fourth of District Judges will need courtrooms.

[2] Dist Judge standards applied to Int'l Trade Judges chambers requirements.

[3] The term Rentable Square Feet is defined as space that includes the tenant's space including the tenant's proportional share of the common areas such as rest-rooms, exits, stairs, lobbies and related spaces.

[4] Appeals Chambers square feet includes space for both resident and non-resident chambers.

[5] Includes space need within chambers and from the hallway.

[6] Includes courtroom, circulation space, jury deliberation conference rooms, and attorney/witness conference rooms.

THE FEDERAL JUDICIAL CENTER
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JOHN S. COOKE
DEPUTY DIRECTOR

TEL.: 202-502-4184
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February 19, 2008

Honorable Charles E. Schumer
Chairman, Subcommittee on Administrative Oversight and the Courts
Committee on the Judiciary
United States Senate
161 Hart Senate Office Building
Washington, DC 20510

Honorable Jeff Sessions
Ranking Member, Subcommittee on Administrative Oversight and the Courts
Committee on the Judiciary
United States Senate
G-66 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Schumer and Sessions:

I write to provide you information regarding the work the Federal Judicial Center did to develop the current district court case weights. Attached is a short document that describes the methods we used, and in particular how we addressed the concerns about the study design that were raised by the GAO in their 2003 report. Also attached is a copy of the published report from the case-weighting study.

We believe that the current case weights reliably reflect the caseload-related burdens facing the district courts. The event-based design used to produce the current case weights is a well-recognized method and was carefully tailored and implemented to ensure accurate results.

We will be happy to provide any additional information that you or your staff might need.

Sincerely yours,

John S. Cooke

Attachments: Methods Used by the Federal Judicial Center to Compute the 2003-2004 District Court Case Weights and Response to GAO Concerns About the Study Design; 2003-2004 District Court Case-Weighting Study

Methods Used by the Federal Judicial Center to Compute the 2003-2004 District Court Case Weights and Response to GAO Concerns About the Study Design

Background Context for the Inquiry

The Government Accountability Office (GAO) included in their May 30, 2003, report *The General Accuracy of the Case-Related Workload Measures Used to Assess the Need for Additional District Court and Courts of Appeals Judgeships* a short assessment of the design of the new district court case-weighting study that had begun in December 2002. The Federal Judicial Center was conducting the study at the request of the Subcommittee on Judicial Statistics of the Judicial Conference Committee on Judicial Resources. In its review, the GAO identified two concerns about the design for the new study, essentially (1) the challenges associated with employing data from two different automated data systems, and (2) the effect of computing weights using consensus time data. Before the GAO report was issued, the Center was given an opportunity to respond to the concerns identified, and a letter by the Center's then Deputy Director, Russell Wheeler, addressed the issues raised.[1] Because of the very early stage of the study at that time, the response necessarily identified the way that the Center proposed to deal with the issues as they arose during the execution of the study. Now, after the completion of the study, we can discuss those concerns from the perspective of what challenges actually surfaced during the study and how they were addressed.

Preliminary Notes on Case-weighting Methods

There are several different, and accepted, ways to compute case weights.[2] The available data greatly influence the methodological options. All case-weighting studies require at least two types of data: (1) information about cases that allows individual cases to be grouped into case types (e.g., contract cases, antitrust cases, drug trafficking offenses), and (2) information about the amount of time judges spend processing cases. Event-based methods also require a third type of data, information about the type and frequency of events that occur in a case.

The Federal Judicial Center has conducted four case-weighting efforts in the federal district courts over the last 38 years. The first three were time studies in which case weights were computed at the level of the entire case based on the direct reporting of time by judges. The design of each study was different from the previous one and each strove (a) to address issues that had come up in the previous design, (b) to deal with inherent limitations, and (c) to take advantage of new developments. This does not mean that the older designs were "worse" or newer designs "better," only that each design tried to meet

[1] This letter was included as an addendum to the GAO report.

[2] *Assessing the Need for Judges and Court Support Staff* (National Center for State Courts 1996).

as best it could the situation in which the study was executed. These time studies obtained good empirical data but were very resource-intensive, demanding substantial time and effort from the participating judges, court staff, and research staff.[3] Because of the effort and time involved, these studies were conducted only once every ten years or more, a time frame that sometimes led to concerns that the weights had become outdated before new weights could be calculated.

Over the past 15 years the federal courts have implemented automated case-management systems in each of the district courts. These systems maintain detailed docketing information on all cases filed in the courts. This information is empirical, recorded contemporaneously with the occurrence of the events, and, because it is in active use by the courts for multiple administrative purposes, regularly and carefully checked for accuracy. These automated records provide a level of information about case processing that was unavailable to previous case-weighting studies.

The 2003–2004 case-weighting study in the district courts took advantage of this new data source. The study used an event-based method in which event weights were computed for individual case events. Case weights then were computed as the sum of the defined set of individual event weights.[4] Event-based designs have been used in several state case-weighting efforts, but had not been used before in the federal courts. The new study used the docketed event information and other case information available from the courts' case-management databases to develop event frequencies for each case type. The study used average time values computed from directly reported time for some events (e.g., routinely collected information on the time spent in trials, other evidentiary hearings, and certain non-evidentiary hearings), and average time values based on judges' consensus estimates[5] for other events (e.g., time spent deciding motions and writing opinions).

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[3] In time studies participants report contemporaneously on the work that they perform to process cases. In the most common design, the diary time study, judges usually record information daily for a period of several weeks, marking down on special forms the amount of time spent in each activity, indicating the case being worked on, and often the type of work being done. Statistical analyses are then used to compute a raw weight that represents the average amount of judge time required to process an entire case of a particular type. Usually raw case weights, which are expressed in terms of time, are converted to relative weights, so that the typical case has a weight of 1.0 and cases of other types have a range of weights that compare their average processing time to that of the typical case (e.g., a weight of 2.0 represents a case that requires twice the amount of case-processing time as the typical case).

[4] In an event-based method a raw case weight is computed by identifying a set of major events that can occur during the processing of a case, identifying how often such events occur, and how long it takes for a judge to process each event. The raw weight is the sum of the products of frequency and time for each event. The set of events should represent the major activities in a case that account for the majority of case-processing time, but not necessarily all time. The event frequencies and judge-time components represent the average values over all cases of a particular type. Raw weights are then converted to relative weights in most studies.

[5] Based on their case-processing experience, judges were asked to identify a value that best represented the average time required to process a particular event in a particular type of case (e.g., to produce an order on a discovery motion in a contracts case). The judges discussed their individual estimates and through a defined process arrived at a consensus value that represented the general practice. See below for more details about the procedures used.

Response to GAO's Concerns

Now to the specific concerns listed by GAO and how they were addressed in the case-weighting study.

1. In their report GAO listed their first concern as "the challenge of obtaining reliable, comparable data from two different automated data systems for the analysis."

   At the time the study was conducted—2003 to mid-2004—the district courts were in the process of converting from the case-management systems that they had been using for several years, ICMS, to a new system, CM/ECF, but relatively few courts had changed over completely. In order to use national docketed event information in our calculations we had to extract the information from both types of systems. To do this, after convening a technical advisory group of experienced technicians and data managers from the Administrative Office of the U.S. Courts (AO) and the district courts, we built separate but equivalent data extraction programs for each system. We then converted all court-specific codes into a standard set of codes, and used those standard codes in the analyses. This successful approach to dealing with the dual database issue allowed us to construct event frequency counts that were solidly based on a large cohort of cases that represented national case-processing practice in the district courts[6].

   The published report from the study describes the procedures that were used to extract the required data and perform these conversions and frequency calculations.[7] The technical appendices to the study report, which are available on-line, provide additional detail.[8]

2. The second concern identified by GAO in their report was "the limited collection of actual data on the time judges spent on cases."

   As mentioned above, we used routinely collected empirical data wherever possible in developing the case weights, but consensus-based estimates of judge processing time were required for some of the event-weight calculations. We decided to take advantage of the knowledge of experienced district judges about how they process cases, and ask them to estimate the amount of time required to conduct

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[6] For the study we received docketed event data from 87of the 91 Article III district courts (96%). Sixty-nine courts provided data from ICMS systems, and 20 courts provided data from CM/ECF (two of the courts used both systems, one for civil cases and one for criminal defendants). The event frequencies used in the profiles were based on events docketed in approximately 297,000 cases (civil and criminal) that were closed in calendar 2002.

[7] *2003-2004 District Court Case-Weighting Study: Final Report to the Subcommittee on Judicial Statistics of the Committee on Judicial Resources of the Judicial Conference of the United States* (Federal Judicial Center 2005). A copy of the published report is attached; the printed version of the report does not include the appendices.

[8] The published report, including all appendices, can be obtained on-line from the Center's Internet web page at http://www.fjc.gov/public/home.nsf/autoframe?openform&url_l=/public/home.nsf/inavgeneral?openpage&url_r=/public/home.nsf/pages/665.

specific case activities in various types of cases. The challenge was to obtain these expert estimates in a structured manner.

To do this we used a variation of the Delphi Method, a technique originally developed by the Rand Corporation in 1964 and used since then in many research situations—including the development of case weights in some state courts—to obtain a consensus estimate from subject-matter experts.[9] The method uses an iterative approach of individual estimates, statistical feedback, and re-estimates to arrive at a consensus.

We used a two-step process to obtain the estimates:

1. We conducted a series of facilitated meetings, one in each of the twelve circuits, with district judge representatives from each of the districts in the circuit. More than 100 experienced district judges participated in these meetings. At the meetings the judges discussed the amount of time they spend on various case activities and came to agreement on the value that best represented the average processing time in their circuit. They filled these time values into a worksheet depicting major case events in different types of cases.[10] Judges prepared to participate in these meetings by filling out a copy of the worksheet in advance of the meeting based on their own personal experience before having the benefit of discussions with their colleagues.[11] The worksheets had default values listed for each type of event. These default values were computed using empirical data available from other sources for activities that were similar to, but not exactly the same as, those required for the study.[12] The defaults served to focus the judges on reporting an average value.
2. An analysis of the worksheet time values obtained during the circuit meetings was then presented to a group of twenty-two judges who met in a national meeting. These judges were tasked with evaluating the data from the circuit meetings to produce consensus estimates of the time values that best represented national practice. Using an iterative process of discussion, voting, and feedback the participants arrived at the values that were included in the final case-weight computations.[13]

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[9] *Assessing the Need for Judges and Court Support Staff* (National Center for State Courts 1996), pp. 73–81. *The Delphi Method: Techniques and Applications* (Harold A. Linstone & Murray Turoff, eds. 2002). Although originally implemented as a series of surveys mailed back and forth between respondents and researchers, face-to-face group meetings have also been used.

[10] An example of the worksheet is included in the published report at page 27.

[11] The information from these pre-meeting worksheets was collected and analyzed. The analysis is presented in Appendix K of the report.

[12] For non-trial proceedings such as motion hearings and conferences, the default values were computed using multiple regression from the information reported by judges on page 2 of the monthly JS-10. For chambers events such as producing orders on motions, the average time reported during the previous district court time study for similar activities was used.

[13] The details of this process are presented in the project report.

The estimation process was structured, rigorous, and based on an accepted method for obtaining expert estimates that has been used for years in various settings. The meeting materials and process were designed to focus the task with empirically-derived default values, and to address some of the common difficulties with estimating. The time values produced by this process can be relied on as good estimates of the national average time required to complete the defined case events.

Characteristics of the New Case Weights

The 1993 weights were thought to be outdated and not representative of current case-management practice, so we expected the 2003–2004 district court case weights to be different from the previous case weights. The observed differences are in the expected directions, with criminal weights generally lower and the weights for complex civil cases higher. The relative ranking of the case types also follows a generally expected pattern (e.g., death penalty habeas corpus, civil RICO, environmental, and patent cases have the highest weights, overpayment and recovery actions and asbestos torts the lowest).

The current weights, however, are not so different from the 1993 weights as to suggest they are flawed. The total weighted caseload on a national level changed downward by approximately 5% for 2003 filings computed under both systems (reducing from a national average 532 weighted caseload per authorized judgeship according to the 1993 weights to 505 based on the 2003–2004 weights). And, for approximately two-thirds of the courts their weighted caseload changed by less than 10% in either direction.

Future Implications of the Event-Based Case-Weighting Method

The event-based method not only had beneficial implications for the 2003–2004 study, but the method also affects case-weighting efforts going forward. Because so many components of the case-weight calculations are driven by data routinely collected in the courts' case-management databases, additions and enhancements to those database systems are available to be incorporated when computing future revisions of the weights. In addition, because the raw weight for each case type is computed independently of the others, targeted additions and revisions to the weights can be made without the need to recompute all the weights. Thus the weights can be modified between major case-weighting studies to adjust to new case types or changes in case-management procedures in a way that past weights derived from time studies could not. This keeps the weights more up-to-date and more representative of current court practice.

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May 10, 2008

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: The Federal Judgeship Act of 2008, S. 2774

Dear Chairman Leahy and Senator Specter:

I write on behalf of the Federal Bar Association to express our strong support for The Federal Judgeship Act of 2008 (S. 2774) and to urge the Judiciary Committee's prompt efforts to consider and approve it.

Given the recognition of our association as the foremost national organization of private sector and government lawyers who practice before the federal courts, we believe the legislation will confer significant benefit to our nation's judicial system and the speed of justice.

The legislation would create 12 permanent court of appeals judgeships and 43 permanent court judgeships, as well as create and extend additional temporary judgeships. These numbers are in line with the recommendations of the Judicial Conference of the United States, based upon its empirical evaluation of court caseloads and needs.

Congressional passage of comprehensive judgeships legislation is critical and long overdue. The last comprehensive judgeship bill was enacted in 1990 and provided most of the judgeships requested by the Judicial Conference. Since that time, Congress has authorized piecemeal district court judgeships in 2000, 2001 and 2003, but no new circuit court judgeships.

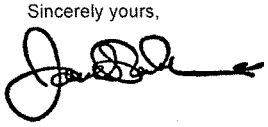
Since 1990, caseloads in the district courts and the courts of appeals have substantially increased. Case filings in the district courts have risen by 29 percent and in the courts of appeals by 55 percent. In 2006, the number of weighted filings in the district courts, which take into account case complexity, was 464 per judgeship, well above the Judicial Conference's standard. In that same year, the national average appellate court caseload was 1,197 cases per

three-judge panel, down slightly from 1,230 cases in 2005, when the highest number of appellate caseloads was recorded.

Now is an excellent time for Congress to enact a comprehensive judgeships measure in order to assure that the Third Branch possesses an adequate capacity to address its core responsibilities to apply and interpret the law and to render justice. While it certainly is the prerogative of Congress to add to the jurisdiction of the federal courts, it is also fair to expect that Congress will provide the necessary judicial resources to meet those new responsibilities.

Thank you for your consideration of these comments, and for your continued leadership and support.

Sincerely yours,



James S. Richardson, Sr.

cc: Sen. Edward M. Kennedy
Sen. Joseph R. Biden
Sen. Herbert H. Kohl
Sen. Dianne Feinstein
Sen. Russ Feingold
Sen. Charles E. Schumer
Sen. Richard J. Durbin
Sen. Benjamin Cardin
Sen. Sheldon Whitehouse
Sen. Orrin G. Hatch
Sen. Charles E. Grassley
Sen. Jon L. Kyl
Sen. Jeff Sessions
Sen. Lindsey O. Graham
Sen. John Cornyn
Sen. Sam Brownback
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June 16, 2008

The Honorable Patrick Leahy
Chairman
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United States Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: June 17 Hearing on "Responding to the Growing Need for Federal Judgeships: The Federal Judgeship Act of 2008"

Dear Chairman Leahy and Senator Specter:

In connection with the Judiciary Committee's hearing on "The Federal Judgeship Act of 2008", I ask that these comments be included in the hearing record.

We firmly believe that Congressional passage of comprehensive judgeships legislation is critical and long overdue. Without an adequate and competent body of judges in our federal courts, especially given rising caseloads, our judicial system will not be properly equipped to meet its mission of adjudicating disputes and dispensing justice among all Americans. In a May 10 letter to the Committee, I expressed the FBA's strong support for The Federal Judgeship Act of 2008 (S. 2774) and urged the Committee to promptly consider and approve the measure. I reiterate that support, and in light of the Committee's approval of the measure on May 15 by a substantial majority, extend our appreciation for that action and the Committee's speed in providing for a hearing on the measure.

The 12 permanent court of appeals judgeships, 43 permanent district court judgeships, and additional temporary judgeships created or extended by S. 2774 are warranted, given rising caseloads and other considerations – including senior and magistrate judge assistance, geographic factors, and unusual caseload complexity – that bear upon resource needs. The numbers of judgeships created by the legislation comport with the recommendations of the Judicial Conference of the United States,

based upon the Conference's extensive and empirical review of court caseloads and needs.

Since 1990, when the last comprehensive judgeship bill was enacted, caseloads in the district courts and the courts of appeals have substantially increased. Case filings in the district courts have risen by 29 percent and in the courts of appeals by 55 percent. In 2006, the number of weighted filings in the district courts, which take into account case complexity, was 464 per judgeship, well above the Judicial Conference's standard. In that same year, the national average appellate court caseload was 1,197 cases per three-judge panel, down slightly from 1,230 cases in 2005, when the highest number of appellate caseloads was recorded.

The foremost focus of the Federal Bar Association lies with the advancement and welfare of the federal court system. Our 16,000 members fervently believe that passage of a comprehensive judgeships measure is critical to assure that all circuits and districts of the federal courts are operating at acceptable levels to satisfy their core responsibilities in applying and interpreting the law.

Thank you for your consideration of these comments in connection with the June 17 hearing, and for your continued leadership and support.

Sincerely yours,

James S. Richardson, Sr.

National President

cc: Sen. Dianne Feinstein

Senator Dianne Feinstein

Statement for Hearing on
the Federal Judgeship Act of 2008
June 17, 2008

Today's hearing focuses on meeting the growing need for new federal judgeships.

It has been 18 years since the last time Congress passed a comprehensive bill to create new federal judgeships. Since that time, case filings in the federal appeals courts have increased by 36 percent, and filings in the district courts have increased by 29 percent.

In March of this year, Chairman Leahy introduced the Federal Judgeship Act of 2008. The bill would add new circuit and district court seats across the nation to handle the growing caseload. It follows the most recent recommendations of the Judicial Conference, which are based on an extensive review of case filings, caseload trends, and case management practices in each judicial district and each circuit court of appeals.

The Chairman's bill has broad, bi-partisan support. I am one of 20 co-sponsors.

One of the main responsibilities of the Judiciary Committee is to oversee the operations of the federal courts. That includes the duty to make sure that we have enough judges.

When caseloads get too heavy, the quality of justice in our nation suffers. Victims of crime are forced to endure long periods of waiting for justice to be done. Plaintiffs face long delays in getting damages or restitution for

harms they have suffered. And morale plummets among overworked judges and court staff.

Over the 18 years since the last major judgeships bill, those problems have arisen in many judicial districts around the country – especially in California.

The Eastern District of California had the nation's highest rate of filings per judge in 2005 and 2006, and the second-highest rate in 2007: 869 filings per judge. That is more than 100 percent higher than the threshold of 430 filings, which is the standard the Judicial Conference uses for recommending a new judgeship.

Because of this overload, the Eastern District has been forced to resort to extreme measures. The court has brought in federal judges from all over the country to help deal with the crushing docket.

Obviously this situation is not sustainable. The Eastern District of California should have enough judges to handle its heavy caseload on its own.

This bill would help get to that result by adding new permanent judgeships in the Eastern District for the first time in 30 years. Under the bill, 4 new seats would be created in this district.

That may sound like a lot of new judgeships. But the caseload is so heavy that **even with these new seats, filings in the Eastern District of California would still be 21 percent higher than the Judicial Conference benchmark** for recommending a new judgeship.

In other words, this bill is not excessive. If anything, it is conservative in its approach to adding new judgeships.

The Ninth Circuit – the busiest appeals court in the nation – would receive four new permanent seats and two temporary seats in this bill.

Again, that might sound like a lot of new judges. But in fact this is another example of the Judicial Conference's conservative approach to recommending new seats.

With the new seats, the number of filings per panel in the Ninth Circuit would be 941. That is 88 percent higher than the benchmark of 500 filings, which the Judicial Conference uses to consider adding new appeals court seats. Even if the number of new Ninth Circuit seats in the bill were doubled, filings in the circuit still would not reach the Judicial Conference benchmark.

This pattern holds true for other circuits and districts across the country. In many of them, the bill could add more judgeships than it does, and caseloads would still exceed the Judicial Conference standards. That is further evidence that this bill adds judges only where they are most needed.

I believe it is time to get this bill done. The timing is right. None of these positions will be effective until after the next president is inaugurated until January 2009. Since no one can know who the next president will be, this bill should not be mired in partisanship.

One final point. I believe we should keep in mind that even when we create new judgeships, we can be flexible in deciding how they are used over time. If it turns out in the future that a seat has become unnecessary, the Senate can choose not to fill it when it becomes vacant. In fact, the Judicial Conference has identified several seats that it believes should not be filled for this reason.

Congress can also reassign vacant seats from one court to another based on changes in caseloads. Last year we did exactly that when we transferred a vacant seat from the D.C. Circuit to the Ninth Circuit, under an amendment that Senator Kyl and I co-sponsored.

We should, of course, seriously consider all of the evidence on the need for new judgeships and make a careful decision. As I said at the markup, I believe that the Judicial Conference recommendations are the best guidepost we have. Their review process is extensive, and their recommendations are supported with detailed data.

As we hear criticisms of the recommendations, we should bear in mind that no judgeships bill can be perfect. But it also doesn't have to be perfect, because we will always have the opportunity to refine the system in the future as the circumstances and caseloads warrant – by leaving vacancies unfilled, or by moving seats from one place to another.

Senator Grassley's Statement for Judgeship Hearing "Responding to the Growing Need for Federal Judgeships: the Federal Judgeship Act of 2008", June 17, 2008

Madam Chairman, thank you for holding this hearing on the need for new federal judgeships. As you know, I've had a longstanding position on creating new federal court judgeships – Congress needs to do its homework and go slow before it expands the federal judiciary on a permanent basis. The federal judiciary's proposal, S. 2774, would create a total of 66 new federal judgeships at both the district and appellate court level. That's a lot of new judges. So I'm pleased that the Committee will do its job and analyze the statistics and methodology to determine whether there is a sound basis for this request for more permanent and temporary federal judgeships.

I'm no stranger to this issue. In the 1990s, when I was Chairman of the Subcommittee on Administrative Oversight and the Courts, I held a series of oversight hearings to evaluate the appropriate allocation of judgeships and to find ways to improve the productivity of the federal judiciary. My study of the hearing testimony, court statistics and data, led me to conclude that unjustifiable, open-ended growth of the federal judiciary is just not desirable.

Many judges agree with me. Smaller courts foster collegiality, coherence in case law and better administration of justice, particularly at the appellate court level. And while it's true that some courts could use additional help because of their increased workloads, before we create new judgeships, Congress should consider whether a court has implemented as many efficiencies as possible - such as better case management, better use of senior, visiting and magistrate judges, and a reduction of non-case related judicial activities and travel by the judges. And certainly we need to consider the costs of creating new permanent judgeships. Not only are we talking about a lot of money per judgeship - over a million dollars for each judge (and this amount will go up even more if the judicial pay bill goes through) – but also a lot of money will have to go into new judge chambers, courthouses and court staff.

Just as importantly, Congress should carefully examine whether a court's caseload truly justifies a new position – in particular that the increase in caseload is a permanent one and not just a temporary spike in case filings.

In this regard, Congress should scrutinize the methodology utilized by the Judicial Conference in calculating judgeship needs. The judgeship study that my subcommittee conducted in the 1990s concluded that there was no consensus on the proper measure of need for judges, nor was there a consensus on whether the statistical formulae utilized by the Judicial Conference are an effective and reliable means for calculating the appropriate number of judges. In fact, my review found that a number of judges themselves believed that there were significant problems with the methods of calculation utilized by the AO.

These concerns with the Judicial Conference's methodology were confirmed by the GAO. The GAO was asked to determine whether the weighted and adjusted case filing systems used by the AO accurately calculated the workload of judges. At a House Judiciary Committee hearing in June 2003, William Jenkins, the top expert on these issues at the GAO, produced a report and testified about flaws with the case-related workload measures that the Judicial Conference uses when it assesses judgeship needs. The GAO concluded that there were problems with the reliability of both district and appellate court methodologies. Mr. Jenkins is here to testify about the Judicial Conference's methodology, whether the methodology has been improved since his 2005 testimony, and whether there are any ongoing concerns with the reliability of the present methodology.

The fact is, it's a lot easier to create judgeship positions than eliminate them. And once you have those positions available, there is an urge to fill them, even if the court caseload shows that there really isn't a need for a full complement of judges on a court.

Instead of rushing to create a boatload of new judgeships, perhaps it would be more prudent to fill the current federal court vacancies. Presently there are 28 judicial nominees pending for 44 circuit and district court vacancies. Certainly confirming these nominees is the quickest way to help ease the burdens on certain courts.

Because the Judicial Conference's methodology is flawed and unreliable, the Judiciary Committee should be particularly careful about reviewing the judgeship request in S. 2774. Nevertheless, I'm sure some of these judgeships are necessary. In 2003, the Judiciary Committee under the chairmanship of Senator Hatch approved a package of new temporary and permanent district court judgeships, even though that bill never became law.

One of the judgeships approved was a temporary judgeship for the Northern District of Iowa, which is also contained in S. 2774. I'm particularly supportive of that temporary judgeship for the Northern District of Iowa, because of the heavy caseload statistics and the steady trend over the past years of this increased caseload. I've also heard first hand from the judges and practitioners that there is a justifiable need for this new temporary judgeship.

But I'm not so sure whether the numbers are accurate or misleading with respect to the other judgeships in the bill. We are talking about a lot of new judges - 14 new circuit court judgeships and 52 new district court judgeships. Let me reiterate that I believe some of these new judgeships are necessary, maybe even a majority of these judgeships are necessary. But we need to look more closely at the numbers and how we got to those numbers, and I'm willing to work with the Chairman in doing so.

I'd like the Chairman to indulge me one more minute. As everyone knows, most of my state of Iowa is under water. I was in Iowa this past weekend to see just how extensive the flooding has been, and I cannot start to tell you how devastating it is. So many homes, farms, businesses have been impacted. So have the federal district courthouses in both Cedar Rapids and Des Moines. But the Iowa spirit is alive and well, and we are picking up the pieces. I'm so humbled by the courage and the strength I've witnessed amongst the massive flooding, the determination and pure grit of Iowans to persevere notwithstanding all the devastation.

I'll be asking the representative from the federal judiciary to give me an update on the status of the federal facilities in Iowa, and whether there is a need for any legislation so the federal courts can conduct court proceedings appropriately in this time of disaster. I also plan to ask the AO to review their priority list for courthouse construction, particularly since Cedar Rapids and its federal courthouse facilities are under water at the moment. The Cedar Rapids courthouse is in dire need, and we can't afford to wait another year. As it has done in other emergencies, I expect the AO to really consider moving Cedar Rapids to the top of the priority list.

United States Government Accountability Office

GAO

Testimony before the Committee on the Judiciary, United States Senate

For Release on Delivery
Expected at 2:30 p.m. EDT
Tuesday, June 17, 2008

FEDERAL JUDGESHIPS

General Accuracy of District and Appellate Judgeship Case-Related Workload Measures

Statement of William O. Jenkins, Jr., Director
Homeland Security and Justice

GAO-08-928T

June 17, 2008

GAO
Accountability · Integrity · Reliability
Highlights

Highlights of GAO-08-928T, a testimony to the Committee on the Judiciary, United States Senate

FEDERAL JUDGESHIPS

General Accuracy of District and Appellate Judgeship Case-Related Workload Measures

Why GAO Did This Study

Twice a year, the Judicial Conference, the federal judiciary's principal policymaking body, assesses the need for additional judges. The assessment is based on a variety of factors, but begins with quantitative case-related workload measures. This testimony focuses on (1) whether the judiciary's quantitative case-related workload measures from 1993 were reasonably accurate; and (2) the reasonableness of any proposed methodologies to update the 1993 workload measures. The comments in this testimony are based on a report GAO issued in May 2003.

What GAO Recommends

In 2003, GAO recommended that the Judicial Conference, among other things, develop a methodology for measuring the case-related workload of courts of appeals judges by using methodologies that support objective, statistically reliable means of calculating the accuracy of the weights and workload measures, respectively. The Conference disagreed and stated that, among other things, GAO's report did not reflect the sophisticated methodology of the study and that the workloads of the courts of appeals entail important factors that have defied measurement. GAO believes the importance and costs of creating new judgeships requires the best possible case-related workload data to support the assessment of the need for more judges.

To view the full product, including the scope and methodology, click on GAO-08-928T. For more information, contact William O. Jenkins, Jr., at (202) 512-8757 or JenkinsWO@gao.gov.

What GAO Found

In 2003, GAO reported that the 1993 district court case weights were reasonably accurate measures of the average time demands that a specific number and mix of cases filed in a district court could be expected to place on the district judges in that district. At the time of GAO's 2003 report, the Judicial Conference was using case weights approved in 1993 to assess the need for additional district court judgeships. The weights were based on data judges recorded about the actual in-court and out-of-court time spent on specific cases from filing to disposition. This methodology permitted the calculation of objective, statistical measures of the accuracy of the final case weights.

In 2003, GAO reviewed the research design the Judicial Conference's Subcommittee on Judicial Statistics had approved for updating the 1993 district court case weights, and had two concerns about the design. First, the design assumed that the judicial time spent on a case could be accurately estimated by viewing the case as a set of individual tasks or events in the case. Information about event frequencies and, where available, time spent on the events would be extracted from existing databases and used to develop estimates of the judge-time spent on different types of cases. However, for event data, the research design proposed using data from two data bases that had yet to be integrated to obtain and analyze the data. Second, unlike the methodology used to develop the 1993 case weights, the design for updating the case weights included limited data on the time judges actually spent on specific types of cases. Specifically, the proposed design included data from judicial databases on the in-court time judges spent on different types of cases, but did not include collecting actual data on the noncourtroom time that judges spend on different types of cases. Instead, estimates of judges' noncourtroom time were derived from the structured, guided discussions of about 100 experienced judges meeting in 12 separate groups (one for each geographic circuit). Noncourtroom time was likely to represent the majority of judge time used to develop the revised case weights. The accuracy of case weights developed on such consensus data cannot be assessed using standard statistical methods, such as the calculation of standard errors. Thus, it would not be possible to objectively, statistically assess how accurate the new case weights are—weights on whose reasonable accuracy the Judicial Conference relies in assessing judgeship needs.

The case-related workload measure for courts of appeals judges is adjusted case filings in which all cases are considered to take an equal amount of judge time except for pro se cases—those in which one or more of the parties is not represented by an attorney—which are discounted. In our 2003 review, we found no empirical basis on which to assess the accuracy of this workload measure. Although a number of alternatives to the adjusted filings measure have considered, the Judicial Conference has been unable to agree on a different approach that could be applied to all courts of appeal.

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to be here today to discuss our work on case-related workload measures for district court and courts of appeals judges. My statement today is based on work completed and reported in 2003 and is focused exclusively on these workload measures.[1] We have no views on the Judicial Conference's pending request for additional judgeships.

Biennially, the Judicial Conference, the federal judiciary's principal policymaking body, assesses the judiciary's needs for additional judgeships.[2] If the Conference determines that additional judgeships are needed, it transmits a request to Congress identifying the number, type, (courts of appeals, district court), and location of the judgeships it is requesting.

In assessing the need for additional judgeships, the Judicial Conference considers a variety of information, including responses to its biennial survey of individual courts, temporary increases or decreases in case filings and other factors specific to an individual court. However, the Judicial Conference's analysis begins with the quantitative case-related workload measures it has adopted for the district courts and courts of appeals—weighted case filings and adjusted case filings, respectively. These two measures recognize, to different degrees, that the time demands on judges are largely a function of both the number and complexity of the cases on their dockets. Some types of cases may demand relatively little time and others may require many hours of work. Generally, each case filed in a district court is assigned a weight representing the average amount of judge time the case is expected to require. The weights are relative to one another; the higher the case weight, the greater the time the case would be expected to require. For example, on average a case with a relative weight of 2.0 would be expected to require twice as much judge time as a case with a weight of 1.0. In the courts of appeals, all case filings are weighted equally at 1.0, except for pro se case filings—those in which

[1] GAO, *Federal Judgeships: The General Accuracy of the Case-Related Workload Measures Used to Assess the Need for Additional district Court and Courts of Appeals Judgeships*, GAO-03-788R (Washington, D.C., May 30, 2003).

[2] The Chief Justice of the United States presides over the Conference, which consists of the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade. The Conference meets twice a year.

one or both parties are not represented by an attorney—which are discounted.

Using these measures, individual courts whose past case-related workload meets the threshold established by the Judicial Conference may be considered for additional judgeships. These thresholds are 430 weighted case filings per authorized judgeship for district courts and 500 adjusted case filings per three-judge panel of authorized judgeships for courts of appeals (courts of appeals judges generally hear cases in rotating panels of three judges each).[3] Authorized judgeships are the total number of judgeships authorized by statute for each district court and court of appeals.

The Judicial Conference relies on these quantitative workload measures to be reasonably accurate measures of judges' case-related workload. Whether these measures are reasonably accurate rests in turn on the soundness of the methodology used to develop them. This statement provides information on two of the objectives in our 2003 report: (1) whether the judiciary's quantitative case-related workload measures were reasonably accurate measures of district judge and courts of appeals judges' case-related workload; and (2) the reasonableness of any proposed methodologies to update the workload measures. In this statement, we discuss those two objectives first for district courts then for courts of appeals.

Our 2003 report was based on the results of our review of documentation provided by the Federal Judicial Center (FJC) and the Administrative Office of the U.S. Courts (AOUSC) on the history and development of the case-related workload measures and interviews with officials in each organization. The scope of our work did not include how the Judicial Conference used these case-related workload measures to develop any specific request for additional district and courts of appeals judgeships. We conducted our performance audit in April and May 2003 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained

[3] In the documentation accompanying its 2007 request for additional judgeship, the Judicial Conference notes that in 2004 it adopted a starting point of more than 430 weighted case filings per authorized judgeship with an additional judgeship.

provides a reasonable basis for our findings and conclusions based on our audit objectives.

Summary

District Courts. In 2003, we reported that the methodology used to develop the 1993 district court case weights resulted in reasonably accurate measures of the average time demands that a specific number and mix of cases filed in a district court could be expected to place on the district judges in that district. At the time of our 2003 report, the Judicial Conference was using case weights approved in 1993 to assess the need for additional district court judgeships. The weights were based on data judges recorded about the actual in-court and out-of-court time spent on specific cases from filing to disposition. This methodology permitted the calculation of objective, statistical measures of the accuracy of the final case weights (e.g., standard errors).

In 2003 we reviewed the research design the Judicial Conference's Subcommittee on Judicial Statistics had approved for updating the 1993 district court case weights, and had two principal concerns about the design. First was the challenge of collecting reliable, comparable data for the analysis on in-court events from two different automated data systems, one of which had not been implemented in all district courts. The FJC established a technical advisory group to work through this issue. Second, unlike the methodology used to develop the 1993 case weights, the design for updating these case weights included limited data on the time judges actually spent on specific types of cases. Specifically, the proposed design included data from judicial databases on the in-court time judges spent on different types of cases, but did not include collecting actual data on the noncourtroom time that judges spend on different types of cases. Instead, estimates of noncourtroom time would be based on estimates derived from the structured, guided discussions of about 100 experienced judges meeting in 12 separate groups (one for each geographic circuit). Noncourtroom time was likely to represent the majority of judge time used to develop the revised case weights. The accuracy of case weights developed on such consensus data cannot be assessed using standard statistical methods, such as the calculation of standard errors. As the Federal Judicial Center acknowledged in commenting on our 2003 report,

it is not possible to objectively, statistically assess how accurate the new case weights are.[4]

Courts of Appeals. Adjusted case filings, used to measure the case-related workload of courts of appeals judges, are based on available data from standard statistical reports from the courts of appeals. Unlike the case weights used to measure district judge case-related workload, adjusted case filings are not based on any empirical data regarding the time that different types of cases required of courts of appeals judges. The adjusted filings workload measure basically assumes that all cases have an equal effect on judges' workload with the exception of pro se cases—those in which one or both parties are not represented by an attorney—which are weighted at 0.33, or one-third as much as all other cases, which are weighted at 1.0. On the basis of the documentation we reviewed, there is no empirical basis on which to base that assumption or on which to assess the accuracy of adjusted filings as a measure of case-related workload for courts of appeals judges. Although a number of alternatives to the adjusted filings measure have been considered, the Judicial Conference has not been able to agree on a different approach that could be applied to all courts of appeals.

Case Weights Are Intended to Measure Judicial Time Required to Handle Their Caseloads

The demands on judges' time are largely a function of both the number and complexity of the cases on their dockets. To measure the case-related workload of district court judges, the Judicial Conference has adopted weighted case filings. The purpose of the district court case weights was to create a measure of the average judge time that a specific number and mix of case filed in a district court would require. Importantly, the weights were designed to be descriptive not prescriptive—that is, the weights were designed to develop a measure of the national average amount of time that judges actually spent on specific cases, not to develop a measure of how much time judges should spend on various types of cases. Moreover, the weights were designed to measure only case-related workload. Judges have noncase-related duties and responsibilities, such as administrative tasks, that are not reflected in the case weights.

[4] We have not reviewed in detail the materials the FJC has posted on its Web site with regard to the methodology actually used to develop the revised case weights approved in 2004. However, those materials indicate that the FJC essentially followed the design we reviewed and that standard errors were not computed for the final weights..

With few exceptions, such as cases that are remanded to a district court from the court of appeals, each civil and criminal case filed in a district court is assigned a case weight. For example, in the 2004 case weights, drug possession cases are weighted at 0.86 while civil copyright and trademark cases are weighted at 2.12. The total annual weighted filings for a district are determined by summing the case weight associated with all the cases filed in the district during the year. A weighted case filings per authorized judgeship is the total annual weighted filings divided by the total number of authorized judgeships. For example, if a district had total weighted filings of 4,600 and 10 authorized judgeships, its weighted filings per authorized judgeships would be 460. The Judicial Conference uses weighted filings of 430 or more per authorized judgeship as an indication that a district may need additional judgeships. Thus, a district with 460 weighted filings per authorized judgeship could be considered for an additional judgeship. However, the Judicial Conference does not consider a district for additional judgeships, regardless of its weighted case filings, if the district does not request any additional judgeships.

1993 Case Weights Reasonably Accurate, But Accuracy of 2004 Case Weights Cannot Be Statistically Determined

In our 2003 report, we found the district court case weights approved in 1993 to be a reasonably accurate measure of the average time demands a specific number and mix of cases filed in a district court could be expected to place on the district judges in that court. The methodology used to develop the weights used a valid sampling procedure, developed weights based on actual case-related time recorded by judges from case filings to disposition, and included a measure (standard errors) of the statistical confidence in the final weight for each weighted case type. Without such a measure, it is not possible to objectively assess the accuracy of the final case weights.

At the time of our 2003 report, the Subcommittee on Judicial Statistics of the Judicial Conference's Judicial Resources Committee had approved the research design for revising the 1993 case weights, with a goal of having new weights submitted to the Resources Committee for review in the summer of 2004. The design for the new case weights relied on three sources of data for specific types of cases: (1) data from automated databases identifying the docketed events associated with the cases; (2) data from automated sources on the time associated with courtroom events for cases, such as trials or hearings; and (3) consensus of estimated time data from structured, guided discussion among experienced judges on the time associated with noncourtroom events for cases, such as reading briefs or writing opinions.

According to the FJC, the Subcommittee wanted a study that could produce case weights in a relatively short period of time without imposing a substantial record-keeping burden on district judges. The FJC staff provided the Subcommittee with information about various approaches to case weighting, and the Subcommittee chose an event-based method—that is, a method that used data on the number of and types of events, such as trials and other evidentiary hearings, in a case. The design did not involve the type of time study that was used to develop the 1993 case weights. Although the proposed methodology appeared to offer the benefit of reduced judicial burden (no time study data collection), potential cost savings, and reduced calendar time to develop the new weights, we had two areas of concern—the challenge of obtaining reliable, comparable data from two different data systems for the analysis and the limited collection of actual data on the time judges spend on cases.

First, the design assumed that judicial time spent on a given case could be accurately estimated by viewing the case as a set of individual tasks or events in the case. Information about event frequencies and, where available, time spent on the events would be extracted from existing administrative data bases and report and used to develop estimates of the judge-time spent on different types of cases. For event data, the research design proposed using data from two data bases (one of which was new and had not been implemented in all district courts) that would have to be integrated to obtain and analyze the event data. The FJC proposed creating a technical advisory group to address this issue.

Second, the research design did not require judges to record time spent on individual cases. Actual time data would be limited to that available from existing data bases and reports on the time associated with courtroom events and proceedings for different types of cases. However, a majority of district judges' time is spent on case-related work outside the courtroom. The time required for noncourtroom events would be derived from structured, guided discussion of groups of 8 to 13 experienced district court judges in each of the 12 geographic circuits (about 100 judges in all). The judges would develop estimates of the time required for different events in different types of cases within each circuit using FJC-developed "default values" as the reference point for developing their estimates. These default values would be based in part on the existing case weights and in part on other types of analyses. Following the meetings of the judges in each circuit, a national group of 24 judges (2 from each circuit) would consider the data form the 12 circuit groups and develop the new weights.

The accuracy of judges' time estimates is dependent upon the experience and knowledge of the participating judges and the accuracy and reliability of the judges' recall about the average time required for different events in different types of cases—about 150 if all the case types in the 1993 case weights were used. These consensus data could not be used to calculate statistical measures of the accuracy of the resulting case weights. Thus, the planned methodology did not make it possible to objectively, statistically assess how accurate the new case weights are—weights whose accuracy the Judicial Conference relies upon in assessing judgeship needs.

We noted that a time study conducted concurrently with the proposed research methodology would be advisable to identify potential shortcoming of the event-based methodology and to assess the relatively accuracy of the case weights produced using that methodology. In the absence of a concurrent time study, there would be no objective statistical way to determine the accuracy of the case weights produced by the proposed event-based methodology—a major difference with the methodology used to develop the 1993 case weights.

Accuracy of Courts of Appeals Case-Related Workload Measure Cannot Be Assessed

The principal quantitative measure the Judicial Conference uses to assess the need for additional courts of appeals judgeships is adjusted case filings. The measure is based on data available from standard statistical reports for the courts of appeals. The adjusted filings workload measure is not based on any empirical data regarding the time that different types of cases required of appellate judges.

The Judicial Conference's policy is that courts of appeals with adjusted case filings of 500 or more per three-judge panel may be considered for one or more additional judgeships. Courts of appeals generally decide cases using constantly rotating three-judge panels. Thus, if a court had 12 authorized judgeships, those judges could be assigned to four panels of three judges each. In assessing judgeship needs for the courts of appeals, the Conference may also consider factors other than adjusted filings, such

as the geography of the circuit or the median time from case filings to disposition.[5]

Essentially, the adjusted case filings workload measure counts all case filings equally, with two exceptions. First, cases refilled and approved for reinstatement are excluded from total case filings.[6] Second, pro se cases—defined by the Administrative Office of the U.S. Courts as cases in which one or both of the parties are not represented by an attorney—are weighted at 0.33, or one-third as much as other cases, which are weighted at 1.0. For example, a court with 600 total pro se case filings in a year would be credited with 198 adjusted pro se case filings (600 x 0.33). Thus, a court of appeals with 1,600 filings (excluding reinstatements)—600 pro se cases and 1,000 non-pro se cases—would be credited with 1,198 adjusted case filings (198 discounted pro se cases plus 1,000 non-pro se cases). If this court had 6 judges (allowing two panels of 3 judges each), it would have 599 adjusted case filings per 3-judge panel, and, thus, under Judicial Conference policy, could be considered for an additional judgeship.

The current court of appeals workload measure represents an effort to improve the previous measure. In our 1993 report on judgeship needs assessment, we noted that the restraint of individual courts of appeals, not the workload standards, seemed to have determined the actual number of appellate judgeships the Judicial Conference requested.[7] At the time the current measure was developed and approved, using the new benchmark of 500 adjusted case filings resulted in judgeship numbers that closely approximated the judgeship needs of the majority of the courts of appeals, as the judges of each court perceived them. The current courts of appeals case-related workload measure principally reflects a policy decision using

[5] At the time of our 2003 report, the FJC had suggested that adjusted case filings may not be an appropriate measure for the D.C. Circuit Court of Appeals, given the distinctive characteristics of the administrative agency appeals that were a major source of that court's caseload. Details on the FJC analysis for the D.C. Circuit can be found in our 2003 report: GAO, *Federal Judgeships: The General Accuracy of the Case-Related Workload Measures Used to Assess the Need for Additional district Court and Courts of Appeals Judgeships*, GAO-03-788R (Washington, D.C., May 30, 2003).

[6] Such cases were dismissed for procedural defaults when originally filed, but "reinstated" to the court's calendar when the case was later refilled. The number of such cases, as a proportion of total case, is generally small.

[7] GAO, *Federal Judiciary: How the Judicial Conference Assesses the Need for More Judges*, GAO/GGD-93-31 (Washington, D.C., Jan. 29, 1993).

historical data on filings and terminations. It is not based on empirical data regarding the judge time that different types of cases may require. On the basis of the documentation we reviewed for our 2003 report, we determined that there is no empirical basis or assessing the potential accuracy of adjusted case filings as a measure of case-related judge workload.

Various Proposals Have Been Considered for Changing the Court of Appeals Workload Measure

In the past decade the Judicial Conference has considered a number of proposals for developing a revised case-related workload measure for the courts of appeals judges, but has been unable to reach a consensus on any approach. As part of its assistance to the Conference in this effort, the FJC in 2001 compiled a document that reviewed previous proposals to develop some type of case weighting measure for the courts of appeals. Table 1 outlines some of these proposals and their advantages and disadvantages, as identified by the FJC. Generally, methods that rely principally on empirical data on actual case characteristics and judge behavior (e.g., time spent on cases) are more appropriate than those that rely principally on qualitative data because statistical methods can be used to estimate the accuracy of the resulting workload measure.

Table 1: Federal Judicial Conference Case Weighting Measure Proposals, 2001

Proposal	Advantages	Disadvantages
1. Estimation of case burden based on actual time required to process the case.	• The quantitative approach would be very thorough. • Empirically based data.	• Judges may not be amenable to the time-consuming task of recording the hours spent on individual cases. • Time spent gathering data could be used elsewhere.
2. Estimate of case burden based on the assessment of burden of only "certain characteristics" from an already-existing data base of factors.	• Would not be very time-consuming for judges. • Would assess the frequencies of certain "factors." • Analysis of an existing database would save time. • Can use a "wealth" of factors to get a big picture of the caseload burden.	• Difficult to agree on what factors to use • Difficult to decide if presence and absence of factors is enough information. • Database and survey accuracy may be compromised.
3. Normative assessment of cases to look qualitatively at the cases as a whole.	• Convenient to extract information from surveys or group discussions.	• Difficult to decide which factors to use. • Dependent upon the accuracy of judges' recall about the case. • Lack of empirically based data.
4. Using multiple regression to use information about the proportional mix of cases with different defined characteristics in the different circuits to account for the differences in case termination level.	• Quantitative approach to determine factors to use.	• Use of a potentially incomplete model. • Inherent statistical limits. • Cannot assess appellate burdens on a national level.
5. Using district court weights for the appellate system.	• Already available data. • Save time by using existing data.	• Little consistency between the two court systems. • Sacrifice accuracy.
6. Tallying court opinions (published and unpublished)	• Most appellate judge work leads to production of appellate opinions in chambers.	• Necessary information cannot be obtained consistently.
7. Sampling cases for approximately 3 months for a case-based study.	• Can project the results of 3 months of cases to the rest of the years.	• There is no way to anticipate possible sample sizes, so cannot make a statistical prediction.

Source: FJC documentation.

We recognize that a methodology that provides greater empirical assurance of a workload measure's accuracy will require judges to document how they spend their time on cases for at least a period of weeks. However, we believe that the importance and cost of creating new federal judgeships requires the best possible case-related workload data using sound research methods to support the assessment of the need for more judgeships.

Our 2003 Recommendations and the Judiciary's Response

In our 2003 report we recommended that the Judicial Conference of the United States

- update the district court case weights using a methodology that supports an objective, statistically reliable means of calculating the accuracy of the resulting weights; and
- develop a methodology for measuring the case-related workload of courts of appeals judges that supports an objective, statistically reliable means of calculating the accuracy of the resulting workload measures and that addressed the special case characteristics of the Court of Appeals for the D.C. Circuit.

Neither of these recommendations has been implemented.

With regard to our 2003 recommendation for updating the district court case weights, the FJC agreed that the method used to develop the new case weights would not permit the calculation of standard errors, but that other methods could be used to assess the integrity of the resulting case weight system. In response, we noted that the Delphi technique to be used for developing out-of-court time estimates was most appropriate when more precise analytical techniques were not feasible and the issue could benefit from subjective judgments on a collective basis. More precise techniques were available for developing the new case weights and were to be used for developing new bankruptcy court case weights.

The methodology the Judicial Conference decided to begin in June 2002 for the revision of the bankruptcy case weights offered an approach that could be usefully adopted for the revision of the district court case weights.[8] The bankruptcy court methodology used a two-phased approach. First, new case weights would be developed based on the time data recorded by bankruptcy judges for a period of weeks—a methodology very similar to that used to develop the bankruptcy case weights that existed in 2003 at the time of our report. The accuracy of the new case weights could be assessed using standard errors. The second part represents experimental research to determine if it is possible to make future revisions of the weights without conducting a time study. The data from the time study could be used to validate the feasibility of this

[8] See GAO, *Federal Bankruptcy Judges: Weighted Case Filings as a Measure of Judges' Case-Related Workload*, GAO-03-789T (Washington, D.C., May 22, 2003).

approach. If the research determined that this were possible, the case weights could be updated more frequently with less cost than required by a time study. We believe this approach would provide (1) more accurate weighted case filings than the design developed and used for the development of the 2004 district court case weights, and (2) a sounder method of developing and testing the accuracy of case weights that were developed without a time study.

With regard to our recommendation improving the case-related workload measure for the courts of appeals, the Chair of the Committee on Judicial Resources commented that the workload of the courts of appeals entails important factors that have defied measurement, including significant differences in case processing techniques. We recognize that there are significant methodological challenges in developing a more precise workload measure for the courts of appeals. However, using the data available, neither we nor the Judicial Conference can assess the accuracy of adjusted case filings as a measure of the case-related workload of courts of appeals judges.

That concludes my statement, Mr. Chairman, and I would be pleased to respond to any questions you or other members of the Committee may have.

Contacts and Staff Acknowledgments

For further information about this statement, please contact William O. Jenkins Jr., Director, Homeland Security and Justice Issues, on (202) 512-8777 or jenkinswo@gao.gov. In addition to the contact named above the following individuals from GAO's Homeland Security and Justice Team also made major contributors to this testimony: Ann Laffoon, Assistant Director; John Vocino, Analyst-in-Charge, and Laura Kaskie, Communications Analyst.

Statement in Support of Five Additional Judgeships
Eastern District of California

Summary

Despite the best efforts of the judges and staff of the Eastern District of California, assistance within the Judiciary, and cooperation with the State of California, five additional judgeships are clearly necessary to alleviate the workload of the District, which carries the heaviest caseload burden in the country.

Judgeship History

The Eastern District of California was created in 1966, when it was authorized three judgeships. It received three additional judgeships in 1978, and one temporary judgeship in 1990 that expired in 2004. Currently, the Eastern District has six district court judgeships. During most of fiscal year 2007, one of its six judgeships was vacant due to an unanticipated resignation and illness.

Number of Judges

Active District Judges	6
Senior District Judges	5
Magistrate Judges	10

In December, the Senate passed S. 1327, which would have reinstated the temporary judgeship that expired in 2004. The House has not acted on the bill. S.2774, introduced March 13, 2008, reflects the 2007 Judicial Conference of the United States comprehensive Article III judgeship request. It includes four new judgeships for the Eastern District.

Since 1990, Congress has authorized 14 additional temporary and permanent judgeships for the four California districts. Of the 14 judgeships, Congress authorized only one judgeship for the Eastern District; this temporary judgeship expired in 2004.

Congressional Authorization of Judgeships

Districts	1990	2002	2004	Current Number of Judgeships
Central District	+ 5 permanent judgeships	+ 1 temporary judgeship	--	28
Eastern District	+ 1 temporary judgeship	--	- temporary judgeship	6
Northern District	+ 2 permanent judgeships	--	--	14
Southern District	--	+ 5 permanent judgeships	--	13

The period from 2000 to 2008 has been a time of rapid growth for the Eastern District. Already by 2003, census data shows that 18 of the top 25 fastest growing counties in California are located in the Eastern District.

Overall Caseload

The Eastern District has long had one of the highest caseloads in the country based on weighted filings per judgeships. The Eastern District has the second highest weighted filings per judgeship in the country.

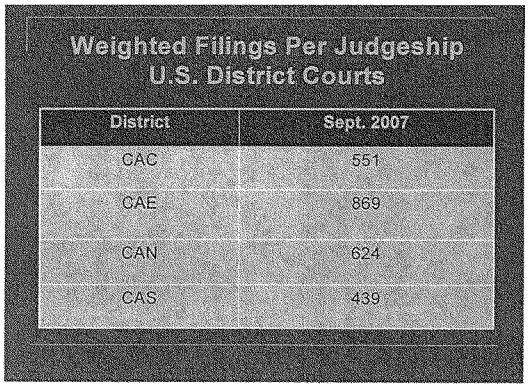
Within the Ninth Circuit, it has consistently ranked first among the fifteen districts. In fiscal year 2007, the Eastern District had 869 weighted filings per judgeship. The second highest district was Northern California with 624 weighted filings per judgeship.

TABLE X-1A
SELECTED U.S. DISTRICT COURTS
WEIGHTED AND UNWEIGHTED FILINGS PER AUTHORIZED JUDGESHIP
DURING THE 12-MONTH PERIOD ENDING September 30, 2007

Ranked by Total Weighted Filings Per Authorized Judgeship

			Weighted Filings per Judgeship				Unweighted Filings per Judgeship			
		AUTH.		SUPERVISION				SUPERVISION		
RANK	DISTRICT / NATION	JUDGES	CIVIL	CRIMINAL	HEARINGS	TOTAL	CIVIL	CRIMINAL	HEARINGS	TOTAL
	NATION	674	366	106	5	477	331	131	32	495
1	LA,E	12	871	42	1	914	693	47	8	749
2	**CA,E**	**6**	**689**	**172**	**8**	**869**	**743**	**204**	**57**	**1004**
3	MN	7	638	101	4	743	737	101	29	867
4	AL,N	8	632	73	2	707	596	79	15	690
5	TX,E	8	527	148	0	674	396	150	1	547
6	NY,S	28	607	54	3	664	551	55	22	629
7	TX,W	13	263	374	13	650	240	520	92	852
8	**CA,N**	**14**	**583**	**36**	**5**	**624**	**457**	**52**	**35**	**543**
9	IN,S	5	522	70	1	594	467	69	7	542
10	FL,M	15	467	98	4	569	432	106	25	563
12	WA,W	7	437	116	6	559	375	192	37	604
13	OR	6	440	111	7	558	408	130	52	590
15	**CA,C**	**28**	**495**	**51**	**5**	**551**	**406**	**65**	**35**	**506**
19	AZ	13	263	252	15	529	260	395	104	759
34	NV	7	423	51	4	478	333	63	29	424
36	ID	2	316	152	6	473	264	169	39	471
45	**CA,S**	**13**	**241**	**184**	**14**	**439**	**198**	**295**	**97**	**590**
59	MT	3	201	177	8	385	200	182	51	434
81	HI	4	209	83	5	297	162	111	36	309
84	WA,E	4	149	104	10	264	141	119	70	330
91	AK	3	130	60	1	191	110	70	5	185

Source: Administrative Office of the United States Courts
NOTE: Louisiana Eastern's high weighted caseload is directly attributable to an influx of cases related to Hurricane Katrina.

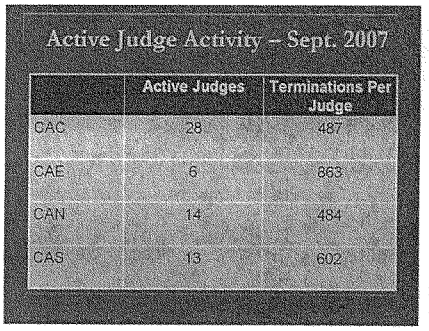


Weighted Filings Per Judgeship
U.S. District Courts

District	Sept. 2007
CAC	551
CAE	869
CAN	624
CAS	439

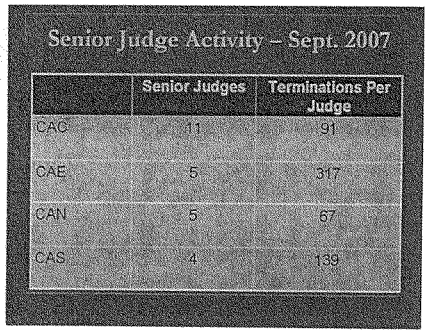
This substantial caseload is matched by a substantial level of productivity. District Judges in the Eastern District terminated 863 cases per judge during 2007, which ranked the district first in the circuit and second in the nation for terminations. This compares to the national average of 468 terminations.

Two of its five senior District Judges maintain caseloads that exceed those of many of the of the nation's active judges. A recent independent assessment by the Ninth Circuit confirmed that all of the judicial officers, even the senior judges who are technically retired, and the staff regularly work long hours, from early in the morning, through the lunch hour and into the evenings, and frequently forego vacations in order to keep from falling further behind.



Active Judge Activity – Sept. 2007

	Active Judges	Terminations Per Judge
CAC	28	487
CAE	6	863
CAN	14	484
CAS	13	602



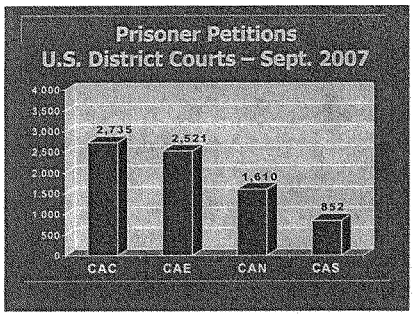
Senior Judge Activity – Sept. 2007

	Senior Judges	Terminations Per Judge
CAC	11	91
CAE	5	317
CAN	5	67
CAS	4	139

Despite their hard work and amazingly high termination rate, the judges are falling behind because filings continue to exceed terminations. On the most recent Civil Justice Reform Act (case backlog) report, the court had 606 civil cases pending for more than three years. This backlog is the result of the woefully insufficient number of judgeships for the Eastern District. The judges must bear the burden of this caseload, but it is the citizens in the Eastern District who must suffer the delayed administration of justice as a result of the lack of adequate judgeships for the court.

Pro Se Prisoner Litigation

Adding to the caseload burden, the Eastern District of California has the second highest number of prisoner petitions in California.

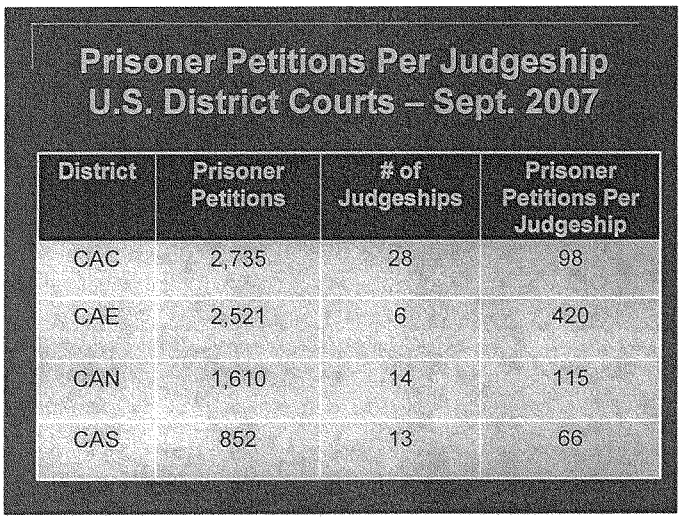


Percent of Prisoner Petitions
U.S. District Courts

District	Filings	Prisoner Petitions	% of Total
CAC	13,368	2,735	20%
CAE	5,472	2,521	46%
CAN	7,688	1,610	21%
CAS	6,148	852	14%

The number of prisoner petitions filed in the Eastern District of California in 1978, when the district grew to its current complement of six judgeships, was 178 cases. By 2007, the number had increased to more than 2,500 prisoner cases, an increase of more than 700% with the same number of authorized district judgeships.

An astounding 46% of all litigation in Eastern California is prisoner petitions.



The number of prisoner petitions per judgeship is more than four times as many as any other district in the Circuit. The Eastern District is handling this caseload with fewer than half the number of judges than other districts across the country with comparable prisoner caseloads. The prisoner cases are primarily pro se litigants, requiring more time and effort by court staff to process than other types of cases. This combination of factors over time has contributed to a staggering backlog of more than 500 prisoner cases in the District.

Yet despite having just six judgeships, the Eastern District terminated 1,897 prisoner cases in fiscal year 2007, only 300 fewer than the total number of prisoner cases terminated by the Central District of California with 28 judges.

This map shows why the Eastern District has heaviest prisoner caseload. There are a total of 33 state and federal prisons within the State of California, with a total prison population of approximately 167,000 prisoners as of FY2007. Nineteen of these prisons, with roughly 100,000 prisoners, reside within the boundaries of the Eastern District. If there is such a label as "border courts," surely the Eastern District of California qualifies as a "prison court."

Internal Judiciary Efforts to Alleviate Caseload

The Judiciary is bringing to bear all additional resources it can muster to assist the District. Six district judges have been designated to sit on Eastern California cases; three of these judges have come from outside of California, but within the Ninth Circuit. Even one senior circuit judge has stepped forward to assist with 200 prisoner cases. Chief Circuit Judge Alex Kozinski is mobilizing additional district judges assistance from within the Ninth Circuit and throughout the Federal Judiciary to meet this caseload crisis. The Judicial Council of the Ninth Circuit has also authorized $290,000 for temporary law clerks.

Additionally, Chief Judge Kozinski appointed a special "resources committee" to assist the district with research on improving internal case processing, information technology, the establishment of pro bono panels for pro se cases, and case reporting procedures. Chief Judge Anthony Ishii and the judges of the Eastern District are acting upon these recommendations.

Prisoner litigation in federal court is extremely expensive. Case backlog caused by insufficient judicial resources results in costly delays in litigation.

Request for Additional Judgeships

While these various strategies for assisting the Eastern District will alleviate the caseload burden to some extent, there is no way the combined effort can mitigate the need for the five additional judgeships, as endorsed by the Judicial Conference of the United States. It is unrealistic to expect the judges and staff of the Eastern District to maintain the pace of productivity indefinitely. It is worth noting that using the Judiciary's weighted caseload standard, the Eastern District could be authorized six additional judgeships. As the Judicial Conference of the United States has in 2007 approved four additional judgeships, the Article III judges of the Eastern District of California request Congressional action to authorize those four additional judgeships.

Honorable Anthony W. Ishii
Chief Judge

Hon. Garland E. Burrell

Hon. Frank C. Damrell Jr.

Hon. Morrison C. England, Jr.

Hon. John A. Mendez

Hon. Lawrence J. O'Neill

Statement of Senator Patrick Leahy

Chairman, Senate Judiciary Committee

Hearing on "Responding to the Growing Need for Federal Judgeships: The Federal Judgeship Act of 2008"

June 17, 2008

Today Republicans added addressing the needs of the Federal judiciary to the now long list of hearings they have objected to in the last week. Republicans objected to the Judiciary Committee's investigation into the use of coercive interrogation techniques. Republicans objected to the impact of Supreme Court decisions on the daily lives of all Americans. And today, the Republican minority has objected to a hearing requested by Judiciary Committee Republicans to examine legislation about the need for additional Federal judgeships.

It would appear to an objective observer that Republicans believe they were elected to the United States Senate to thwart the oversight and legislative efforts of this body. This now all too familiar pattern is childish and serves no good purpose.

I wondered last week, as the Republican minority objected to an important hearing on Supreme Court decisions, just whose side our Republican colleagues are on. Instead of turning their attention to issues affecting the daily lives of the people who have sent them to Washington, they appear more interested in embroiling this chamber in petty, partisan politics. This behavior marks another afternoon of silence behind the witness table in the Senate Judiciary Committee, and another lost opportunity to address issues concerning the American people.

At the May 15, 2008, Judiciary Committee markup several distinguished Republican members of the Committee made the following statements in favor of holding the hearing:

Senator Sessions: My comments on the judges' bill, as a member and Ranking on the Court Subcommittee, we did have hearings several years ago but not recently."

Senator Kyl: "So what I would like to do, Mr. Chairman, is just recommend that you take our colleagues up on the suggestion that we have a hearing to validate the requirements."

Senator Coburn: "If we're going to fix it, let's fix it right. Let's have a great hearing. Let's bring the GAO in, let's bring the Conference in, and let's find out to do it right."

Senator Grassley: "That is the purpose of a hearing, and that is why it is very important that we give this adequate study."

Last month, the Judiciary Committee voted overwhelmingly in favor of reporting the bipartisan Federal Judgeship Act of 2008. This legislation contained the full recommendations of the Judicial Conference of the United States. At our Committee mark-up, one Senator requested that we hold a hearing so that the minority could have an opportunity to present their view and an alternative to the Judicial Conference's formula for determining when a new judgeship is needed. I granted that request, and Senator Feinstein agreed to preside during today's hearing.

The bipartisan judgeship bill that I introduced with Senator Hatch, Senator Feinstein and others would create nearly 60 new Federal judgeships in order to address the increasing workload of the Federal judiciary. The bill is based on the 2007 biennial recommendations of the Judicial Conference of the United States, and its detailed analysis of Federal caseloads.

The Judicial Conference's most recent recommendations were based on an extensive process which begins with an assessment of district and circuit workloads. At the circuit court level, case filings per authorized judgeship are considered in conjunction with local circumstances that may have an impact on judgeship needs. In the district courts, cases are weighted to reflect the estimated time expenditure for each type of case. Workload factors such as the amount of assistance from senior and magistrate judges, unusual caseload complexity, and temporary caseload increases or decreases are also factored into the formula that resulted in our bipartisan bill.

Historically, new judgeships are authorized when judicial vacancies are at low levels. The last time that a comprehensive judgeship bill was enacted in 1990, Congress authorized 72 new Article III judgeships. At that time, there were only 27 district court vacancies and 7 circuit court vacancies. Today, with Federal district court vacancies at 33, and circuit court vacancies at 11, and poised to drop to even lower numbers, the Federal judiciary is approaching the same low vacancy percentage as 18 years ago.

It has been nearly two decades since the last comprehensive judgeship bill was enacted. Since then, weighted filings in the district and circuit courts have risen well above acceptable standards in the targeted districts and states, and in some cases have approached record caseloads. The need for new judgeships is urgent because Federal courts must have adequate judicial resources in order to ensure that all Americans receive justice in a timely manner. And now is the best time for Congress to authorize new judgeships when no one knows what party will have the power to appoint them.

We will include in the Committee record a letter from 14 Federal judges who serve on the from the Judicial Conference's Committee on Judicial Resources. This letter urges us to take up and pass this legislation. I hope we can respond to the urgent resource needs of our co-equal branch of government without further delay. I thank the witnesses for providing their testimony to the Committee today, and I am disappointed we will not hear

from them directly. The Committee will keep the hearing record open for one week, and I look forward to reading the responses to questions submitted to the witnesses. I regret that partisan politics have preempted the Committee's hearing on this important and pressing matter.

# # # # #

Statement of Senator Jeff Sessions
Senate Judiciary Committee – June 17, 2008

Madam Chairwoman, I want to thank you for holding this hearing. It has been some time since this Committee addressed the expansion of the federal Judiciary. In fact, the last time we looked at the issue was 2005 when I chaired a hearing in my subcommittee on Administrative Oversight and the Courts. The issues we looked at then remain with us today. This is an important concern, particularly since there is pending legislation, S. 2774, which would create 66 new permanent and temporary federal judgeships at the appellate and district levels.

Congress must not take lightly its constitutional role in overseeing the administration of the Judicial Branch and creating such inferior courts "as the Congress from time to time may ordain or establish." The Congress must diligently seek to determine the proper size of the federal Judiciary and the optimum number of judges for the lower courts. Striking the proper balance ensures the proper administration of justice and guarantees that all Americans have access to an efficient, fair judiciary in accordance with our constitutional heritage.

If a particular court's caseload becomes too heavy, it becomes necessary for Congress to approve additional judgeships. Should this be our initial response or should we first examine accurately the challenges the courts face and whether that challenge is best met by large increases in judges? If we are going to create new judgeships, we must be confident that we do so based upon accurate information demonstrating a true need for new judgeships.

Congress, though, cannot honestly meet the Judiciary's needs unless it is clear the requests for new judgeships are based on accurate and relevant data. Some, including the Government Accountability Office (GAO), have expressed concern that the formula the Judicial Conference uses to determine the need for new judgeships is flawed. Specifically, there is concern that the method of weighting cases in district courts is based on data that does not contain accurate, statistical support. This is an issue that must be resolved to ensure new judgeships are created only when there is an absolute need.

And this criticism of the Judiciary's methodology in determining the need for new judgeships is not new. William Jenkins, from GAO, brought to light important concerns on this issue in 2003 when he testified before the House Judiciary Committee. He noted then, as he did today, the problems that exist

in measuring a court's workload. Case weights provide a measure of the time a judge may need to handle a particular case. This informs how busy a particular court is and whether additional judgeships are needed to alleviate any burdens on that court.

All cases are not equal. It is this reality the weighting method seeks to address. Some cases, like prisoner petitions and immigration cases can be disposed of quickly – a judge can fully utilize his staff attorneys and law clerks, even magistrate judges, to assist in processing these cases, which allows the judge to work on more time consuming cases. I mention this because S. 2774 provides for new judges in some of our borders states with high immigration related cases. It is my understanding that these cases are not too time consuming. Thus, I can understand why some maintain there are flaws in the Judicial Conference's case weight methodology.

For example, Arizona currently has 13 district court judges. Since 2000, Arizona has received 5 new judgeships – the District Court of Arizona has grown over 62% in 8 years. That's a remarkable rate of growth for any court in any district. Moreover, the Arizona court has 12 full-time magistrate judges right now who assist the Article III judges in processing their caseload. While the state does have a lot of filings, if you look closely at the numbers you will find that almost 50% of the court's 2007 fiscal year docket consisted of prisoner petitions and immigration related cases. Magistrate judges often are able to fully adjudicate these cases without a district court judge being involved. These are not time consuming cases. This new bill would provide Arizona with 4 new permanent judgeships and 1 temporary judgeship, bringing the total number of judges to 18, meaning the court will have received 10 new judgeships since 2000 – an increase of 125%.

If there is an absolute need for new judgeships, due to sustained high caseloads, then I believe the Congress should respond to those requests. There may well be a need for some judgeships contained in this bill, but no one can verify with accuracy that this is the case. Why? Because there are too many questions with regard to the Judicial Conference's methodology used to calculate those needs. I am concerned that it would be an abdication of our duty to the American people to allow any court to grow 125% in eight years based on data the GAO finds objectionable.

The CBO estimates that this bill, S. 2774, will result in direct spending of $107 million over the 2009-2018 period for the salaries and benefits of additional federal circuit and district court judges. Additionally, CBO

estimates the bill will result in discretionary spending for support staff and office space associated with each judgeship of approximately $188 million over a five year period from 2009-2013. This is a substantial cost to the American taxpayer; I hope this hearing will shed some light on the process and give this legislative body a broader perspective when taking steps to further the efficient administration of justice.

I believe many courts are stepping forward with excellent management techniques to improve their ability to manage their cases and dockets. In doing so, the judges are provided more time to do their job – make decisions, write opinions and handle other administrative duties. Such efficiencies are in part the product of technology: computers allow an entire court system to be streamlined, meaning documents can be filed electronically. Aside from technology, many judges have large staffs – a large number have a permanent law clerk, along with two or more one-year law clerks.

Technology and staff are not the only ways judges can become more efficient. I hope this hearing will examine some of the other resources available to federal judges that may be underutilized. The use of senior judges, magistrate judges, shared judgeships, inter-circuit and intra-circuit assignment of judges all help to make the federal Judiciary more efficient. I would like to include into the record the statement of Judge William Steele, a district judge in Mobile, Alabama, and a former magistrate judge himself, which discussed the vital role a U.S. magistrate judge plays and how they are a valuable resource in the disposition of cases.

These and other areas need to be examined to ensure we are getting all we can out of the federal Judiciary. My colleague on the courts subcommittee, Senator Charles Schumer, noted at the 2005 hearing, that there are a number of things that can be done to improve the Judiciary's efficiency. His statements from 2005 remain true today:

> "We [can] help the courts expand and strengthen their mediation and settlement programs. We [can] explore more effective uses of staff attorneys and law clerks. We [can] improve case management and technology. All of this has gotten better over the last decade, but there may be a ways to go. Another way we can increase efficiency is to fill the existing vacancies, especially in the circuits and districts

where the Judicial Conference has recommended additional judgeships."

I could not agree more. Before creating new judgeships, we should fill current federal court vacancies. Currently there are 28 judicial nominees pending for 44 circuit and district court vacancies. The challenge is to determine the real need for new judgeships and fill that need. Once authorized, judgeships are not eliminated. So we must make ensure we are creating judgeships in only the locations they are needed.

At a time when everyone in America is seeking ways to become more efficient, I think it is only appropriate we require the same of our federal judges. Many judges are doing a superb work managing their caseloads and containing costs. Their successes should be the model for all judges across the country. I thank the witnesses for their time and expertise in this matter and look forward to hearing what they have to say.

STATEMENT OF JUDGE GEORGE Z. SINGAL
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

Senator Leahy, Senator Feinstein, and members of the Committee, I am George Singal, District Chief Judge for the District of Maine and Chair of the Judicial Conference Committee on Judicial Resources. I would like to thank the Committee for its strong, 15-4 vote in favor of S. 2774, the Federal Judgeships Act of 2008. The Judicial Conference supports S. 2774, which reflects all outstanding Article III judgeship recommendations of the Judicial Conference. The Conference appreciates the Committee's action on the bill and the scheduling of this hearing.

The Judicial Resources Committee of the Judicial Conference of the United States is responsible for all issues of human resource administration, including the need for Article III judges and support staff in the U.S. courts of appeals and district courts. I am here today to provide information about the judgeship needs of the courts and the process by which the Judicial Conference of the United States (the "Conference") determines those needs.

Every other year, the Conference conducts a survey of judgeship needs of all U.S. courts of appeals and U.S. district courts. The latest survey was completed in March 2007. Consistent with the findings of that survey and the deliberations of my Committee, the Conference recommended that Congress establish 67 new judgeships in the courts of appeals and district courts. The Conference also recommended that five temporary district court judgeships be established as permanent positions and that one temporary district court judgeship be extended for an additional five years. Appendix 1 contains the specific recommendation as to

each court. One of the judgeships recommended by the Conference for the Ninth Circuit has already been addressed in a law enacted earlier in this Congress. All the remaining judgeships recommended by the Conference would be provided by S. 2774. For many of the courts, the recommendations, and the bill, reflect needs developed since the last omnibus judgeship bill was enacted in 1990.

Survey Process

In developing recommendations for consideration by Congress, the Conference (through its committee structure) uses a formal process to review and evaluate Article III judgeship needs. The Committee on Judicial Resources and its Subcommittee on Judicial Statistics conduct these reviews; the Conference makes the final recommendations on judgeship needs. Before a judgeship recommendation is transmitted to Congress, it undergoes consideration and review at six levels within the Third Branch, by: 1) the judges of the court making a request; 2) the Subcommittee on Judicial Statistics; 3) the judicial council of the circuit in which the court is located; 4) the Subcommittee on Judicial Statistics, in a further and final review; 5) the Committee on Judicial Resources; and 6) the Judicial Conference. In the course of the 2007 survey, the courts requested 75 additional judgeships, permanent and temporary. Our review procedure reduced the number of recommended judgeships to 67.

In the course of each judgeship survey, all recommendations made in the prior survey are re-considered, taking into account such factors as the most current caseload data and changes in the availability of judicial resources. In some instances, this review prompts adjustments to previous recommendations.

Judicial Conference Standards

The recommendations developed through the review process described above (and in more detail in Appendix 2) are based in large part on a numerical standard based on caseload. These standards are not in themselves indicative of each court's needs. They represent the caseload at which the Conference may begin to consider requests for additional judgeships – the starting point in the process, not the end point.

Caseload statistics must be considered and weighed with other court-specific information to arrive at a sound measurement of each court's judgeship needs; circumstances that are unique, transitory, or ambiguous are carefully considered so as not to result in an overstatement or understatement of actual burdens. The Conference process therefore takes into account additional factors, including:

- the number of senior judges, their ages, and levels of activity;
- magistrate judge assistance;
- geographical factors, such as the number of places of holding court;
- unusual caseload complexity;
- temporary or prolonged caseload increases or decreases;
- the use of visiting judges; and
- any other factors noted by individual courts (or identified by the Statistics Subcommittee) as having an impact on resource needs.

Courts requesting additional judgeships are specifically asked about their efforts to make use of all available resources. (See Appendix 3.)

The standard used by the Conference as its starting point in the district courts is 430 weighted filings per judgeship after accounting for the additional judgeships recommended. But the workload exceeds 430 per judgeship in all but one district court in which the Conference is recommending an additional judgeship. Weighted filings were 500 per judgeship or higher in 18 of those district courts, and five courts exceeded 600 weighted filings per judgeship.

In the courts of appeals, the starting point used by the Conference is 500 adjusted filings per panel. In 2007, four circuits exceeded 900 adjusted filings per panel; even so, two of these courts did not request an additional judgeship. The case mix in the circuits in which additional judgeships are recommended differs significantly from the case mix in the circuit courts that did not request additional judgeships. For example, criminal and prisoner petition appeals were approximately 60 percent of all appeals filed in the Fifth and Eleventh Circuits (which did not seek additional judgeships), but only about 30 percent in the Second and Ninth Circuits (which did). The Second and Ninth Circuits have also experienced dramatic increases in appeals of decisions by the Board of Immigration Appeals. In each circuit court in which the Conference is recommending additional judgeships, the caseload levels substantially exceed the standard, and other factors bearing on workload have been closely considered.

In short, caseload statistics furnish the threshold for consideration, but the process entails a critical scrutiny of the caseloads in light of many other considerations and variables, all of which are considered together.

Background-Caseload Information

The last comprehensive judgeship bill for the U.S. courts of appeals and district courts was enacted in 1990. Since that time, case filings have continued to rise.

By September 2007, filings in the courts of appeals had grown by 36 percent, while case filings in the district courts rose 29 percent (civil cases were up 22 percent while criminal felony filings rose 73 percent). Although Congress created some additional judgeships in the district courts in recent years in response to particular problems in certain districts, no additional judgeship has been created for the courts of appeals. As a result, the national average caseload per three-judge panel has reached 1,049. Were it not for the assistance provided by senior and visiting judges, the courts of appeals would not have been able to keep pace, particularly in light of the number and length of vacancies.

Even with the additional district judgeships, the number of weighted filings per judgeship in the district courts has reached 477-- above the Judicial Conference standard for considering recommendations for additional judgeships. I have provided at Appendix 4 a more detailed description of the most significant changes in the caseload since the last comprehensive judgeship bill.

Although the national figures provide a general indication of system-wide changes, the situation in courts where the Conference has recommended additional judgeships is much more dramatic. For example, there are 18 district courts with caseloads exceeding 500 per judgeship. The district courts in which the Conference is recommending additional judgeships (viewed as a group) have seen a growth in

weighted filings per judgeship from 427 in 1991 to 556 in September 2007--an increase of 30 percent.

The national data and the combined data for courts requesting additional judgeships provide general information about the changing volume of business in the courts. The Conference's recommendations are not, however, premised on this data concerning courts as a group. Judgeships are authorized court-by-court rather than nationally. So the caseload data most relevant to the judgeship recommendations are those that relate to each specific court in which the Conference is recommending an additional judgeship. The Administrative Office of the U.S. Courts has previously provided detailed justifications for the additional judgeships in each court.

Over the last 20 years, the Judicial Conference has developed, adjusted, and refined the process for evaluating and recommending judgeship needs in response to both judiciary and congressional concerns. The Conference does not recommend (or wish) indefinite growth in the number of judges. The *Long Range Plan for the Federal Courts* (Recommendation 15) recognizes that growth in the judiciary must be carefully limited to the number of new judgeships that are necessary to exercise federal court jurisdiction. The Conference attempts to balance the need to control growth and the need to seek resources that are appropriate to the judiciary's caseload. In an effort to implement that policy, we have requested far fewer judgeships than the caseload increases combined with the other factors would suggest are now required.

Again, the Judicial Conference of the United States is grateful that the Committee voted 15-4 in support of S. 2774, the Federal Judgeships Act of 2008, which reflects the recommendations of the Judicial Conference and is supported by the Conference.

Appendix 1

ADDITIONAL JUDGESHIPS OR CONVERSION OF EXISTING JUDGESHIPS RECOMMENDED BY THE JUDICIAL CONFERENCE
2007

CIRCUIT/DISTRICT	AUTHORIZED JUDGESHIPS	JUDICIAL CONFERENCE RECOMMENDATION
U.S. COURTS OF APPEALS		**13P, 2T**
FIRST	6	1P
SECOND	13	2P
THIRD	14	2P
SIXTH	16	1P
EIGHTH	11	2P
NINTH	28	5P, 2T
U.S. DISTRICT COURTS		**38P, 14T, 5T/P, 1T/E**
ALABAMA, MIDDLE	3	1T
ARIZONA	13	4P, 1T, T/P
CALIFORNIA, NORTHERN	14	2P, 1T
CALIFORNIA, EASTERN	6	4P
CALIFORNIA, CENTRAL	28	4P, 1T
COLORADO	7	1P, 1T
FLORIDA, MIDDLE	15	4P, 1T
FLORIDA, SOUTHERN	18	2P, 1T
HAWAII*	4	T/P
IDAHO	2	1T
INDIANA, SOUTHERN	5	1P
IOWA, NORTHERN	2	1T
KANSAS*	6	T/P
MINNESOTA	7	1P
MISSOURI, EASTERN	8	T/P
MISSOURI, WESTERN	6	1P
NEBRASKA	3	1P
NEVADA	7	1T
NEW JERSEY	17	1T
NEW MEXICO	7	1P, 1T, T/P
NEW YORK, EASTERN	15	3P
NEW YORK, WESTERN	4	1P
OHIO, NORTHERN	12	T/E
OREGON	6	1P, 1T
SOUTH CAROLINA	10	1P
TEXAS, EASTERN	8	1P
TEXAS, SOUTHERN	19	2P
TEXAS, WESTERN	13	1P
UTAH	5	1T
VIRGINIA, EASTERN	11	1P
WASHINGTON, WESTERN	7	1P

P = PERMANENT; T = TEMPORARY; T/P = TEMPORARY MADE PERMANENT
T/E = EXTENSION OF TEMPORARY

* If the temporary judgeship lapses, the recommendation is amended to one additional permanent judgeship.

Appendix 2

JUDGESHIP RECOMMENDATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

JUDICIAL CONFERENCE PROCESS

In developing judgeship recommendations for consideration by Congress, the Judicial Conference, through its committee structure, uses a formal survey process to review and evaluate Article III judgeship needs, regularly and systematically. The nationwide surveys of judgeship needs are based on established criteria related to the workload of the judicial officers. These reviews are conducted biennially by the Committee on Judicial Resources, with final recommendations on judgeship needs approved by the Conference.

The recommendations are based on justifications submitted by each court, the recommendations of the judicial councils of the circuits, and an evaluation of the requests by the Committee on Judicial Resources using the most recent caseload data. During each judgeship survey, the Conference reconsiders prior, but still pending, recommendations based on more recent workload data and makes adjustments for any court where the workload no longer supports the need for additional judgeships. The Judicial Conference has also implemented a process for evaluating situations where it may be appropriate to recommend that certain positions in district courts be eliminated or left vacant when the caseload does not support a continuing need for the judicial officer resource.

In general, the survey process is very similar for both the courts of appeals and the district courts. First, the courts submit a detailed justification to the Subcommittee on Judicial Statistics. The Subcommittee reviews and evaluates the request and prepares a preliminary recommendation which is given to the courts and the appropriate circuit judicial councils for their recommendation. More recent caseload data are used to evaluate responses from the judicial council and the court, if a response is submitted, as well as to prepare recommendations for approval by the Committee on Judicial Resources. The Committee's recommendations are then provided to the Judicial Conference for final approval.

COURT OF APPEALS REVIEWS

At its September 1996 meeting, on the recommendation of the Judicial Resources Committee, which consulted with the chief circuit judges, the Judicial Conference unanimously approved a new judgeship survey process for the courts of appeals. Because of the unique nature of each of the courts of appeals, the Conference process involves consideration of local circumstances that may have an impact on judgeship needs. In developing recommendations for courts of appeals, the Committee on Judicial Resources takes the following general approach:

A. Courts are asked to submit requests for additional judgeships provided that at least a majority of the active members of the court have approved submission of the request; no recommendations for additional judgeships are made without a request from a majority of the members of the court.

B. Each court requesting additional judgeships is asked to provide a complete justification for the request, including the potential impact on its own court and the district courts within the circuit of not getting the additional judgeships. In any instance in which a court's request cannot be supported through the standards noted below, the court is requested to provide supporting justification as to why the standard should not apply to its request.

C. The Committee considers various factors in evaluating judgeship requests, including a statistical guide based on a standard of 500 filings (with removal of reinstated cases) per panel and with pro se appeals weighted as one third of a case. This caseload level is used only as a guideline and not used to determine the number of additional judgeships to recommend. The Committee **does not** attempt to bring each court in line with this standard.

The process allows for discretion to consider any special circumstances applicable to specific courts and recognizes that court culture and court opinion are important ingredients in any process of evaluation. The opinion of a court as to the appropriate number of judgeships, especially the maximum number, plays a vital role in the evaluation process, and there is recognition of the need for flexibility to organize work in a manner which best suits the culture of the court and satisfies the needs of the region served.

DISTRICT COURT REVIEWS

In an ongoing effort to control growth, in 1993, the Conference adopted new, more conservative criteria to evaluate requests for additional district judgeships, including an increase in the benchmark caseload standard from 400 to 430 weighted cases per judgeship. Although numerous factors are considered in looking at requests for additional judgeships, the primary factor for evaluating the need for additional district judgeships is the level of weighted filings. Specifically, the Committee uses a case weighting system[1] designed to measure judicial workload, along with a variety of other factors, to assess judgeship needs. The Conference and its Committee review all available data on the caseload of the courts and supporting material provided by the individual courts and judicial councils of the circuits. The Committee takes the following approach in developing recommendations for additional district judgeships:

A. In 2004, the Subcommittee amended the starting point for considering requests from current weighted filings above 430 per judgeship to weighted filings in excess of 430 per judgeship *with an additional judgeship*. This caseload level is used only as a guideline and is not used to determine the number of additional judgeships to recommend. The Committee **does not** attempt to bring each court in line with this standard.

B. The caseload of the individual courts is reviewed to determine if there are any factors present to create a temporary situation that would not provide justification for additional judgeships. Other factors are also considered that would make a court's situation unique and provide support either for or against a recommendation for additional judgeships.

C. The Committee reviews the requesting court's use of resources and other strategies for handling judicial workload, including a careful review of each court's use of senior judges, magistrate judges, and alternative dispute resolution, in addition to a review of each court's use of and willingness to use visiting judges. These factors are used in conjunction with the caseload information to decide if additional judgeships are appropriate, and to arrive at the number of additional judgeships to recommend for each court.

D. The Committee recommends temporary judgeships in all situations where the caseload level justifying additional judgeships occurred only in the most recent years, or when the addition of a judgeship would place a court's caseload close to the guideline of 430 weighted filings per judgeship. The Committee sometimes relaxes this approach in the case of a small court, where the addition of a judgeship would drop the caseload per judgeship substantially below the 430 level. In some instances the Committee also considers the pending caseload per judgeship as an additional factor supporting an additional temporary judgeship.

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[1] "Weighted filings" is a mathematical adjustment of filings, based on the nature of cases and the expected amount of judge time required for disposition. For example, in the weighted filings system for district courts, each civil antitrust case is counted as 3.45 cases while each homicide defendant is counted as 1.99 weighted cases. The weighting factors were updated by the Federal Judicial Center in June 2004 based on criminal defendants and civil cases closed in calendar year 2002.

Appendix 3

ACTIONS TO MAXIMIZE USE OF JUDGESHIPS

In addition to the conservative and systematic processes described above for evaluating judgeship needs, given the current climate of fiscal constraint, the judiciary is continually looking for ways to work more efficiently without additional resources. As a part of the normal judgeship survey process or as a separate initiative, the judiciary has used a variety of approaches to maximize the use of resources and to ensure that resources are distributed in a manner consistent with workload. These efforts have allowed us to request fewer additional judgeships than the increases in caseload would suggest are required. Among the more significant methods in use are:

(1) **Surveys to review requests for additional permanent and temporary judgeships and extensions or conversions of temporary judgeships to permanent:**
As described previously, surveys are conducted biennially of all Article III judgeship needs. To reduce the number of additional judgeships requested from Congress, the Judicial Conference has recently adopted more conservative criteria for determining when to recommend creation of additional judgeships in the courts of appeals and district courts.

(2) **Recommending temporary rather than permanent judgeships:**
Temporary, rather than permanent, judgeships are recommended in those instances where the need for additional judgeships is demonstrated, but it is not clear that the need will exist permanently.

(3) **Development of a process to recommend not filling vacancies:**
In March 1997, the Judicial Conference approved a process for reviewing situations where it may be appropriate to recommend elimination of a district judgeship or that a vacancy not be filled. The Judicial Conference includes this process in its biennial surveys of judgeship needs for recommending to the Executive and Legislative Branches that specific vacant positions be eliminated or not be filled. A similar process has been developed and is in use for the courts of appeals.

(4) **Use of senior judges:**
Judicial officer resource needs are also met through the use of Article III judges who retire from active service to senior status. Most senior Article III judges perform substantial judicial duties; over 400 senior judges are serving nationwide.

(5) **Shared judgeships:**
Judgeship positions have been shared to meet the resource needs of more than one district without the cost of an additional judgeship.

(6) **Intercircuit and intracircuit assignment of judges:**
To furnish short-term solutions to disparate judicial resource needs of districts within and between circuits, the judiciary uses intercircuit and intracircuit assignments of Article III judges. This program has the potential to provide short-term relief to understaffed courts.

(7) **Use of Magistrate Judges:**
Magistrate judges serve as adjuncts to the district courts, supplementing the work of the Article III judges. Use of magistrate judges on many routine court matters and proceedings allows for more effective use of Article III judges on specialized court matters.

(8) **Use of alternative dispute resolution:**
Since the late 1970s and with increasing frequency, courts use various alternative dispute resolution programs such as arbitration, mediation, and early neutral evaluation as a means of settling civil disputes without litigation.

(9) **Use of technology:**
The judiciary continually explores ways to help align caseloads through technological advancements, where judges can assist other districts or circuits without the need to travel.

Over the last 20 years, the Judicial Conference has developed, adjusted, and refined the process for evaluating and recommending judgeship needs in response to congressional concerns. In addition, some adjustments have been made because the Conference recognizes that there cannot be indefinite growth in judicial officer resources and is concerned about continuing growth. This issue is recognized in Recommendation 15 of the Long Range Plan for the Federal Courts, which acknowledges the need for growth in the judiciary to be carefully controlled so that creation of new judgeships is limited to that number necessary to exercise federal court jurisdiction. The Judicial Conference is constantly evaluating the need to control growth and the need to seek resources that are appropriate to the workload. In an effort to place that policy in effect, the Conference has requested far fewer judgeships than the caseload increases would suggest are now required.

Appendix 4

CASELOAD CHANGES SINCE LAST JUDGESHIP BILL

A total of 34 additional district court judgeships have been created since 1991, but five temporary judgeships have lapsed, including two in 2004. These changes have resulted in a four percent increase in the overall number of authorized district court judgeships; court of appeals judgeships have not increased. Since the last comprehensive judgeship bill was enacted for the U.S. courts of appeals and district courts, the numbers of cases filed in those courts have grown by 36 percent and 29 percent, respectively. Specific categories of cases have seen dramatic changes over the last 16 years, some increasing and some decreasing significantly. Following is a summary of the most significant changes.

U.S. COURTS OF APPEALS *(Change in authorized judgeships: 0)*

- The total number of appeals filed has grown by over 15,000 cases since 1991.
- Appeals of criminal cases have increased 28 percent.
- The most dramatic growth in criminal appeals has been in immigration appeals, which increased from 145 in 1991 to 2,007 in 2007.
- Appeals of decisions in civil cases from the district courts have risen 8 percent since 1991.
- The most dramatic growth in civil appeals has been in prisoner appeals where case filings are up 42 percent since 1991.
- Appeals involving administrative agency decisions have fluctuated over the years, but have grown from 2,859 in 1991 to 10,382 in 2007. The increases began in 2002 due to appeals of decisions by the Board of Immigration Appeals (BIA). Dramatic increases in BIA appeals occurred in the Ninth and Second Circuits.
- Original proceedings have grown from 609 in 1991 to 3,775 in 2007. The Antiterrorism and Effective Death Penalty Act, enacted April 1996, requires prisoners to seek permission from courts of appeals for certain petitions. Data for these and certain pro se mandamus proceedings were not reported until October 1998. Between 1999 and 2007, original proceedings filings rose 12 percent.

U.S. DISTRICT COURTS *(Change in authorized judgeships: +4%)*

CIVIL CASELOAD

- The civil caseload has fluctuated over the past 16 years, but has increased 22 percent overall since 1991.

- The increase in civil filings since 1991 resulted primarily from cases related to personal injury product liability (233%), copyright, patent and trademark (108%), civil rights (60%), social security (53%), and prisoner petitions (27%).

- Some of the increases in civil filings resulted, in part, from legislative actions:

  - civil rights filings increased steadily after the Civil Rights Act of 1990 was enacted. Filings rose from 19,892 in 1991 to 43,278 in 1997, then remained relatively stable for several years before declining in 2005, 2006, and 2007.

  - prisoner petitions rose through the first half of the 1990's, rising 61 percent between 1991 and 1996, due primarily to a 57 percent increase in prison civil rights cases. Motions to vacate sentence and habeas corpus petitions were also significantly higher. Prison litigation reform was enacted in 1996, and prison civil rights filings have since fallen 42 percent and are now below the number of cases filed in 1991. Habeas corpus petitions, on the other hand, have increased 87 percent since 1991. Overall, prisoner petitions increased 27 percent between 1991 and 2007.

- Personal injury product liability filings rose 200 percent from 1991 to 1997, due primarily to breast implant cases and a large number of cases filed in the Middle District of Louisiana related to an oil refinery explosion. Filings have since fluctuated significantly, but the number of cases filed in 2007 was more than three times the number filed in 1991. A large proportion of these cases involve multi-district litigation related to pharmaceutical products.

- Filings related to social security fluctuated considerably between 1991 and 1996, but nearly doubled between 1996 and 2002. Although filings have declined since 2002, the number of social security cases filed in 2007 was 53 percent above the number filed in 1991.

- Protected property rights cases rose 68 percent between 1991 and 2000, due primarily to significant increases in trademark and patent cases. Filings declined slightly between 2000 and 2002, but have since risen 31 percent due primarily to increases in copyright cases, which more than doubled. Since 1991, filings have increased 108 percent.

- In the District of South Carolina, nearly 20,000 civil cases related to a single case in the U.S. Bankruptcy Court were filed in 2004.

FELONY CRIMINAL CASELOAD

- Criminal felony case filings have increased 73 percent since 1991 and the number of criminal felony defendants is 51 percent higher. After fluctuating between 1991 and 1994, both case filings and defendants steadily increased through 2004. Criminal filings have declined slightly over the last three years.

- The largest increase, by far, has been in immigration filings which rose from 1,992 in 1991 to 16,593 in 2007.
- Firearms filings fluctuated between 1991 and 1997, but rose 198 percent between 1997 and 2004. Although filings have declined slightly since 2004, the increase from 1991 to 2007 totaled nearly 4,500 cases.
- The number of drug-related filings in 2007 was 43 percent above the number filed in 1991 despite a 10 percent decline since 2002.
- Although filings have fluctuated over the years, the number of fraud cases has increased 16 percent from 5,931 in 1991 to 6,854 in 2007.
- Filings related to drugs, immigration, firearms, and fraud offenses comprise more than 80 percent of all felony cases filed.

COMMITTEE ON JUDICIAL RESOURCES
of the
JUDICIAL CONFERENCE OF THE UNITED STATES

June 2, 2008

Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As Chairman of the Judicial Resources Committee of the Judicial Conference of the United States, the policy-making body of the Federal Judiciary, I write to express the appreciation of the Conference for the Senate Judiciary Committee's consideration and favorable reporting of the Federal Judgeships Act of 2008 (S. 2774).

As you know, the legislation reflects the 2007 Judgeship Recommendations of the Judicial Conference of the United States, which are the current recommendations of the Conference. The judgeships that would be established through the legislation would address serious workload needs in 6 courts of appeals and 31 district courts across the country, and in so doing would enhance the efficient administration of criminal and civil justice in the federal court system.

The judgeships in S. 2774, as recommended by the Conference, are the product of extensive study conducted through the Conference's biennial six-step evaluation and recommendation process. These judgeships are greatly needed at this time, long before the Conference's present evaluation and recommendation cycle is completed and the next set of Judicial Conference recommendations are produced in March, 2009.

The Judicial Conference of the United States is thus grateful that the Senate Judiciary Committee acted on the legislation, and we look forward to working with you toward its passage.

Sincerely,

Judge George Z. Singal

Statement of
The Honorable Arlen Specter
United States Senator
Pennsylvania

June 17, 2008
United States Senate Judiciary Committee
"Responding to the Growing Need for Federal Judgeships: The Federal Judgeship Act of 2008"

The Committee has convened today's hearing to examine the need for additional judgeships, the methodology by which the Judicial Conference determines that need, and the costs thereof.

The need for additional judgeships is demonstrated by the increased caseloads that the Federal courts have seen over the nearly twenty years since the last comprehensive judgeship bill was enacted. The Federal Judgeship Act of 2008 would create 14 circuit court judgeships and 52 district court judgeships, alleviating these increased caseloads, including a 55 percent increase in the circuit courts and 29 percent increase in the district courts.

It is ironic, however, that this body would add 66 new judgeships, including 14 circuit court judgeships, when this Committee is failing to act on so many judicial nominees who have been pending for months, and even years, especially those deemed "judicial emergencies" by the Administrative Office of the Courts.

For example, Judge Robert Conrad is nominated to fill a seat deemed a judicial emergency on the severely understaffed Fourth Circuit Court of Appeals. Nevertheless, his nomination has been pending for 336 days. A former prosecutor under both Republican and Democratic administrations, Judge Conrad currently serves as chief judge for the Western District of North Carolina. He graduated *magna cum laude* from Clemson University and received his law degree from the University of Virginia. The American Bar Association has given him its highest rating, "unanimous well qualified," which Democrats have called the "gold standard" for evaluating a nominee. An editorial in *The Charlotte Observer* stated it is "outrageous" that the Judiciary Committee has not held a hearing on Judge Conrad, calling him a "well-qualified judge who only 3 years ago received unanimous Senate confirmation," and who "was appointed by Democratic Attorney General Janet Reno to head the Justice Department's Campaign Task Force."

Similarly, Mr. Steven Matthews has been waiting for a hearing for 285 days even though he too is nominated to the Fourth Circuit, which is currently one-fourth vacant. Mr. Matthews is a well respected partner in a prestigious South Carolina law firm and has the strong support of both his home state senators.

Mr. Rod Rosenstein of Maryland is also nominated to the Fourth Circuit and has been waiting 215 days for a hearing. Mr. Rosenstein currently serves as U.S. Attorney for Maryland and has been rated unanimously well qualified by the ABA. *The Washington Post* editorialized that "blocking Mr. Rosenstein's confirmation hearing ... would elevate ideology and ego above substance and merit, and it would unfairly penalize a man who people on both sides of this question agree is well qualified for a judgeship."

Another example of a nominee who is being needlessly delayed is Mr. Peter Keisler, whose nomination to the District of Columbia Circuit Court has been pending in Committee for 719 days. Mr. Keisler is an outstanding nominee graduating *magna cum laude* from Yale and from Yale Law School, where he was editor of the Yale Law Journal. A partner in a top D.C. law firm, Mr. Keisler previously served as Acting Attorney General following the resignation of Alberto Gonzales. In addition, Mr. Keisler has received the ABA's highest rating, a "unanimous well qualified." Editorials in *The Los Angeles Times* and *The Washington Post* have called for confirmation of Mr. Keisler, calling him a "moderate conservative" and a "highly qualified nominee" who "certainly warrants confirmation."

This bill adds circuit court judgeships to the First and Third Circuits, where nominees to seats designated as "judicial emergencies" have been pending for months. These nominees include: Judge William Smith of Rhode Island, nominated to the First Circuit and waiting for a hearing for 194 days; Mr. Shalom Stone of New Jersey, nominated to the Third Circuit and waiting for a hearing for 336 days; and Gene Pratter of Pennsylvania, also nominated to the Third Circuit and waiting for a hearing for 215 days. They are all exceptional nominees and have been rated well qualified by the ABA.

This bill also addresses the district courts' need by adding 52 district court judgeships to counterbalance the 29 percent increase in case filings since 1990. The district courts do need additional judges, but they also need this Committee to act on well-qualified district court nominees, such as Tom Farr who is nominated to fill a "judicial emergency" in the Eastern District of North Carolina and has been waiting for a hearing for 558 days. When Senators Dole and Burr wrote the Committee in May asking for a hearing for Mr. Farr, they noted that the seat to which Mr. Farr is nominated carries the highest number of cases per authorized judgeship in the entire Fourth Circuit when considering weighted criminal filings.

Currently, there are 16 district court nominees pending in Committee and 3 district court nominees pending on the Senate floor. This bill adds district court judgeships to the districts of Arizona, California, Indiana, New York, and Virginia, all of which have judicial nominees currently awaiting Senate action.

Increased caseloads hinder litigants' access to the federal justice system. We have a responsibility to ensure that the American people receive prompt justice in our courts. Many circuit and district courts are considered judicial emergencies. Where nominees have been pending for protracted periods of time, failing to fill vacancies does great harm to the litigants who are waiting to have their cases heard. If there is no district judge to try the case, the litigant waits. There are real and dire consequences to that situation – people ought to have their day in court to have the matter adjudicated. If the matter is finally tried, then an appeal is taken in the circuit court, where many judicial emergencies exist. Again, the litigant waits. The adage is well-established in our lexicon that justice delayed is justice denied.

The Senate should act on these pending nominees who are nominated to courts that need their services before it considers adding new judgeships.

I want to thank the witnesses for coming to the hearing today.

TESTIMONY OF U. S. DISTRICT JUDGE WILLIAM H. STEELE
BEFORE THE SENATE JUDICIARY COMMITTEE
JUNE 17, 2008

Thank you for this opportunity to address the committee in writing for purposes of its hearing on "Responding to the Growing Need for Federal Judgeships: The Federal Judgeship Act of 2008". I have been asked to comment on the utilization of magistrate judges, and more specifically, on the utilization of magistrate judges in the Southern District of Alabama.

By way of background, I served as a magistrate judge in the Southern District of Alabama from 1990 until 2003. In 2003, I was appointed and began serving as a United States District Judge; consequently, I have witnessed the benefits of the magistrate judges' system both from a supporting role and in a supported role.

The Southern District of Alabama is considered to be a pioneer district in the full utilization of magistrate judges. This was an evolution that resulted from a set of unique circumstances which occurred in our district over a period of several years. During the mid to late 1990's, the Southern District was authorized, and had serving, three district judges. Historically, the Southern District is a busy district, and given its proximity to the drug corridors of South Texas, South Florida, and the Gulf of Mexico, it is a district which has handled a significant number of drug cases. Because criminal cases generally take priority over civil cases, and because of the Speedy Trial Act, it was necessary to move these criminal cases through the system as quickly as possible.

As a result of a number of factors affecting our district judges including ill health, retirement, senior status, and the delay in replacing these judges, over time, the number of district judges in Southern District of Alabama diminished from three active judges to one active judge. That judge was then responsible for managing most, if not all, of the total criminal case load in addition to his own civil case load. As a result of these conditions and factors, the Court began looking for ways to efficiently manage the civil and criminal dockets so as to avoid any substantial backlog and delay in the efficient administration of justice. For our district, the logical place to turn was to the magistrate judges.

At the time of this crisis, the magistrate judges in the Southern District of Alabama were already serving in their traditional roles. By traditional roles, I mean that these judges were handling all of the § 1983 prison litigation on report and recommendation, all of the § 2254 habeas cases on report and recommendation, all of the social security appeals on report and recommendation, all of the preliminary criminal matters (arraignments, initial appearances, detention hearings, pretrial conferences, and discovery motions), all of the central violations bureau cases (hunting and game violations, petty offenses, and assimilated crimes act offenses), and all preliminary civil matters (discovery motions and the entry of scheduling orders).

In order to relieve the lone district judge so that he could manage the criminal docket and as much of the civil docket as possible, the magistrate judges were asked to take on additional responsibilities which included handling a significant number of civil pretrial conferences, a substantial number civil case settlement conferences, jury selection in almost all of the criminal and civil jury trial cases, and an automatic assignment of a significant part of the civil docket. In addition, a small number of civil dispositive motions (summary judgment, and motions to dismiss), were referred to the magistrate judges for entry of a report and recommendation, and,

on occasion, the magistrate judges were called upon to take guilty pleas.

Also, pursuant to 28 U.S.C. § 636, magistrate judges are authorized, with the consent of the parties, to exercise jurisdiction over all proceedings in jury or non-jury civil matters, and may order the entry of judgment in a "consent" case. In an effort to relieve the district judges (and ultimately the one district judge) in our district, our court implemented a system wherein 25 percent of the total civil docket was automatically assigned to the magistrate judges. With the consent of the parties, a number of these cases were retained and disposed of by the magistrate judges, thus reducing the total civil case load of the district judge.

As a result of this expanded utilization of magistrate judges, our court was able to efficiently and effectively administer justice in the Southern District of Alabama during this critical time when the district was operating with one district judge.