

**FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2016**

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**TUESDAY, MARCH 24, 2015**

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 10:32 a.m., in room SD-138, Dirksen Senate Office Building, Hon. John Boozman (chairman) presiding.  
Present: Senators Boozman, Lankford, and Coons.

**FEDERAL JUDICIARY**

**STATEMENT OF HON. JULIA SMITH GIBBONS, UNITED STATES COURT OF APPEALS**

**OPENING STATEMENT OF SENATOR JOHN BOOZMAN**

Senator BOOZMAN. Good morning. The subcommittee will come to order.

As we begin this important hearing to review the budget request of the Federal judiciary, we welcome our witnesses, Judge Julia Gibbons, Chair of the Budget Committee of the Judicial Conference of the U.S.; and James Duff, Director of the Administrative Office of the U.S. Courts.

Thank you so much for being here today. We look forward to your testimony.

We all recognize the importance of a fair and independent judiciary. That independence comes with a great responsibility and a commitment to the preservation of our rights. Your work helps to ensure we have a society governed by the rule of law as envisioned by the Framers of our Constitution.

As members of the Appropriations Committee, it is our duty to ensure the hard-earned tax dollars from millions of Americans are spent wisely. We appreciate that the judiciary takes its responsibility to be good stewards of the taxpayers' money very, very seriously.

Cost containment is not new to judiciary. Recognizing the likelihood of future tight budgets, projected increases, and fixed costs, the Judicial Conference unanimously endorsed a comprehensive cost-containment strategy that called for examining more than 50 court operations for reducing expenses.

Since then, the judiciary has focused on three areas that have the greatest potential for significant long-term savings: rent, personnel expenses, and information technology. During the past 10

years, the judiciary's cost-containment efforts have resulted in a cost avoidance of nearly \$1.5 billion relative to projected requirements.

It is unfortunate that the President's budget does not reflect the same commitment to reducing the cost of government. In his proposal for fiscal year 2016, the President wants to create \$2.1 trillion new taxes, increase spending by 65 percent, and add \$8.5 trillion to the debt over the next 10 years. While hardworking Arkansans have been forced to cut their spending significantly the past few years, the President has been unwilling to do the same in Washington.

Under the Budget Control Act, the discretionary spending caps for fiscal year 2016 limit nondefense spending to \$493 billion. This represents an increase of only \$1.1 billion over the 2015 level for all nondefense departments and agencies.

The judiciary is requesting an increase of 3.9 percent for fiscal year 2016. While we recognize the strides you have made to ensure that you spend your resources effectively and efficiently, it is important to note that all requests for funding must be considered in the broader context of the fiscal constraints facing the Federal Government.

The American people want a government that works for them, not against them. They want us to curb Washington's wasteful spending habits; make the Government more efficient, effective, and accountable; and pursue policies that create economic opportunities for everyone. Again, we appreciate the fact that you all as an agency have worked very hard to do that.

These are the priorities of the American people. They will be reflected in the critical oversight we conduct as we consider the fiscal year 2016 budget request for all of the agencies within our jurisdiction.

Judge Gibbons and Director Duff, I look forward to hearing from you this morning. But before that, I will first ask Senator Coons to proceed with his opening statement.

#### STATEMENT OF SENATOR CHRISTOPHER A. COONS

Senator COONS. Thank you, Chairman Boozman.

I would like to welcome our witnesses, Judge Gibbons and Director Duff. I am thankful for your years of service and look forward to your testimony today.

As we all know, our citizens rely on a Federal court system that guarantees the rights of all Americans, ensures the right to a defense, and secures public safety. I would argue that our Federal court system is the envy of the world and the gold standard for this important independent branch of our constitutional structure.

So I welcome today's opportunity to examine the judiciary's budget request and discuss how we can best work together to help our Federal courts fulfill their vital and broad responsibilities.

As Chairman Boozman mentioned, I look forward to hearing about your cost-containment strategies and reductions, and about how proactive planning has made it possible for the Federal judiciary to be prepared for what has been a very difficult budget environment over the last couple of years.

As you well know, last year, when I served as chairman of the Judiciary Subcommittee on the Courts, I heard first hand and in detail the significantly harmful impacts that sequestration had on Federal courts, on their operations, on their staffing, and, in particular, I will just draw attention for one moment to this, on the Public Defender Services. Sequester reduced staffing in Federal Defender Services by 11 percent. There were widespread furloughs, a loss of many senior and seasoned staff. And yet, it was troubling, even ironic, that this happened on the 50th anniversary of *Gideon v. Wainwright*, a decision by the Supreme Court that established a right to counsel.

And as a consequence of the protected right to counsel, the deep cuts actually failed to achieve meaningful savings, because Federal defendants were entitled to representation, which was provided by panel attorneys. So there was both an enormous loss of the experience in the Federal Public Defenders Service and no significant reduction in spending, which is yet another example of penny-wise and pound-foolish.

Sequestration also resulted in significant cuts in courthouse security, as well as in mental health testing and treatment services. The 5 percent sequester cut in fiscal year 2013 came on top of several years of flat budgets, resulting in 2,700 fewer workers overall—in clerks of court, probation, pretrial services, a roughly 12 percent cut in the overall workforce.

I am encouraged the judiciary now seems to be on a somewhat recovering financial footing. As a result of last year, courts and Federal defender offices are able to backfill some of these many vacancies. But as we enter another appropriations cycle, in my view, we shouldn't turn back the clock and impose another round of senseless and devastating cuts through sequestration.

There is a request before us for a slight increase of \$264 million out of a total budget of \$6.96 billion. This keeps pace with recent requests that would allow the courts to maintain their current level of services.

I am looking forward very much to hearing your plans for how to prepare for this environment, which, frankly, to be blunt, is not encouraging. In the fiscal year 2016 funding forecast, the budgetary constraints that remain in place suggest that we will have a difficult environment.

So I look forward to hearing your testimony about cost-containment, and I hope we can work together to ensure that we come up with a responsible budget that continues to invest in this vital constitutional function.

Thank you.

Senator BOOZMAN. Thank you, Senator Coons.

And thank you, Senator Lankford, for being here.

In the interest of time, I will ask our witnesses to provide us with their testimony, and then subcommittee members will proceed with their questions.

Judge Gibbons, I invite you to present your remarks on behalf of the Federal Judiciary Conference.

## SUMMARY STATEMENT OF HON. JULIA SMITH GIBBONS

Judge GIBBONS. Thank you, Mr. Chairman. Chairman Boozman, Senator Coons, Senator Lankford, as you know, I am here today to testify on behalf of the judiciary's fiscal year 2016 funding needs.

By way of background, I have been a Federal judge since 1983, spending 19 years in the District Court and the last 13 on the Court of Appeals. With me today, of course, is Jim Duff, our new, although he has been with us before, director of the Administrative Office of the Courts.

## FISCAL YEAR 2015 JUDICIARY FUNDING

We have not had a hearing before this panel in several years, and we appreciate very much your holding this hearing today. At the outset, I thank you for the funding provided to us in the 2015 omnibus appropriations bill, the 2.8 percent overall increase allows us to backfill some vacancies in clerks of court, probation, and pre-trial services offices, and Federal defender organizations, and allows us enough funding to meet other operational needs.

We know the funding constraints you faced and greatly appreciate your making us a funding priority.

## ROLE OF THE JUDICIAL BRANCH

Every year, I ask that the Appropriations committees take into account the nature and importance of the work of the Federal courts. This plea takes on greater urgency as the Federal budget tightens and as deficit reduction proposals are considered that make cuts to nondefense discretionary spending below the current spending caps.

The scope and volume of our work is dictated by the functions assigned to us by the Constitution and by statute. We must adjudicate all cases filed in our courts; protect the community by our supervision of defendants who are awaiting trial and who are on post-conviction release; provide defense counsel for indigent defendants; pay juror costs; and ensure the safety and security of judges, court staff, litigants, and the public in court facilities.

Sequestration with cuts in 2013 had a devastating impact, and we fear a return to sharply reduced funding levels and the cut-backs that would necessitate. We ask that you take into account the unique role of the Federal courts in our democracy and make the judiciary a funding priority again for 2016.

## COST CONTAINMENT

Turning to our own efforts to contain costs, which we appreciate both of you recognizing in your statements, we continue that effort in order to position ourselves for future fiscal realities. We have had some real cost-containment success, but we know there is more work to do.

My written testimony discusses in detail our efforts to reduce the judiciary space footprint. We are pursuing a multifaceted approach to space reduction, including plans to reduce our footprint by 3 percent by the end of fiscal year 2018. We are on track to meet that goal.

## NASHVILLE COURTHOUSE AND CAPITAL SECURITY

Director Duff will discuss these topics in more detail, but I want to add my strong support for two items in the President's 2016 General Services Administration (GSA) budget request, \$181.5 million for a new Federal courthouse in Nashville, and \$20 million for the Capital Security Program. Nashville is our top space priority, and we need a new courthouse to address significant security and operational deficiencies. Capital security funding has enabled us to address security deficiencies in courthouses where physical renovations are feasible. We would hope that these two items would be funded.

## FISCAL YEAR 2016 BUDGET REQUEST

Turning to our 2016 budget request, we are seeking \$7 billion in discretionary appropriations, a 3.9 percent increase. We believe the request achieves our goal of holding down cost growth, where possible, while also investing in several important new initiatives, most of which, in fact, have the potential to enable us to realize more savings down the road.

Our program enhancements, which total \$56 million, include \$26 million for IT initiatives related to national hosting of court IT systems and replacing our aging email system.

We request \$15 million for our probation program to expand the use of best practices to reduce recidivism.

We seek \$4.6 million to increase the number of court security officers at Federal courthouses, based on the U.S. Marshals' security recommendation.

We request a \$6 per hour increase to \$134 to the rate paid to private practice attorneys appointed to represent indigent defendants, and a \$10 increase to \$50 for the daily rate for jury service.

## CLOSING REMARKS

We thank you again for having this hearing today. As you make your decisions on 2016 funding, we ask that you take into account our unique constitutional role. In return, we commit to you that we will continue to be good stewards of the taxpayers' dollars, cutting costs where possible, spending each dollar wisely, and making smart investments to achieve long-term savings.

I would ask that my statement be placed in the record, along with statements of the Administrative Office of the U.S. Courts, the Federal Judicial Center, the Sentencing Commission, the Court of Appeals for the Federal Circuit, and the Court of International Trade. I look forward to answering your questions.

[The statements follow:]

## PREPARED STATEMENT OF HON. JULIA SMITH GIBBONS

## INTRODUCTION

Chairman Boozman, Senator Coons, and members of the subcommittee, I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals. Our court sits in Cincinnati, Ohio, and my resident chambers are in Memphis, Tennessee. As the Chair of the Judicial Conference Committee on the Budget, I will testify on the judiciary's appropriations requirements for fiscal year 2016. I believe our fiscal year 2016 request of \$7.0 billion in discretionary appropriations achieves our goal of holding down cost growth across the judiciary where possible while also investing in several

important new information technology and program initiatives that will improve judiciary operations. My testimony will provide details on those initiatives, discuss recently enacted fiscal year 2015 judiciary appropriations, and provide an update on our cost-containment program, including a detailed discussion of efforts underway to reduce the judiciary's space footprint. This is my eleventh year testifying before Congress on behalf of the Federal judiciary and my first appearance before this Financial Services and General Government panel since 2008. Appearing with me today is James C. Duff, Director of the Administrative Office of the United States Courts. We are very appreciative that you are holding this hearing today.

#### STATEMENTS FOR THE RECORD

In addition to my statement and Director Duff's, I ask that the entire statements of the Federal Judicial Center, the U.S. Sentencing Commission, the U.S. Court of Appeals for the Federal Circuit, and the U.S. Court of International Trade be included in the hearing record.

#### FISCAL YEAR 2015 FUNDING FOR THE JUDICIARY

Chairman Boozman and Senator Coons, I begin today by thanking Congress for the funding the judiciary received in the "Consolidated and Further Continuing Appropriations Act of 2015," the omnibus spending measure that funds most of the Federal Government for fiscal year 2015. The omnibus bill provided the judiciary with a 2.8 percent overall increase in discretionary appropriations above fiscal year 2014, essentially equal to the judiciary's re-estimated request and sufficient to meet our full funding needs. The 2.8 percent increase builds on the 5.1 percent appropriations increase Congress provided the judiciary for fiscal year 2014 and will enable the courts to recover from the harmful effects of the 2013 sequestration cuts. It will allow us to backfill some vacancies in clerks of court, probation and pretrial services offices, and Federal defender organizations, and will provide sufficient funding to meet operational costs, juror expenses, and court security requirements for fiscal year 2015. We are aware that this subcommittee had a 1 percent cut in its allocation below fiscal year 2014 for constructing a final fiscal year 2015 bill, and we are greatly appreciative that the judiciary was again treated as funding priority, receiving an overall 2.8 percent increase as I just mentioned.

#### ROLE OF THE JUDICIAL BRANCH

Each year in my testimony before Congress on the judiciary's budget request, I ask that the Appropriations Committees take into account the nature and importance of the work of the Federal courts, and I do so again this year. This plea takes on a greater urgency as the Federal budget tightens and as proposals for further deficit reduction for fiscal year 2016 and beyond are considered that make cuts to non-defense discretionary spending below the current spending caps.

The judiciary performs constitutionally-mandated core government functions that are a pillar of our democratic system of government. The scope and volume of our work is dictated by the functions assigned to us by the Constitution and by statute. We must adjudicate all criminal, bankruptcy, civil, and appellate cases that are filed with the courts; we must protect the community by supervising defendants awaiting trial and offenders on post-conviction release; we must provide qualified defense counsel for defendants who cannot afford representation; we must pay jurors for costs associated with performing their civic duty; and we must ensure the safety and security of judges, court staff, litigants, and the public in Federal court facilities. We look to Congress to provide us with the resources we need to accomplish this broad mission.

While Congress has made the judiciary a funding priority in fiscal years 2014 and 2015, we remain concerned about the longer-term funding prospects for the judiciary in what will be a constrained Federal budget environment for the foreseeable future. As you know, the overall discretionary spending cap provides essentially no growth from fiscal year 2015 to 2016, increasing only about \$2.0 billion (0.2 percent) to \$1.017 trillion. Beyond fiscal year 2016, assuming the continuation of current law, the spending caps will rise by only about 2.4 percent annually through fiscal year 2021, which may not be sufficient to keep pace with inflation and to meet other critical requirements. This may be a best-case scenario, given some of the additional deficit reduction proposals being discussed. Sequestration cuts in 2013 had a devastating impact on Federal court operations, and we fear a return to sharply reduced funding levels and the cutbacks it would necessitate. As I mentioned at the outset of my testimony, Congress has made it possible for the judiciary to recover from sequestration and we ask you to take into account the nature and importance

of our work and to make the judicial branch a funding priority again in fiscal year 2016, as well as in future years.

#### COST CONTAINMENT

For more than 10 years we have been focused on containing costs in the judiciary's budget and we have achieved significant success. In fact, since the beginning of our formal cost containment program in 2005, the judiciary has realized a cost avoidance of nearly \$1.5 billion relative to our projected requirements, attributable primarily to cost-containment policies put in place, as well as other factors. Changes made to date have reduced current and future costs for: rent, information technology, magistrate judges, compensation of court staff and law clerks, law books, probation and pretrial services supervision work, and other areas. And we have achieved this cost containment without harming court operations. But we recognize there is more work to be done.

We are now working on a new round of cost-containment initiatives that may be more controversial within the judiciary, more difficult to implement quickly, and could result in significant change within the judiciary. But we believe these new initiatives are essential to positioning the judiciary for what likely will continue to be a constrained Federal budget environment going forward. We continue to expand the use of shared administrative services among the courts of appeals, district courts, bankruptcy courts, probation and pretrial services offices, and Federal defender organizations to reduce duplicative human resources, procurement, financial management, and information technology activities. Forty-two percent of all courts have formal sharing arrangements of some kind, and many others have informal or temporary arrangements. The decision to migrate to a shared administrative services model is up to each circuit or district, and we are exploring ways in which we can increase shared administrative services, including offering incentives. We also are exploring voluntary consolidation of offices and other longer-term changes that would further reduce growth in personnel and operational costs.

As we continue our efforts to reduce cost growth in the judiciary's budget, I emphasize that no amount of cost containment will offset budget cuts or even flat funding in fiscal year 2016. Our budget request is reflective of the cost-containment policies we have put in place and is the amount we require to fulfill our mission.

#### REDUCING THE JUDICIARY'S SPACE FOOTPRINT

With strong controls in place to limit the growth in our space rent costs, including revamping our courthouse planning process and instituting new procedures to identify billing errors, we are now focusing on reducing the judiciary's overall space footprint and we are making real progress in this area. At its September 2013 session, the Judicial Conference approved three new initiatives to facilitate space reduction: (1) a 3 percent space reduction target by the end of fiscal year 2018 subject to certain exclusions such as new courthouse construction, renovation, or alterations projects approved by Congress; (2) a "no net new" policy in which any increase in square footage within a circuit must be offset by an equivalent reduction in square footage identified within that circuit in the same fiscal year; and (3) requiring each of the 12 judicial councils to formulate a space management plan articulating how the new space reduction policy will be implemented.

I am pleased to report to the subcommittee significant progress on our space reduction efforts. The judiciary's 3 percent space reduction goal aims to reduce our space footprint by 870,305 square feet by the end of fiscal year 2018, which is 3 percent of the 2013 space baseline level of 29,010,183 square feet. The space reduction target was prorated among the 12 regional circuits nationwide to ensure space reduction is fair and equitable across the country. As of October 2014, the judiciary has reduced space on a national basis by nearly 1 percent—that is 242,403 square feet of space that has been removed from the courts' rent bill, resulting in an annual rent cost avoidance of \$5.8 million to the judiciary. We are on track to accomplish the full 3 percent reduction by the end of fiscal year 2018.

The judiciary appreciates the funding provided by Congress to support our cost-containment efforts, particularly those related to space reduction. Up-front costs to support construction, renovation, and information technology are critical to the success of this effort. Our fiscal year 2016 request includes \$25.0 million for space reduction efforts. Space reduction projects requiring renovations each undergo a two-step process: first, an architectural and engineering analysis is completed on potential projects to determine if space reduction is feasible and cost effective; and second, if the architectural and engineering analysis identifies reasonable savings, funding is made available for the implementation phase to design and construct the new space. It is important to note that not all projects make it beyond the architectural

and engineering analysis step to implementation. The judiciary pursues projects that yield the greatest savings with the quickest return on investment.

A key component of our space reduction effort is our Integrated Workplace Initiative (IWI), which seeks to create a smaller and more efficient workplace that reflects changing work practices, such as mobile work or telework for some court employees. An example of an area where an IWI project would be especially useful is a probation or pretrial services office. Some probation officers require less space now because they use mobile devices while visiting clients and working in the field. As a result, some probation offices can reduce the amount of commercial leased space that they occupy, or they could move out of commercial leased space and into government owned courthouses and Federal buildings, while occupying less space than previously needed. This is just one example. We currently have 10 IWI projects in the design phase in the courts and an eleventh in the implementation phase.

In addition, we have an IWI project underway right here in Washington, DC, at the Administrative Office of the United States Courts (AO). This is a national demonstration project that involves co-locating the nearly 70 staff from four facilities and security office divisions into one space on the first floor of the Thurgood Marshall Federal Judiciary Building. The total occupied space will be reduced by up to 25 percent and the design fully incorporates IWI mobility concepts. The space will include systems furniture and movable walls to allow for flexible space configuration. The design process for this project is now underway. The project will serve as a working example for judges and court unit executives who travel to Washington, DC to experience first-hand what an IWI project looks like and to then consider something similar for their court.

I will close on this topic by assuring the subcommittee that we are working hard to reduce the judiciary's space inventory. The General Services Administration's (GSA) cooperation is essential to our ability to reduce space and to date GSA has been working collaboratively with us on our space reduction efforts.

#### NASHVILLE COURTHOUSE AND CAPITAL SECURITY FUNDING

Director Duff addresses these topics in more detail in his written testimony, but I want to add my strong support for two items included in the President's 2016 budget under the General Services Administration. First, the President's budget includes \$181.5 million for constructing a new courthouse in Nashville, Tennessee, the Judicial Conference's top space priority. The Nashville courthouse project has been on the judiciary's *Five-Year Courthouse Construction Project Plan* for nearly 20 years and a new courthouse is needed to address severe security, space, and operational deficiencies in the existing facility.

The second item is the \$20 million in the President's budget for the judiciary Capital Security Program. This program was designed to address serious security deficiencies in existing courthouse buildings where physical renovations are viable alternatives to new courthouse construction. Eight Capital Security Program projects have been funded with appropriations provided in fiscal years 2012, 2013, and 2015. Fiscal year 2016 funding would be utilized to address security deficiencies at Federal courthouses in Raleigh, North Carolina and Alexandria, Louisiana. The Capital Security Program has been a valuable, cost-effective solution to achieving greater security at courthouses with significant security deficiencies.

I respectfully ask that the subcommittee fund these two items in fiscal year 2016.

#### JUDICIARY'S FISCAL YEAR 2016 BUDGET REQUEST

The judiciary's fiscal year 2016 budget request of \$7.0 billion in discretionary appropriations reflects an overall 3.9 percent increase above fiscal year 2015 to support the constitutional and statutory mission of the Federal courts. As I mentioned at the outset of my testimony, we believe the request achieves our goal of holding down cost growth across the judiciary where possible, while also investing in several important new information technology and program initiatives that will improve judiciary operations. With the sequestration cuts of 2013 behind us and our financial position now on more solid footing, we believe it is the right time to make these investments. The judiciary's requested increase of \$264.5 million includes \$209.0 million for adjustments to base for standard pay and non-pay changes, and a total of \$55.5 million for program enhancements. I will now summarize the fiscal year 2016 requests for our four major accounts and discuss base adjustments needed to maintain current services. In the next section of my testimony I discuss in detail our program enhancements. A more detailed summary of our fiscal year 2016 request is provided in Appendix A.

The judiciary's largest account, courts' Salaries and Expenses, funds the bulk of Federal court operations nationwide, including the regional courts of appeals, dis-



strict courts, bankruptcy courts, and probation and pretrial services offices. For this account, we are requesting a 3.9 percent increase in fiscal year 2016 to \$5.0 billion in discretionary appropriations. I note that we are not requesting funding to increase the number of staff in clerks of court or probation and pretrial services offices, but those offices will have the ability to continue backfilling some vacancies in fiscal year 2016. The request includes \$136.2 million for standard pay and non-pay inflationary adjustments for court staff. In addition, we are requesting an increase of \$11.0 million for additional chambers staff associated with projected changes in filled judgeships. We also seek \$8.9 million in net adjustments in our space program.

The Defender Services program, which provides court-appointed criminal defense representation under the Criminal Justice Act to financially eligible defendants, requires a 4.0 percent increase to \$1.06 billion in fiscal year 2016 to handle an estimated 200,000 representations. The fiscal year 2016 request includes \$39.3 million for inflationary pay and benefits adjustments for Federal defender organizations, changes in projected Federal defender and panel attorney caseload, and payments to panel attorneys, including a 1 percent cost-of-living adjustment to panel attorney hourly rates.

Our Court Security account funds protective guard services and security systems and equipment at Federal courthouses and requires a 5.5 percent increase to \$542.4 million for fiscal year 2016. Adjustments to base total \$22.1 million and include \$11.7 million for a required 3 percent wage rate increase for contract court security officers (CSOs), \$4.9 million for additional security systems and equipment costs, \$2.4 million in higher Federal Protective Service charges, and \$3.1 million in other standard pay and non-pay adjustments.

The Fees of Jurors and Commissioners account funds statutory fees and allowances for grand and petit jurors and land commissioners appointed by a court to determine just compensation in Federal eminent domain cases. This includes the daily compensation paid to jurors as well as related costs for meals and incidental expenses. This account requires \$52.4 million in fiscal year 2016, a 0.4 percent increase above fiscal year 2015, a net increase of \$220,000 comprised of downward adjustments to base totaling \$3.8 million primarily due to lower petit juror projections, and a \$4.0 million program enhancement to increase daily juror pay, which I discuss in the next section of my testimony.

#### PROGRAM ENHANCEMENTS TO IMPROVE JUDICIARY OPERATIONS

##### *Implementing Centralized IT Hosting Services for the Courts*

The judiciary's fiscal year 2016 request for the Salaries and Expenses account includes \$19.0 million for the first year costs of a multi-year national IT hosting initiative. Over the past decade, the judiciary has pursued an incremental path toward consolidating both its national systems and court hosting environments. Previously, courts were responsible for locally hosting mission-essential systems and providing the necessary infrastructure for those systems. Most courts now access their national case management, jury management, email, telephone service, and other systems over the judiciary's data network from one of two national data centers, one on each coast.

The remaining systems in the local courts' server rooms are primarily focused on managing courts' desktop computers and providing file servers for court staff. Yet even these systems are capable of being hosted centrally. There are four primary benefits to doing so: (1) economy-of-scale savings of as much as 40 percent in lower hardware and software costs as local courts would no longer have to maintain separate hosting infrastructure; (2) improved continuity of operations because a regional disaster or outage would not impact data/applications that are centrally hosted (the national data centers on each coast provide failure backup to each other); (3) standardized security for court systems versus the various security models that exist today; and (4) reduced space needs as rooms previously dedicated to local computer servers could be given up or repurposed for other uses. As an example of the benefits of providing centralized IT services, several years ago the judiciary implemented a national phone system to replace individual court phone systems across the country. Since implementation of the new phone system we have seen lower aggregate telecommunications costs, reduced equipment costs, better security, and improved reliability.

Currently, 17 court units participate in a pilot program for national hosting of their local IT systems. The pilot has confirmed that while the reasons an individual court might decide to adopt enterprise hosting and cloud computing services for its systems may vary, the basic benefits across the judiciary are the same: reduce the total cost-of-ownership for hosting systems; achieve true continuity-of-operations;

and improve IT security. The success of the pilot drove, in part, the judiciary's decision to seek funding in fiscal year 2016 to make centralized hosting available to all courts nationwide. The initial implementation will employ a judiciary private "cloud" technology that will address our specific and unique security requirements. Funding requested in fiscal year 2016 would enable the judiciary to move beyond the pilot with implementation in a number of additional courts. Locally, courts will be able to accrue savings by not having to spend funds for hardware and related systems administration and will benefit from enhanced reliability, redundancy, and security. In addition, providing a national solution reduces the need for courts to maintain large computer rooms, thus reducing space and utilities requirements.

#### REPLACING OUTDATED AND INEFFICIENT EMAIL AND MESSAGING SYSTEM

We request \$7.0 million in the courts' Salaries and Expenses account to begin replacement of the judiciary's 14-year-old email and messaging system that is inadequate to meet the judiciary's current workload demands. While email and calendaring were the primary needs in 2000, today's email platform includes advanced features and functionality, such as instant messaging, collaboration, document sharing, integration with mobile device platforms, and more. This initial investment will fund the development of a unified judiciary-wide email and messaging system that incorporates advanced features and functionality required for mobile computing, document sharing, and improved security. The judiciary is examining several key issues, such as whether to migrate legacy email data and alternatives for doing so, that will determine the ultimate cost. It is anticipated such decisions will be made this summer so that the project can move forward, subject to available funding in fiscal year 2016.

#### REDUCING OFFENDER RECIDIVISM

Our probation and pretrial services program strives to employ the most proven strategies for supervising offenders awaiting trial or released from prison and living in the community. Our fiscal year 2016 request includes \$15.0 million in the courts' Salaries and Expenses account to expand evidence-based offender supervision practices to further reduce recidivism rates.

To begin, the Federal system's recidivism rate has been half that of many States. The 3-year felony re-arrest rate for persons under Federal supervision is 24 percent, and the revocation rate hovers at 30 percent. In contrast, a Bureau of Justice Statistics study looking at 15 State parole systems found a recidivism rate of 67.5 percent. Similarly, while supervision violators constituted 33 percent of all new prison admissions in the States in 2011, violators constituted only 8 percent of the new admissions in Federal prisons during the same period.

Past supervision approaches have focused on frequency of probation officer/offender contacts and compliance with conditions of supervision imposed by the judge. While compliance with conditions still remains a major component of supervision, working with the offender to change his behavior will provide the best long-term value to the offender and the community. "Evidence-based practices" (EBP) are the supervision practices proven to produce specific, intended results. EBP is an outcome-based approach that focuses on specific supervision and treatment strategies versus the more traditional contact-driven supervision approach. One of the judiciary's EBP programs, called Staff Training Aimed at Re-Arrest Reduction (STARR), involves exercises and instructions designed to alter the dysfunctional thinking patterns exhibited by many offenders and improves the quality and nature of the relationship between the offender and the officer. STARR builds on officers' existing communication skills, use of authority, and ability to impart cognitive restructuring strategies to offenders. Since STARR was implemented in 2012, 1,139 officers have been trained in 57 of the 94 judicial districts nationwide. The \$15 million requested for fiscal year 2016 will expand access to programs like STARR that target dynamic risks posed by offenders.

We believe that the modest cost for the judiciary's evidence-based approach to offender reentry into society will reduce the high costs associated with recidivism. It costs the Bureau of Prisons about \$80 per day to incarcerate an offender in a Federal prison. It costs the judiciary on average less than \$10 per day for a probation officer to supervise an offender in the community. If that offender succeeds, the costs of further incarceration are avoided and the offender can become a productive member of society—gain employment, pay taxes, make restitution, pay fines, etc. This may not be possible in every case, but we believe there are ways to improve the chances that many more offenders will remain law-abiding, and through our STARR program we are proactively seeking to identify and implement supervision practices that will assist offenders.

#### ADDING MAGISTRATE JUDGES TO MEET WORKLOAD DEMANDS

Our request also includes a program increase of \$1.9 million in the courts' Salaries and Expenses account for three additional magistrate judges and associated staff to address workload demands in three judicial districts. The Judicial Conference authorizes new magistrate judge positions based upon a demonstration of need by a requesting court. The Judicial Conference has approved three new magistrate judge positions in the following locations: San Francisco or San Jose, California (California-Northern); Tacoma, Washington (Washington-Western); and Tampa, Florida (Florida-Middle).

#### PROVIDING ADEQUATE COMPENSATION TO COURT-APPOINTED COUNSEL

We request your support for a program enhancement in our budget that will ensure effective representation for criminal defendants who cannot afford to retain their own counsel. We are requesting \$1.8 million in the Defender Services program to increase the non-capital (non-death penalty) panel attorney rate by \$6 per hour above the cost-of-living adjustment (COLA) level, effective January 1, 2016. If the judiciary's budget request is fully funded, the new effective non-capital hourly rate would be \$134. The annualized cost of the \$6 increase is \$14.4 million. A panel attorney is a private attorney who serves on a panel of attorneys maintained by the district or appellate court and is assigned by the court to represent financially-eligible defendants in Federal court in accordance with the Criminal Justice Act (CJA). There are more than 10,000 panel attorneys accepting CJA appointments in Federal court and most are solo or small law firm practitioners.

Panel attorneys currently are paid \$127 per hour for non-capital work and \$181 per hour for capital (death penalty) work. The CJA authorized the Judicial Conference to implement annual cost-of-living adjustments (COLAs) to panel attorney rates, subject to congressional funding. The COLA requested in our fiscal year 2016 budget would increase the current rate by \$1 to \$128 per hour. If the statutory COLAs provided to Federal employees (the base employment cost index component only) had been provided to panel attorneys on a recurring, annual basis since 1986, the authorized non-capital hourly rate for fiscal year 2016 would be \$144. As a result, we are also seeking a \$6 "catch up" increase to \$134 in fiscal year 2016 to close the gap between the current rate and the authorized hourly rate of \$144.

Panel attorneys are small business owners who pay their own salary, as well as rent, staff salaries, health insurance, and other overhead expenses from the CJA hourly rate. The rate is intended to cover both overhead and a fair hourly fee. According to a 2009 nationwide survey conducted by the judiciary, panel attorneys earned on average \$246 per hour for their non-CJA cases and incurred overhead expenses of \$70 per hour. The current CJA non-capital rate is not competitive with even these out-of-date figures. For comparison, the Department of Justice pays \$200 per hour to retain private counsel to represent current or former Federal employees in civil, congressional, or criminal proceedings. The judiciary is in the process of completing another nationwide survey of panel attorneys and judges to assess the effect of the current hourly rate on CJA representations and will share that information with the subcommittee once the survey data has been compiled.

Although the judiciary's goal is to eventually attain the full non-capital rate authorized by statute, we are cognizant of pressures on the Federal budget and seek only a partial catch-up increase in fiscal year 2016. We must, however, remain mindful that ensuring the Sixth Amendment right to effective counsel depends on the quality and competence of these CJA panel attorneys, and a fair hourly rate is essential to meeting this constitutional mandate.

#### IMPROVING SECURITY AT FEDERAL COURTHOUSES

The judiciary's fiscal year 2016 request for Court Security includes \$4.6 million to improve security at Federal courthouses nationwide. One of the U.S. Marshals Service's (USMS) primary missions is to provide security for the Federal courts. Congress appropriates funding to the judiciary and we transfer about 85 percent of that funding to the USMS for it to manage the Judicial Facility Security Program, which includes contracting for 4,200 court security officer (CSO) positions to protect Federal courthouses, and procuring court security systems and equipment, such as magnetometers, to deploy at Federal court facilities.

The USMS currently allocates CSOs to judicial districts based on a staffing formula that was developed in 1994. The USMS commissioned a review in September 2011 to assess CSO staffing levels to determine if they were sufficient to meet current security requirements. Based on the results of the review, the USMS recommends that 346 additional CSOs be posted at Federal courthouses during busi-

ness hours. The updated standard strengthens security at court facilities by adding CSOs in security control rooms and at garage/loading docks at large court facilities. The updated standard also includes a crucial exterior “forward watch” position outside courthouse entrances to identify and address threats earlier, before they gain entry to the courthouse.

Hiring 346 additional CSOs in a single year would cost an estimated \$33.8 million. Mindful of Federal budget constraints, the judiciary and the USMS propose phasing in the new staffing standard over 5 years, with 69 additional CSO positions being hired in fiscal year 2016 at a cost of \$4.6 million, and a similar number each succeeding year, through full implementation in fiscal year 2020.

Additional program enhancements for Court Security include \$780,000 to increase the class size for in-depth CSO training at the Federal Law Enforcement Training Center in Glynco, Georgia from 24 to 30 students, and extending the training from 3 to 5 days, and \$1.0 million to reimburse the USMS for security-related IT support services it provides but has not previously charged to the judiciary.

#### INCREASING THE DAILY PAY FOR FEDERAL JURY SERVICE

The judiciary’s fiscal year 2016 request includes \$4.0 million in the Fees of Jurors and Commissioners account to increase petit and grand juror daily attendance pay by \$10, from \$40 to \$50. Although inflation and the cost-of-living have increased, juror pay has not changed since December 1990. If basic inflationary increases were applied each year since 1990, the current rate would be \$72 per day. In order to compensate jurors more fairly for performing their civic duty, we are requesting a modest \$10 increase to \$50 per day. We would appreciate the subcommittee’s support of this proposal.

#### CONCLUSION

Chairman Boozman and Senator Coons, I hope that my testimony today provides you with some insight into the fiscal year 2016 funding needs of the Federal courts, particularly the information technology and other program initiatives that I just described. Again, I thank the subcommittee for holding this hearing today and I look forward to working closely with you going forward. As you make decisions on fiscal year 2016 funding for the agencies under the subcommittee’s jurisdiction, we ask that you take into account the judiciary’s unique constitutional role in our system of government. In return, we commit to you that we will continue to be good fiscal stewards, cutting costs where possible, spending each dollar wisely, and making smart investments to achieve long-term savings.

Thank you for your support of the Federal judiciary. I would be happy to answer any questions the subcommittee may have.

#### APPENDIX A

##### SUMMARY OF THE JUDICIARY’S FISCAL YEAR 2016 BUDGET REQUEST

The judiciary’s fiscal year 2016 budget request of \$7.0 billion in discretionary appropriations reflects a 3.9 percent increase above fiscal year 2015 to support the constitutional and statutory mission of the Federal courts.

The judiciary’s fiscal year 2016 request will maintain current services across the judiciary, continue the recovery and restoration of activities that were disrupted because of sequestration, and enable investment in important new or upgraded program initiatives needed to support judicial operations.

The judiciary’s budget request does not include funding for additional staff in clerks of court or probation and pretrial services offices, but those offices will have the ability to continue backfilling some vacancies in fiscal year 2016. The request fully funds the judiciary’s Defender Services Program which provides court-appointed counsel to indigent defendants, and includes a \$6 rate increase above inflation to the non-capital panel attorney hourly rate, from \$128 to \$134. The requested level also provides for a sufficient level of security at Federal court facilities nationwide. Lastly, the judiciary’s request will ensure that funds are available for criminal and civil jury trials, and will allow for an increase in the daily juror attendance fee by \$10, from \$40 to \$50, the first such increase since 1990.

##### DETAILS OF THE FISCAL YEAR 2016 BUDGET REQUEST

—The judiciary’s fiscal year 2016 appropriations request totals \$7.5 billion. The request includes \$7.0 billion in discretionary appropriations, an increase of \$264.5 million (3.9 percent) over the fiscal year 2015 enacted level. The request

also includes \$571.1 million in mandatory appropriations, an increase of \$20.7 million above fiscal year 2015.

#### *Discretionary Appropriations*

- A total of \$209.0 million (79 percent) of the \$264.5 million increase requested will provide for pay adjustments, inflation, and other adjustments to base necessary to maintain current services. Of this amount:
  - An increase of \$132.0 million provides for inflationary pay and benefit rate increases for magistrate and claims judges and support personnel, including annualization of fiscal year 2015 pay adjustments, expected January 2016 pay adjustments (e.g. 1.0 percent Employment Cost Index (ECI) adjustment for Federal workers), changes in benefits costs, a cost-of-living adjustment for panel attorneys, and a wage rate adjustment for court security officers.
  - An increase of \$50.2 million is necessary to replace non-appropriated sources of funds used to support base requirements in fiscal year 2015 with direct appropriations, due to lower fee collections and carryforward balances projected for fiscal year 2016 versus fiscal year 2015.
  - An increase of \$15.7 million provides for increases in contract rates and other standard inflationary increases.
  - An increase of \$13.8 million is necessary to maintain on-going information technology requirements.
  - An increase of \$11.0 million is associated with additional chambers staff for newly confirmed judges and judges taking senior status.
  - An increase of \$9.7 million provides for space-related adjustments.
  - An increase of \$7.3 million funds security-related adjustments.
  - A net decrease of \$30.7 million is associated with fiscal year 2015 non-recurring requirements, projected changes in Defender Services caseload, and other minor adjustments.
- A total of \$55.5 million (21.0 percent) of the \$264.5 million increase requested will provide for program enhancements. Of this amount,
  - An increase of \$26.0 million provides initial funding for a national enterprise hosting and cloud computing initiative and to upgrade the judiciary's email and messaging system.
  - An increase of \$15.0 million expands evidence-based supervision practices in the probation and pretrial services program to further reduce recidivism rates.
  - An increase of \$6.3 million funds security-related enhancements, including the initial implementation of a new court security officer staffing standard recommended by the U.S. Marshals Service.
  - An increase of \$4.0 million raises the daily juror attendance fee by \$10—from \$40 to \$50—for grand and petit jurors, the first such increase since 1990.
  - An increase of \$1.9 million funds three additional magistrate judges and staff.
  - An increase of \$1.8 million provides for a \$6 per hour panel attorney rate increase above inflation, from \$128 to \$134, for non-capital cases.
  - An increase of \$0.5 million funds higher Supreme Court facility maintenance costs.

#### *Mandatory Appropriations*

- A \$20.7 million increase is requested for judiciary mandatory appropriations, as follows:
  - An increase of \$4.1 million provides for pay adjustments for Article III and bankruptcy judges' salaries, including annualization of the fiscal year 2015 pay adjustment, the proposed January 2016 pay adjustment (e.g. 1.0 percent ECI adjustment for Federal workers), and changes in benefits costs.
  - An increase of \$4.8 million funds salary costs associated with 45 projected judge confirmations and 30 judges taking senior status in fiscal year 2016, and changes in the number of filled bankruptcy judgeships.
  - An increase of \$11.8 million provides for the judiciary retirement trust funds accounts based on requirements calculated by an independent actuary.

## JUDICIARY APPROPRIATIONS

Discretionary Appropriations Account	Fiscal Year 2015 Enacted	Fiscal Year 2016 Request	\$ Change Fiscal Year 2016 vs. Fiscal Year 2015	% Change Fiscal Year 2016 vs. Fiscal Year 2015
U.S. Supreme Court				
Salaries & Expenses .....	\$74,967	\$75,717	\$750	1.0
Care of Building and Grounds .....	11,640	9,953	(1,687)	-14.5
Total .....	86,607	85,670	(937)	-1.1
U.S. Court of Appeals for the Federal Circuit .....	30,212	30,841	629	2.1
U.S. Court of International Trade .....	17,807	18,145	338	1.9
Courts of Appeals, District Courts, and Other Judicial Services				
Salaries & Expenses—Direct .....	4,846,818	5,036,338	189,520	
Vaccine Injury Trust Fund .....	5,423	6,045	622	
Total .....	4,852,241	5,042,383	190,142	3.9
Defender Services .....	1,016,499	1,057,616	41,117	4.0
Fees of Jurors & Commissioners .....	52,191	52,411	220	0.4
Court Security .....	513,975	542,390	28,415	5.5
Subtotal .....	6,434,906	6,694,800	259,894	4.0
Administrative Office of the U.S. Courts .....	84,399	87,590	3,191	3.8
Federal Judicial Center .....	26,959	27,679	720	2.7
U.S. Sentencing Commission .....	16,894	17,540	646	3.8
Direct .....	6,692,361	6,956,220	263,859	
Vaccine Injury Trust Fund .....	5,423	6,045	622	
Total Discretionary Appropriations .....	6,697,784	6,962,265	264,481	3.9
Mandatory Appropriations:				
Salaries of Judges <sup>1</sup> .....	406,762	415,699	8,937	
Judiciary Retirement Trust Funds .....	143,600	155,400	11,800	
Total Mandatory Appropriations .....	550,362	571,099	20,737	
Total Judiciary Appropriations .....	7,248,146	7,533,364	285,218	

<sup>1</sup> Mandatory salaries include the salaries of justices of the Supreme Court, judges of the Court of Appeals for the Federal Circuit and Court of International Trade, and Article III and bankruptcy judges funded in the Courts' Salaries and Expenses account. (Magistrate judges and Court of Federal Claims judges are funded by discretionary appropriations.)

PREPARED STATEMENT OF HON. JEREMY D. FOGEL, DIRECTOR, FEDERAL JUDICIAL  
CENTER

Chairman Boozman, Senator Coons, and members of the subcommittee:

My name is Jeremy Fogel. I have been a United States District Judge in the Northern District of California since 1998 and the Director of the Federal Judicial Center since October 2011. I appreciate the opportunity to provide you with this statement in support of our 2016 appropriations request. Because our request is modest, this statement is brief. The Center's Board, which the Chief Justice chairs and on which the Director of the Administrative Office of the U. S. Courts serves, approved this request in October 2014.

Our request for 2016 is \$27,679,000—an increase of \$720,000 (or 2.7 percent) above our fiscal year 2015 appropriations level (\$26,959,000). The \$720,000 increase is entirely for standard adjustments to our 2015 base. We are not requesting any funds for program growth or enhancements.

I would like to provide you with a brief description of the Center and its activities. I hope to convey to you the important contribution that the Center makes to the effective and efficient functioning of the Federal courts.

THE CENTER'S CONTRIBUTION TO THE COURTS

Speaking not only as the Center's director but also as a judge, I can attest to the importance of the Center to the courts and the people who work in them. The Center's statutory mission is to further the development and adoption of improved judi-

cial administration in the Federal courts. We carry out our mission through educational programs for judges to help them dispose of complex litigation effectively and fairly, and for court managers and staff to help them operate efficiently and to maintain services to the public, including supervision of Federal criminal defendants and offenders. Our independent, impartial, empirical research on Federal litigation and judicial administration contributes directly to changes in procedures and policies that make litigation and court operations more user-friendly and efficient.

#### EDUCATION AND TRAINING

Center education programs are vital to judges and court staff. Orientation programs enable new judges to assume their responsibilities quickly. Continuing education programs educate judges on topics ranging from case-management techniques to new statutes and case law and emerging trends and practices.

Court staff, who play a critical role in supporting judges and ensuring the efficient operation of the courts, rely on the Center for educational programs and materials that help them do their jobs well. Our multi-year leadership programs help court employees do their current jobs even better and prepare them for positions of greater responsibility.

The need for education and training remains great. Educating judges about new legal developments, ethical requirements and effective case management practices always has been and will continue to be necessary. Judges and court managers also seek additional education in effective court management to help address the challenging fiscal climate, use technology effectively and maintain a productive workforce.

The Center delivers education through in-person programs and a variety of media to provide education and information to judges and staff efficiently. The delivery tools we use include hard-copy publications, and an array of technologies, including our internal and external Web sites, Web applications, teleconferencing, Web-conferencing, and streaming video. All these delivery means help us meet the diverse needs of a diverse population of judges, managers, and staff in a cost-effective way.

#### CENTER RESEARCH

The courts, and particularly the Judicial Conference of the United States, as well as Congress and the public, are regular consumers of the Center's research projects. They rely on the Center for thorough, unbiased, well-documented research. Most of the approximately 50 major research projects under way in 2015 were requested by the Judicial Conference and its committees. The Center's research not only helps judges decide cases efficiently and fairly but also helps the judiciary and Congress make better-informed decisions about policies and procedures affecting the courts.

Thank you for your careful consideration of our request. I hope that the brevity of this statement does not minimize in any way the vital contribution the Center makes to support the work of the Federal courts. I respectfully urge you to provide the Center with the modest 2.7 percent increase—simply a current services funding level—it needs in 2016. I would be pleased to respond to any questions you may have.

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#### PREPARED STATEMENT OF HON. PATTI B. SARIS, CHAIR, UNITED STATES SENTENCING COMMISSION

Chairman Boozman, Senator Coons, and members of the subcommittee, the United States Sentencing Commission (Commission) thanks you for the opportunity to submit this statement in support of its appropriations request for fiscal year 2016. The Commission's statutory mission to ensure sound and just Federal sentencing policy while prioritizing limited resources to best ensure public safety, as set forth in the Sentencing Reform Act of 1984, continues to be of tremendous importance.

#### RESOURCES REQUESTED

The Commission is requesting \$17,540,000 for fiscal year 2016, representing a 3.8 percent increase over the fiscal year 2015 appropriation of \$16,894,000. The Commission fully appreciates the serious budget constraints facing the Nation and the need for Government agencies to allocate their resources responsibly and has limited its requests accordingly.

## JUSTIFICATION FOR COMMISSION'S APPROPRIATIONS REQUEST

The statutory duties of the United States Sentencing Commission include: (1) promulgating sentencing guidelines to be determined, calculated, and considered in all Federal criminal cases; (2) collecting sentencing data systematically to detect new criminal trends, to determine if Federal crime policies are achieving their goals, and to serve as a clearinghouse for Federal sentencing statistics; (3) conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on Federal sentencing practices; and (4) providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the Federal criminal justice community on Federal sentencing issues, including application of the guidelines.

The Commission sits at the intersection of all three branches of Government and synthesizes the interests of the three branches to effectuate sound Federal sentencing policy. Consistent with statutory guidance and Supreme Court case law, the Commission continues its core mission to promulgate new guidelines and guideline amendments in response to legislation, sentencing data, and information and feedback from sentencing courts, Congress, the executive branch, Federal public defenders, and others in the Federal criminal justice system. The Commission continues to expand its specialized training on Federal sentencing issues, including application of the guidelines to Federal judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and others.

In fiscal year 2014, the Commission has taken a leading role in reducing costs associated with rising prison populations, increasing the fairness and efficiency of sentencing, and improving recidivism outcomes, thereby saving additional funds. The Commission's efforts are calibrated to ensure public safety and provide that the statutory purposes of sentencing are achieved. The Commission will continue these efforts in fiscal years 2015 and 2016 and is also prioritizing finding ways to make the guidelines work better, promoting efficiency and effectiveness and reducing unnecessary litigation.

Furthermore, the Commission continues to refine its data collection, analysis, and reporting efforts to provide up-to-date data about Federal sentencing practices and trends. The Commission continues to disseminate sentencing information in real time and in new ways to fulfill its statutory duties to monitor the operation of the guidelines and to advise Congress on Federal sentencing policy. The Commission also continues to analyze major sentencing issues and report its findings and recommendations to Congress, as well as to respond to requests from Congress for data and analysis.

Even as the demand for Commission work-product, information, and services is increasing, the Commission is not requesting program increases for fiscal year 2016 because it continues to maximize existing resources. The Commission appreciates the funding Congress has provided for the Commission's fulfillment of its statutory duties.

## SENTENCING POLICY DEVELOPMENT

In light of the increasing costs of incarceration and the ongoing overcapacity of the Federal prison system, since fiscal year 2014 the Commission has made implementing its mandate at section 994(g) of the Sentencing Reform Act, which requires that the guidelines "minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons," an overarching policy priority. Consistent with that goal, in fiscal year 2014 the Commission reexamined the guideline covering Federal drug trafficking offenses since Federal drug offenders account for more than half of the Federal prison population.

The Commission conducted hearings on how the guidelines account for the quantity of drugs involved in Federal drug trafficking offenses, analyzed sentencing and recidivism data, considered legislative and guideline developments, reviewed tens of thousands of letters from the public, and carefully considered input from Members of Congress and other key stakeholders, and other relevant information. The Commission's exhaustive re-examination resulted in the promulgation of an amendment that somewhat reduces the guideline penalties based on the quantity of drugs involved in an offense. The amendment is anticipated to affect approximately 70 percent of Federal drug trafficking defendants, with their sentences decreasing an average of 11 months, or 17 percent, from 62 to 51 months. In addition to addressing prison populations and costs, these changes to the drug guidelines respond appropriately to statutory changes Congress has made and developments in the guidelines in the years since the drug guideline levels were originally set.



The Commission carefully weighed public safety concerns and, based on past experience, existing statutory and guideline enhancements, and expert testimony, concluded that the amendment should not jeopardize public safety. To the contrary, the Commission received testimony from the Department of Justice and other stakeholders that the amendment would promote public safety by permitting resources otherwise dedicated to housing prisoners to be used to reduce overcrowding, enhance programming designed to reduce the risk of recidivism, and increase law enforcement and crime prevention efforts.

Section 994(u) of the Sentencing Reform Act also required that the Commission consider whether to make the drug amendment retroactive, and after extensive consideration, the Commission decided to make the amendment retroactive with a 1 year delay in implementation. In reaching its decision, the Commission was informed by its study of recidivism following retroactive application of the 2007 crack cocaine amendment which suggests that modest reductions in drug penalties can be accomplished without an increase in recidivism. The 1 year delay in implementation will also help to ensure public safety by allowing judges time to carefully consider each case, providing time for the Probation and Pretrial Services Office to prepare to supervise more offenders, and ensuring that the Bureau of Prisons can provide offenders with transitional services before they are released.

Retroactive application of the amendment is anticipated to have a significant impact on reducing prison costs and overcapacity, and the impact will come much more quickly than from a prospective change alone. More than 40,000 offenders may be eligible for reduced sentences, and these offenders are eligible to have their sentences reduced by an average of 25 months or 18.8 percent. This reduction is estimated to result over time in a savings of more than 70,000 prison bed years.

The Commission believes that the 2014 drug amendment and its retroactive application are important first steps toward addressing prison costs and populations with proportionate guidelines, without negatively impacting public safety. The Commission hopes the amendment will lay the groundwork for more comprehensive action by Congress in the future, and the Commission's Chair testified to that effect before the House Judiciary Committee's Over-Criminalization Task Force in June 2014.

In fiscal year 2014, the Commission also implemented the Violence Against Women Reauthorization Act of 2013, Public Law No. 113-4, a major piece of legislation impacting a variety of offenses in Indian Country and beyond. It also resolved circuit conflicts in Courts of Appeals relating to the guidelines, including differences in calculating tax loss under the guidelines and the circumstances under which a defendant receives full credit for acceptance of responsibility.

In fiscal year 2015 and looking forward to fiscal year 2016, the Commission has prioritized examining ways the guidelines can be made fairer, more efficient, and more effective. In furtherance of this goal, the Commission expects to promulgate guideline amendments resulting from its multi-year review of economic crimes that target specific areas of ongoing concern, such as cases involving particularly high loss amounts and fraud on the market offenses. In addition, the Commission is prepared to respond to recent rescheduling by the Drug Enforcement Administration for the drug hydrocodone.

Furthermore, the Commission convened an expert roundtable discussion on application issues caused by differing statutory, guideline, and case law definitions of crimes of violence. Differing and complex statutory and guideline definitions have caused significant litigation in Federal sentencing, draining judicial resources and causing increased uncertainty and lack of uniformity in sentencing.

The Commission also continued work on a multi-year study on recidivism of Federal offenders. In fiscal year 2013, the Commission held a recidivism roundtable where it heard from a variety of experts on methodology, quantitative statistical analysis, and program evaluation. The recidivism study will draw on partnerships across the Federal criminal justice system and will combine data from the Commission, the Department of Justice, and the Administrative Office of the U.S. Courts to develop a comprehensive trajectory of offenders prior to incarceration, during incarceration, and following reentry into the community. The Commission believes this research will contribute significantly to the consideration of Federal sentencing policy by Congress and others in fiscal year 2015 and beyond.

In addition, in fiscal year 2014, the Commission undertook a study of Federal sentencing practices pertaining to imposition and violations of conditions of probation and supervised release, including possible consideration of amending the relevant provisions in the *Guidelines Manual*. The Commission believes this research may inform congressional consideration of issues including identification of conditions of supervised release that are correlated with lower recidivism.

Also in fiscal year 2014, the Commission began work on a review of the use of risk-assessment instruments in the Federal criminal justice system in order to be

able to provide the Commission's data and expertise to Congress, the Probation and Pretrial Services Office of the Administrative Office of the U.S. Courts, and researchers at the Federal Judicial Center. The Commission's study is aimed at considering these tools in the context of the goals and requirements of the Sentencing Reform Act of 1984 that sentences remain neutral with respect to race, gender, and socioeconomic status, among other consideration.

In fiscal year 2014, the Commission focused on making its data and research more readily accessible in more easily understood ways to Congress, the courts, the public, and the press. To this end, the Commission expanded its Quick Facts series first introduced in fiscal year 2013. The Quick Facts series is designed to provide concise facts about a single area of Federal crime in an easy-to-read, two-page format. The Commission released 14 publications in the Quick Facts series in fiscal year 2014 covering topics including illicit drugs, Native American offenders, female offenders, alien smuggling, and national defense offenses. The Commission will release new publications in fiscal year 2015 and update them regularly.

In fiscal year 2014, the Commission also introduced a series of relatively short reports on various topics of interest. For example, the Commission released a brief publication about recidivism in connection with 2007 amendments that reduced sentences for crack offenders. The Commission will continue this short publication series in fiscal year 2015 and beyond.

The Commission has also continued to work with Congress on its reports from fiscal years 2011 and 2012 on mandatory minimum penalties, child pornography offenses, and disparity in sentencing. These comprehensive reports provide policy-makers with relevant and important sentencing information and data, as well as the most relevant social science research and case law.

The information and data contained in these reports has contributed to the consideration of Federal sentencing policy by Congress and others in fiscal years 2013 and 2014 and will likely continue to do so. In particular, during the 113th Congress the Commission worked to implement recommendations from its report on statutory mandatory minimum penalties and updated its recommendations on mandatory minimum penalties to address legislation before both the House and Senate. The Commission stands ready to work with the 114th Congress and others on steps that can be taken regarding the findings and recommendations in those reports.

#### COLLECTING AND REPORTING SENTENCING DATA

Each year the Commission collects data regarding every felony and class A misdemeanor offense sentenced during that year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case: the charging document, the plea agreement, the presentence investigation report, the judgment and commitment order, and the statement of reasons form. The Commission analyzes these documents and collects information of interest and importance to policy-makers and the Federal criminal justice community.

The Commission's data collection, analysis, and reporting requirements are impacted by the high volume of cases sentenced in the Federal system annually. The Commission will receive documentation on more than 350,000 documents for more than 76,000 original sentencings for fiscal year 2014. To put this caseload in perspective, in fiscal year 1995, the Commission received documentation for 38,500 cases sentenced under the guidelines.

The Commission also collects real-time data from the courts on retroactive application of its permanent amendment implementing the Fair Sentencing Act of 2010, Public Law No. 110-220. The guideline amendment took effect on November 1, 2011.

As of December 2014, the Commission has collected data on approximately 14,000 cases in which a modification of the sentence imposed was sought under the 2011 amendment to the sentencing guidelines that implemented the provisions of the Fair Sentencing Act and which the Commission voted to retroactively apply to persons sentenced before the date of that amendment. The Commission anticipates eventually receiving documentation on more than 15,000 motions for retroactive application of the 2011 crack cocaine amendment. These documents and original research will form the basis for a study on implementation of the Fair Sentencing Act in fiscal year 2015 as contemplated by the Act, which requires the Commission to submit a report to Congress 5 years after its enactment (August 3, 2010).

The Commission has also begun collecting data on retroactive application of the 2014 drug amendment. Beginning November 1, 2014, judges were able to review sentences imposed prior to that date to determine if offenders' sentences should be reduced consistent with the 2014 drug amendment. Offenders will not be eligible for

release from Bureau of Prisons custody until November 1, 2015. The Commission anticipates receiving documentation on more than 40,000 motions for retroactive application of the 2014 drug amendment.

The Commission's sustained investment in modernization and refinement of data collection and analysis have kept pace with demands placed on it, but full funding of the Commission's fiscal year 2016 budget request is necessary to ensure efficient and effective performance of its data responsibilities given the number of Federal cases.

The Commission continually updates and modernizes the system that enables sentencing courts to submit documentation directly to the Commission electronically. In recent years, the Commission advanced from an internal electronic data transmission submission system to a Web-based system and improved its processes related to the receipt and analysis of sentencing data. By the end of fiscal year 2014, 79 districts were using the Web-based system.

The Commission continues to work to develop means to automatically extract some data fields from the court documents to improve the efficiency of its data collection and to expand the type of information the Commission can collect and analyze on a routine basis. The Commission began to collect some data through this automated means in fiscal year 2014, and will continue to do so in fiscal year 2015 and beyond.

The Commission makes its sentencing data available to the public in several ways. Analyses of the data extracted from the sentencing documents it receives are reported in the Commission's Annual Report and Sourcebook of Federal Sentencing Statistics, which is available in print and on its Web site. In order to provide the most timely information on national sentencing trends and practices, the Commission also disseminates on its Web site key aspects of this data on a quarterly basis and provides trend analyses of the changes in Federal sentencing practices over time.

The Commission continued to improve and expand use of its Interactive Sourcebook. The Interactive Sourcebook allows users to re-create and customize tables and figures, for example by circuit, district, or State and has improved the transparency and accessibility of its sentencing data to the public. Additionally, the Interactive Sourcebook provides analyses not found elsewhere, including analyses of sentence length by the primary guideline the court used at sentencing, amount of loss in fraud cases, and age of offenders in drug cases for each major drug type. In fiscal year 2014, additional analyses were added to this resource, including several new figures that examine trends in sentencing data over time.

As required by 28 U.S.C. § 994(g) and 18 U.S.C. § 4047, when the Commission considers amendments to the guidelines, it considers the impact of these amendments on the Federal prison population. In addition, the Commission is asked often by Congress to complete prison and sentencing impact assessments for proposed legislation. Since fiscal year 2012, the Commission makes its prison and sentencing impact analyses available to the public on its Web site.

The Commission often is asked by Congress to complete prison and sentencing impact assessments using real-time data of sentencing trends related to proposed and pending legislation. These assessments are often complex and time-sensitive and require highly-specialized Commission resources. In addition, the Commission responds to more general data requests from Congress on issues such as drugs, immigration, fraud, and sex offenses and provides district, state-wide, and circuit data analyses to House and Senate Judiciary Committee members and, on an as-requested basis, to other Members of Congress.

The Commission also responds to requests for data analyses from Federal judges, including specific data requests relating to pending cases. In fiscal year 2014, the Commission responded to 77 such requests from the courts. The Commission's ability to provide these analyses on demand and with real-time data provides a unique and helpful resource to judges.

#### CONDUCTING RESEARCH

Research is a critical part of the Commission's overall mission. The Commission's research staff regularly analyzes the current and prior fiscal years' data to identify the manner in which the courts are sentencing offenders and using the guidelines. The Commission routinely uses these analyses when considering proposed changes to the guidelines. Similarly, some analyses are published by the Commission as a resource for policy-makers and the criminal justice community.

In May 2014, the Commission published an updated study on the recidivism of offenders whose sentences were reduced as a result of changes to the 2007 crack cocaine sentencing guidelines. The study compared the recidivism rates for offenders

who were released early as a result of retroactive application of the 2007 crack cocaine amendment with a control group of offenders who served their full terms of imprisonment. The Commission detected no statistically significant difference in the rates of recidivism for the two groups of offenders over 5 years. This information represents some of the first high-quality, quasi-experimental, Federal recidivism data that uses sentence length as a dependent variable. This data was crucial to the Commission in making its fiscal year 2014 changes to the drug quantity table. It has also been used by Members of Congress in their own evaluations of proposed sentencing legislation.

Since fiscal year 2013, the Commission makes individual offender datafiles available on its Web site. Datafiles from fiscal years 2002 through 2013 are now available.

#### TRAINING AND OUTREACH

The Commission continues to fulfill its statutory duty to provide training and specialized technical assistance on Federal sentencing issues, including application of the guidelines, to Federal judges, probation officers, staff attorneys, law clerks, prosecutors, and defense attorneys by providing educational programs around the country throughout the year. In fiscal year 2014, Commissioners and Commission staff conducted training programs in all 12 circuits and approximately half of the 94 judicial districts providing instruction and guidance to more than 6000 judges, probation officers, prosecutors, defense attorneys and others throughout the year.

In September 2014, the Commission held its annual national training program in Philadelphia, Pennsylvania with more than 900 attendees, including many Federal district court judges. The Commission also participated in training an unusually large number of new Federal district judges, many of whom were unfamiliar with the Federal sentencing system prior to their appointments.

Commissioners and Commission staff also participated in numerous academic programs, symposia, and circuit conferences as part of the ongoing discussion of Federal sentencing issues. The Commission anticipates that these expanded efforts and requests for training will continue throughout fiscal years 2015 and 2016.

The Commission also is relying on a more robust program of distance and online learning as part of cost containment efforts. The Commission has increased the number of sentencing-related Webinars and training videos on its Web site throughout fiscal year 2014 and will continue to do so in 2015 and 2016. In October 2014, the Commission released its first training video focused at addressing the needs of Federal crime victims. The video informs victims of the Federal sentencing process and prepares them to participate more fully in the process.

#### SUMMARY

The Commission remains uniquely positioned to assist the Federal criminal justice community, including Congress, in ensuring sound and just Federal sentencing policy and prioritizing limited resources to best protect the public safety. Located in the judicial branch and composed of Federal judges, individuals with diverse experience in the Federal criminal justice community, and ex officio representatives of the executive branch, the Commission is an expert, bipartisan body that works collaboratively with all three branches of Government on matters of Federal sentencing policy.

As evidenced from the discussion above, demand for the Commission's various work products continues to increase. The Commission has responded in recent years by placing a high priority on increasing public access to its sentencing data, information, analyses, and training. The Commission has achieved this increased public access in great part by expanding the availability of resources on its Web site, and the Commission plans to continue this trend in fiscal year 2016 and beyond.

The Commission appreciates the funding it has received from Congress and respectfully submits that full funding of its fiscal year 2016 appropriations request of \$17,540,000 will ensure that the Commission can continue to fulfill its various statutory missions efficiently and effectively.

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#### PREPARED STATEMENT OF SHARON PROST, CHIEF JUDGE, UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Chairman Boozman, Senator Coons, and members of the subcommittee, thank you for affording me the opportunity to submit this statement in support of the United States Court of Appeals for the Federal Circuit's fiscal year 2016 budget request.

I am Sharon Prost, and my tenure as Chief Judge began on May 31, 2014. This is my first budget statement to you on behalf of the court.

As you know, the United States Court of Appeals for the Federal Circuit is located in Washington, DC, and the court has exclusive nationwide jurisdiction over a large and diverse subject area. The Federal Circuit's jurisdiction includes appeals in all patent cases nationwide, all Government contract cases, all international trade cases, all Government personnel cases, all cases involving monetary claims against the United States under the Tucker Act, veterans' cases, and many others.

Appeals to the Federal Circuit come from all of the 94 United States District Courts, the United States Court of Federal Claims, the United States Court of International Trade, and the United States Court of Appeals for Veterans Claims. The court also hears appeals from certain administrative agency decisions, including the United States Merit Systems Protection Board, the Board of Contract Appeals, the Patent Trial and Appeal Board, and the Trademark Trial and Appeals Board. In addition, the court reviews decisions of the United States International Trade Commission, the Office of Compliance, and the Government Accountability Office Personnel Appeals Board.

At the outset, let me say that our court fully appreciates and embraces the need to reduce the Federal deficit and contain Federal spending. The Federal Circuit has worked diligently to do its part by finding cost-effective ways to meet its national mission. During my tenure as Chief Judge of the Federal Circuit, I pledge to continue to find new ways to control the court's operating expenses. Under my leadership, the Federal Circuit will be a vigilant steward of its appropriation, applying not only sound fiscal, procurement and personnel practices, but innovative ones as well. Indeed, these principals have consistently guided the court.

In fiscal year 2013, the court managed through the sequestration and rescission of funds without resorting to the staff furloughs that many other courts imposed. This was accomplished by a hiring freeze and the leveraging of funding from staff and chambers vacancies. Understanding that this was only a short-term strategy, the court prepared to meet the need for continuing fiscal austerity by reconstructing our Mediation Services by increasing our reliance on expert volunteer mediators. We were then able to close our mediation satellite office in the Kluczynski Federal Building in Chicago and permanently release three full-time employees. Last fiscal year, the court began a reorganization to address further staff attrition caused by the retirement of a number of our retirement-eligible staff, trying like many courts and other organizations to do more work with fewer people. In the course of this reorganization, we determined that the level of staff reduction we experienced over the past 2 years is not permanently sustainable. We need to fill our remaining vacancies by the end of fiscal year 2015. In doing so, however, we will remain below our historic staffing level. This occurs at a time when our case load is demonstrably rising due to structural changes in the court's caseload, principally because of recent amendments in the law relating to patent litigation.

Before I continue with my fiscal year 2016 statement, let me extend my sincere appreciation to the Committee for recognizing the Federal Circuit's needs in the enacted appropriation for the court in fiscal year 2015. The court will be able to fulfill its mission of timely adjudication of cases during this fiscal year because the funds you appropriated will allow us to proceed with recovering from the sequestration's impact.

For fiscal year 2016, I respectfully ask that Congress provide the funds I have identified as necessary for the court to sustain current services and to continue to operate in an efficient and effective manner. With this goal in mind, the Federal Circuit's 2016 budget request totals \$33,763,000, which includes \$2,922,000 for mandatory expenses and \$30,841,000 for discretionary expenses. The discretionary request of \$30,841,000 is slightly less than a 2.1 percent increase over the fiscal year 2015 enacted appropriation for discretionary expenses of \$30,212,000.

For the fifth fiscal year in a row, the Federal Circuit's budget request includes no request for programmatic or staff increases. I am requesting only sufficient funds to provide for the essential, ongoing operations of the court. One hundred percent of the 2.1 percent budget increase requested for 2016 is to pay for adjustments to the base budget needed to maintain current services. These adjustments include projected salaries and benefits increases for staff, staff promotions and within-grade increases, general inflationary adjustments, and the increasing cost of library services and computer-assisted legal research.

I recognize and fully appreciate the relentless pressure on Congress to contain and reduce Government spending. At the same time, the court also recognizes that the administration of justice and this court's unique impact on the economy and on those veterans and Federal employees who seek relief from this court, would suffer if funds are insufficient to keep the court properly staffed and fully functional. In

this regard, I note further that our judges are aging and three are now eligible to elect senior status. As you know, when a judge opts for senior status, this court must provide two staff positions to support the judge's continuing work. In recent years, we have used vacant positions within the court's staff to fill senior judge needs. Having already absorbed a permanent staff reduction, we will no longer have this flexibility when all of our current vacancies are filled later this year. If one or more judges elect senior status, I may need to request funding sufficient to fill existing, but currently vacant, full-time equivalent (FTE) positions, or be forced to release two permanent employees in order to hire staff for any new senior judge. I will closely monitor this situation, and will notify you of any emergent need as soon as I am able.

For fiscal year 2015, the Federal Circuit currently has sufficient resources to address the caseload. As I noted previously, however, structural changes have occurred in litigation within the jurisdiction of the court that have begun to increase the Federal Circuit's caseload. Last year, the court experienced its highest caseload in 5 years. Early indications are that this year will equal or surpass last year. Moreover, the predominant increase is in complex patent cases, so the impact is larger than any raw numeric increase might support.

The context of what appears to be a permanent, structural increase in our caseload begins with the Leahy-Smith America Invents Act, Public Law No. 112-29 (the AIA) enacted on September 16, 2011. As a result of changes to patent practice in the AIA, the Federal Circuit has begun to see what we expect to be a significant and long-term increase in the patent appellate caseload. The U.S. Patent and Trademark Office (USPTO) is implementing the America Invents Act (AIA) in a manner that makes it easier for American entrepreneurs and businesses to bring their inventions to the marketplace sooner, converting their ideas into new products and new jobs. As you know, the intent of the AIA is to help companies and inventors avoid costly delays and unnecessary litigation, and allow them focus instead on innovation and job creation. A number of important provisions of the law went into effect in September, 2012, 12 months after the law was enacted.

The success of the AIA depends on the Federal Circuit, which will have to resolve each of the many statutory interpretation questions posed by the new law. The AIA provides for patentability trials before the USPTO at the newly created Patent Trial and Appeal Board (PTAB), which is also tasked with working through a substantial backlog of appeals from conventional patent examination decisions. The statute provides that all of the appealed cases of the new PTAB come to the Federal Circuit for review. Only one AIA trial decision was rendered by the PTAB in 2013. In comparison, however, by early February of 2015, the PTAB had generated 254 final written decisions from the more than 800 pending trials. The AIA trial work of the PTAB is expected to combine with other USPTO appeals to produce a very significant increase in cases in fiscal year 2016 for review by the Federal Circuit. We have already begun to see the impact. This past year USPTO patent appeals nearly doubled over the preceding year, from 110 to 212. This was accompanied by an increase in patent appeals from the United States District Courts, for a total increase of about 176 patent cases. While the numeric rise in cases does not yet appear unmanageable, the district court and PTAB patent cases are typically the most complicated and time consuming cases on the court's docket because the patents at issue are technically complex. Thus, the actual increase in appellate work is under-represented by last year's statistical increase of cases viewed in isolation.

Based on the complexity of patent practice under the AIA, and the case load evidence to date, it is clear that there will be a sustained and progressive increase in our patent caseload. This is further confirmed by the fact that the USPTO has increased the number of administrative judges threefold, as well as attorneys in its solicitor's office. While facing the potential for a permanent increase in our caseload will be a challenge, it would be premature to request additional resources at this time. As a result, in our fiscal year 2016 budget, I have not requested any additional funding to address the already increasing patent case load.

At the same time, however, I am keenly aware that the Federal Circuit would be defeating the purpose of the AIA if delays occur in the appeal process that impede American inventors and businesses from bringing their products to market and resolving their disputes as swiftly as possible. It would indeed be unfortunate if the Federal Circuit is unable to process appeals from the PTAB expeditiously due to a lack of well-qualified staff resulting from insufficient funds. I will monitor the Federal Circuit's patent caseload carefully and I will not hesitate to notify you of any need for additional resources.

Just as the AIA has apparently resulted in a structural increase in the Federal Circuit's caseload, the United States Department of Veterans Affairs (VA) is accelerating the processing of disability cases and pension claims that is also likely to

result in a long-term increase in our caseload. Of 380,000 backlogged veterans' appeals, 67,000 have reached the Board of Veterans' Appeals, and approximately 200,000 of the remainder are expected to follow. With the benefit of 60 veterans law judges and more than 400 supporting counsel because of increased funding by Congress, the Board decided 55,000 cases in fiscal year 2014 and is expected to decide approximately 57,000 cases in fiscal year 2015. While backlogs at the Board will continue, it is clear that decisions by the Board are accelerating.

Despite the fact that the Board significantly increased the number of decisions in 2014, the number of appeals to the United States Court of Appeals for Veterans Claims (the Veterans Court) increased by just over 200 cases. This relatively small increase, however, does not readily reflect that the appeals rate that generated the increase occurred largely in the last 6 months of fiscal year 2014. Should appeals through fiscal year 2015 continue at the same rate, the Veterans Court will receive more than 1,000 additional appeals this year and as many as 1,000 more in 2016. As you know, this increasing pool of cases will ultimately result in decisions that are appealable to the Federal Circuit, and this number does not include several hundred decisions the Veterans Court will issue on petitions.

Thus far, the Federal Circuit has not seen a marked increase in appeals from the Veterans Court. Nevertheless, with the mechanisms in place to dispose of increasingly large numbers of cases by the Veterans Court, I fully expect that the number of appeals to the Federal Circuit will increase this year and continue in fiscal year 2016. Prudence, therefore, dictates that this source of the Federal Circuit's caseload be carefully monitored as a potential structural change in our caseload. It is, however, too early to assess with specificity the magnitude of that increase, and as a result, I have not requested any increase in resources to address it. Recognizing that delayed justice for our veterans and their families is unacceptable, I will monitor the caseload increases from the Veterans Court, and I will notify you as soon as I believe additional resources are needed by the Federal Circuit.

Last year's budget statement cited a third source of caseload increase at the Federal Circuit, characterized as being imminent, though likely temporary. The sequestration in fiscal year 2013 resulted in a flood of furlough appeals being filed with the Merit Systems Protection Board (MSPB) by Federal employees who were furloughed because of automatic spending cuts. As of September of 2013, more than 32,000 furlough appeals had been filed at the MSPB. This was in addition to the average of 6,000 appeals received annually on other matters that are appealable to MSPB under the law. While MSPB is poised to make significant progress in processing the existing inventory of appeals in fiscal year 2015, it is likely MSPB will start fiscal year 2016 with a significant number of appeals in the regional offices and petitions for review at headquarters. As these appeals and petitions result in decisions, if a Federal employee's case fails at the MSPB, that employee may appeal to the Federal Circuit.

The Federal Circuit has yet not received a significant portion of MSPB furlough cases and it is impossible to predict with certainty how many of these appeals might survive MSPB review. Nevertheless, it is prudent to plan for a significant number of these cases to be appealed to the Federal Circuit and, given the permanent increase in staff at the MSPB and its view that its caseload will be at historic levels in 2015 and beyond due to changes in the law, I cannot discount that these circumstances do, indeed, portend a third structural change that will drive an increase in the Federal Circuit's caseload. In acknowledging this, however, I do not anticipate such a large increase in MSPB cases in 2016 that would require resources beyond those I have requested in our annual appropriation. I will rely on prudent management of the resources you provide, recognizing that it will be my duty to request more, if it becomes clear that more is needed. In the interim, the impending furlough cases serve to reinforce the need for the Federal Circuit to complete filling current staff vacancies and training those new employees so that they are able to respond to the organizational stress an increase in MSPB cases seems likely to impose in the foreseeable future.

Finally, I would like to address the court's plan to reduce facilities costs. House Report 113-172 required this court to report on a plan by July of 2014. That report was developed in consultation with the Judicial Conference of the United States and the General Services Administration and was delivered on time. Consistent with that plan, the court is pursuing actionable alternatives to reduce, reallocate and reconfigure existing space that will support a reduction in facilities costs. I note that we have already met the 3 percent reduction goal set by the Judicial Conference of the United States for the Federal judiciary at large. While I believe there are still some prudent and achievable measures that the court can pursue on its own, ultimately, to make any further significant reduction in facilities costs, the Federal Cir-

cuit may have to request additional funding targeted for facilities alteration or perhaps new leases.

Chairman Boozman, I would be pleased to provide any additional information that the subcommittee may require or to meet with subcommittee members or staff to discuss our budget request in further detail. Thank you for this opportunity to present my views.

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PREPARED STATEMENT OF TIMOTHY C. STANCEU, CHIEF JUDGE, UNITED STATES  
COURT OF INTERNATIONAL TRADE

Chairman Boozman, Senator Coons, and members of the subcommittee:

Thank you for providing me the opportunity to submit this statement on behalf of the United States Court of International Trade, which is established under Article III of the Constitution with exclusive nationwide jurisdiction over civil actions arising out of the administration and enforcement of the customs and international trade laws of the United States. As you know, the Court has its roots in the uniformity requirement of Article I, Section 8 of the Constitution ("all duties, imposts and excises shall be uniform throughout the United States") and in that way serves a vital role that contributes to the Nation's economic strength.

The Court's fiscal year 2016 budget request is \$20,150,000, which is comprised of \$2,005,000 for mandatory appropriations and \$18,145,000 for discretionary appropriations. The discretionary portion of the appropriations request represents an increase of \$338,000, or 1.9 percent, from the fiscal year 2015 enacted discretionary appropriations of \$17,807,000. This modest increase reflects the necessary adjustments to the base in order to maintain current services, fund essential on-going operations and initiatives, and provide for adjustments in pay and benefits. It also accounts for other inflationary factors applied to the base, including an increase in pro-rata costs paid to the Federal Protective Service (FPS) for the critical and necessary security of the Federal Complex (including the Court) in lower Manhattan. Further, it reflects adjustments for security costs paid to the U.S. Marshals Service for the Court's internal security officers.

The Court remains committed to the efficient and conservative management of its resources through sound fiscal practices. The Court continues to utilize cost containment strategies in keeping with the overall administrative policies and practices of the Judicial Conference, particularly regarding security costs, equipment costs, technology, contractual obligations, and personnel. This is consistent with the Court's long-standing policy of requesting only funds that are absolutely needed for fulfilling the Court's judicial responsibilities, such as increases for pay, benefits, and other inflationary factors, and for essential on-going operations and initiatives of the Court.

Currently, the Court is working actively with the General Services Administration to release space in the Courthouse to the U.S. Marshals Service. If this initiative is successful, it will reduce the Court's rent bill while simultaneously improving security. Additionally, I would like to note that in fiscal year 2014, the Court transferred \$1.15 million to the Judiciary's Court Security Program to address critical security needs.

The Court continues to meet the objectives set forth in its Strategic Plan through the use of its annual appropriation and the Judiciary Information Technology Fund. These objectives provide access to the Court through the effective and efficient delivery of services and information to litigants, the bar, the public, judges, and staff. For a national court, this access is critical to realizing the mission of resolving disputes by: (1) providing cost effective, courteous, and timely service; (2) providing independent, consistent, fair, and impartial interpretation and application of the customs and international trade laws; and (3) fostering improvements in customs and international trade law and practice, as well as in the overall administration of justice.

Specifically, technology remains a critical component of the Court's commitment to high quality service to its various constituencies. To this end, the requested appropriation will enable the Court to support and maintain its information technology program. This entails cyclical maintenance and, when necessary, replacement, of hardware and software to ensure that the Court's infrastructure will continue to support its present and future technological and telecommunications needs. During fiscal year 2014, the Court used its Judiciary Information Technology Fund successfully to strengthen its technological capabilities by: (1) upgrading the Storage Area Network for the COOP site; (2) installing a secondary firewall for redundancy purposes; (3) executing maintenance agreements for computer hardware and software applications; (4) continuing its support of its video conferencing system, data



network and voice connections, wireless infrastructure, and Virtual Private Network System (VPN); (5) installing hard drive encryption software for laptops; and (6) cyclically upgrading its laptops.

In fiscal year 2015, the Court plans to expend funds on essential information technology projects to: (1) add redundancy to the core switch for the network; (2) upgrade the Polycom conference phone system from analog to digital; (3) upgrade and support existing software applications; (4) purchase new software applications to ensure the continued operational efficiency of the Court; (5) install virtual desktop infrastructure; (6) purchase log management software for the Court's network; (7) purchase document management software to streamline workflow for court staff; and (8) replace computer desktops, monitors and printers in accordance with the judiciary's cyclical replacement program. Additionally, the Court will continue to support its long-standing commitment to provide developmental and educational programs for staff on subjects pertaining to technology and job-related skills.

In fiscal year 2016, the Court again will use its carry-forward balances in the Judiciary Information Technology Fund for information technology initiatives that support the Court's short-term and long-term information technology needs. Additionally, the Court will continue to maximize the use and functionality of common and individual office space. This effort is part of the Court's on-going rent review process. The Court also will continue its cyclical replacement and maintenance program for equipment, furniture, and offices to help extend the useful life of equipment and furnishings. Moreover, the fiscal year 2016 request once again includes funds for the continued upgrade, support, and maintenance of the Court's internal and perimeter security systems. Further, the Court will seek to continue its efforts to address the educational needs of the bar and Court staff. Finally, the Court, in fiscal year 2016, will build on its prior efforts in cost-saving negotiations of contracts with GSA, FPS, and public and private companies.

I personally extend my deepest appreciation to this subcommittee and the entire Congress for recognizing the needs of the Court by providing adequate funding in fiscal year 2015 to maintain current services so that the Court can fulfill its commitment to the administration of justice for all.

The Court's "General Statement and Information" and "Justification of Changes," which provide more detailed descriptions of each line item adjustment, were submitted as part of the judiciary fiscal year 2016 Congressional Budget Justification. If the subcommittee requires any additional information, we will be pleased to provide it.

Senator BOOZMAN. Thank you very much, Judge Gibbons.

Director Duff, it is good to have you here.

Director Duff is kind of excited and nervous, not about the subcommittee today. He is an old University of Kentucky basketball player, so he has a lot going on, in that sense.

We invite you to give your testimony on behalf of the Administrative Office of the U.S. Courts.

#### **STATEMENT OF JAMES C. DUFF, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS**

Mr. DUFF. Thank you very much, Chairman Boozman, Senator Coons, Senator Lankford, members of the subcommittee. I am very pleased to be before you to present the fiscal year 2016 budget request for the Administrative Office of the United States Courts, and to support the overall request for the judiciary that Judge Gibbons will address.

I join Judge Gibbons in thanking the subcommittee for the support it has provided the judiciary. We fully recognize the funding constraints that the subcommittee has faced in recent years and the difficult choices that have been necessary. We are all the more grateful in that environment for the priority that was placed on the funding requirements of the judiciary.

## RETURN TO THE ADMINISTRATIVE OFFICE

On January 1 this year, I returned to the Administrative Office to serve a second appointment as its director. I am very grateful to Chief Justice Roberts for the privilege of working for our Federal judiciary again. I am especially looking forward to working with you and this subcommittee on challenges that face the judiciary.

## TEMPORARY DISTRICT JUDGESHIPS

The Judicial Conference is once again indebted to this subcommittee for authorizing extensions of expiring temporary Article III judgeships in your annual appropriations bill. Without your action, the affected districts would be facing the loss of a judgeship upon the first judicial vacancy occurring after the expiration of the previous authorization.

In fiscal year 2016, we will face the same fate as the existing temporary judgeships will expire beginning in April 2016. If the Judiciary committees are unable to preserve these expiring judgeships, we urge you to include the necessary 1-year extensions in your fiscal year 2016 appropriations bill to enable the work to continue in those districts where they are most needed. The workload in those districts is simply too great to lose judgeships that could take years to create and fill again.

## CAPITAL SECURITY PROGRAM

I also would like to thank the subcommittee for its support of the Judiciary Capital Security Program funded within the General Services Administration. This was an important new development that we worked on with GSA. CSP, or the Capital Security Program, was designed to address serious security deficiencies in existing court facilities where renovations are a viable alternative to new construction.

Again, this is in the current environment of fiscal restraint and constraints. Recognizing that new courthouse construction was going to be challenging, we embarked upon this effort to address security concerns in courthouses where it is most needed.

It has been a cost-effective means to achieve greater security at existing courthouses nationwide. CSP has projects currently underway in five facilities nationwide, including Lexington, Kentucky, with others in the planning stages. The President's budget request for GSA includes \$20 million for the program in fiscal year 2016. We hope you will support the funding to continue this critically important program.

Funding of the CSP is not, however, a substitute for new courthouse construction when it is otherwise needed. For those courts that not only have severe security deficiencies but also have a serious lack of space and deteriorated building infrastructure, the only feasible and economically viable resolution is new construction.

## NASHVILLE COURTHOUSE

I will echo Judge Gibbons' comments. We very much appreciate the administration's inclusion in the fiscal year 2016 GSA budget request for \$181.5 million for the new courthouse in Nashville, Tennessee, which is the Judicial Conference's top space priority.

This is only the second time in 6 years that the President's budget has included funding for a project on the Judicial Conference's 5-year courthouse construction plan. So it is a recognition, I think, within the administration of the importance of this particular courthouse project.

Without stable and consistent funding of courthouse construction by the GSA, the ability of the judiciary to carry out its constitutional mission of administering justice is significantly impaired.

The Nashville courthouse project has been on the 5-year plan for nearly 20 years, and a total of \$25.1 million has already been spent to acquire the site and building design. That is why this project we think is within the administration's budget, because it recognizes investments already made.

A new courthouse is needed to resolve severe security, space, and operational deficiencies in the existing facility. We respectfully urge you to support the funding of the new Nashville courthouse in your fiscal year 2016 appropriations bill.

#### COST CONTAINMENT

Senator Coons addressed cost containment in his opening statement, as did Chairman Boozman. Cost containment continues to be a primary focus of the judiciary. As Judge Gibbons describes in her written testimony at greater length, some cost-containment initiatives, however, require changes to existing law.

Last year, we sought the assistance of this subcommittee to enact several legislative provisions that would result in savings to the judiciary. We appreciate that the conference agreement included one of those provisions. However, there are still several reforms endorsed by the Judicial Conference that, if enacted, will produce additional savings.

#### ROLE OF THE ADMINISTRATIVE OFFICE

The Administrative Office (AO) was created by Congress in 1939 to assist Federal courts in fulfilling their mission to provide equal justice under law. The AO does not operate as a headquarters for the courts, but rather provides support to the Judicial Conference and its 25 committees, as well as to more than 30,000 judicial officers and court employees.

The AO develops and supports technology for the courts. It provides financial management and personnel services. And it conducts audits and reviews to ensure the continued quality and integrity of the Federal court operations.

While the AO has evolved over the years to meet the changing needs of the judicial branch, service to all the courts remains our basic mission.

#### FISCAL YEAR 2016 BUDGET REQUEST

The AO appropriation request for fiscal year 2016 totals \$87.6 million. This is an increase of \$3.2 million or a 3.8 percent increase over the 2015 enacted level. It represents a current services budget—that is to say, there is no additional staff or program increases requested by the AO. Instead, the requested resources are nec-

essary to support standard changes to pay and benefits, as well as requirements such as travel, communications, and supplies.

#### CLOSING REMARKS

I fully recognize, as Judge Gibbons does, that fiscal year 2016 will be a difficult year for you and your colleagues as you struggle to meet funding needs of the agencies and programs under your purview. In making your funding decisions, we urge you to consider the significant role that the AO plays in supporting the courts and the mission of the judiciary.

Chairman Boozman, we appreciate the opportunity to appear before the subcommittee today. We thank you for the good work that you have done for us in the past. And we are pleased to address any questions you have today, of course.

[The statement follows:]

#### PREPARED STATEMENT OF JAMES C. DUFF

##### INTRODUCTION

Chairman Boozman, Senator Coons, and members of the subcommittee, I am pleased to appear before you to present the fiscal year 2016 budget request for the Administrative Office of the United States Courts (AO), and to support the overall request for the entire judicial branch.

I join Judge Gibbons in thanking the subcommittee for the continued support it has provided the judiciary. We fully recognize the funding constraints the subcommittee has had in recent years in writing the annual Financial Services and General Government Appropriation bill. We know that difficult choices had to be made and greatly appreciate the priority that was placed on the funding requirements of the judiciary. We have a practice of refining our request throughout the year with the goal of seeking the minimum amount necessary to meet the needs of the courts. You can be assured that we will continue to provide the subcommittee with re-estimates of our fiscal year 2016 request throughout the year.

##### RETURN TO THE AO

On January 5, 2015, I returned to the Administrative Office to serve a second appointment as Director. I am grateful to Chief Justice Roberts for the privilege of working with our Federal judiciary again. From my first job in Chief Justice Burger's office 40 years ago, through later years as Counselor to Chief Justice Rehnquist, and then 5 years as Director of the Administrative Office, from 2006 to 2011, my respect and admiration for the Federal judiciary has only grown. I look forward to working on the challenges that face the judiciary—from its operations to its administration, and I especially look forward to working closely with this subcommittee.

##### TEMPORARY DISTRICT JUDGESHIPS

Once again, the Judicial Conference is indebted to this subcommittee for authorizing extensions of expiring temporary Article III judgeships in the annual appropriations bill. Without your action, the authorization of all ten existing temporary Article III judgeships would have expired and we would have risked losing judgeships in these courts upon the first vacancy—through death, retirement, or elevation to a higher court—occurring after their lapse date.

In fiscal year 2016, we face the same fate. Without further action the temporary judgeships will expire beginning in April, 2016. If the House and Senate Judiciary Committees are unable to preserve these expiring judgeships, I urge this subcommittee to include the necessary 1 year extensions for the following judicial districts: Alabama-Northern, Arizona, California-Central, Florida-Southern, Kansas, Missouri-Eastern, New Mexico, North Carolina-Western, and Texas-Eastern. The workload in these districts is too great to risk losing judgeships that in all likelihood will take years to create and fill again.

##### NEW JUDGESHIPS IN HIGH CASELOAD DISTRICTS

It has been 13 years since Congress passed a bill authorizing additional district judgeships. The last comprehensive Article III bill was passed in 1990, two and a

half decades ago. The Judicial Conference appreciates the subcommittee's inclusion of language in the fiscal year 2014 and fiscal year 2015 appropriations bills authorizing new judgeships in seven districts struggling with extraordinarily high and sustained workloads (Arizona, California-Eastern, Delaware, Minnesota, New Mexico, Texas-Southern, and Texas-Western), as well as the conversion of three temporary judgeships to permanent (in Arizona, California-Central, and New Mexico). While this provision was dropped in conference, additional judgeships are still sorely needed. The Judicial Conference will soon be forwarding to Congress recently approved judgeship recommendations for 2015. We will be working with the Senate and House Judiciary Committees to hopefully enact a comprehensive judgeship bill this year and will keep the subcommittee apprised of our efforts.

#### CAPITAL SECURITY PROGRAM

I also would like to thank the subcommittee for its support of the Judiciary's Capital Security Program (CSP), funded as a special emphasis program within the General Services Administration's (GSA) Federal Buildings Fund. CSP was designed to address serious security deficiencies in existing courthouse buildings where physical renovations are viable alternatives to new construction. This program has been a valuable, cost-effective solution to achieving greater security at existing courthouses nationwide.

Five projects are currently underway using fiscal year 2012 and fiscal year 2013 funding—in Brunswick, Georgia; Benton, Illinois; Lexington, Kentucky; San Juan, Puerto Rico; and St. Thomas, Virgin Islands. Fiscal year 2015 funding will support projects in Columbus, Georgia; Monroe, Louisiana; and Texarkana, Texas/Arkansas. For fiscal year 2016, the President's budget request for GSA includes \$20 million for the Judiciary's Capital Security Program which will support projects at courthouses in Raleigh, North Carolina and Alexandria, Louisiana. We hope you will continue to support this successful program that improves the security provided to occupants and visitors at Federal courthouses.

#### COURTHOUSE CONSTRUCTION

Funding of the Judiciary's Capital Security Program should not, however, be a substitute for new courthouse construction when it is otherwise needed. That is, while the CSP may address a court's immediate security deficiencies, it does nothing to address other courts that not only have severe security deficiencies, but also have a serious lack of space, and deteriorated building infrastructure. In these latter circumstances, the only feasible and economically viable resolution is to build a new courthouse or annex to meet the operational needs of the court.

We very much appreciate the administration's support of new courthouse construction funding in its fiscal year 2016 budget request for the GSA. The President's budget requests \$181.5 million for a new courthouse in Nashville, Tennessee, which is the Judicial Conference's top space priority. This is only the second time in 6 years that the President's budget has included funding for a project on the Judicial Conference's *Five Year Courthouse Construction Project Plan (Five-Year Plan)*. Because GSA builds our facilities, these monies come under the jurisdiction of the executive branch. In some years this has worked fine, when the President's budget represented the space priorities of the Judicial Conference as outlined in its *Five-Year Plan*. But too often this has not been the case. Without stable and consistent funding of courthouse construction by the GSA, the ability of the judiciary to carry out its constitutional mission of administering justice is significantly impaired.

Over the last 10 years, the judiciary has taken strategic steps to improve its courthouse facilities planning process, with a focus on cost containment and development of an objective, consistently applied methodology. This effort has been significant and has resulted in only the most important project recommendations going forward, and at a reduced cost. The designs of courthouses on the *Five-Year Plan* will result in lower cost buildings due to the adoption of courtroom sharing policies as well as the removal of projected judgeships from courtrooms and chambers construction plans.

The Nashville courthouse project has been on the *Five-Year Plan* for nearly 20 years and a total of \$25.1 million already has been spent to acquire the site and design the building. The construction of the Nashville courthouse is requested to resolve severe security, space, and operational deficiencies in the existing facility. The Estes Kefauver Federal Building in downtown Nashville was built more than 60 years ago, has an insufficient number of courtrooms for district judges, and due to space shortages all magistrate judges must use hearing rooms instead of courtrooms. This exacerbates issues related to security and safety. Further, the building houses 17 different Federal entities and there are no separate circulation patterns

for judges, the public, and prisoners. We respectfully urge you to support the funding of the new Nashville courthouse in your fiscal year 2016 Appropriations bill.

#### LEGISLATIVE INITIATIVES TO INCREASE COST CONTAINMENT

Cost containment continues to be a primary focus of the judiciary, as Judge Gibbons describes in her testimony. AO staff, through their support of the Judicial Conference and its committees, is heavily involved in these cost-containment efforts. While there are many policies and practices that the judiciary has been able to implement to achieve savings, some require changes to existing law. Absent a general *"Courts Improvement Bill"* or similar legislative vehicle, last year we sought the assistance of this subcommittee to include several legislative provisions in the annual appropriations bill that would result in savings to the Judiciary's Probation and Pretrial Services program without any loss in the quality of services. We appreciate that the fiscal year 2015 conference agreement included one of our requested provisions that removed from law an unnecessary reporting requirement; however, there are still several reforms endorsed by the Judicial Conference that, if enacted, would produce additional cost savings.

For example, the Judicial Conference has endorsed the sharing of probation officers among Federal judicial districts. Section 3602 of title 18, United States Code, requires a probation officer to work "within the jurisdiction and under the direction of the court making the appointment." Amending this statute to allow an officer to serve in another district with the consent of the appointing court, would facilitate the sharing across district lines of officer positions requiring special knowledge, such as sex-offender specialists, cyber-crime specialists, and search team members. Such a sharing arrangement will conserve resources by allowing the districts to avoid the higher salary costs associated with these specialized officers, which can be as much as \$15,000 more than a typical probation officer. For instance, a probation officer in the Eastern District of New York who has been trained in supervising sex offenders with computer monitoring conditions might also be able to handle those types of cases in the Southern District of New York or in the District of New Jersey, thereby relieving those districts from the obligation of hiring and training their own specialists.

In addition, this change could lower travel costs by allowing officers who work in one district to supervise offenders who reside in a neighboring district, which has its probation office farther from where offenders live. This option may be especially useful in supervising offenders from Indian reservations, which may straddle multiple judicial districts. For example, the Districts of Arizona and New Mexico both include the Navajo Indian reservation. Currently, officers from both districts must supervise cases on the reservation, which means duplicating efforts to learn the territory, develop relationships with tribal officials, and foster resources for offenders. If, however, officers in one of the districts were authorized to work across district boundaries, officers from one district could assume responsibility for supervising all of the offenders on the reservation, regardless of which district the offender resides. Alternatively, such arrangements could result in officers being assigned to cases not based on the district of supervision, but based on proximity to the closest probation office. For instance, officers from the Flagstaff probation office in the District of Arizona must travel 223 miles to visit offenders from the Round Rock region of the reservation. If probation officers from the Farmington probation office in the District of New Mexico were authorized to work across district boundaries, however, they would only need to travel 118 miles to visit the same offenders. I hope you will consider the inclusion of this provision in your fiscal year 2016 Appropriations bill.

#### ROLE OF THE ADMINISTRATIVE OFFICE

Created by Congress in 1939 to assist the Federal courts in fulfilling their mission to provide equal justice under law, the AO is a unique entity in government. Neither the executive branch nor the legislative branch has any comparable organization that provides the broad range of services and functions that the AO performs for the judicial branch.

Unlike most executive branch entities in Washington, the AO does not operate as a headquarters for the courts. The Federal court system is decentralized, although the AO does have management oversight responsibilities over the court security program, the probation and pretrial services program, the defender services program, and our national information technology programs.

AO support to the Judicial Conference and its 25 committees is a cornerstone of this structure. The Conference committees, which we staff, not only deal with important issues of judicial administration and policy, but they are constantly exploring ways to cut costs, work more efficiently in their program areas, and oversee auditing

functions for the branch. The AO develops and supports the application of new technology for the courts; provides financial management services, and personnel and payroll support; and conducts audits and reviews to ensure the continued quality and integrity of Federal court operations. The AO has evolved over the years to meet the changing needs of the judicial branch, but service to the courts has been and remains our basic mission.

#### IMPROVING JUDICIAL ADMINISTRATION

The AO is working in coordination with the courts to implement several national technology solutions that will improve judicial administration. A major initiative is a “next generation” case management/electronic case filing (CM/ECF) system we are deploying nationwide to harness improved technologies to meet the evolving needs of judges, clerks of court offices, the bar, debtors, litigants, and other users. CM/ECF next generation is currently deployed in two circuit courts and implementation nationwide will occur over the next several years. We are also implementing the Judiciary Integrated Financial Management System (JIFMS), which will provide a single system of record for financial and procurement processes throughout the judiciary, including all Federal court units, Federal defender offices, and the Administrative Office. JIFMS is currently deployed to the national courts, the AO and several circuit court units, and its full deployment should be completed by December 2017. In addition, a Judiciary Electronic Travel System (JETS) will provide a user-friendly, paperless, Web-based travel system that will reduce errors and streamline travel planning and vouchering. JETS will be available to court units and Federal defender offices beginning in the Fall of 2015. Finally, eVoucher is a new system for issuing payments electronically to Criminal Justice Act court-appointed counsel, replacing the current paper-based system, and streamlining the submission and review of vouchers and improving efficiency and oversight by providing automatic error checks. Currently, eVoucher is deployed in 75 of 106 court units and full implementation is expected in early calendar year 2016.

#### AO RESTRUCTURING

When I first became Director of the AO in July 2006, I launched a review of the organization and its mission to ensure that the structure and services provided by the AO were appropriate and cost-effective, and that they addressed the changing needs of the courts.

That review resulted in a 2007 report providing recommendations to enhance AO services to the courts. During fiscal year 2008, improvement initiatives were pursued through the development of the *Strategic Direction of the AO: fiscal years 2009–2013* to guide the AO’s activities. We then began to integrate the Strategic Plan into our major initiatives process, focusing on short- and long-term objectives to help the AO support the judiciary through the economic downturn and future constrained budgets. In January 2011, I formed a cost-containment task force that reviewed AO organizational, policy, and process alternatives, and developed specific actions to contain costs in fiscal years 2012, 2013, and beyond. Finally, in June 2013, then-Director Judge Thomas Hogan announced a major restructuring of the AO to be implemented by the end of fiscal year 2013. The new organizational structure is now fully in place.

I offer this as background to demonstrate that organizational change focused on meeting the needs of the courts requires a thoughtful and strategic approach to achieve continuous improvement in service. The positive results of the restructuring are evident throughout the AO, and the improvements make the AO’s service to the courts more effective and efficient.

#### AO FISCAL YEAR 2016 BUDGET REQUEST

The Administrative Office appropriation request for fiscal year 2016 totals \$87,590,000. This is an increase of \$3.2 million, or 3.8 percent, over the 2015 enacted level and represents a current services budget—there are no additional staff or program increases requested.

Specifically, the requested increase is necessary to support adjustments to base for salaries and benefits, and recurring requirements such as the cost of travel, communications, service agreements, and supplies. The AO account is financed through direct appropriations, reimbursements from other judiciary accounts, and the use of non-appropriated funds. In fiscal year 2016, the judiciary expects to have fewer non-appropriated funds available than it did in fiscal year 2015. As a result, in order to maintain current services, the increase also includes \$500,000 to replace the slightly lower estimate of non-appropriated funds available to the AO in 2016.

## CONCLUSION

Chairman Boozman, Senator Coons, and members of the subcommittee, the work performed by the AO is critical to the efficient and effective operation of the U.S. courts. The AO provides administrative support to 25 Judicial Conference Committees, 2,352 judicial officers, and more than 28,500 court employees. In addition to our service to the courts, the AO works closely with our colleagues in the executive branch and especially with the Congress, in particular the Appropriations Committee and its staff, to provide accurate and responsive information about the Federal judiciary.

I fully recognize that fiscal year 2016 will be another difficult year for you and your colleagues as you struggle to meet the funding needs of the agencies and programs under your purview. I urge you, however, to consider the significant role the AO plays in supporting the courts and the mission of the judiciary. Our budget request for the AO does not seek new resources for additional staff or programs; instead, our request represents the minimum investment needed simply to maintain the organization's current activities and services. We urge you to support this funding.

Thank you again for the opportunity to be here today. I would be pleased to answer your questions.

## IMPACT OF A HARD FREEZE IN FISCAL YEAR 2016

Senator BOOZMAN. Thank you, both, very much for your testimony.

At this time, we will proceed to our questioning, where each Senator will have 7 minutes. If there is sufficient interest, then we will have additional rounds.

Flat spending caps will make discretionary funding very tight in fiscal year 2016, as we all know. What would be the impact on the judiciary if it had to operate the fiscal year 2015 funding level for fiscal year 2016?

Judge GIBBONS. The effect is pretty dramatic. In the salaries and expenses account, we would have to reduce 520 positions or 260 full-time equivalent (FTE) below 2015 year-end levels. In the defender account, we would have to defer panel attorney payments for a month. The court security account, we would have to defer \$6.3 million for enhancements for staffing, training, and security-related IT developments. We would have to cut \$22 million, which is almost 50 percent, for court security systems and equipment. We think that the fees of jurors account could meet requirements.

The result of the elimination of staffing positions in the court would be reductions in supervision of offenders, which, of course, carries with it a serious public safety risk, delays in case processing, and decreased public availability of courts.

In the IT area, we might face delays in the implementation of the next generation of the Case Management/Electronic Case Files (CM/ECF) system, which is our electronic case filing system, which has been a vehicle for doing more with less.

I think the reason, in order to understand why a hard freeze hits us so hard, is that if you look at the overall increase we are requesting, it is a total of \$264 million in discretionary appropriations, or 3.9 percent, and \$209 million of that are escalating costs for the judiciary, rent, benefits, general inflation. We do give our employees a COLA. We include it in our request. If the executive branch receives a cost of living adjustment (COLA), we think it puts us in a very difficult position, as an employer, not to do that. Also we have ongoing IT services and implementation.



Those are our adjustments to base. Only 0.7 percent of that 3.9 percent is for improvements or enhancements. As I noted, many of those go to helping us save money down the road.

#### TEMPORARY DISTRICT JUDGESHIPS

Senator BOOZMAN. Very good.

For the past several years, the financial services bill has included language extending temporary Article III judgeships. Please explain why it is important to continue extending those judgeships and the impact if the judgeships were not extended.

Mr. DUFF. Thank you for the question, Chairman Boozman. It is very important that the temporary judgeships either be extended or permanent judgeships created out of those temporary judgeships. I think the Judicial Conference in its recent March meeting is recommending ultimately making permanent judgeships of 9 out of the 10 temporary judgeships.

But it is very important, if new judgeships can't be created, that the temporary judgeships are extended, because the workload in those districts where the temporary judgeships exist is so extreme. That is why the judgeships were created to begin with, to address that workload. So if the extensions aren't granted, the workload moves to the other judges on those courts, and it would be extraordinarily burdensome for them to pick up the workload.

[CLERK'S NOTE.—Subsequent to the hearing, Director Duff provided the following additional information:]

The table below illustrates the importance of extending 9 of the 10 temporary district judgeships and the impact on workload without extensions. For example, weighted filings per judgeship in Texas-Eastern was 1,331 in fiscal year 2014. Without an extension that caseload would increase to 1,521 filings per judgeship.

District	Authorization Expires	Fiscal Year 2014 Average Weighted Caseload	Weighted Caseload in District With Loss of Temporary
Texas-Eastern .....	9/30/2016	1,331	1,521
Arizona .....	7/8/2016	742	804
Florida-Southern .....	7/31/2016	695	736
California-Central .....	4/27/2016	664	689
New Mexico .....	7/14/2016	598	698
Alabama-Northern .....	9/17/2016	381	435
Missouri-Eastern .....	5/20/2016	374	427
Kansas .....	5/21/2016	366	439
North Carolina-Western .....	4/28/2016	351	439
Hawaii * .....	4/7/2016	286	381

\* Hawaii not recommended for extension or conversion from temporary to permanent.

#### NASHVILLE COURTHOUSE PROJECT

Senator BOOZMAN. GSA's 2016 budget request includes \$182 million for the judiciary's top construction priority, a new courthouse in Nashville. Given the backlog of courthouse construction projects, a new courthouse in Nashville has been on the judiciary courthouse construction project plan for almost 20 years.

Can you all describe the judiciary's process for selecting a courthouse, your construction priorities in that regard, including why a new courthouse in Nashville is the judiciary's top space priority?

Mr. DUFF. Yes, Mr. Chairman. We did, at the urging of GAO, restructure, somewhat, our formula for prioritizing new courthouse construction. There are several factors that go into that analysis, security being one of them. We carved out security needs separately, as I mentioned, in the opening remarks. We did that to enable us to address security needs in courthouses where an entirely new courthouse wouldn't be possible, given the fiscal constraints we are operating under.

But under our new space planning process for courthouse construction, there are very important criteria that go into those decisions. We have come up with a new listing, if you will, of courthouse construction priorities. Nashville remains at the top that list, in part because not only does it meet the new criteria, but also because so much has already been invested in the design and study.

As you mentioned, Mr. Chairman, it has been on the 5-year plan for now 20 years. So investments have already been made. The site has been purchased and partially cleared for construction. And that is why the Nashville courthouse remains at the top of that list.

Judge GIBBONS. Actually, while security is taken into account, it values security less than was previously the case, under the old methodology.

Nevertheless, the Nashville courthouse has both just really, really serious operational needs, serving the number of judges it was never intended to serve, and quite serious security needs.

I am personally familiar with that courthouse. I was a law clerk in it. I have been in it recently. It is kind of a mess for the judges who hold court there.

Senator BOOZMAN. Thank you.

Senator Coons.

#### COST CONTAINMENT PROPOSALS

Senator COONS. Thank you, Chairman Boozman.

So first, if we might talk further about cost-containment, you put forward some legislative proposals that will save money. I think last year it was a proposal to eliminate an annual report. This year it is a proposal to allow the sharing of probation services among districts.

I wondered if you would just elaborate on why that might be a good idea and how it might save some money.

And then also, if we could talk about some of the space reduction initiatives and whether these involve court staffing only, or whether there is more that could be done with courthouses not fully occupied due to there not being a sufficient number of judges.

And then I want to talk about court security.

Judge GIBBONS. Well, I will start. This is not the order you asked, but if we may start with rent, then court security from the standpoint of cost-containment, and then move on to the legislation. There is one, in particular, that I know Director Duff will want to address. I will try to move through this pretty quickly.

#### CONTAINING SPACE COSTS

We have done a lot of things in the past with respect to space. Our current rent validation effort really involves a three-pronged approach. Working with our appropriations subcommittees, we

agreed to implement a goal of a 3 percent reduction in our occupied space by the end of fiscal year 2018. Going hand-in-hand with that is a requirement for no-net-new, meaning if you acquire new space, you have to give up space. It doesn't apply to new courthouse construction like Nashville, but it does apply otherwise in the system.

The third component is a circuit-wide plan. That really provides the blueprint for how we would reach goals one and two. The circuits have all done their plans. The process is moving forward very well. We believe we are well on target to meet our goal, and we are pleased with the way that that is progressing.

[CLERK'S NOTE.—Regarding Senator Coons' question about whether space reduction initiatives apply only to court support staffing, subsequent to the hearing Judge Gibbons provided the following additional information:]

The Judiciary's space reduction initiatives apply to our entire space portfolio, regardless of who is using a particular space and for what purpose. It is true that most of the space reduction projects undertaken so far have focused on staff-occupied space. Those are the projects that have been identified and pursued by the circuits, based on their local decision making. That said, there are a number of space reduction projects that have resulted in the reduction, consolidation or elimination of space occupied or used by judges. For example, the Judiciary has closed several non-resident facilities, where courtrooms existed for the use of judges who were not stationed at that facility full time. We have also moved bankruptcy judges out of leased space and into courthouses in several locations. In addition, we have engaged in the creative redesign of some chambers space, resulting in the sharing of judges' conference rooms and other facilities. We will continue to consider and approve such projects whenever they are proposed and shown to be meritorious.

#### INTEGRATED WORKPLACE INITIATIVE

Along the way, this is one of the areas in which there is a need to spend a little money to save money. That is why our budget requests \$25 million for some renovations that will enable us to use less space. We have an initiative underway—we give everything a name—called the integrated workplace initiative. The idea is, folks work differently today. Our probation officers work in the field more. So we have developed sort of a new workplace that accommodates that, and it occupies less physical space. There is telecommunicating, there is being outside the office, all those things.

But sometimes you have to make renovations to do that. We have two or three projects, Chicago, I think in Phoenix and Tucson. It seems like there is one other that go to our implementation of that.

[CLERK'S NOTE.—Subsequent to the hearing, Judge Gibbons provided the following additional information:]

Following are brief summaries of Integrated Workplace Initiative (IWI) projects underway:

##### *Project in Demolition and Construction Phase*

—*Chicago, Illinois.* The Northern District of Illinois probation office will save \$1.4 million in estimated annual rent by reducing its space footprint 55 percent and relocating from leased space to a Federal building. This project is anticipated to be completed in November 2015.

##### *Projects in Concept Design Phase*

—*San Juan, Puerto Rico.* The District of Puerto Rico probation office will save \$300,000 in estimated annual rent by releasing 5,800 sq. ft. in a Federal building and Federal courthouse. There is no estimated completion date at this time.

—*Phoenix and Tucson, Arizona.* The District of Arizona probation office will save \$300,000 in estimated annual rent by releasing 7,000 sq. ft. in a Federal build-

- ing in Phoenix. It will save another \$400,000 in estimated annual rent by releasing 10,000 sq. ft. and relocating staff from leased space to the Federal courthouse in Tucson. There is no estimated completion date at this time.
- Dallas, Fort Worth, and Arlington, Texas.* The Northern District of Texas probation office is working to assess options to reduce space in Federal buildings and courthouses located in Dallas and Fort Worth, and in leased space in Arlington. The project is being assessed in conjunction with other space reductions projects underway in Dallas and Fort Worth involving the District and Bankruptcy Courts. There is no estimated savings or completion date at this time.
  - Houston, Laredo, Brownsville, and Corpus Christi, Texas.* All court units in the Southern District of Texas are working to assess options to reduce their respective space allocations in a Federal courthouse in Houston. In Laredo, the probation office is working to release leased space and to relocate in a Federal courthouse. In Corpus Christi, the probation office is working to reduce its space allocation in a Federal building and courthouse. There is no estimated savings or completion date at this time.
  - Washington, District of Columbia.* A national demonstration project at the Administrative Office involves co-locating the nearly 70 staff from four Facilities and Security Office divisions into one space on the first floor of the Thurgood Marshall Federal Judiciary Building. Total occupied space will be reduced by up to 25 percent and the design fully incorporates IWI mobility concepts. The space will include systems furniture and movable walls to allow for flexible space configuration. The design process for this project is now underway. The project will serve as a working example for judges and court unit executives who travel to Washington, DC to experience first-hand what an IWI project looks like and to then consider something similar for their court.

#### JUDICIARY CAPITAL SECURITY PROGRAM

Senator COONS. I have other questions I would love to get to, if you could briefly speak to the Capital Security Program and how that investment will reduce—

Judge GIBBONS. It has been a great way for us to take smaller projects and try to achieve good security improvements while using lesser amounts of money. It has been very important.

We have a listing of improvements that we could provide to you. One of particular interest to this subcommittee might be the one in Texarkana, Arkansas, that is being carried out at this time.

If you want more about that, I am full of information. But if you would like for us to move onto legislation, we would do that.

[CLERK'S NOTE.—Subsequent to the hearing, Judge Gibbons provided the following additional information:]

Following are brief summaries of Capital Security projects either planned or underway:

- Federal Building and U.S. Courthouse, Monroe, Louisiana.* \$6.1 million (fiscal year 2015 funding). Security deficiencies at this courthouse would be addressed by enclosing a sally port, adding one or two elevators (for prisoners and judges), and reconfiguring/constructing new corridors.
- U.S. Courthouse and Post Office Building, Texarkana, Texas/Arkansas.* \$7.2 million (fiscal year 2015 funding). A number of security deficiencies at this courthouse will be addressed by this Capital Security project. It will provide secure, covered parking for judges. It will consolidate U.S. Marshals space from two locations to one location within the courthouse, and enclose a sally port. The project will also add elevators and enhance building corridors to create separate circulation patterns for judges and prisoners.
- Ron De Lugo Federal Building, St. Thomas, U.S. Virgin Islands.* \$20 million (fiscal year 2013 funding). The scope of this capital security project includes new judge and prisoner elevators, a judges' garage, a U.S. Marshals Service sally port, and other security improvements to the site. An architecture/engineering contract was awarded and the project entered the design phase in February 2015.
- Frank M. Scarlett Building, Brunswick, Georgia.* \$5.5 million (fiscal year 2012 funding). Security deficiencies at this courthouse are being addressed by building entry improvements, reconfiguring corridors, adding elevators, enclosing a

sally port, and creating secure parking for judges. The design is underway, with anticipated completion of construction in January 2016.

- Federal Building and U.S. Courthouse, Benton, Illinois.* \$4.7 million (fiscal year 2012 funding). Security deficiencies at this courthouse are being addressed by reconfiguring/constructing new corridors, adding an elevator, enclosing a sally port, and constructing visual barriers. Construction was completed in January 2015 and the court is currently occupying the renovated space.
- U.S. Courthouse and Post Office, Lexington, Kentucky.* \$6.7 million (fiscal year 2012 funding). Security deficiencies at this courthouse are being addressed by reconfiguring/constructing new corridors, adding elevators, enclosing a sally port, and constructing visual barriers. The design-build contract for this project is in the process of being awarded, with the anticipated completion of construction in September 2016.
- Hato Rey Complex, Clemente Ruiz-Nazario U.S. Courthouse and Federico Degetau Federal Building, San Juan, Puerto Rico.* \$3.1 million (fiscal year 2012 funding). Security deficiencies at this courthouse are being addressed by reconfiguring/constructing new corridors and adding elevators for prisoners. The project is currently under construction and is on time and under budget. The anticipated completion of construction is May 2015. A CSP study is currently underway in Puerto Rico to evaluate additional significant security concerns not addressed by the fiscal year 2012 project.

In addition, the judiciary has requested \$20 million for CSP projects in fiscal year 2016. Funds are requested for the following locations (with project cost estimates subject to verification by GSA):

- Terry Sanford Federal Building, Raleigh, North Carolina.* \$11 million. Security deficiencies at this courthouse could be addressed by adding and/or reconfiguring two or three elevators and constructing additional secure corridors.
- U.S. Post Office and Courthouse, Alexandria, Louisiana.* \$9 million. Security deficiencies at this courthouse could be addressed by enclosing judges parking and providing an elevator and a corridor addition to allow the judges secure circulation. The U.S. Marshals Service would have new space that includes operations, an enclosed sally port, holding cells, a prisoner elevator and an interlock corridor for secure prisoner transport.

#### SHARING PROBATION OFFICERS ACROSS DISTRICTS

Senator COONS. What is the proposal and how would it save money, Mr. Duff?

Mr. DUFF. Senator Coons, you asked about some legislative proposals where there may be some cost savings, and we are grateful for the conference agreement in the last Congress on one of those, which had to do with reducing an unnecessary reporting requirement, which is a cost savings.

Our probation and pretrial services program, another suggestion that we are urging in the way of a legislative fix is permitting probation officers appointed in one district to perform services for another district, with the consent of the appointing court. I will give you an example of where there could be cost savings, if the prohibitions were lifted as to sharing probation officers or allowing them to travel outside their districts.

An officer from the Flagstaff Probation Office in the District of Arizona has to travel 223 miles to visit offenders from the Round Rock region of the reservation there. If probation officers from the Farmington Probation Office in the District of New Mexico were permitted and authorized to work across their district boundaries, they would need to travel only 118 miles to visit the same offenders.

So given the location of these offices, we think, if officers are allowed to travel outside their districts, it would actually result in significant cost savings over the long run.

[CLERK'S NOTE.—Subsequent to the hearing, Director Duff provided the following additional information:]

In addition to the example I cited of the benefits of sharing probation officers across large judicial districts, such sharing arrangements could also conserve resources by enabling districts to avoid the higher salary costs associated with officers with specialized supervision skills, which can be as much as \$15,000 more than a typical probation officer. For example, a probation officer in the Eastern District of New York who has been trained in supervising sex offenders with computer monitoring conditions might also be able to handle those types of cases in the Southern District of New York and in the District of New Jersey, thereby relieving those districts from the obligation of hiring and training their own specialists.

#### NEED FOR ADDITIONAL JUDGESHIPS

Senator COONS. Mr. Duff, you had a conversation with the chairman about temporary judgeships. Let me just ask a question on that, if I might.

If I understand correctly, we haven't had a new authorization, a broad review and authorization, since 1990 of the number of Federal judgeships required in the Judicial Conference. Its most recent report is now requesting 73 new judgeships, as well as the conversion of nine of the temporary to permanent.

But there are truly acute shortages in several courthouses around the country, in California, Texas, and Delaware. What sort of impact does it have on litigants, what sort of impact does it have on timely access to justice, when you have significantly overburdened courthouses in certain places? And what sort of workload leads you to deem a particular courthouse acute in its shortage?

Mr. DUFF. The courts you mentioned, certainly the border courts that you identified, are severely burdened, as are a lot of bankruptcy proceedings and courts in Delaware.

The border court judges, they are carrying workloads sometimes in the range of 800 to 900 cases per year. That is just unmanageable. So we are doing the best we can in moving judges, in inter-circuit assignments, moving judges to help out in those districts.

But your question is a very good one, concerning the burden it places not only on the courts but on those we serve within the court system, and those who appear before the courts.

[CLERK'S NOTE.—Subsequent to the hearing, Director Duff provided the following additional information:]

Regarding the workload standards that are used to determine whether a new district judgeship is needed, the Judicial Conference uses a threshold of 430 weighted filings per authorized judgeship in a judicial district as a starting point for considering an additional judgeship. The 430 threshold for a new district judgeship applies to what filings per judgeship in a district would be after a new judgeship is created, unless certain circumstances apply. For this reason, judicial districts that are candidates for new judgeships currently have filings well above the 430 threshold.

#### DELAYS IN OVERBURDENED COURTS

Senator COONS. What would be a typical delay, length of time, in one of these overburdened courts, from filing to first hearing to resolution?

Mr. DUFF. I don't know about a typical delay, but it is clear that the courts can't keep up with the caseload, if individual judges are being asked to preside over 800 or 900 cases a year.

[CLERK'S NOTE.—Subsequent to the hearing, Director Duff provided the following additional information:]

Speedy trial dictates for Federal criminal cases, including the Sixth Amendment and the Speedy Trial Act—which establishes specific time limits between various stages of Federal criminal proceeding—necessitate that Federal judges give priority to criminal cases over civil cases. Delays in civil cases are dependent on the size and complexity of the case. The impact on litigants is that delays in civil cases can increase attorneys' fees in order to keep the case active, or can result in a plaintiff feeling pressured to settle a case due to an uncertain timeline for going to trial. To address caseload needs in overburdened judicial districts, the Judiciary uses visiting judges from around the country to assist with criminal and civil dockets.

Senator COONS. I routinely hear complaints about years of delays before Federal filings are ultimately resolved in some of the most overburdened courts.

Judge GIBBONS. I am sure that is true in courts like Delaware that are among the most burdened in the Nation.

Senator COONS. Thank you, both.

Senator BOOZMAN. Senator Lankford.

#### WORKLOAD TRENDS

Senator LANKFORD. Thank you.

I have several questions here. One is, I have noticed some of the numbers and the trends here. Civil filings grew by about 4 percent. Criminal filings have fallen 11 percent. So help me understand the trend that is happening here, and what do you attribute that to? Is that affecting your judges and placements and their workloads?

Judge GIBBONS. No. Fluctuating filings are a fact of life for us. In the criminal area, they are very much affected by both prosecution policies of the Department of Justice and also by resources available to the Department of Justice.

In the civil area, external events tend to drive civil filings—trends in personal injury, product liability cases, the economy. I mean, there are just all kinds of things, and we are accustomed to dealing with that. But we do take filings into account in calculating both our judgeship needs and our staffing needs.

Senator LANKFORD. Okay. Tell me the trends in filings right now in drug-related cases and immigration-related cases.

Judge GIBBONS. Well, I am not sure that I have information with me broken down by type of filing. If I do, probably the staff will pull my coat. But we can, certainly, provide that to you for the record.

Senator LANKFORD. Okay.

Tell me about some of the vacancy areas.

Judge GIBBONS. I do think that the immigration filings are down. I am not sure I know about the drug filings.

Senator LANKFORD. Yes, it is my understanding that both of them are actually down fairly significantly. I was trying to figure out the trend and the reason for that.

Judge GIBBONS. Well, I don't know, because it is within the Department of Justice. And I, certainly, don't speak for them.

On the other hand, the two factors I mentioned are typically the things that drive criminal filings, policy plus resources. Of course, the Justice Department was under sequestration, as we were.

[CLERK'S NOTE.—Subsequent to the hearing, Judge Gibbons provided the following additional information:]

The table below provides criminal defendants by major offense type for 2010 through 2014 based on the Judiciary's statistical tables. The number of criminal de-

defendants in Federal court is determined by the prosecutorial policies of the Department of Justice. Questions regarding increases or decreases in the number of defendants prosecuted, or changes in prosecutions for a particular offense type can best be answered by the Department of Justice.

Criminal Defendants by Major Offense Type, 2010-2014<sup>1</sup>

Offense Type	2010	2011	2012	2013	2014
Drug Offenses .....	29,660	31,134	30,653	29,141	26,354
Immigration Offenses .....	29,242	28,676	26,056	24,476	22,160
Property Offenses .....	17,146	17,526	15,957	14,733	13,708
Firearms Offenses .....	8,474	8,433	8,990	8,402	7,726
Sex Offenses .....	2,825	3,384	3,422	3,450	3,425
Traffic Offenses .....	4,105	4,609	3,486	3,229	2,914
Violent Offenses .....	2,888	2,791	2,734	2,822	2,721
General Offenses .....	2,218	2,609	2,242	2,330	1,977
Regulatory Offenses .....	2,055	2,137	2,125	2,013	1,949
Justice System Offenses .....	993	967	927	936	845
Total .....	99,606	102,266	96,592	91,532	83,779

<sup>1</sup> Reflects statistics for criminal defendants for the 12 months ending June 30 for the years shown.

#### JUDGESHIP VACANCIES

Senator LANKFORD. Of the openings there and the vacancies, we have nine individuals who are in the Court of International Trade. We have four vacancies in the Court of International Trade. How are they operating and functioning at this point?

Mr. DUFF. May I just double back?

Senator LANKFORD. Sure.

Mr. DUFF. Another expansion to the answer on your previous question is that sequestration did have an impact on the number of U.S. attorneys, so that had impact on the caseload as well.

Senator LANKFORD. So the vacancies in the Court of International Trade, four vacancies there. How significant is that to their basic operation? That is a pretty large percentage.

Mr. DUFF. Well, it is significant. I think one of the things that we have done well within the judiciary is we have been honest brokers, if you will, where there are needs. If a vacancy occurs in a district, for example, where the workload does not justify the extension or filling of that vacancy, we have been candid with the Congress about that in the appropriations process and throughout.

If, however, a vacancy occurs where the workload demands the filling of the vacancy or the creation of new judgeships, which we have come to the subcommittee with from time to time, we do so.

So a drop-off of four in that particular court is significant, and it would have an impact on how they deliver their work.

[CLERK'S NOTE.—Subsequent to the hearing, Judge Timothy Stanceu, Chief Judge of the U.S. Court of International Trade, provided the following additional information:]

As Senator Lankford correctly states, there are nine authorized judgeships on the Court of International Trade and there are currently four vacancies. One nomination is pending in the Senate. The Court is addressing workload needs with the assistance of its senior judges who have left active status but continue to take cases. This, however, can be only a temporary solution pending the filling of vacancies on the Court.



## DISTRICT COURT WORKLOAD

Senator LANKFORD. So, which district would you say has the lowest caseload at this point, as far as number of cases that are before them? You mentioned the one that is high. You mentioned some that have up to 800 cases a year. What is our low-end?

Mr. DUFF. I would have to get that number to you. I don't know off the top of my head for a particular court, a particular judge.

Senator LANKFORD. Or just a particular district.

Mr. DUFF. A particular district. I don't know the low-end, the lowest.

Judge GIBBONS. I don't know either, and I hesitate to mention particular areas. I mean, I know historically where some of the lowest areas are, but I would be hesitant to identify them. Those judges would be squealing if I happened to be wrong in light of the exact situation today.

[CLERK'S NOTE.—Subsequent to the hearing, Judge Gibbons provided the following additional information:]

In fiscal year 2014, the five Federal judicial districts with the lowest weighted filings per judgeship are Vermont (241), District of Columbia (232), New Hampshire (228), Wyoming (189), and Alaska (158). The national median weighted filings per judgeship in fiscal year 2014 was 415.

## EVIDENCE-BASED PRACTICES

Senator LANKFORD. We will try to pull that.

You had mentioned, Judge Gibbons, a statement in your written testimony where you talked about reducing offender recidivism. You talked about evidence-based offender supervision practices increasing recidivism rates.

Can you give me an example of that? You implied you are having some success in that area, and that is great. What are tactics? What is happening? And what are you doing to accomplish that?

Judge GIBBONS. It is interesting what evidence-based practices are. Our recidivism rate has been lower historically in the Federal system, even prior to our implementation of these techniques, than say it is in State systems. For us, it is about 30 percent. In State systems, it has been up to 70 percent or thereabouts.

Senator LANKFORD. So States are saying 70 percent. Federal, around 30 percent.

Judge GIBBONS. Right. For us, about 30 percent reoffending.

But the impact of evidence-based practices, supervision historically has been based on visits, keeping up with offenders, and counseling. There are some practices, which have been validated by empirical studies, that show that in addition to those longstanding techniques, it can be very effective for probation officers to be trained in techniques that help interrupt and change the cognitive thought processes.

Senator LANKFORD. That is what I was asking.

Judge GIBBONS. For example, we are trying to break patterns of destructive behavior that drive offenders back into associations with people they shouldn't be associating with, that interfere with their obtaining and maintaining employment, all the things that you can think of, the attitude things that you can think of that shape an individual's success in life.

Now, I haven't been to evidence-based training, so I can't tell you how a probation officer would go about doing that. But this is what that training is specifically designed to address, so that an officer knows how to work with an individual to, let's put it in lay terms, to get them to shape up and do right, as far as attitude.

[CLERK'S NOTE.—Subsequent to the hearing, Judge Gibbons provided the following additional information:]

The Judiciary's Staff Training Aimed at Re-Arrest Reduction (STARR) program involves exercises and instructions designed to alter the dysfunctional thinking patterns exhibited by many offenders and improves the quality and nature of the relationship between the offender and the officer. STARR builds on officers' existing communication skills, use of authority, and ability to impart cognitive restructuring strategies to offenders. For example, in applying the principles of STARR in interacting with an offender, an officer would utilize skills that help the offender identify dysfunctional thinking patterns and criminogenic life style issues, such as anti-social peers and substance abuse, that contribute to their proclivity to re-offend. Over the series of many interactions, the offender will learn and practice strategies to manage high risk situations, that in the past, have led to undesirable behavior and that interfere with the offender's personal life goals. Where appropriate, the officer will utilize proven negative and positive reinforcement techniques, and other techniques such as active listening that enhance the quality of the officer-offender interactions.

Senator LANKFORD. Thank you.  
I yield back.

#### FILINGS PER JUDGESHIP

Mr. DUFF. Senator Lankford, if I could just double back on one of your questions as well. Just to put in perspective what an 800-case per judge workload is like, new judgeships in our formula are requested when there are 430 cases for a judge. So a judge carrying 800 cases is basically doing the work of two judges.

Judge GIBBONS. And the low caseload districts would be down into the 200 or even a bit below that range, perhaps. Something like that.

#### RETROACTIVITY OF SENTENCING GUIDELINE CHANGE

Senator BOOZMAN. Let me ask just one more question, and if Senator Coons has a question, and Senator Lankford, if you would like.

The U.S. Sentencing Commission recently revised their sentencing guidelines to include the future and also going back in the past to those that are currently incarcerated.

How will reduced sentences impact the workload of the courts? What are you doing to prepare for that?

Judge GIBBONS. Well, pretty significantly. Of course, that sort of thing requires extra work for judges and for court staff, but that is not where we worry. Where we worry is about the impact on probation officers.

Probation officers, although the name is kind of a bit of a misnomer, they supervise an increasingly dangerous and high-risk population. So when they are not supervised adequately, there is a public safety risk.

We will need more probation officers to handle the workload that will be created by the releases of the offenders, which will begin after November 1 this year.

But right now, we have funds available, thanks to this subcommittee's appropriation. We have funds available to begin putting those probation officers in place, which is important and very good, because probation officers require full FBI background reports and they require training. So you need a little bit lead time, so it is very, very fortunate.

We are not asking for new staff for that, because we feel we have adequate funds now to do what we need to do.

#### REDUCING RECIDIVISM

Senator BOOZMAN. I appreciate that. I was interested in the question that Senator Lankford asked about reducing recidivism and things, evidence-based. This is almost the opposite of that.

If you have a situation where you don't have the staff in place as you put people out on the street, if we don't do a good job in that regard, then that rate is going to go up dramatically, as we have seen perhaps in some States as they have done similar things but not provided adequate parole officers to actually implement. That is so important, as you said earlier, getting people to change their attitude and shape up and stay out of jail.

Judge GIBBONS. The \$15 million we have requested for increased training for probation officers, some of our officers are trained in how to do this sort of supervision. Others fell behind because of the impact of sequestration. While we are continuing these efforts, in 2016 we are asking for \$15 million more, to get as many of our officers trained in the practices demonstrated to bring the best results.

Senator BOOZMAN. Very good.

Senator Coons.

#### EVIDENCE-BASED PRACTICES

Senator COONS. Just if I could, a follow up on that. So of your 94 judicial districts, how long will it take before you complete training in the probation staff, the teams of all of them? \$15 million won't allow you to accomplish all this in 1 year, will it?

Judge GIBBONS. No, it will not. We believe we will have folks in most districts trained, but we cannot say we will have every officer in 94 districts trained. We don't believe that is going to happen.

[CLERK'S NOTE.—Subsequent to the hearing, Judge Gibbons provided the following additional information:]

The \$15 million in the Judiciary's fiscal year 2016 budget request will not result in all 94 districts receiving STARR training, but it will facilitate the expansion of the program by preparing untrained officers in the currently involved districts (64) and allow some additional districts to participate in the training.

Regarding implementation, we are prepared to move ahead immediately with expansion plans in fiscal year 2016 if funding is appropriated. The Administrative Office's Probation and Pretrial Services program has identified at least two commercial off-the-shelf programs that would provide officers with a foundation needed for the STARR program. We have already selected regional STARR coaches who will work with each STARR-trained district and can travel there to assess implementation and provide any necessary booster training that is needed. An internal group was convened to outline contracting procedures for districts to begin the development of resources for officers and treatment providers.

#### INVESTMENTS FOR LONG-TERM SAVINGS

Senator COONS. There are a couple places in your opening comments, you stated that there are places where we need to make in-

vestments in order to save money. We talked a little bit about how restructuring some of the courthouses would allow you to actually reduce space, but you have to invest money in rebuilding and reorienting the space.

Here we are talking about investing money in training probation officers so that you have fewer recidivism incidents, so you have fewer repeat offenders.

Anything else you wanted to emphasize before we close in places where your investment in IT or courthouse security, for example, or, frankly, in rehiring career public defender staff rather than relying solely on panel attorneys, any other areas where you might save money in the long-term by making a short-term investment that is in this proposal?

Judge GIBBONS. Let me try to chip away at several of those as quickly as possible.

In the defender area, there are a number of reasons defenders have been slow to hire up. We have funds available for them to get back to near pre-sequestration levels in 2015. So they are hiring at this point, but we think we will be there, we hope, by the end of this year.

Another area of investment for us would be the \$19 million we are requesting for enterprise hosting and IT. We need to do that internally because of security concerns. The \$19 million is a beginning. I can't give you a net cost-benefit analysis, but ultimately, that promises to bring savings to local courts that will not have to maintain their own systems in the way that they do today.

I am trying to think if I have neglected anything that is a savings down the road, but that is what I am thinking of at this time.

I might double back and say one sentence about something that I should have covered earlier. You had asked me previously about the split in judges versus staffing, space reductions. It is about 55 percent, 45 percent, many more staff than judges. But the reason that 45 percent of the burden has been borne by judges is because of our efforts to close nonresident and other facilities.

[CLERK'S NOTE.—Subsequent to the hearing, Judge Gibbons provided the following clarification:]

Approximately 55 percent of the Judiciary's space inventory is comprised of chambers and courtrooms and the remaining 45 percent is for clerks of court offices, probation and pretrial services offices, and libraries. The Judiciary's 3 percent space reduction target by the end of fiscal year 2018 will focus on reducing space where feasible and practicable, however, space reduction will not necessarily be accomplished in proportion to the current 55 percent/45 percent split of chambers and courtroom space to other Judiciary space.

Senator COONS. Thank you both very much. I appreciate it.

Senator BOOZMAN. I want to thank all of the people that participated in preparing the hearing today. Our staff on both sides work really hard very hard to do that, so we appreciate that.

We thank you for your testimony today about a number of really important issues. We thank you for your frankness and really feel like this will be very, very helpful as we go forward in trying to prepare the 2016 funding.

At this time, I ask unanimous consent that a letter from the Federal Bar Association in support of the judiciary's fiscal year 2016 budget request be included in the record.

[The information follows:]

## PREPARED STATEMENT OF THE FEDERAL BAR ASSOCIATION

MARCH 23, 2015.

Hon. JOHN BOOZMAN, *Chairman*  
*Appropriations Subcommittee on*  
*Financial Services and General*  
*Government*  
*United States Senate*  
*Washington, DC 20510*

Hon. CHRISTOPHER A. COONS, *Ranking*  
*Member*  
*Appropriations Subcommittee on*  
*Financial Services and General*  
*Government*  
*United States Senate*  
*Washington, DC 20510*

Re: Fiscal Year 2016 Funding Request of the Federal Judiciary

Dear Chairman Boozman and Ranking Member Coons:

We write to express strong support for the Federal judiciary's fiscal year 2016 budget request. The request equals \$7.0 billion in discretionary appropriations, and increase of 3.9 percent over the fiscal year 2015 enacted level. The request also includes \$571.1 million in mandatory appropriations. We urge the Congress to make these funds available to assure the Federal courts are able to fulfill their constitutional and statutory responsibilities.

Our Association's membership of over 16,000 attorneys represents a major constituency of the Federal court system. Our members witness the daily need for adequate funding for the Federal courts. Their clients, whether defendants or plaintiffs, enter the courts in civil and criminal disputes with the same expectations for the fair and prompt administration of justice.

We are deeply appreciative of your subcommittee's past support for the Federal judiciary and your vigilance to assure that the necessary resources are made available to permit them to fulfill their responsibilities as a co-equal branch of Government. The funding that Congress made available to the Federal courts in fiscal year 2015 was vital in helping courts across the Nation to stabilize their financial position and operations after the devastating impact of sequestration. The judiciary's fiscal year 2016 request will maintain current services across the judiciary, continue the recovery and restoration of activities disrupted because of sequestration, and enable investment in important new or upgraded program initiatives to support judicial operations.

We note that the judiciary's budget request fully funds the judiciary's Defender Services program, which provides court-appointed counsel to indigent defendants, and increases the non-capital panel attorney hourly rate from \$128 to \$134. The funding request also ensures that funds will be available for criminal and civil jury trials. For the first time since 1990, the judiciary's request provides for an increase in the daily juror attendance fee by \$10, from \$40 to \$50.

We ask your subcommittee to take into account the commendable actions taken by the judiciary to contain costs and implement more efficient ways to administer justice. Space reduction remains the judiciary's primary cost-containment initiative. Since 2013, the judiciary has proactively removed more than 242,000 square feet of space from its rent bill, representing an annual savings of \$6 million.

In addition, we support the judiciary's request for design and construction services funding for the Nashville, Tennessee Federal Courthouse, as included in the administration's budget request for the General Services Administration. Funding of this project would represent only the second approval of new Federal courthouse funding since 2010.

Members of the Federal bar are committed to doing everything we can to continue to support the judiciary's efforts to assure the administration of justice good stewardship of taxpayer resources. Thank you for your consideration of our comments.

Sincerely yours,

MATTHEW B. MORELAND,  
*President.*

Senator BOOZMAN. If there are no further questions, the hearing record will remain open until Tuesday, March 31, at noon, for subcommittee members to submit statements and questions to the witnesses for the record. We request responses to those questions be within 30 days.

## SUBCOMMITTEE RECESS

Senator BOOZMAN. Again, thank you very much. And with that, the hearing is adjourned.

[Whereupon, at 11:25 a.m., Tuesday, March 24, the subcommittee was recessed, to reconvene subject to the call of the Chair.]