

STATEMENT OF
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CHAIRMAN, COMMITTEE ON THE BUDGET
JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE
UNITED STATES SENATE
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON THE DEPARTMENTS OF
COMMERCE, JUSTICE, AND STATE, THE JUDICIARY
AND RELATED AGENCIES

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INTRODUCTION

Chairman Hollings, Senator Gregg, and Members of the Subcommittee, thank you for giving me the opportunity to testify on the judiciary's fiscal year 2003 budget request. With me today are Judge M. Blane Michael, Judge of the United States Court of Appeals for the Fourth Circuit; and Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts, who is also the Secretary of the Judicial Conference and a member of its Executive Committee.

Before addressing our fiscal year 2003 budget request, on behalf of the entire judiciary I want to express our sincere appreciation for the generous funding levels provided to the judiciary for fiscal year 2002. Faced with responding to both the need for additional resources due to the terrorist and anthrax attacks and continuing fiscal pressure, the Congress was able to provide significant resources for several of the judiciary's highest priorities. While we did not receive funding for all the new probation and pretrial services positions and clerks' office positions, you provided

funding for a significant increase in the hourly rates paid to private panel attorneys representing defendants who cannot afford to pay for their representation; the judiciary's highest priority security needs; the first installment on the renovation of the Supreme Court building; and a COLA for judges. Although we did not get all the funding we requested, we are very grateful that you and your dedicated staff worked with us to fund our most pressing needs.

BUDGET OVERVIEW

The judiciary's fiscal year 2003 request totals \$5.2 billion, a 10.7 percent or \$507 million increase over available fiscal year 2002 appropriations, including the emergency counterterrorism supplemental funding. Three quarters of this requested increase (\$375 million) is required to continue current operations such as pay and benefit adjustments, inflationary adjustments, increases in GSA space rental costs, an increase in filled Article III judgeships, and continuation of the enhanced security measures taken since the terrorist and anthrax attacks. The remainder (\$132 million) is requested for programmatic and workload related needs such as: additional bankruptcy court staff to process an all time high number of bankruptcy filings; additional probation staff to supervise a record number of offenders released from prisons and living in our communities; and an increase in district court staff to handle the projected growth in criminal filings as the number of Department of Justice prosecutors continues to grow.

In addition to the funds requested, the judiciary has identified \$129.8 million required to implement the Administration's proposed legislation to shift the full cost for selected retirement benefits for current employees from the Office of Personnel Management to each individual agency. If this legislation is enacted, the judiciary would require a total appropriation of \$5.4 billion dollars. A detailed explanation of our fiscal year 2003 request is included as an Appendix to this statement.

IMPACT OF THE SEPTEMBER 11TH ATTACKS

An independent judiciary that all citizens trust and respect, which can fairly and expeditiously dispense justice and resolve citizens' disputes, is a fundamental tenet of our nation. The events of September 11th, and the anthrax incidents that followed, tested the judiciary's ability to maintain the high quality of justice our country deserves. I am pleased to report that the men and women of the Third Branch came together in a remarkable show of pride, teamwork, and patriotism to make certain that the work of the judiciary continued unabated.

In New York City, the 2nd Circuit Court of Appeals, the Court of International Trade, and the district and bankruptcy courts, probation and pretrial services offices, and federal public defender offices for the Southern District of New York are all located within a few blocks of the World Trade Center. The judiciary thankfully suffered no casualties as a direct result of the attacks. The attacks resulted in some

facility damage, a disruption in court operations, ongoing air quality issues and exerted untold emotional stress on court employees. However, with the assistance of judiciary staff across the country, especially those in the Eastern and Northern Districts of New York, the District of New Jersey, and the Eastern District of Pennsylvania, these courts were able to continue to function. For example:

- \$ Pretrial services officers from New York Eastern and New Jersey provided office space and telephones. They assisted in home confinement/electronic monitoring by following up on alerts for 86 defendants. In many cases, because streets were closed to vehicles and the subway was not operational, officers walked to appointments with defendants.
- \$ The bankruptcy court, which was using the judiciary's new case management/electronic filing system, was up and running within hours after court executives contacted the Administrative Office to receive electronic backups.
- \$ The 2nd Circuit Court of Appeals heard oral arguments at the Association of the Bar of the City of New York while awaiting permission to move back into its courthouse.
- \$ District Court Clerks offices= staff in the Eastern District of Pennsylvania, the District of New Jersey, and the Northern District of New York volunteered to travel to the Southern District of New York to assist with various processing functions that were delayed due to the attacks.

IMPACT OF THE ANTHRAX ATTACKS

The anthrax attacks also had a significant impact on the judiciary. The most dramatic was the evacuation and temporary closing of the Supreme Court building. The Court continued to hear arguments at the ceremonial courtroom in the District of Columbia E. Barrett Prettyman United States Courthouse. Examples of other impacts

on the judiciary include: finding alternative ways to receive time sensitive case materials from prosecutors, defendants, and civil litigants without utilizing the U.S. mail; receiving juror qualification questionnaires without relying on the U.S. mail to ensure that adequate numbers of jurors were available to continue trials; significantly scaling back on the Administrative Office's use of the U.S. mail to communicate with the courts and relying almost exclusively on electronic communications via the judiciary's nationwide Data Communications Network; and responding to anthrax hoaxes to ensure the safety of court facilities.

LONG-TERM IMPLICATIONS

In response to the terrorist attacks, the judiciary is taking steps to protect against future incidents that could disrupt the operations of the judiciary. These steps include heightened security, the development of a nationwide continuity-of- operations plan, studying the feasibility of establishing a court operations center located outside of Washington, D.C., and the continued use of technology to decrease the courts' reliance on mail to perform routine business (i.e., the electronic filing of documents, electronic noticing, and processing juror questionnaires).

Also in the long-term, the workload of the judiciary is expected to increase. As additional resources are provided to the various law enforcement agencies of the Department of Justice and additional Assistant U.S. Attorneys are hired to combat terrorism, the result will be continued growth in the workload of the judiciary. Any

number of high profile trials could result from prosecutions already known or probable. These cases will cause increased security and defense expenditures. Our budget request does not specifically take into account these potential trials. However, we will monitor the costs of these proceedings so that Congress and the public can be kept informed.

HEIGHTENED SECURITY

Since the September 11th attacks, the judiciary has significantly enhanced security at judiciary facilities. The additional resources appropriated by Congress in the fiscal year 2002 emergency supplemental will enable the judiciary to maintain the level of court security officer (CSO) coverage recommended by the U.S. Marshals Service, procure upgraded X-ray machines for courthouse loading docks and mailrooms, create 106 new deputy marshal positions to coordinate security in each circuit and district, begin to address the mail handling and screening needs of the courts, and provide increased protection both for CSOs and court facilities, especially those with high-profile terrorist cases.

The judiciary's budget request for Court Security totals \$298 million and will continue the current higher level of security in the courts for fiscal year 2003. The request is \$1.4 million below our fiscal year 2002 spending plan and takes into account non-recurring funding for security systems provided in the emergency supplemental. Working with the U.S. Marshals Service, the judiciary will continue to evaluate its

security needs and will keep the Committee informed of our requirements.

While not part of the judiciary's budget request, the Marshals Service is responsible for the security of courthouses, judges, criminal proceedings, and the transportation and security of prisoners. The impact of the war on terrorism and the growing number of criminal cases has had a dramatic impact on the resource needs of the Marshals Service. The dedication and professionalism which the men and women of the Marshals Service have displayed since the September 11th attacks has been immeasurable. The judiciary appreciates that you were able to provide the Marshals Service with significant funding increases in fiscal year 2002.

We hope that in fiscal year 2003 the Committee will be able to continue to provide the Marshals Service with additional staff for protection of the judicial process. In districts such as the Southern District of Florida and those along the southwest border, the number of defendants detained by the Marshals Service has grown dramatically in recent years, and additional deputy marshals are desperately needed to secure these potentially dangerous defendants. Additional deputy marshals are also needed for counterterrorism efforts associated with the terrorist-related cases the courts are currently hearing and additional cases that may be heard in the future. We encourage you to provide the Marshals Service the necessary resources to support their judicial protection responsibilities.

IMPACT OF ADDITIONAL ASSISTANT U.S. ATTORNEYS (AUSAs)

Over the past few years, additional resources have been provided to the U.S. Attorneys to increase gun prosecutions, promote school safety, combat cyber crime, and establish joint terrorism task forces. As the number of AUSAs continues to grow to address the priorities of Congress and the Administration, workload in the judiciary will continue to grow. The potential growth in criminal filings that could result from additional AUSAs has a far-reaching impact on the judiciary. Additional criminal cases brought to federal courts require additional judges to hear cases, court staff to administer them, pretrial services officers to supervise defendants released in our communities while awaiting trial, court-appointed counsel to represent additional defendants, and more probation officers to prepare presentence reports and supervise offenders released from prison serving their mandatory terms of supervised release.

COURT SUPPORT STAFF

The work of the judiciary is largely uncontrollable. The courts must handle whatever number of civil, criminal, or bankruptcy cases are filed, fairly and expeditiously. The judiciary cannot control the number and length of trials, the resulting number of jurors, and the number of defendants requiring representation. The courts also are unable to control the number of offenders serving a term of supervised release or defendants awaiting trial who require supervision. In order to ensure resources are deployed to match workload demands, the judiciary has developed scientifically-derived staffing formulas that are used to construct the budget

request and allocate funding to court clerks=offices and probation and pretrial services offices. Each court program (courts of appeals, bankruptcy courts, district courts, and probation and pretrial services) has its own formula which takes into account the individual workload drivers for the functions performed by these offices.

The staffing formulas were updated in the summer of 2000 after completion of an extensive series of analytical studies of the work performed in clerks=offices and probation and pretrial services offices. The formulas are used to determine the level of resources needed to allow the judiciary to provide a consistent level of service to the bench, bar, and the public, taking into consideration upward and downward changes in workload. As filings and other workload drivers fluctuate from year to year, the application of the formulas to individual court units allows for a corresponding increase or decrease in funding allocations. This allows the judiciary to ensure that resources are allocated equitably to all court units based on their individual workloads.

Although the courts= workload continues to increase in fiscal year 2002 the judiciary was unable, due to funding constraints, to fund fully its staffing formulas. The judiciary was able to provide some additional law enforcement resources only to probation and pretrial services offices where workload is increasing the most.

In FY 2003, the budget requests funding for 1,297 additional FTEs to fund fully the courts= fiscal year 2002 and 2003 workload requirements (461 FTEs for

probation and pretrial services and 836 FTEs for clerks= offices). Without sufficient staff, judicial processes are short-changed, civil and bankruptcy cases are delayed, support provided to judges and the public deteriorates, and offenders and defendants living in our communities are not adequately supervised.

PROBATION AND PRETRIAL SERVICES

Federal probation and pretrial services officers protect the public through the investigation and supervision of defendants and released offenders within the federal criminal justice system. A pretrial services officer supervises defendants awaiting trial who are released into our communities and provides a source of information upon which the court can determine conditions of release or detention while criminal cases are pending adjudication. To support sentence determinations, which require both uniformity and attention to individual circumstances, probation officers provide the court with reliable information concerning the offender, the victim, and the offense committed, as well as an impartial application of the sentencing guidelines. Probation officers supervise offenders coming out of federal prison who are required to serve a term of supervised release. Many of those under supervised release have substance abuse and mental health conditions.

In order to highlight the vital role played by these dedicated officers, I would like to offer an example of an incident where a probation officer went the extra mile in preparing a presentence report for the judge.

In March of 2001, a probation officer from the Northern District of California was assigned a presentence report of a case where the defendant pled guilty to Conspiracy to Bring Aliens Into the United States Illegally, Transportation of Minors in Foreign Commerce for Illegal Sexual Activity, and Subscribing to False Tax Returns. The case came to the attention of authorities when a minor female died of carbon monoxide poisoning in one of the defendant's apartment complexes. Further investigation revealed that this female and other minor females were illegal aliens who had been smuggled into the United States with fraudulent visas. The defendant began having sexual relations with many of the victims when they were as young as 11 years old.

The probation officer left no stone unturned in preparation of the presentence report. She interviewed each agency involved, including the city attorney's office, the Immigration and Naturalization Service, the American Civil Liberties Union - Immigration Rights Project, the victims' civil attorney, the Internal Revenue Service, and the mental health professionals who were working with the victims. It was through these interviews that the probation officer determined the extent of the psychological injuries to the victims.

The probation officer's presentence report to the Court recommended that the Court depart upward due to the extreme psychological injury to the victims. This upward departure was not part of the plea agreement, and became a point of contention at the sentencing hearing. The judge believed there was evidence to support this factor and agreed that an upward departure of two levels was warranted on that basis. The attorneys agreed to revise the plea agreement to include the upward departure. The defendant was ultimately sentenced in accordance with all of the factors that were presented and supported through the probation officer's extraordinary investigation.

The mission of our probation and pretrial services officers is not only to protect the public by supervising the activities of offenders and providing information to the court but it is to help offenders and defendants get back on their feet and integrate back into our communities. For example:

In the Western District of Kentucky, an offender recently released from prison

entered the probation office and experienced an emotional breakdown because his proposed housing had fallen through. With the help of a probation officer, the offender was admitted to a Crisis Intervention Unit where the offender lived and received emotional counseling for several months. While the offender was admitted, the probation officer helped the offender apply for Social Security benefits and food stamps. The officer also helped the offender secure an apartment, which he was able to pay for using his Social Security benefits. The offender is now living on his own, receiving bi-monthly counseling sessions, and is in total compliance with the terms of his release.

These are only two examples of the dedication and commitment that each employee of the Third Branch brings to the job.

In fiscal year 2001, probation and pretrial services officers supervised a record number of offenders and defendants (139,797) living in our communities.

This is above the federal prisoner population and is projected to continue to grow in FY 2002 and FY 2003 as the number of offenders released from federal prisons continues to increase.

The FY 2003 budget requests 461 additional probation and pretrial services FTEs to provide the additional staff required to manage this growing workload. Without the additional resources needed to manage their growing workloads, probation and pretrial services officers will be unable to maintain their high level of service to the community. Without adequate staffing, officers will focus most of their efforts supervising those persons they believe to be the most dangerous felons released from federal prison, while reducing the level of supervision over other released offenders who appear to be less dangerous, but may still pose a threat to the community. In

addition, the officers would be unable to devote sufficient time to prepare sentencing recommendations to the court and helping struggling offenders in need of assistance.

CLERKS=OFFICE STAFF

The FY 2003 budget also requests 836 FTEs to support the operations of the courts. This includes 494 FTEs for bankruptcy courts to handle the explosive growth in bankruptcy filings. In FY 2001, bankruptcy filings were a record 1,437,354 and they are projected to continue to increase. The long term impact of insufficient staffing in bankruptcy clerks=offices will be seen in longer disposition times, more case management errors, and reduced level of service to the judges and the bar. Ultimately this will negatively affect both debtors and creditors.

The request also includes 289 FTEs for district courts where the number of criminal defendants is projected to increase by 9 percent in FY 2002 over FY 2001. This anticipated growth in criminal workload reflects the projected increases in the number of cases the U.S. Attorneys offices will be able to prosecute given their recent increases in funding. Without additional staff to process this extra work, we can expect delays in civil filings and decreased service to the bench, bar, and public.

Finally, the request includes 53 FTEs to support circuit courts of appeals where between FY 2000 and FY 2001, appeals increased by 5 percent.

DEFENDER SERVICES

The Sixth Amendment to the U.S. Constitution provides that **A**in all criminal

prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.@ In enacting the Criminal Justice Act of 1964, Congress charged the federal judiciary with responsibility for providing counsel in connection with *federal* criminal prosecutions and related matters and authorized a separate Judiciary account **B** the Defender Services appropriation **B** to pay for these appointed counsel services.

As is true of the Judiciary's workload generally, the demand for appointed counsel services is not within the Judiciary's control. Both the number and complexity of cases in which counsel must be appointed are a function of both decisions made by the Department of Justice and the criminal laws and related statutes enacted by the Congress.

The substantial rate increase you provided for fiscal year 2002 will go a long way toward ensuring that competent counsel are available to meet the demands. I not only want to reiterate and re-emphasize how much this milestone is appreciated by those of us in the Judiciary responsible for managing the appointed counsel process, but also to let you know that panel attorneys from around the country have asked that we convey to you directly their appreciation for what you have done. At a time when the world's attention is likely to be focused on our federal criminal justice system, we believe that this increase will have a meaningful, positive impact on how well that system operates.

Excluding funding for panel attorney rate increases, we are seeking only a

modest increase for Defender Services in FY 2003 to cover workload growth and inflationary increases. Defender Services obligations are projected to grow by just 7.6% in FY 2003. Half of this growth is associated with the need to provide representation in the greater number of criminal matters that are expected to be filed in FY 2003 than in FY 2002. The remainder is needed to fund inflationary increases and mandatory pay and benefit adjustments.

COST CONTAINMENT AND THE JUDICIARY'S BUDGET PROCESS

The Constitution created the judiciary as a separate and independent branch of government. One of the by-products of the distinction as a separate branch, is the judiciary's authority to submit its budget request to Congress through the President without change by the executive branch. 31 U.S.C. § 1105(b).

The judiciary takes this authority seriously. The Judicial Conference of the United States recognizes that the responsibility for budgetary oversight requires stewardship and fiscal responsibility in both providing for the judiciary's requirements while considering the needs of the nation. The Judicial Conference established a Committee on the Budget, of which I am the Chairman, to assemble and present to Congress the budget for the judicial branch. In response to a request from the Congress, the Judicial Conference determined that the Budget Committee's jurisdiction should be expanded to include an Economy Subcommittee responsible primarily for:

- (1) coordinating efforts of the judiciary to achieve fiscal responsibility, accountability,

and efficiency; (2) advising the Budget Committee on development of fiscally responsible budget estimates; and (3) coordinating the development of reliable long-range budget estimates. The Budget Committee continues to meet each of these objectives.

With the assistance of the professional staff at the Administrative Office who support the committees of the Judicial Conference, the Economy Subcommittee and the Budget Committee analyze and debate the budget requests of the various program committees of the Judicial Conference. After intensive review, the Budget Committee recommends a budget request to the Judicial Conference that balances both the judiciary's responsibility to request sufficient funding to effectively operate the courts and the judiciary's duty as stewards of the public's funding.

In addition to the annual review of the budget request by the Budget Committee, the judiciary on a regular basis retains outside consultants to evaluate independently our financial and operational requirements and identify areas for improvements and efficiencies. While these studies are sometimes undertaken at Congress's behest, more often the judiciary itself initiates these reviews. Over the past few years, under the leadership of the Administrative Office, independent consultants have evaluated the courts' space and facilities program, the information technology program, the library services program, and the court security program. Currently, the judiciary is conducting a comprehensive assessment of the probation and pretrial

services system. Upon completion of these independent program studies, the Administrative Office and the applicable committees of the Judicial Conference review the results and implement program changes to improve the level of service provided by the courts and make the courts more efficient.

While the judiciary is working at the national level to review budget requests and conduct independent program reviews, we, with the assistance of the Administrative Office, also are working at the local level to ensure that the funding you provide us is spent efficiently. Chief judges and unit executives receive training on the financial responsibilities of operating their court; local court unit financial analysts are trained in budget and accounting; and Administrative Office staff conduct court audits and program assessments that help court managers improve the management of their resources. These efforts are done to ensure that every court -- from the large urban courts to the small rural courts -- is effectively managing the funding provided to the judiciary.

CONTRIBUTIONS OF THE ADMINISTRATIVE OFFICE

As I discussed earlier, the Administrative Office plays a pivotal role in the budgeting and management of the funding you provide the judiciary. It not only performs important administrative functions such as personnel, payroll, procurement, space management and planning, and accounting, but also provides a broad range of legal, financial, management, program, and information technology services to the

courts. The Administrative Office, under the direction of the Judicial Conference, is the manager of change in the judiciary. This change includes: implementing throughout the courts modern automated systems, such as personnel, accounting, library services, jury management, and case management; and expanding the use of technologies to assist in the supervision of offenders and defendants.

The Administrative Office was also instrumental in providing direct support to the courts to restore operations, upgrade security and facilitate new mail handling procedures, after the events of September 11. The exemplary performance was commended in a letter I read from the Chief Judge of the Southern District of New York. He recognized the Administrative Office for the resource and personnel help that enabled the court to carry on its business while bearing the burdens of September 11.

I urge the Committee to fund fully the Administrative Office's budget request including its modest request for eight additional FTEs. The Administrative Office is integral to the judiciary's ability to perform its work. Without the Administrative Office's support, the judiciary could not continue to improve its efficiency. The increase in funding will ensure that the Administrative Office continues to provide program leadership, policy guidance, and administrative support to the courts, and to lead the efforts for them to operate efficiently.

CONTRIBUTIONS OF THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the federal judiciary's education, training, and research arm. With Judge Smith, I thank you for last year's programmatic increase, the first such increase in over ten years, and only the second full current services increase in the same period. We are grateful.

The Center is vital to our work as judges, and a main element of its modest 8.7 percent increase this year involves education for judges. I want also to recognize the Center's education for the employees in our clerks, probation, and pretrial offices in these troubled times of employee unease and uncertainty. Center management training, almost all of it offered by satellite and on the web, has never been more important and highlights the need for the three educational technology positions the Center requests.

Center education is also vital to our work as judges. The Center seeks an increase of \$500,000 to allow it to restore its basic judicial continuing education programs to an annual basis. Since 1999, the Center's reduced appropriation has meant that district, magistrate, bankruptcy, and appellate judges may attend one of these seminars no more than once every eighteen months. This cutback has been a matter of great concern to judges over the country. The Board of the Center took the unusual step of adding its own statement to supplement Judge Smith's justification for this increase.

These programs provide updates on caselaw trends, on innovations in managing

cases, and on such specialized topics as admissibility of scientific evidence.

Furthermore, we can share notes with colleagues from other courts as well as with the excellent faculty that the Center assembles. I believe the Center's request deserves the committee's support and urge favorable action on the full amount.

JUDICIAL COMPENSATION

Before closing, I would like to express our appreciation for Congress' approval of a fiscal year 2002 Employment Cost Index (ECI) adjustment for federal judges, members of Congress and top officials in the executive branch. The Judicial Conference strongly encourages Congress to authorize an ECI adjustment for fiscal year 2003, which will require a provision to waive section 140 of Public Law 97-92. While the law provides for a 3.1% increase, the President's Budget reduces this adjustment to a maximum 2.6% increase. We urge that Congress take action this year to avoid further salary erosion.

CONCLUSION

Chairman Hollings and members of the subcommittee, this concludes my statement. I look forward to working with you and I would be pleased to respond to any questions you may have.