

**STATEMENT OF JUDGE ROYAL FURGESON
BEFORE THE SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT
AND THE COURTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

Mr. Chairman and members of the Subcommittee, I am Royal Furgeson, District Judge for the Western District of Texas and Chair of the Judicial Conference Committee on Judicial Resources. That Committee is responsible for all issues of human resource administration, including the need for Article III judges and support staff in the U.S. courts of appeals and district courts. I am here today to provide information about the judgeship needs of the courts and the process by which the Judicial Conference of the United States (the "Conference") ascertains those needs.

Every other year, the Conference conducts a survey of judgeship needs of all U.S. courts of appeals and U.S. district courts. The latest survey was completed in March 2005. Consistent with the findings of that survey and the deliberations of my Committee, the Conference is recommending that Congress establish 68 new judgeships in the courts of appeals and district courts. The Conference is also recommending that three temporary district court judgeships created in 1990 be established as permanent positions and that one temporary district court judgeship be extended for an additional five years. Appendix 1 contains the specific recommendation as to each court.

For many of the courts, the recommendations reflect needs developed since the last comprehensive judgeship bill was enacted, in 1990. Every two years since

then, the Conference has submitted to Congress recommendations on the number of additional Article III judgeships required in the judicial system.

Survey Process

In developing recommendations for consideration by Congress, the Conference (through its committee structure) uses a formal process to review and evaluate Article III judgeship needs. The Committee on Judicial Resources and its Subcommittee on Judicial Statistics manage these reviews; the final recommendations on judgeship needs are adopted by the Conference itself. Before a recommendation is transmitted to Congress, it undergoes consideration and review at six levels within the Third Branch, by: 1) the judges of the court making a request; 2) the Subcommittee on Judicial Statistics; 3) the judicial council of the circuit in which the court is located; 4) the Subcommittee, in a further and final review; 5) the Committee on Judicial Resources; and 6) the Judicial Conference. In the course of the 2005 survey, the courts requested 80 additional judgeships, permanent and temporary. Our review procedure reduced the number of recommended judgeships to 68.

In the course of each judgeship survey, all recommendations made in the prior survey are re-considered, taking into account the latest workload data, changes in the availability of resources, and adjustments to guidelines for evaluating requests. In some instances, this review prompts adjustments to previous recommendations.

Judicial Conference Standards

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

Caseload statistics must be considered and weighed with other court-specific information to arrive at a sound measurement of each court's judgeship needs; circumstances that are unique, transitory, or ambiguous may result in an overstatement or understatement of actual burdens. The Conference process therefore takes into account additional factors, including:

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

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

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

In the courts of appeals, the starting point used by the Conference is 500 adjusted filings per panel. In 2005, four circuits exceeded 1,000 adjusted filings per panel; even so, two of these courts did not request an additional judgeship. The case mix in the circuits in which additional judgeships are recommended differs significantly from the case mix in the circuit courts that did not request additional judgeships. For example, criminal and prisoner petition appeals were approximately 60 percent of all appeals filed in the Fifth and Eleventh Circuits (which did not seek additional judgeships), but only about 30 percent in the Second and Ninth Circuits (which did). The Second and Ninth Circuits have also experienced dramatic increases in appeals of decisions by the Board of Immigration Appeals. In each circuit court in which the Conference is recommending additional judgeships, the caseload levels substantially exceed the standard, and other factors bearing on workload have been closely considered.

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

New District Court Case Weights

Case weights are a relative measure of the amount of judicial work required by different types of civil and criminal cases. In 2004, the Federal Judicial Center updated the district court case weights, and the judiciary adopted the new weights as the basis for calculating weighted filings in the district courts.

The previous case weights had been in place since 1993, and there was concern that many of the case weights were out of date due to changes in case law and case management procedures. The new weights were developed using an event-based approach that modeled the interaction between the events that occur during the life of a case (e.g., hearings, motions, trials) and the amount of time judges spend to accomplish those events. The study involved nearly 300,000 civil and criminal cases and the participation of more than 100 district judges from 89 courts. Overall, the new case weights are not substantially different from the old weights for many case types. There are instances, however, in which the differences are notable. For example, the case weights for complex civil litigation are significantly higher while the weights for some types of criminal cases are substantially lower. The Conference used weighted filings per authorized judgeship based on the new case weights to determine whether a court's caseload met the criteria for considering requests for additional judgeships.

Background-Caseload Information

Chart 1. U.S. Courts of Appeals

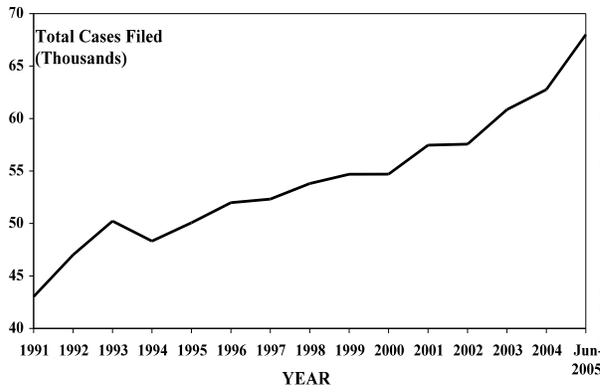
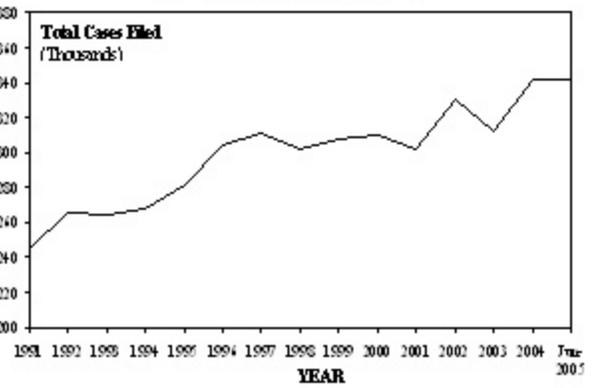


Chart 2. U.S. District Courts



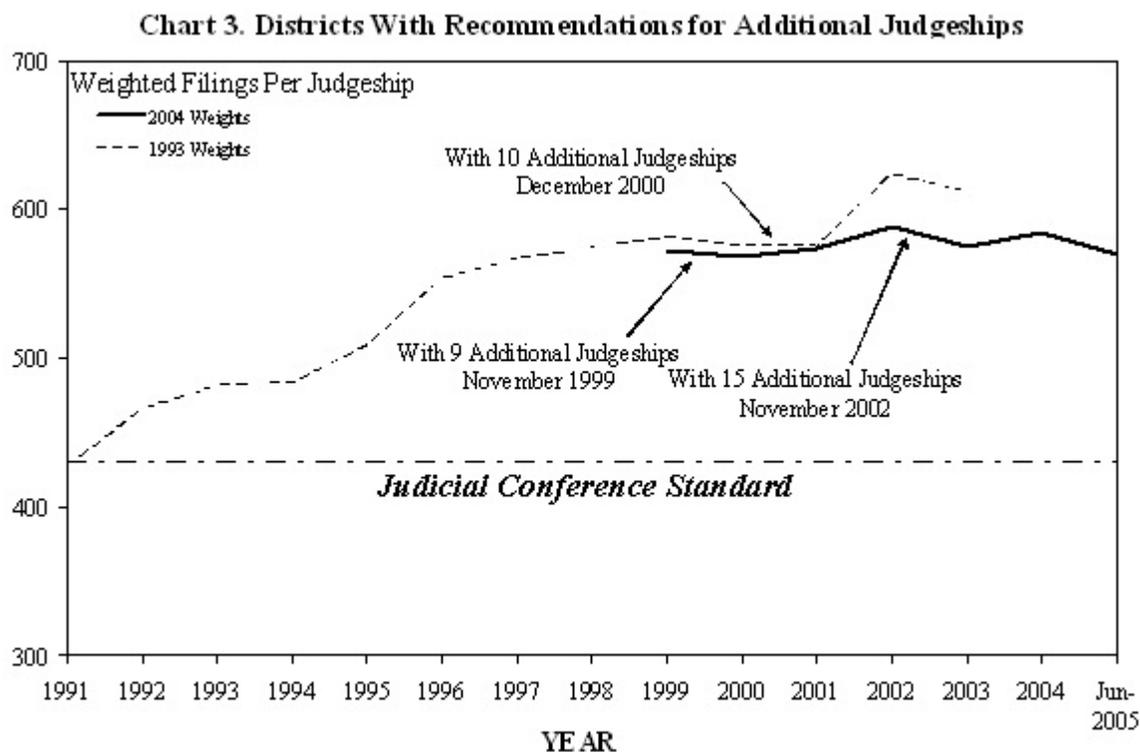
The last comprehensive judgeship bill for the U.S. courts of appeals and district courts was enacted in 1990¹. Public Law 101-650 established 11 additional judgeships for the courts of appeals and 74 additional judgeships for the district courts. Since that time, case filings have continued to rise.

By June 2005, filings in the courts of appeals had grown by 58 percent (Chart 1), while case filings in the district courts rose 40 percent (civil cases were up 34 percent while criminal felony filings rose 75 percent) (Chart 2). Although Congress created 34 additional judgeships in the district courts in recent years in response to particular problems in certain districts, no additional judgeship has been created for the courts of appeals. As a result, the national average caseload per three-judge panel has reached 1,222--the highest ever. Were it not for the assistance provided by senior and visiting judges, the courts of appeals would not have been able to keep pace, particularly in light of the number and length of vacancies.

¹As part of the judiciary's appropriation for fiscal years 2000 and 2001, and as part of the Department of Justice authorization bill in fiscal year 2003, the Congress created 9, 10, and 15 judgeships, respectively.

Even with the additional district judgeships, the number of weighted filings per judgeship in the district courts has reached 531--well above the Judicial Conference standard for considering recommendations for additional judgeships. I have provided at Appendix 4 a more detailed description of the most significant changes in the caseload since 1991.

Although the national figures provide a general indication of system-wide changes, the situation in courts where the Conference has recommended additional judgeships is much more dramatic. For example, there are 10 district courts with caseloads exceeding 600 per judgeship. The district courts in which the Conference is recommending additional judgeships (viewed as a group) have seen a growth in weighted filings per judgeship from 427 in 1991 to 569 in June 2005--an increase of 33 percent (Chart 3).



The national data and the combined data for courts requesting additional judgeships provide general information about the changing volume of business in the courts. The Conference's recommendations are not, however, premised on this data concerning courts as a group. Judgeships are authorized court-by-court rather than nationally; so the workload data most relevant to the judgeship recommendations are those that relate to each specific court in which the Conference is recommending an additional judgeship.

Appendix 1 contains summary information about the numbers of additional judgeships recommended by the Conference for each court. The Legislative Affairs staff of the Administrative Office of the U.S. Courts has previously provided to each member of the Judiciary Committee the detailed justifications for the additional judgeships in each court.

Over the last 20 years, the Judicial Conference has developed, adjusted, and refined the process for evaluating and recommending judgeship needs in response to both judiciary and congressional concerns. The Conference does not recommend (or wish) indefinite growth in the number of judges. The *Long Range Plan for the Federal Courts* (Recommendation 15) recognizes that growth in the judiciary must be carefully limited to the number of new judgeships that are necessary to exercise federal court jurisdiction. However, as long as federal court jurisdiction continues to expand, there must be a sufficient number of judges to properly serve litigants and justice. The Conference is perennially attempting to balance the need to control growth and the need to seek resources that are appropriate to the workload. In an

effort to implement that policy, we have requested far fewer judgeships than the caseload increases would suggest are now required.

On behalf of the Judicial Conference, I request that this Subcommittee give full and favorable consideration to the draft bill submitted by the Judicial Conference to establish 12 additional judgeships for the U.S. courts of appeals and 56 additional judgeships for the U.S. district courts.