

STATEMENT OF LEONIDAS RALPH MECHAM, DIRECTOR
ADMINISTRATIVE OFFICE OF THE U. S. COURTS
BEFORE THE SUBCOMMITTEE ON
TRANSPORTATION, TREASURY, HOUSING AND URBAN DEVELOPMENT,
THE JUDICIARY, AND DISTRICT OF COLUMBIA
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

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Introduction

Chairman Knollenberg, Congressman Olver, and members of the Subcommittee, I am pleased to appear before you this morning to present my final testimony before the Congress in support of the fiscal year 2007 budget request for the Administrative Office of the United States Courts (AO). As Judge Gibbons has said, I will soon be retiring as Director of the Administrative Office. I have served three Chief Justices, thousands of judges and court staff, and directed the AO during two decades of unprecedented change. I have worked closely with members and staff of the various Committees of Congress with jurisdiction over the judiciary and am extremely proud of what we have accomplished together. I am grateful for the opportunity afforded me to head what I believe is the finest agency in the federal government.

I especially want to thank you and your Committee for the support provided to the Judiciary during our first year under the purview of this Subcommittee. Only weeks after the Appropriations Committee reorganization last year, you supported emergency supplemental funding to enhance the protection of judges in their homes, and language ensuring sufficient fees would be available to support the judiciary's implementation of the new Bankruptcy law. Then, during consideration of the FY 2006 Transportation-Treasury Appropriations Act, you made funding for the judiciary a priority, recognizing the uncontrollable nature of the workload in our nation's courts. And, as the year drew to a close, you supported emergency supplemental funding to assist Gulf Coast courts in their recovery efforts in the aftermath of Hurricanes Katrina, Rita, and Wilma. Your leadership in support of the Judicial Branch during these times of tremendous budget pressures is deeply appreciated.

Containing Costs Through Rent Relief

As you may recall, much of my testimony before your Subcommittee last year focused on the adverse impact the judiciary's rent bill has had on court operations and our attempts to obtain rent relief from the General Services Administration (GSA). As Chief Justice John Roberts stated in his 2005 Year-End Report, "*The federal judiciary cannot continue to serve as a profit center for GSA.*" While the judiciary has taken steps of its own to control its rent bill by undertaking a comprehensive review of its courthouse construction program, including a moratorium on new construction projects, it is the so-called "market based" or commercially equivalent rent we are paying for existing facilities that is exacerbating our budget difficulties.

During the eighteen-month period from October 2003 through March 2005, budget shortfalls and delayed appropriations forced the judiciary to reduce court staffing by 8 percent or 1,800 employees. Yet, during this same time period, the rent bill paid to GSA increased and was paid in full. Faced with the choice of paying an even higher rent bill or firing additional court employees, all during a period of historically high workload, the judiciary tried unsuccessfully to seek a rent exemption from the GSA – similar to those the GSA provided at the same time to 14 other executive branch entities. Each request by the judiciary was turned down or GSA offered alternatives that, in the long term, would not save money. Unable to sustain any further staffing reductions, and without cooperation from GSA, the judiciary had no choice but to engage in a detailed, and costly, technical review of rent bills at the local level to try to identify rent discrepancies that would result in a lower rent bill.

Judge Gibbons has described this effort in her testimony and shared with you the success we have had in identifying inaccuracies and errors in the rent bills for the Northern and Southern Districts of New York, which resulted in a savings of \$30 million to the judiciary through rebates and rent credits. Certainly we are pleased with this result as the unanticipated return of funds has helped to offset the impact of the one percent across-the-board rescission to our FY 2006 appropriation. But, the rebates provide only short-term rent relief. As Chief Justice Roberts stated in his 2005 Year-End Report, “... *the judiciary must still find a long-term solution to the problem of ever-increasing rent payments that drain resources needed for the courts to fulfill their vital mission.*” Unless judiciary appropriations keep pace with the increase in our rent bills, we will be unable to sustain the staffing levels necessary to carry-out the mission of the Judicial Branch. Despite the aforementioned rebates, rent paid to GSA in FY 2006 is expected to consume over 20 percent – nearly \$1 billion – of the courts’ operating budget. In contrast, the Executive Branch as a whole spends less than two-tenths of one percent of its budget on GSA rent – in part because many agencies have managed to become totally independent of the GSA.

On February 8, 2006, Congressman Sensenbrenner introduced H.R. 4710, the Judiciary Rent Reform Act of 2006. A similar bill, S. 2292, was introduced in the Senate by Senator Specter on February 16, 2006. The purpose of this bipartisan legislation is to ensure that the rent paid by the Federal judiciary is fair and equitable, and is related to the actual costs of providing court facilities. Enactment of the legislation would change existing practice by requiring the judiciary to pay only for the GSA’s direct expenses associated with the operation and maintenance of federally-owned space occupied by the courts, as well as applicable indirect GSA expenses, which principally entail GSA’s administrative overhead at the field office, regional and central office levels. The judiciary would be required to pay only the underlying contract rent for any court-occupied leased space and would be exempt from paying for components of GSA’s current pricing policy, which are above and beyond its actual costs of operating and maintaining Federally-owned space.

With regard to future courthouse construction or major repair and alteration projects undertaken by GSA on behalf of the judiciary, under this proposed legislation, the judiciary would request appropriations directly from Congress and transfer appropriations approved by

Congress to GSA for deposit into the Federal Buildings Fund. The amounts transferred would be designated specifically for those projects. This legislation will not change the current congressional process for authorizing new courthouse construction and repair and alteration projects, nor will it change appropriations subcommittee jurisdiction. It simply will ensure that the judiciary pays a fair and equitable amount to GSA to lease, operate, and maintain court facilities. Furthermore, it will ensure that all funding deposited in the Federal Buildings Fund by the judiciary is used to support and build judiciary facilities, and is not used by the Administration to fund Executive Branch projects instead.

Modifying the funding mechanism for judiciary facilities will improve the process for both the Judiciary and Congress, and will preclude the situation the judiciary finds itself with respect to FY 2007 – and, in fact, five of the past ten years. The Judicial Conference has identified to GSA and the Administration the need for five courthouse projects, at a cost of \$307 million for FY 2007. The President's budget has included no funds whatsoever for courthouse construction projects. OMB has included no funds for projects funded out of the Federal Buildings Fund. Yet, the judiciary will pay approximately \$1 billion in rent to GSA in FY 2007, which is about \$500 million more than is needed to pay for the cost to lease and operate court facilities. While there is \$148.6 million in the FY 2007 request for three courthouse Repair and Alteration projects, the vast majority of the "rent profit" realized by GSA from the judiciary goes to support Executive Branch projects.

Mr. Chairman and members of the Subcommittee, I hope you will support the judiciary's efforts to address the burden that excessive rent costs are placing on the judiciary by co-sponsoring H.R. 4710. Especially during these times of limited resources, I fear that our ability to carry out the basic functions of the judicial branch are at stake if rent relief is not obtained.

Role of the Administrative Office

The Administrative Office of the U.S. Courts was created by an Act of Congress in 1939 and is devoted to helping the courts fulfill the judiciary's mission – administering justice to the citizens of this country. Neither the Executive Branch nor the Legislative Branch has a comparable organization that provides the broad range of services and functions that the Administrative Office does for the Judicial Branch. My successor will be only the seventh Director of this unique institution in almost seventy years.

The AO provides administrative, legal, financial, management, program, security, and information technology services to the federal courts. It provides support and staff counsel to the Judicial Conference of the United States and its 25 committees, and it helps implement Judicial Conference policies as well as applicable federal statutes and regulations. The AO is also the focal point for judiciary communication, information, program leadership, and administrative reform. Our administrators, accountants, systems engineers, analysts, architects, lawyers, statisticians, and other staff provide professional services to meet the needs of judges and staff working in the federal courts nationwide. The AO staff also responds to Congressional inquiries, providing information on pending legislation and Congressionally mandated reports.

As I prepare to retire from this extraordinary organization, I want to take this last opportunity to appeal for sufficient resources to sustain the AO's staffing level, which has not been increased in over 10 years despite many new work demands. In the past few years, we have been forced to maintain high vacancy rates due to funding shortages. I hope the following examples of recent challenges and achievements will illustrate the critical role the employees of the Administrative Office play in supporting the federal judiciary.

Implementing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

The most sweeping changes to bankruptcy law in the past 20 years were enacted on April 20, 2005, with the signing of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109-8). The Act's impact on judiciary resources, including AO and court staff, has been monumental. The 500-page Act made many substantive changes to the Bankruptcy Code that required significant amendments to the judiciary's bankruptcy rules and forms. It also established a host of new procedures and proceedings that are adding to the work of bankruptcy judges, bankruptcy clerks, bankruptcy administrators, and staff here at the AO. Most of the Act's provisions took effect October 17, 2005, just 180 days after enactment, requiring the AO, Judicial Conference committees, and the bankruptcy courts to undertake an enormous effort to meet the tight deadline. Moreover, implementing the Act required the AO to quickly develop a new version of CM/ECF, the case management and electronic filing system, used by the courts.

To coordinate the AO's national implementation of the Act, I formed a Bankruptcy Act Implementation Working Group, which met three times a month to identify all implementation tasks and issues and to coordinate all phases of implementation of the provisions of the Act. Over one hundred employees representing a minimum of fifteen program offices at the AO were involved in this tremendous effort – all of which had other principal duties.

I also approved the creation of a Bankruptcy Legislation Working Group, comprising judges, unit executives, and deputy clerks, who worked many hours, in conjunction with my staff, to address many of the new issues raised in the Reform Act. This Group created a "grid" of information, addressing various areas of the law, including means testing, credit counseling, and tax returns. This grid, which included procedural and legal guidance, statutory cites, and CM/ECF information, proved an invaluable resource for the courts as they prepared to implement the new law.

In addition, the Advisory Committee on Bankruptcy Rules, the Committee on the Administration of the Bankruptcy System, and court working groups devoted substantial hours and effort to ensure compliance with the Act. Beginning with an organizational meeting the day after enactment of the law, the Advisory Committee conducted more than 20 conference calls, held three subcommittee meetings, and two full committee meetings. Members of the Committee, the committee's consultants – four law professors – and AO staff spent countless hours conferring, drafting, and redrafting the new and revised rules and forms. As a result of this work, on August 11, 2005, the Executive Committee of the Judicial Conference approved eight

new rules, amendments to 35 existing rules, amendments to 33 existing forms, and nine new official forms, and authorized the distribution to the courts of interim rules with the recommendation that the courts adopt them by local order. In the meantime, the Standing Rules Committee is proceeding with permanent changes to the Federal Rules of Bankruptcy Procedure, following the normal procedures of the Rules Enabling Act.

Administrative Office staff posted these Interim Rules and official forms on the judiciary's internet website. From October 2005 to January 2006, the new forms had nearly 362,000 visitors and the interim rules had almost 100,000 visitors. AO staff have responded to thousands of inquiries about the rules and forms, the new procedures and the amended Bankruptcy Code in general, and have participated in many meetings on the interim rules and amended forms, including dozens of national and local seminars and teleconferences, and a satellite broadcast with bankruptcy judges, clerks, and other court staff.

AO staff also completed major revisions to the case management software, the courts' electronic docket and case management system, to incorporate the many procedural changes in bankruptcy cases and proceedings that took effect on October 17. This updated version of the software enabled the courts to comply with the means test, as well as the new noticing requirements. Currently, AO staff are working on the development of a new statistical database and analysis system to enable the courts to meet the Act's data reporting requirements, which will become effective 18 months after the enactment. The enhanced statistical infrastructure needed to produce the new statistics will be in place by October 1, 2006.

Later in my statement, I will discuss the overall impact our electronic case management system has had on the courts, but I would like to point out here that without this system, the bankruptcy courts would have been paralyzed during the period preceding the October 17, 2005, effective date. During the sixteen days preceding the Act's effective date, over 625,000 bankruptcy cases were filed, more than would normally be expected over a 5 month period. In paper-form, if an average no-asset Chapter 7 case file measures 3/8 of an inch thick, then those 625,000 cases would have required a shelf almost 4 miles long, to support a weight of 208 tons. With a lot of hard work and overtime, and with the incredible performance of CM/ECF, our bankruptcy clerks were able to begin processing this avalanche of cases – which are still in progress – with minimal adverse impact on the courts.

Disaster Response – Hurricane Recovery Efforts

In 2001, after the terrorist attacks of 9/11, I created a Judiciary Emergency Preparedness Office at the AO to ensure that the courts have the capability to perform essential activities and function without extended delays in the event of natural disasters, terrorist attacks, or civil emergencies. It is led and staffed by individuals who have other duties during non-emergency periods. The AO's leadership role for the judiciary in disaster response was demonstrated and tested during the hurricanes of 2005. The staff of the AO met the challenge with commitment, dedication, expertise, and above all – success.

In the wake of Hurricane Katrina, the AO launched an immediate and intensive effort to assure that judges, court staff, and their families were safe, and to return court operations to normal as quickly as possible. Seventy court units from Houston to Miami experienced some break in telecommunications and more than 1,500 court employees were affected. Here in Washington, AO staff from 18 program offices formed the Judiciary Emergency Response Team (JERT) to coordinate information and assistance to the affected courts in the areas of procurement, space and facilities, technology, travel, finance, human resources, legislative affairs, public affairs, and legal counsel. The JERT met for nearly seven weeks to assess the situation and provide advice and assistance to the courts, to include site visits to the affected areas.

Staff contacted banks in Louisiana and Mississippi to ensure paychecks were received and processed, negotiated with benefit providers to expedite payments, and made available phone and electronic communication services for courts unable to access their long-distance carriers. At the direction of the Judicial Conference, legislation was pursued by the AO and quickly enacted to allow courts to convene outside their regional jurisdiction during times of emergency. Memoranda were also issued to affected judges and court unit executives addressing areas of key concern such as: relocating judges and court employees; providing guidance on temporary duty travel and related expense reimbursement; allocating funds to cover disaster expenses; delegating certain procurement authority for the immediate replacement of furniture, supplies, and equipment; and reestablishing information technology systems.

Throughout September, teams of experts from the AO were deployed to Jackson in the Southern District of Mississippi, Baton Rouge, Houma, and Lafayette in the Eastern and Western Districts of Louisiana, and to the Hurricane Rita-impacted Southern and Eastern Districts of Texas. The AO staff provided on-site assistance in human resources management, temporary duty travel, information technology, procurement, space and leasing, security, and coordination with other assisting government agencies.

Court operations are running fairly well in the districts affected by the hurricanes of 2005. Mr. Chairmen, we owe a debt to you and your Subcommittee, which was especially supportive of our emergency supplemental request. Our funding needs were primarily to recover costs associated with per diem, travel expenses, and replacing lost equipment. Fortunately, through quick action and the personal dedication of our court staff, we were able to avoid hundreds of thousands of dollars in equipment replacement costs. I am proud of the work of the AO's Judiciary Emergency Preparedness Office, and the judiciary employees across the country who were instrumental in the judiciary's swift recovery from these natural disasters.

Continuity of Operations Plans (COOPs)

Since its creation, a principal focus of the AO's Judiciary Emergency Preparedness Office has been to assist each court in the development of continuity of operations plans (COOPs). During the last several years, courts have been testing and validating their COOPs.

Before Katrina hit, and throughout the disaster recovery period, the affected courts used their Continuity of Operations Plans to safeguard staff, court files, and property. At both the circuit and the district court levels, the intensive efforts to develop and test COOPs paid off in the aftermath of Katrina. Court employees knew their space and equipment requirements, knew which employees were critical to the resumption of operations, and the employees themselves knew their roles. Ten days after Katrina hit, the courts affected felt that they were much further ahead than they would have been if Hurricane Katrina had struck four years ago.

Cost Containment Initiatives

Supporting the judiciary's overall cost-containment initiatives has been a top priority of the AO during the past year. Led by Judicial Conference Committees, and working closely with court advisors, AO staff is currently engaged in more than 50 cost-containment initiatives related to space and facilities cost control, workforce efficiency, review of compensation costs, effective uses of technology, program changes in defender services, court security, and law enforcement, and adjustments to fees. To date, initiatives that have already yielded savings include the moratoria on space projects, reductions to probation and pretrial services work requirements, reductions and elimination of Federal Protective Service contract guard services that were deemed to be redundant and/or unnecessary, and productivity adjustments to court staffing formulas.

The AO is also leading by example. During 2005, the AO continued implementation of internal cost-control measures – staffing vacancies were closely monitored and controlled. Because of funding limitations, the AO maintained a vacancy rate of nearly 10 percent – also, all operations, projects, and functions were closely examined to identify cost reduction opportunities. Only limited travel and training were allowed, and orders for all other contracts, services, supplies, and equipment were restricted to those essential to basic operations and to supporting Judicial Conference committees, continuing court operations, and implementing information technology projects previously approved. While such restrictions may be acceptable for a short period, over the longer term, they begin to adversely affect the AO's ability to support the courts. For example, having a properly trained workforce is absolutely critical to maintaining legal, financial, human resources, and technology support for the courts. It is also necessary to maintain up-to-date information technology and office equipment if we are to communicate with the courts effectively. Lastly, it is essential that AO staff travel to the courts in order to perform program reviews and audits, and to assist in the implementation of more cost-effective practices which will benefit the taxpayers in the long run. Later, I will discuss how our FY 2007 budget request will meet these needs.

We also sought and secured, thanks to your Subcommittee, changes to judiciary procurement authorities which will allow us to enter into multi-year contracts that are more competitive and cost efficient. The Executive Branch already had these authorities and we appreciate your extending them to the judiciary as part of the FY 2006 Appropriations Act.

Increasing Productivity in the Courts Through Information Technology Systems

Another key AO responsibility is to lead and manage the development, implementation, and support of new information technology systems that will enhance the management and processing of information and the performance of court business functions. During 2005, the AO focused on continuing to strengthen the judiciary's information technology infrastructure.

Electronic Case Filing

By the end of 2005, the federal courts' Case Management-Electronic Case Files (CM/ECF) system was operating in virtually all district and bankruptcy courts. The prototype system was launched in 1995 when a team from the AO helped the U.S. District Court in the Northern District of Ohio cope with more than 5,000 document-intensive maritime asbestos cases. That court faced up to 10,000 new pleadings a week, and a workload that quickly became unmanageable. Together, the team developed a system that allowed attorneys to file and retrieve documents and receive official notices electronically. A year later, the Bankruptcy Court in the Southern District of New York began live operations with a similar system that the AO had tailored for bankruptcy court needs. That court faced some of the early mega-bankruptcies, and was drowning in paper. Since those early efforts, the system has processed more than 24 million federal court cases and served hundreds of thousands of attorneys and litigants nationwide.

The implementation of CM-ECF is the largest system development and implementation effort ever undertaken in the judiciary. Virtually all bankruptcy and district courts are now using this system, and the appellate courts are testing a version for deployment later this year. The reach of the project is almost staggering. More than 400,000 attorneys have registered and been trained in CM-ECF and in one month alone – August 2005 – 4.6 million docket entries were made using CM-ECF. In coordination with the Public Access to Court Electronic Records System (PACER), it provides lawyers, the media, and any interested party with access to important case documents from anywhere, at any time, and replaces what had previously been a burdensome, labor-and paper-intensive responsibility. Attorneys have praised the systems, noting that they are easy to use, reduce their service and copying expenses, and provide quick notice of actions.

Bankruptcy Noticing Center

The AO's Bankruptcy Noticing Center (BNC) electronically retrieves data from bankruptcy courts' case management systems and prints, addresses, batches, and mails the resulting notices. The Bankruptcy Code and Federal Rules of Bankruptcy Procedure require bankruptcy courts to send these notices to all interested parties in a bankruptcy case. The BNC not only eliminates local preparation and mailing of notices by deputy clerks, it also generates notices in a fraction of the time and at a far lower cost than local noticing. The BNC, now in its 8th year, is estimated to have saved nearly \$36 million for the Judiciary since its inception.

Earlier, I spoke of the enormous undertaking required to implement the 2005 Bankruptcy Act, and Judge Gibbons described the record number of filings that occurred in the days before enactment of the new law. As bankruptcy courts across the country handled long lines of bankruptcy filers, the Bankruptcy Noticing Center also was generating a flood of notices. In the weeks prior to and immediately after October 17, 2005 – the law’s effective date – the BNC produced up to 1.7 million individual notices per day, over triple its normal workflow. By the end of October, the BNC was still churning out over one million notices a day.

Probation and Pretrial Services Automated Case Tracking System

The Probation and Pretrial Services Automated Case Tracking System (PACTS) is a case tracking and case management tool that demonstrated its value in the days and weeks that followed the destruction on the Gulf Coast. PACTS collects case-related information, produces statistical and workload reports, and provides efficient retrieval of case information by probation and pretrial services officers. An interface between PACTS and personal digital assistants (PDAs) – as well as laptop computers – allows officers field access to information in all districts. The system is now implemented in all 94 districts and in the aftermath of the hurricanes, we are working to provide PDAs to as many officers as possible.

Without access to their offices, and in many cases, computers of any kind, probation officers were able to use their PDAs and PACTS to locate and check-up on supervised offenders who were displaced from their homes after the hurricanes hit. One particular lesson learned in our disaster recovery is the need to expedite the provision of PDAs to all probation officers nationwide. At your direction, funding in the Courts’ FY 2006 financial plan will allow us to do that.

Administrative Office Budget Request

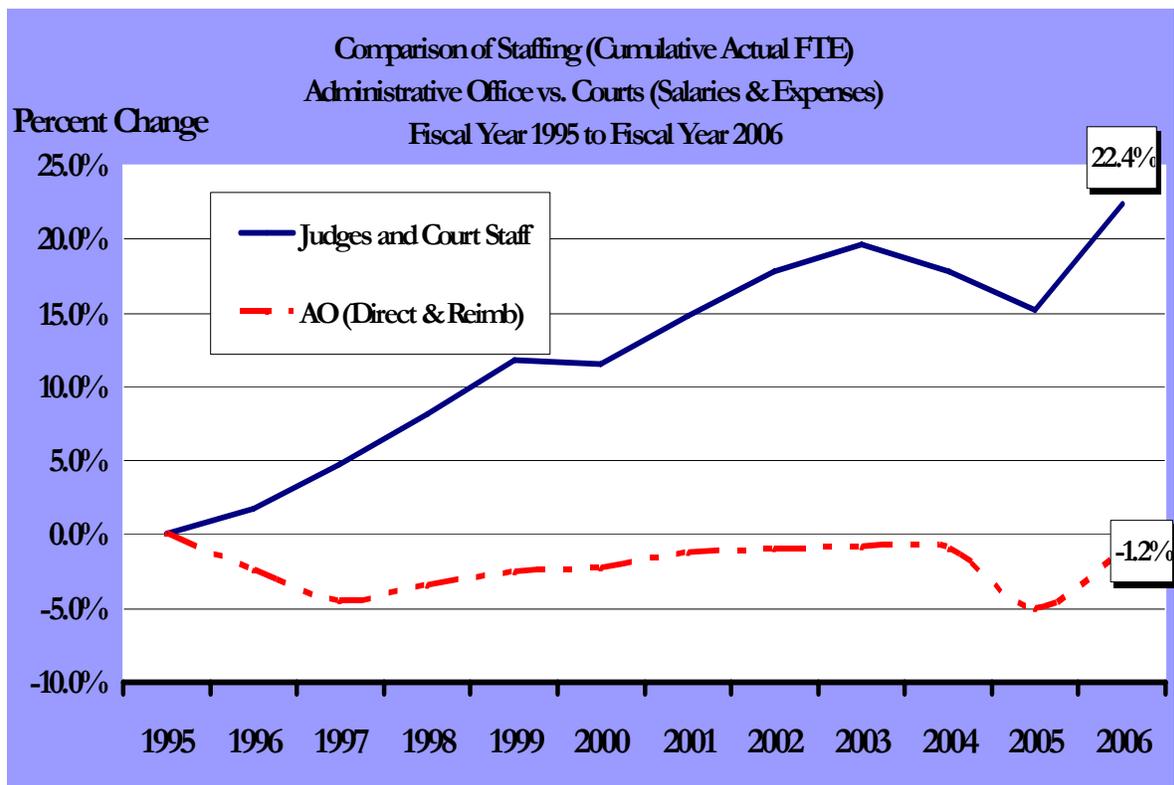
The FY 2007 appropriations request for the Administrative Office of the U.S. Courts is \$75,333,000, representing an increase of \$5,774,000, or 8.3 percent, over fiscal year 2006 available appropriations. While the percentage increase in appropriations we are seeking may appear significant, overall it represents a current services budget request. The primary reason for this large increase in appropriations is to replace non-appropriated funds (fee/carryover) that were used to finance the FY 2006 financial plan, but which are expected to decline in FY 2007.

Specifically, the increases needed to maintain current services include \$1.1 million for standard pay and other inflationary increases and a \$4.7 million financing adjustment associated with a projected decline in fees and carryforward in fiscal year 2007 from what was available in fiscal year 2006. Should our current declining fee and carryover projections come to pass, and they are not replaced with direct appropriated funds, we will be forced to reduce current on-board staffing. This will adversely affect our ability to serve the courts. We will, of course, keep you apprised of actual fee collections and carryover estimates as the year progresses. Should collections surpass our estimates, the amount we are requesting could be reduced.

AO Resources are Stretched Thin

The AO's funding situation is extremely tight. Without enough funds to maintain a full complement of staff, the agency and its managers and staff are under enormous strain. As demonstrated by some of my earlier examples, unanticipated events over the past several years have required us to provide greater support to the courts in the areas of security, emergency preparedness and disaster recovery, financial management and planning, technology, and the development and implementation of new business practices resulting from changes in federal law. Without adequate staff resources, the AO struggles to meet these challenges head on – we have been forced to pull people away from their daily duties to handle the crises as they arise but cannot continue to do this on a long term basis.

As illustrated in the following graph, staffing levels at the AO have actually declined since fiscal year 1995, while during the same time period, the number of judges and court staff being supported by the AO have grown by 22 percent. This widening disparity between staffing and support of the courts has been a hardship for the AO and could be crippling in FY 2007 if the non-appropriated sources of funding available to the AO in FY 2006 are not replaced with direct appropriations.



Conclusion

Chairman Knollenberg, Mr. Olver, members of the Subcommittee, I hope that I have conveyed the wide array of responsibilities vested in the AO and the seriousness with which we undertake them. For every issue that affects the judiciary, every new piece of legislation that expands or alters federal jurisdiction, every Administration initiative that impacts federal law enforcement, every Congressional request for information, personnel at the AO must quickly master the subject area and render expert advice and support to the courts.

During these times of fiscal constraint and limited discretionary spending, the AO takes the lead in assisting the courts in developing new, innovative, and cost-effective ways to carry out the business of the judiciary. I am proud of the AO's record of service to the courts in this regard and know that the staff will continue to work tirelessly to ensure the administration of justice is able to be carried out efficiently and effectively. While I recognize that FY 2007 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 to consider the significant role the AO plays in supporting the courts and the mission of the judiciary. Once again, our budget request is one that will require the staff at the AO to do more with less – it does not seek new resources for additional staff or programs. I hope you will support it.

Thank you again for the opportunity to be here today. It has been a privilege for me to serve the federal courts for the past twenty-one years. I have particularly enjoyed working with the Appropriations Committee.

I would be pleased to answer your questions.