

STATEMENT OF JUDGE THOMAS F. HOGAN, DIRECTOR
ADMINISTRATIVE OFFICE OF THE U.S. COURTS
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

March 28, 2012

Introduction

Chairwoman Emerson, Representative Serrano, and members of the Committee, I am pleased to appear before you this afternoon to present the fiscal year 2013 budget request for the Administrative Office of the United States Courts (AO) and to support the overall request for the entire Judicial Branch. I enjoyed having the opportunity to meet with you prior to today's hearing.

Before I begin, I would like to join Judge Gibbons in thanking you and the Committee for the support you continue to provide the Judiciary during these difficult economic times. We fully recognize the funding constraints under which you have had to write your bills and deeply appreciate the resources you have provided the Judiciary.

AO Leadership Transition

Last October, I was appointed by Chief Justice Roberts as the eighth Director of the Administrative Office of the U.S. Courts, and the first judge to serve as Director since the AO's creation 73 years ago.

In nearly 30 years as a trial judge, I have come to recognize the privilege of working for the Third Branch, as well as the many challenges we face. No doubt these are difficult times and the AO must continue its leadership and support in helping the Judicial Branch maintain our tradition of excellence. I am committed to continuing this practice while focusing on ways the AO and the courts can work more effectively and efficiently in this era of cost containment. I bring with me experience as a former chief district judge, a member of the Judicial Conference of the United States, where I served as chair of its Executive Committee, a board member of the Federal Judicial Center, and a current member of the Foreign Intelligence Surveillance Act (FISA) court.

Judiciary Capital Security Program

Chairwoman Emerson and Representative Serrano, the Judiciary appreciates the Committee's support of the Judiciary Capital Security Program by appropriating funds to the General Services Administration (GSA) specifically to address courthouse security deficiencies in fiscal year 2012. The Judiciary Capital Security Program was an outgrowth of the Judiciary's asset management planning (AMP) program, which as a cost-containment initiative, requires that greater emphasis be placed on space availability for judicial functions rather than on security when determining the need for a new courthouse. The Judiciary Capital Security Program will

provide a much needed vehicle for addressing the security deficiencies in a timely and less costly manner when constructing a new courthouse is not a possibility. We cannot thank you enough for your leadership with regard to this new initiative.

Renovation projects that enhance security will be selected for participation in the Judiciary Capital Security Program through an objective and collaborative review process that includes stakeholders from local courts and their circuit judicial councils, the United States Marshals Service (USMS), the GSA, the Judicial Conference's Space and Facilities Committee in consultation with the Judicial Security Committee, and the AO. This process includes assessing the building conditions and utilization, viability of long-term use, and structural capacity to identify cost-effective solutions that can be implemented in a timely manner.

The Judiciary, the USMS, and the GSA have reached consensus on four projects to participate in the program for fiscal year 2012. The projects are:

- San Juan, Puerto Rico
- Benton, Illinois
- Brunswick, Georgia
- Lexington, Kentucky

At each of these courthouses, security will be improved by addressing the internal lack of physical separation between the public, the government staff and the prisoners who are brought into these courthouses daily. Without separate and secure circulation paths for each, prisoners are brought into buildings where conditions allow for high-risk contact and potential intimidation of jurors and witnesses by defendants. Public corridors and cramped elevators are often shared by the prisoners, the public, jurors, and judicial officers, which not only put these parties at physical risk, but can compromise the judicial process.

The Judiciary, through its Committee on Space and Facilities and other stakeholders, has developed a strategy and action plan for the Capital Security Program going forward, similar to Courthouse Construction Long Range Planning. Should funding be provided for fiscal year 2013 and beyond, the Judiciary, the USMS, and GSA will build upon the process used in fiscal year 2012 to identify projects that would qualify for the program. *The Judiciary Capital Security Report to Congress*, March 2012, was transmitted to the Committee on March 16, 2012, and provides greater detail on the specifics of how the program will be implemented. Although the President's 2013 Budget does not include funding for this program, on behalf of the Judiciary, I urge the Committee to support funding of the Judiciary Capital Security Program, within the GSA Federal Buildings Fund, again this fiscal year.

Courthouse Construction Plan

Attached to my written testimony is the *Five-Year Courthouse Project Plan for Fiscal Years 2013-2017 (Five-Year Plan)*, that I ask be included in the official hearing record. This latest *Five-Year Plan* sets forth the Judiciary's priorities for courthouse construction funding in each of those years and was approved by the Executive Committee, acting on behalf of the

Judicial Conference of the United States on February 1, 2012. The projects were scored according to urgency of need, considering space, security, and operational deficiencies.

In approving this *Five-Year Plan*, the Judiciary is mindful of the intense budget pressures under which this Committee is operating. The majority of the proposed projects have previous congressional funding and authorization, and GSA is already working on them. Some of these have completed designs and could be constructed as soon as the funds are appropriated. The current *Five-Year Plan* is largely geared to completion of these projects.

There are a few projects on the *Five-Year Plan* that are still in the design phase or have not yet started design. We are working closely with GSA to ensure that the designs for these projects will be consistent with the courtroom sharing policies adopted by the Judiciary over the last several years, as well as our recent decision not to plan space for projected new judgeships.

This effort, together with our continued emphasis on cost containment, led to a decision this year to remove two projects from the *Five-Year Plan*. Working with the affected courts, it was determined that the project in Greenbelt, Maryland, which had site and design funding, and the project in San Jose, California, which had funding for a site, can now be reconfigured to meet their space needs for the near future through renovations instead of constructing a new facility. Therefore, both projects have been removed by the Judicial Conference from the *Five-Year Plan*.

There are also no projects in the final year of this *Five-Year Plan*. Again, because of budget constraints, the Judiciary is currently not forwarding any additional projects to GSA for feasibility studies, which is the next step to advance a courthouse project after it has been cleared through the Judiciary's vigorous asset management planning process.

As you are aware, the Judiciary does not request its own funding for the construction of courthouses. Because GSA builds our facilities, these monies come under the jurisdiction of the Executive Branch and are included in GSA's budget. The President's Fiscal Year 2013 Budget Request for GSA includes minimal funding for new construction, site acquisition, and design within the Federal Buildings Fund, and no funding for any of the courthouse projects on the *Five-Year Plan*. Although we understand the constraints under which the Committee is operating this year, if funding can be allocated to support the completion of a courthouse project, we would greatly appreciate it.

Extension of Temporary Judgeships

Chairwoman Emerson and Representative Serrano, once again, the Judicial Conference is indebted to this Committee for authorizing extensions of expiring temporary Article III judgeships in your annual appropriations bill. This year, without your action, two existing temporary Article III judgeships, one in the District of Hawaii and one in the District of Kansas, would have expired. In fiscal year 2013, six temporary judgeships will expire and the workload in these districts is too great to risk losing a judgeship that in all likelihood will take years to create and fill again. They are in the following judicial districts:

| <u>District</u> | <u>Expiration Date</u> |
|-----------------|------------------------|
| Kansas | 11/21/2012 |
| Alabama (N) | 09/17/2013 |
| Arizona | 07/08/2013 |
| Florida (S) | 07/31/2013 |
| New Mexico | 07/14/2013 |
| Texas (E) | 09/30/2013 |

If the House and Senate Judiciary Committees do not act to preserve these expiring judgeships, I urge this Committee to include the necessary one-year extensions in its fiscal year 2013 Appropriations bill. In addition, the temporary judgeship in the District of Hawaii will also expire in fiscal year 2013.

While we are not requesting any action on your part, I would point out that we also face the potential loss of some of the 27 temporary bankruptcy judgeships which have or soon will expire. Two temporary bankruptcy judgeships have already expired pending action on this issue. There is a bill, S. 1821, awaiting action by the Senate to extend these judgeships. The Judicial Conference fully supports the extension bill. The House version of the bill, H.R. 1021, was passed overwhelmingly by the House on December 6, 2012.

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 one comparable organization that provides the broad range of services and functions that the AO performs for the Judicial Branch.

Unlike most Executive Branch agencies in Washington, the AO does not operate as a headquarters for the courts. The federal court system is decentralized, although the AO has management oversight responsibilities of the court security program, the probation and pretrial services program, and the defender services program, among others. The AO supports the Judicial Conference of the United States in determining Judiciary policies; develops new methods, systems, and programs for conducting the business of the federal courts efficiently and economically; develops and supports the application of technology; collects and analyzes statistics on the business of the federal courts for accurate planning and decisions about resource needs; 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 and matured over the years to meet the changing needs of the Judicial Branch. Service to the courts, however, has been and remains our basic mission. But, there is no question that the roles and responsibilities of the men and women at the AO are vast and varied. Please let me take a moment to share with you a few examples of the work performed at the AO.

Audits and Program Reviews

The AO conducts financial audits, program reviews, assessments, and evaluations to promote effectiveness, efficiency, and economy in both court and AO operations. These initiatives are essential components of the Judiciary's accountability program.

The AO's Office of Audit carries out a comprehensive program of financial audits covering all court units, Judiciary funds, and financial systems. Court audits are conducted on a four-year cycle for most courts, and on a 30-month cycle for larger courts. In 2011, the AO issued final reports for 69 cyclical financial audits of the courts. It completed 42 other financial audits, including audits of Bankruptcy Administrator Offices, the Court Registry Investment System, Criminal Justice Act grantees, and audits in response to a change of clerk, and to follow up on prior reviews. In addition, 277 debtor audits were conducted.

The AO Office of Court Administration, in coordination with other offices within the AO, respond to requests from chief judges and court unit executives to conduct operational and administrative reviews of court units. In addition, the Office of Defender Services and the Office of Probation and Pretrial Services initiate similar reviews. These reviews result in reports and recommendations that advise on more effective practices, recommend improved procedures and management structures, and assist the court unit in complying with statutory responsibilities, Judicial Conference policy, or guidance from the AO. In 2011, 52 such reviews were conducted.

Internal Control Enhancements

The AO recently updated its internal control policies. Internal control measures provide reasonable assurance that: Judiciary assets are protected from error, fraud, waste, loss, or abuse; operations are efficient and effective; financial reports are accurate and reliable; and business practices comply with applicable statutes and policies.

Following an extensive review of the Judiciary's existing internal control program, unnecessary requirements have been eliminated or modified to reduce administrative burdens while still ensuring adequate control over assets. A working group of AO staff reviewed existing procedures and provided advice on the content and structure of the policies. This was an arduous process that required extensive coordination between the AO and the courts. Court staff were consulted throughout the revision process to ensure the practicality of specific requirements.

Dodd-Frank Implementation and Studies

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 requires the AO to conduct studies annually for three consecutive years and every fifth year thereafter to examine the Bankruptcy Code and to assess the bankruptcy system's effectiveness in resolving the insolvency of large systemically important financial firms. A working group with members from the Judicial Conference Committee on Administration of the Bankruptcy System, the AO, and the FJC assisted in developing the initial AO study, which was submitted to Congress last July.

AO Cost Containment

While Judge Gibbons has touched on the significant cost containment efforts that the Judicial Conference, through its Committee structure, continues to pursue, I want to mention more specifically the efforts the AO has made in cost containment during the last year. In January 2011, my predecessor, former Director Jim Duff, formed an AO cost containment task force representing all parts of the agency, with the goal of developing short- and long-term recommendations to ensure the AO could meet its core responsibilities with substantially reduced resources.

The task force reviewed organizational, policy, and process alternatives and developed specific actions to contain costs in fiscal years 2012, 2013, and beyond, for both the AO as well as funds managed centrally that support court operations. Work was completed in April 2011, and recommendations were endorsed by AO leadership in May 2011. While many of the recommendations have been implemented for 2011 and 2012, others requiring further analysis and development are being pursued by AO follow-up teams.

The recommendations fall into six major categories: pay and benefits, non-salary, workforce structure and organization, process improvement, contract related, and adverse personnel actions as a last resort measure. Because staff pay is the AO's major budget expense, many of the recommendations focused on containing salary and benefit costs. Initiatives implemented to date include:

- early-out and buy-out retirement authority to accomplish workforce restructuring and savings;
- revised pay setting and hiring practices;
- more efficient use of travel and training resources; and
- savings in printing, publication, subscription, and mobile device costs.

Initiatives under development include:

- a study of the pay and classification system;
- review of information technology projects and priorities;
- review of organizational structure and workforce alignment;
- shared administrative services; and
- savings that can be achieved in contracts.

Administrative Office Fiscal Year 2013 Budget Request

The fiscal year 2013 appropriations request for the Administrative Office of the U.S. Courts is \$85,148,000. This represents an increase of \$2,239,000, or 2.7 percent, over fiscal year 2012 enacted appropriations. The AO continues to operate under a no-growth, current services budget. However, since FY 2011, funded staffing at the AO actually dropped from a high of 896 in the FY 2011 Financial Plan down to 869 in the FY 2012 Plan and the FY 2013 request.

The requested net increase of \$2.2 million is exclusively to cover base adjustments to maintain current services; the AO requests no program increases in FY 2013. This request includes an adjustment to base to cover the estimated loss in non-appropriated sources of funding that will not be available in fiscal year 2013. The AO requests direct appropriated funds to replace these non-appropriated funds in order to maintain the same level of service as provided in FY 2012. The remainder of the adjustments to base are for standard inflationary increases. We will, of course, keep you apprised of our actual carry-over estimates throughout the year. If carry-over and fee collections are higher than expected, our need for direct appropriations could be reduced. We only seek the funding necessary to support current staff in order that they may carry out the AO's statutory responsibilities and serve the courts.

However, similar to the courts, a 7.8 percent sequestration would have a devastating impact on the AO's ability to support core court operations, including processing payroll and personnel actions, reviewing court financial operations, and supporting probation and pretrial services. The AO would have to absorb a \$13 million reduction in funding, cutting operating expenses by 25 percent. The remaining shortfall in funding would require an estimated four week furlough of all employees and/or some forced reduction of staff.

Conclusion

Chairwoman Emerson, Representative Serrano, members of the Committee, the AO's appropriation comprises less than two percent of the Judiciary's total budget, yet the work performed by the AO is critical to the effective operation of the U.S. courts. The AO provides administrative support to 25 Judicial Conference committees, 2,250 judicial officers, and more than 30,000 court employees. In addition to our service to the courts, the AO works closely 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 2013 will be a 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 is one that 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. I would be pleased to answer your questions.

Five-Year Courthouse Project Plan for FYs 2013-2017

Approved by Executive Committee on Behalf of the Judicial Conference

February 1, 2012

(estimated dollars in millions)

| FY 2013 | | | Cost | Score |
|---------|---------------|----------------|----------------|-------|
| 1 | Mobile, AL* | Add'l. C | \$140.3 | 59.8 |
| 2 | Nashville, TN | Add'l. S&D / C | \$142.0 | 67.3 |
| 3 | Savannah, GA | Add'l. C | \$95.5 | 61.3 |
| | | | \$377.8 | |

| FY 2014 | | | Cost | Score |
|---------|-----------------|----------------|----------------|-------|
| 1 | San Antonio, TX | Add'l. S&D / C | \$112.0 | 61.3 |
| 2 | Charlotte, NC | C | \$126.4 | 58.5 |
| 3 | Greenville, SC | C | \$80.0 | 58.1 |
| 4 | Harrisburg, PA | C | \$76.5 | 56.8 |
| | | | \$394.9 | |

| FY 2015 | | | Cost | Score |
|---------|--------------|--------------|----------------|-------|
| 1 | Norfolk, VA | C | \$104.7 | 57.4 |
| 2 | Anniston, AL | Add'l. D / C | \$41.0 | 57.1 |
| 3 | Toledo, OH | C | \$109.3 | 54.4 |
| | | | \$255.0 | |

| FY 2016 | | | Cost | Score |
|---------|-----------------|-----|---------------|-------|
| 1 | Chattanooga, TN | S&D | \$21.5 | 37.3 |
| 2 | Des Moines, IA | S&D | \$43.0 | 35.3 |
| | | | \$64.5 | |

| FY 2017 | | | Cost | Score |
|---------|--|--|--------------|-------|
| | | | | |
| | | | \$0.0 | |

S = Site; D = Design; C = Construction; Addl. = Additional
 All cost estimates subject to final verification with GSA.

* Congress provided \$50.0 out of \$190.3 million needed for Mobile, AL in December 2009