

STATEMENT OF
HONORABLE JOHN W. LUNGSTRUM, CHAIR
COMMITTEE ON THE BUDGET OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

February 26, 2020

INTRODUCTION

Chairman Quigley, Ranking Member Graves, and members of the Subcommittee, my name is John Lungstrum, and I am pleased to be here to present and defend the budget request of the federal Judiciary. I am a senior United States district judge in the District of Kansas, but I am appearing here today in my capacity as Chair of the Judicial Conference Committee on the Budget. In that role, I help to formulate a budget request for the branch that is accurate, realistic, and transparent, and I endeavor to ensure that Congress understands both what we have requested and why those resources are critically needed for the effective and efficient administration of justice.

My testimony will address FY 2020 funding outcomes, our FY 2021 discretionary appropriations request, and our longstanding cost containment program. Within each of these topics, my remarks will focus on the funding and activities that are overseen by the Judicial Conference. That includes the operations of our bankruptcy, district, and appellate courts and our

probation and pretrial services offices; court-appointed counsel for federal defendants who are financially unable to obtain adequate representation; court security; and federal jury costs.

Other portions of the Judiciary's budget, including the Court of International Trade, the Court of Appeals for the Federal Circuit, the Federal Judicial Center, and the United States Sentencing Commission, are outside of the purview of the Judicial Conference, and each of these entities is responsible for formulating and justifying its own request. The leaders of these organizations have prepared written statements that describe their budgetary needs and priorities. We will provide these statements for the record, and I encourage the Subcommittee to follow up with those organizations with any questions or concerns about their requests. In addition, I am joined here today by James Duff, Director of the Administrative Office of the United States Courts (AO) and Secretary of the Judicial Conference, who will address the budget request of the AO and several Conference priorities beyond the Judiciary's own budget.

FISCAL YEAR 2020 FUNDING OUTCOMES

I'd like to begin by thanking the Subcommittee for the strong and consistent support it has shown the Judiciary. We understand that there are many competing demands for the funding under the Subcommittee's jurisdiction and that any additional dollar allocated to the Judiciary is a dollar less that the Subcommittee can provide in support of other important government functions. For that reason, we are especially grateful for the efforts you undertook to maximize the resources available to the branch in the recently enacted Consolidated Appropriations Act of 2020. Using an allocation that was more than \$700 million below the House level, the conference bill still largely sustained the House mark for the Judiciary and provided a 3.2% overall increase for the branch. Those resources enable us to make progress on a number of key priorities, including increasing the number of probation and federal defender staff, upgrading

obsolete court security equipment, outfitting new courthouses that are under construction by the General Services Administration (GSA), and adding critically needed new magistrate judges in districts burdened by heavy workload.

In several important respects, FY 2020 represents a turning point in the Judiciary's recent budget history. Appropriations increases that would have fully met Judiciary requirements in past years are no longer sufficient to meet the demands placed on us by significant new cost drivers. First, in April 2019 the Senate changed its rules on the consideration of Article III judge nominations, resulting in 81 confirmations in FY 2019 and a projected 85 confirmations in FY 2020, up from 61 in FY 2018 and only 6 in FY 2017. Filling judicial vacancies more quickly is positive for the administration of justice, but also increases the Judiciary's costs. Second, the Judiciary began to feel increasing budget pressures from rising criminal workload resulting both from the prosecutorial policies of the Executive Branch and the early release of additional inmates to the supervision of a probation officer pursuant to the First Step Act and other measures. Finally, increases in several administrative categories, such as federal employee pay adjustments and employer contributions to the Federal Employee Retirement System (FERS), were mandated in amounts far exceeding recent history.

Managing the Judiciary's resources in the face of these budgetary pressures requires economizing and difficult trade-offs. Some courts, probation and pretrial services offices, and federal defender organizations will be challenged to maintain their existing staff or will have to defer hiring additional positions needed to meet their increasing workload. We will work within those constraints to ensure that the critical operations of the Judiciary are carried out successfully, but many of the same dynamics that have brought us these FY 2020 budget pressures will continue to apply in FY 2021. As a result, we are as dependent as ever on the

willingness of the Subcommittee to make our needs a priority and allocate sufficient resources to carry out our constitutional and statutory missions.

FISCAL YEAR 2021 DISCRETIONARY APPROPRIATIONS REQUEST

The Judiciary's FY 2021 request of \$7.8 billion in discretionary appropriations represents an overall 4.4% increase above the FY 2020 enacted level. In addition to our discretionary funding, the Judiciary also requests a total of \$740 million in mandatory funds for judges' salaries and retirement funds. My remarks today, however, will focus on the discretionary portion of the request that is most relevant to the Subcommittee.

Budget Proposals of the Executive Branch

Before turning to the details of the Judicial Conference's requested budget, I would like to make a few observations about the budget proposals put forward by the Executive Branch, many of which impact the Judiciary either directly or indirectly.

Unlike agencies of the Executive Branch, the Office of Management and Budget (OMB) has no oversight role in the review of any funding request of the Judiciary. OMB's responsibility with respect to the Judiciary's budget is a simple ministerial one, in which our budget request is included in the President's Budget transmitted to the Congress each February. This relationship is even codified in statute, as section 1105(b) of Title 31 requires OMB to transmit our request (and that of the Legislative Branch) to Congress "without change."

Nevertheless, OMB has taken to the practice of including recommended reductions to our request as part of its larger package of annual budget proposals. These reductions, referred to as "negative allowances," have been included in each budget since FY 2018 and have fluctuated in size from \$300 million to more than \$500 million. The FY 2021 President's Budget includes a

negative allowance for the Judiciary of \$327 million as part of a broader proposal to reduce non-defense discretionary spending by 5%. Because OMB plays no role in formulating or reviewing our requests, these “negative allowances” are based on no substantive analysis and fail to engage at all with the catastrophic impacts such drastic cuts would have on the administration of justice. We have registered strong objections with OMB over their repeated proposal of “negative allowances,” and we urge the Subcommittee to disregard any such proposal as inconsistent with the law and not representative of the true budgetary requirements of the Judiciary.

Beyond the suggested reduction to our funding, the President’s Budget includes a number of other proposals that could affect the Judiciary in FY 2021 and future years. Most significantly, the Administration continues to request substantial new resources for federal law enforcement, including additional Department of Justice personnel for immigration and violent crime offenses; additional Department of Homeland Security agents for enhanced immigration and border enforcement initiatives; and additional immigration judges (whose decisions are appealed to the federal circuit courts). In addition, new investments at the Bureau of Prisons will support the continued implementation of the First Step Act, which allows inmates to transition to the supervision of a probation officer faster and in higher numbers than previous practice.

As these investments are made at the Department of Justice, Department of Homeland Security, and elsewhere, the Judiciary will continue to receive additional workload in the form of civil and criminal case filings, Criminal Justice Act representations, pretrial supervision of defendants, and post-conviction supervision of offenders. As such, our resource requirements will increase across a host of categories, including judgeships and chambers staff, clerks of court staff, probation and pretrial services officers, court-ordered monitoring and treatment services, and court-appointed counsel. In short, when investments are made in one part of the criminal

justice system, those investments have ripple effects across the system that must be addressed to ensure that budget shortfalls, bottlenecks, or other inefficiencies are not created.

Government-Wide Budget Issues

The Judiciary's FY 2021 request includes funding related to the implementation of several government-wide policies. First, the request includes \$42 million for an additional increase of 1.3% in the employer contribution to FERS. This is the second year in a row that FERS contributions are anticipated to increase significantly, a decision that is driven by the calculations of the Board of Actuaries of the Civil Service Retirement and Disability System. The Judiciary has no choice but to fund these increased contributions regardless of the level of appropriations we receive. Similarly, the Judiciary must fund any federal employee pay adjustment that is authorized by Congress, regardless of the funding available to us. Our FY 2021 request includes \$32 million needed to annualize the 3.1% pay adjustment authorized in the Consolidated Appropriations Act of 2020 and another \$33 million to pay for an expected 1.0% pay adjustment in FY 2021.

We understand that decisions about whether and how to fund government-wide cost drivers such as these will likely be made on a government-wide basis. As those decisions are made, however, I urge all relevant decision makers to consider the programmatic impact of failing to fund these administrative costs. Because the Judiciary's budget consists overwhelmingly of personnel-related expenses, adjustments like the FERS contribution or a change in pay rates will swiftly accumulate into significant costs, and we have very few flexibilities in our budget to absorb those costs beyond deferring hiring or choosing not to backfill vacancies. Those are common short-term management strategies, but, over time, an inability to fund staff at the necessary levels will begin to diminish the ability of the Judiciary to

provide necessary services to litigants and the public.

Salaries and Expenses

The majority of federal court activities nationwide are funded from the courts' Salaries and Expenses (S&E) account. As noted, the operation of the court system is a very personnel-heavy activity, and this account is used to pay for the salaries, benefits, and related operational expenses of more than 28,000 Judiciary personnel working around the country in courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. This account also pays for rent and related expenses for more than 700 court facilities nationwide; the development, operation, and maintenance of major court information technology systems; and the provision of court-ordered services, such as drug testing or mental health counseling, for individuals under the supervision of federal probation or pretrial services officers.

The FY 2021 request for the S&E account totals \$5.5 billion, a 4.0% increase above FY 2020. Over \$192 million of that increase—more than 90% of the total increase being sought—is needed just to maintain current service levels. That includes funding to address some of those large government-wide issues discussed above, including the annualization of the FY 2020 pay raise and FERS contributions, as well as Judiciary-specific needs, such as accepting delivery from GSA of necessary new courthouse space and paying for the law clerks and administrative staff (including related operational costs) that are required to support projected net increases in the numbers of active and senior Article III judges and bankruptcy judges. An additional \$17 million is requested to pay for three significant program increases associated with workload changes, new courthouse infrastructure, and an increase in the number of magistrate judges.

As discussed in detail above, the Judiciary is experiencing the budget impacts of

significant workload and caseload increases across its programs. Much of this work stems from increased prosecutions by the Executive Branch, which are driving projected increases of 7.9% for criminal case filings, 8.4% for pretrial case activations, 4.0% for pretrial supervision of defendants, and 8.4% for presentence reports. Offenders under the supervision of a probation officer are also projected to increase 0.4% due both to increased Executive Branch prosecutions and to new responsibilities and obligations resulting from the enactment of the First Step Act. While 0.4% may not sound like much, the effect is magnified when you break down offenders by risk level: the highest risk offenders who require the most intensive supervision and most expensive support services constitute the fastest growing share of total offenders, while the low risk group that consumes far fewer resources is declining. In other program areas, we are projecting a 6.5% increase in appellate filings, and even bankruptcy filings, after many consecutive years of precipitous decreases, are projected to grow by 1.8%. To accommodate all of this additional workload, the Judiciary is requesting \$14 million to hire 278 additional court support staff, primarily in probation and pretrial services offices.

The second S&E program increase is necessitated by the unprecedented appropriation of nearly \$1 billion to GSA for new courthouse construction in FY 2016. Those funds enabled work to begin on 11 courthouse projects in locations where the Judiciary's space needs had been deemed most urgent, and FY 2021 will bring the expected completion of three of those projects (Nashville, Tennessee; Charlotte, North Carolina; and Savannah, Georgia). Although we remain grateful for that infusion of construction resources for GSA, there has been a cost impact on the Judiciary, which is responsible for the full costs of outfitting each of these new facilities so that they are ready for occupancy at the completion of construction. This means the Judiciary requires funding for furniture, moving and swing space costs, information technology

cabling/wiring, and other infrastructure. Our FY 2021 request includes an increase of \$3 million for these courthouse-related infrastructure costs.

The final requested S&E program increase is for two additional full-time magistrate judges. Magistrate judges, appointed for renewable eight-year terms, perform critical judicial functions that enable courts to operate more efficiently. For example, magistrate judges handle most pre-trial activities, all petty offenses, many prisoner petitions, and (with the consent of all parties) full civil trials. After a rigorous internal review and justification process, the Judiciary has determined that additional magistrate judges are needed in St. Louis, Missouri, and San Diego, California. The FY 2021 request includes \$1 million for these judges and associated staff.

Defender Services

The right to counsel for defendants financially unable to obtain representation is one of the bedrocks of the American criminal justice system. It is a crucial component in guaranteeing a fair trial for all defendants, regardless of circumstances or means, and a prerequisite for our judicial system to live up to its aspiration of equal justice under the law. In the federal system, the right to counsel is implemented through the work of the Judiciary's Defender Services program and funded through our Defender Services account. This account covers all costs related to the provision of court-appointed counsel under the United States Constitution, the Criminal Justice Act (CJA), and other statutes.

The Defender Services appropriation request for FY 2021 totals \$1.3 billion, a 6.6% increase above FY 2020. This increase is driven by increasing workload for both Federal Defender Organizations (FDOs) and court-appointed private panel attorneys. FDO workload projections for FY 2020 are 27% higher than actual workload just five years ago, and projected

panel attorney workload is 12% higher over the same period. These trends are expected to continue in FY 2021, as prosecutors continue to bring more criminal cases, particularly for immigration and weapons offenses and criminal forfeiture proceedings. Typically, less than 10% of federal defendants have access to retained counsel, so the Judiciary must and does provide representation for the overwhelming majority of cases brought by the Executive Branch.

The requested increase in FY 2021 consists of \$48 million in adjustments to base to maintain current services, such as federal pay and benefit adjustments, workload increases for panel attorney representations, and the annualization of FY 2020 hiring, and \$34 million of program increases. These program increases address staffing, private panel attorney compensation, and information technology needs.

Staffing in the Defender Services program has several components. The bulk of FDO staff are provided in accordance with work measurement formulas, which use workload and caseload statistics to calculate the number of staff necessary to accomplish the day-to-day legal and administrative work of an FDO. The request includes \$24 million to hire 237 additional FDO staff pursuant to the formulas. With these additional positions in place, the Defender Services program will be staffed at 98% of estimated full formula requirements, up from an estimated 94% supported by FY 2020 final appropriations. The request also includes \$3 million for an FDO staffing reserve, a small pool of resources to fund temporary staff in individual FDOs experiencing unexpected workload surges that were not anticipated at the time the budget was constructed. Finally, the request includes \$2 million for 26 positions that are outside of the FDO staffing formulas because they perform specialized functions that are not common to all FDOs or are better provided on a national or centralized basis. These positions include staff to provide management oversight, attorney training, data management, information technology services,

technical assistance for high volume electronic discovery, and the efficient administration of districts' panels of private attorneys available for appointment in CJA cases.

With respect to panel attorney costs, the FY 2021 request once again includes resources to increase the hourly compensation rate paid to panel attorneys in non-capital cases. This is the culmination of several years of effort by the Judicial Conference to match the actual non-capital hourly rate to its statutorily authorized maximum, which is estimated to be \$155 per hour in FY 2021. Surveys of judges, FDOs, and panel attorneys indicate that increased hourly compensation is essential to the Judiciary's ability to recruit and retain the highest quality panel attorneys necessary to successfully litigate complex federal cases. Building on the increases that Congress has authorized several times in recent fiscal years, our request of \$0.3 million in FY 2021 will provide the last \$1 hourly above-inflation increase needed to attain the statutory maximum.

The final requested increases for the Defender Services program, totaling \$5 million, are related to information technology. These resources will allow for cyclical replacement of older servers to ensure sufficient server capacity and avoid maintenance problems associated with aging technology and expiring vendor support. They will also support the acquisition of a log management tool to improve the security of FDO computer networks by monitoring and identifying malicious network activity. Finally, they will provide software and related training for a new generation of litigation support products that attorneys need to manage successfully the increasingly complex and ever-evolving technological evidence, including mobile device forensics and social media capture.

Court Security

Court security is a shared funding responsibility of the Judiciary and the United States

Marshals Service (USMS). The USMS pays for the costs of the deputy U.S. marshals who safeguard judicial proceedings and protect judges in—and, when necessary, outside of—the courthouse, but the Judiciary pays for the general protection of federal courthouses through the provision of contract court security officers (CSOs) and security systems and equipment. The Judiciary also makes required payments to the Federal Protective Service (FPS) for the patrol and protection of courthouse perimeters.

The Court Security appropriation request for FY 2021 totals \$664 million, a 3.9% increase above FY 2020. The increase is split between \$11 million in adjustments to base to maintain current services, such as standard wage rate increases for CSOs and adjustments to FPS charges, and \$14 million in program increases for new or expanded security activities. These program changes cover four major areas.

First, the Judiciary requests an increase of \$5 million associated with the ongoing Physical Access Control Systems (PACS) replacement strategy. PACS are the key cards and scanners that allow courts to restrict access, as necessary, to secure interior space. For example, PACS would prevent a member of the public from entering judicial chambers without authorization. Unfortunately, many of the Judiciary's PACS are fragile and failing, or are in danger of failing, due to aging equipment and outdated software that is no longer supported by the vendor. Working together with the USMS, the Judiciary devised a multi-year budget strategy to upgrade PACS nationwide, using a risk-based prioritization process. The resources requested in FY 2021 represent the third year of our four-year strategy, at the end of which PACS resources will be stabilized at a level sufficient to maintain a 10-year technology refreshment cycle and avoid a recurrence of the PACS failures experienced in recent years.

The second Court Security program increase draws, in many ways, on the experience of

the Judiciary and the USMS with the PACS program. In an effort to be more proactive about the identification, prioritization, and management of equipment vulnerabilities, the USMS identified several additional categories of key security equipment where technological failures or obsolescence require action to modernize the Judiciary's inventory and maintain a responsible cyclical replacement schedule. Specifically, the USMS recommended additional funding to modernize and replace existing Video Management Systems (VMS), which are the camera systems that allow the USMS to monitor activity around and within the courthouse, and basic screening equipment, including magnetometers, wands, and x-ray machines used to screen people and parcels entering court space. To begin investments in the requisite upgrades and to hire staff to supervise the upgrade process, the Judiciary requests \$5 million in FY 2021.

Third, much like the S&E account discussed above, the Judiciary must request Court Security funding to provide the necessary security infrastructure for new courthouses under construction. Without these funds, newly constructed facilities might not be functional by their dates of expected occupancy. In FY 2021, the Judiciary requires a net increase of \$3 million to provide security equipment for the courthouses under construction in Toledo, Ohio, and Savannah, Georgia, and CSOs for the courthouses underway in Charlotte, North Carolina; San Antonio, Texas; Anniston, Alabama; and Greenville, Mississippi.

Finally, the FY 2021 Court Security request includes a program increase of \$1 million in sustainment costs for our Facility Access Card (FAC) program. Just like the Executive Branch's HSPD-12 identity credentials, FACs are "smart cards" used for personal identification and to access court facilities (and, in some cases, controlled computer networks). These funds will ensure that the Judiciary can continue procuring the equipment and licenses necessary to provide and support FACs for current and new employees and contractors.

Fees of Jurors and Commissioners

The Fees of Jurors and Commissioners account funds statutory fees and allowances for federal jurors and for land commissioners, who are appointed by a court to determine fair compensation in federal eminent domain cases. The Judiciary takes very seriously its commitment to federal jurors, who provide a vital and constitutionally required public service for very little compensation and sometimes at great cost to personal or professional priorities. Our FY 2021 request of \$55.5 million, a 3.6% increase above FY 2020, is based on current projections for grand and petit juror usage and will ensure that we have the resources needed to provide fees and allowances as required without any deferred payments or transfers of resources from other Judiciary accounts.

NON-APPROPRIATED RESOURCES

It's important to end the discussion of our FY 2021 appropriated request with an acknowledgement of our non-appropriated resources. Many years ago, previous Congresses found it necessary, prudent, and advantageous to enact some specific authorities for the Judiciary to collect and retain a variety of different fees, as well as to retain and carry forward a subset of appropriated dollars for longer than the typical single fiscal year availability period.

These authorities are certainly not unique in the federal government—many Executive Branch agencies collect and spend fees and other offsetting collections, and almost all agencies have and use some form of multi-year carryover authority—but they are sometimes misunderstood. Our fees and balances are not siloed pots of funding that are used entirely at our discretion. Instead, they are fundamental components of our annual budget requests, where our proposed collection and use of these funds are reported and described with the same level of

detail as the more traditional appropriated portion of our request. Each dollar of requirements that we propose to fund with fees or carryover balances is a dollar that the Subcommittee does not have to appropriate, freeing up scarce taxpayer funds for other priorities while still allowing the Judiciary to accomplish important programmatic goals.

Our non-appropriated resources come in several different varieties. First, we collect about \$140 million each year in fees for the usage of the Public Access to Court Electronic Records (PACER) system. By statute, these fees are available to fund the Judiciary's Electronic Public Access (EPA) programs, which seek to enhance the public's electronic access to court information and records. PACER fees support not just the operation of the PACER system itself but also the development, operation, and maintenance of the Judiciary's electronic case filing and case management system, electronic bankruptcy noticing, related telecommunications infrastructure and security needs, and other programs to enhance public access. Without PACER fees, the Judiciary would be forced either to request an equivalent amount of appropriated funds to support its EPA programs or to reduce public access services.

Our second major source of non-appropriated funding is statutory and miscellaneous fees. These come in numerous types, from case filing fees to returned check fees. The Judiciary is authorized to retain all or a portion of these various fees, and they are legally available to support "the operation and maintenance of the courts." In recent fiscal years, we have collected annually a little over \$200 million of statutory and miscellaneous fees. Our annual budget request is predicated on the notion that these fees will be used to offset a portion of our total requirements, allowing us to request less in appropriated funds from the Subcommittee.

Our final source of non-appropriated funding is multi-year carryover balances. These include fees collected, but not spent, in prior years, as well as certain appropriated dollars

(primarily dollars deposited into the Judiciary Information Technology Fund) that are permitted by statute to remain available until expended. Having this carryover authority is critical to the Judiciary's ability to plan and carry out large, complex activities, such as the development of new technology tools, that are likely to take multiple fiscal years to complete. When we determine that we have excess balances—amounts greater than needed to accomplish the work we have planned—we report those balances as part of our budget and, again, use them to reduce our requirement for appropriated dollars in the request.

The Judiciary endeavors to use its non-appropriated funding authorities in a responsible and transparent manner that lessens the burden on the Subcommittee (and the taxpayer) to provide new funds to meet our financial needs. These funds are critical components of our total budget and serve important functions for both the Judiciary and the Congress.

COST CONTAINMENT

The Judiciary has always tried to be a responsible steward of its funding. That means scrutinizing our operations for efficiencies, looking for new and innovative ways to conduct business, and being transparent with Congress about both our needs and our flexibilities. In 2005, we formalized these practices into an official and ongoing cost containment program in which all parts of the Judiciary are tasked with regularly analyzing operations and reporting on ideas and opportunities to reduce either current or future costs. Through these efforts, we have reduced or avoided tens of millions of dollars of costs associated with rent, information technology, legal research materials, and staffing requirements, among other areas.

Today, fifteen years after the creation of the initial cost containment program, our efforts continue unabated. We have several ongoing initiatives, as well as new ideas that are being

evaluated for future adoption. Examples of each kind are discussed in more detail below. As always, we have incorporated into our budget request the best available estimates of savings resulting from our cost containment initiatives through the end of FY 2021. As such, our request reflects the results of many years of diligent cost containment work.

Space

Achieving significant savings and cost avoidance in our space rental costs has been the Judiciary's largest cost containment success in the last few fiscal years. As reported in our FY 2020 budget request, the Judiciary met the Judicial Conference's space reduction target of removing more than 870,000 square feet from the Judiciary's rent bill by the end of FY 2018. This was done by releasing space, reconfiguring space to allow for different utilization, or leveraging opportunities provided by technology (for example, by reducing law book collections and transitioning to online legal research sources in order to reduce law library space). Our efforts were so successful, in fact, we exceeded our goal by 30%, removing 1.2 million square feet from our bill for an annual rent avoidance of approximately \$36 million. In addition to space reduction, we have also created a joint initiative with GSA, known as the Service Validation Initiative (SVI), in which we work collaboratively to address a variety of service, pricing, and management concerns. The SVI has many achievements, but among its most noteworthy was the negotiation of a slate of changes to the methodologies by which GSA assesses costs to the Judiciary. These changes have saved the Judiciary nearly \$80 million annually.

Building on these successes, the current focus of the Judiciary's space cost containment program is the implementation of a Judicial Conference policy called "No Net New." Under this policy, a circuit must identify a reduction in square footage equivalent to any proposed space increase within a given fiscal year (subject to exclusions for new courthouse construction or

renovation and alteration projects approved by Congress). Preventing net growth in our space footprint is an aggressive goal during a period in which the pressures on our space needs are working in the opposite direction. For example, as court units are facing workload increases, they will need to hire additional staff without being able to acquire a net increase in space to house those staff. Just as significantly, the high confirmation rate of judges continues to produce demand for additional courtrooms and chambers because many of the newly confirmed judges are replacing judges who have taken senior status but are still carrying significant caseloads and occupying the courtrooms and chambers that might otherwise be available for reallocation. To accommodate this growth in personnel without a net growth in space, circuits will be challenged to utilize their existing space in new and creative ways. The Judiciary makes a limited pool of money available to circuits to fund renovations or other expenses associated with “No Net New” compliance on the understanding that any investment made upfront will be recouped in avoided rent within a reasonable payback period. In FY 2021, the Judiciary’s S&E budget request includes \$15 million for this purpose.

Organizational Alternatives

Federal courts have experimented for years with ways to reduce costs or improve services by collaborating with one another on nontraditional ways of conducting the business of the clerks of court and probation and pretrial services offices. Most court units, for example, operate some form of shared services agreement in which a single individual or group of individuals provides support to more than one court unit for such administrative functions as human resources, financial management, procurement, or information technology support. Looking to the future, the Judicial Conference is testing and evaluating new organizational alternatives that expand on the concept of shared administrative services to create fully consolidated clerks of court

operations across multiple court units.

The Conference's most formalized effort in this area has been the initiation of a pilot project to learn more about the potential benefits and efficiencies of consolidating bankruptcy clerks of court offices across multiple judicial districts. This is referred to within the Judiciary as the "horizontal consolidation" pilot (as opposed to "vertical consolidation," which would represent the consolidation of district and bankruptcy clerks of court offices in the same judicial district). Under the pilot, pairs of bankruptcy courts enter into a memorandum of understanding that puts both clerks' offices under the control of a single clerk of court, who is empowered to run the two offices as a consolidated unit. Two pairs of bankruptcy courts—those in the Northern and Southern Districts of Iowa and those in the Districts of North and South Dakota—have enrolled in the pilot. The Federal Judicial Center will empirically study the pilot districts to determine whether horizontal consolidation can allow consolidated courts to operate with fewer financial and/or human resources while still maintaining necessary standards of service. The results of the pilot and its associated study will inform the Conference's stance toward office consolidation as a viable cost containment priority in the coming years.

OTHER CONSIDERATIONS

Director Duff's statement addresses these topics in more detail, but I want to add my support for funding in two GSA programs that directly serve the needs of the Judiciary. The first of these is new courthouse construction. The current top construction priorities of the Judicial Conference are new courthouses in Hartford, Connecticut, and Chattanooga, Tennessee. These two facilities are the most urgent new construction needs across the branch, based on an objective, quantitative assessment process called Asset Management Planning.

The second GSA program of interest to the Judiciary is the Capital Security Program (CSP). The CSP was developed to fund smaller construction projects within existing courthouses experiencing significant security challenges. Through small renovation projects, such as the installation of prisoner transport elevators, the security posture of these courthouses can be markedly improved, and the Judiciary can potentially avert the need for much more costly new courthouse construction projects. The Judiciary currently has two CSP projects identified and ready to receive funding—in Detroit, Michigan, and Augusta, Georgia—but the program has not been funded in either of the past two fiscal years. If the Subcommittee can find the resources needed to reinvigorate the CSP in FY 2021, I think you will find your investment to be both effective and efficient in improving the day-to-day security conditions for litigants, jurors, and the public in these facilities.

CONCLUSION

Chairman Quigley, Ranking Member Graves, and members of the Subcommittee, thank you for the opportunity to appear before you today. I hope that my testimony and our discussion today will provide you with the information you need to evaluate our budget request and make the necessary decisions about how to allocate the resources that are available to you. As you make those decisions, please bear in mind the heavy constitutional and statutory responsibilities with which the Judiciary is charged and the associated cost of carrying out those responsibilities effectively. In return, I commit to you that we will continue our efforts to be conscientious and reliable stewards of any funds entrusted to us, seeking to show wisdom and prudence not just in our judicial opinions but in our resource management as well.

Thank you for your continued support of the federal Judiciary. I would be pleased to answer any questions the Subcommittee may have.