

Financial Services and General Government Subcommittee
Hearing on the Judiciary FY 2015 Budget
for The Honorable Julia S. Gibbons, Chair, Committee on the
Budget of the Judicial Conference of the United States

Questions for the Record Submitted by Congressman Mike Quigley

Federal Defenders

- 1. The Judiciary has been given the important task of protecting the independent federal defense function in our justice system. Sequester has had a devastating impact on the federal defense function in particular.**

Question: In what specific ways are you planning to build back the federal defense function while protecting its independence?

Answer:

The Judiciary depends on Congress to provide the funding we need to do our work and therefore our ability to rebuild the Defender Services program is directly related to the appropriations we receive from Congress. Congress certainly responded to our request for help in the aftermath of sequestration by providing the Judiciary with a 5.1 percent overall increase in discretionary appropriations in the FY 2014 omnibus appropriations bill, which included a 5.9 percent increase for the Defender Services program. We are very appreciative that Congress recognized the devastating impact of sequestration on the Judiciary and provided funding in FY 2014 sufficient for the federal courts to begin recovering from sequestration.

The Budget Committee, Defender Services Committee, and Executive Committee of the Judicial Conference are committed to rebuilding the Defender Services program. Specifically, FY 2014 funding is being utilized to enable federal defender organizations to backfill most of the 400 staff (11 percent) lost as a result of sequestration. We realize backfilling this many positions in a single year is not realistic so the Executive Committee approved a strategy to use the no-year appropriations authority in the Defender Services account to allow the backfilling of positions through the end of FY 2015. The House and Senate Appropriations Committees also approved this multi-year hiring strategy as presented in the Judiciary's FY 2014 financial plan. In addition, FY 2014 funding was utilized to restore, effective March 1, 2014, the \$15 per hour temporary emergency rate cut to Criminal Justice Act panel attorney rates that took effect September 1, 2013, due to the uncertainty regarding FY 2014 funding.

The two-year hiring strategy is only available for federal defender organizations and is made possible because of Congressional funding. Clerks of court and probation and pretrial services offices – which have lost 3,200 positions (15 percent) since July 2011 due to flat budgets followed by sequestration in FY 2013 – have not received this same hiring authority for FY 2014 and FY 2015.

The actions described in this response to rebuild the Defender Services program in no way encroach upon the independence of the Judiciary's appointed-counsel program. Federal defenders and CJA panel attorneys will continue to operate with the same degree of independence they always have on case-related matters.

2. You stated in your testimony that the federal defenders were hit harder than other accounts in the judiciary.

Question: Isn't this the time to be infusing the Defender Account with more resources because it will take several years to hire back qualified staff?

Answer:

To clarify, the statement in my prepared testimony that "[p]erhaps the most significant impact was in our Defender Services program . . ." should not be interpreted to mean that the sequestration cut to Defender Services was *disproportionately* larger than the sequestration cut to other Judiciary accounts, or to other government programs in general. On the contrary, the Defender Services program was subject to the same 5.0 percent across-the-board sequestration cut that applied to discretionary appropriations government-wide.

The statement that the most significant impact of sequestration was perhaps in the Defender Services program instead refers to the *effects* of sequestration on Defender Services, specifically the loss of 400 staff (11 percent) in federal defender organizations, two weeks of panel attorney vouchers that had to be deferred from FY 2013 into FY 2014, and a \$15 temporary emergency rate cut to panel attorney hourly rates that was implemented September 1, 2013, due to concern that the account would be flat funded at a sequestration funding level for FY 2014.

The impact of sequestration was devastating across the Judiciary. However, the impact was perhaps more significant for federal defender organizations because of decisions to hire staff in the months leading up to sequestration. With 90 percent of federal defender organizations' budgets required for staff salaries and space rent, the only option available for managing the 5 percent sequestration cut was to furlough and layoff staff. On the other hand, clerks of court and probation and pretrial services offices had reduced staffing levels prior to sequestration, primarily through normal attrition, which better positioned those offices to deal with sequestration cuts. That said, clerks of court and probation and pretrial services offices still lost 1,200 staff (6 percent) in fiscal year 2013 alone.

We completely agree with the statement that this is the time ". . . to be infusing the Defender Account with more resources because it will take several years to hire back qualified staff." We are doing exactly that. As stated in the previous response, the Executive Committee of the Judicial Conference and the House and Senate Appropriations Committees have approved a two-year hiring strategy to allow federal defender organizations to backfill, through the end of

FY 2015, most of the 400 positions lost during sequestration. Additional hiring in FY 2016 and beyond in federal defender organizations, if needed, will be dependent on workload, results of the work measurement study, and on appropriations received from Congress.

3. We understand that you have an accelerated Work Measurement study underway for the 81 federal defender organizations.

Question: How does this encourage federal defenders to hire staff in the next three years?

Answer:

The potential impact of the staffing formula development process on either national federal defender organization staffing requirements or on individual offices is not yet known. The Judiciary expects the Judicial Conference to consider staffing formulas for federal defender organizations at its September 2015 session, thus making the approved formulas available for use in the FY 2016 financial plan. The Judiciary will consider an implementation strategy covering multiple years, as appropriate.

For FY 2014 and FY 2015, federal defender organizations have the ability to backfill most of the 400 positions lost during sequestration. Additional hiring in FY 2016 and beyond in federal defender organizations, if needed, will be dependent on workload, results of the work measurement study, and on appropriations received from Congress. We live in uncertain budget times. Federal defenders, like all Judiciary managers, must make prudent hiring decisions that take into account the federal budget outlook as well as office workload needs.

The Budget Committee believes that, given available resources, defenders should hire now if workload justifies it. This is the best course to follow in order to rebuild the program promptly. Federal defenders should not let fears of future contingencies that cannot now be known govern hiring decisions.

4. Judge Gibbons, you have focused on the many cost containment initiatives underway across the Judiciary.

Question: Do you have specific plans for federal defense?

Answer:

We take great pride in being responsible stewards of the taxpayers' money and we endeavor to cut costs where possible, spend each dollar wisely, and make smart investments to achieve long-term savings. Our cost-containment efforts are essential to position the Judiciary for the fiscal realities of today and the future, and enable us to say with confidence that we only request from Congress the minimum amount of funding we need to do our work.

The Judiciary is 10 years into an intensive cost-containment effort that has touched all corners of federal court operations and we continue to look for ways to reduce growth in the Judiciary's budget. We are expanding the use of shared administrative services among the courts of appeals, district courts, bankruptcy courts, probation and pretrial services offices, and federal defender organizations to reduce administrative staffing and overhead costs. We have recently launched a major initiative to reduce the Judiciary's space footprint by a targeted 3 percent by the end of FY 2018.

For the Defender Services program there are several cost containment initiatives underway:

- Electronic CJA Voucher System. An electronic CJA voucher processing system is being developed to automate and streamline the current paper review/approval process, improve the accuracy of panel payments, give judges better analytical tools to use when evaluating CJA panel attorney vouchers, and improve the data available about CJA cost drivers.
- Case Weights. A federal defender organization (FDO) case weighting system has been implemented to help assess individual FDO workload and resource needs. These case weights have been used as part of a new methodology for formulating the national FDO appropriations request, as well as for individual FDOs for budget execution purposes.
- Staffing Formula for FDOs. The Judiciary is developing a new staffing formula for FDOs, using the work measurement process to provide a more equitable distribution of staffing, based on the work performed at each FDO. The Judicial Conference is expected to consider staffing formula options in September 2015, thus making the approved formulas available for use in FY 2016. The Judiciary will consider an implementation strategy covering multiple years, as appropriate.
- Case Budgeting. This initiative focuses on the 3 percent of CJA panel attorney representations that account for 30 percent of the costs. The Judiciary is promoting the use of case budgeting for any "mega-case" (a representation in which total expenditures are expected to exceed \$30,000) and for all federal capital prosecutions and capital post-conviction proceedings. A 2010 Federal Judicial Center study found that the savings from case budgeting positions more than offset their costs. The Judiciary will be expanding the number of case budgeting attorney positions from three to eight FTE in fiscal year 2014. These eight FTE will provide case budgeting services in nine judicial circuits.
- Discovery Costs. In a cooperative venture between the Administrative Office and the Department of Justice, broad national protocols were promulgated last year that are designed for more cost-effective and efficient management of electronically stored information (ESI) in discovery. The Judiciary is optimistic that cost avoidance will

result from widespread implementation of the new protocols, particularly in the increasingly common cases involving extremely large amounts of ESI.

5. Question: In other words, do you intend to cut or shrink this account?

Answer:

The Budget Committee of the Judicial Conference has no intention of cutting or shrinking the Defender Services account. The goal of our cost-containment efforts is to position the Judiciary for the fiscal realities of today and the future, and to request from Congress the minimum amount of funding we need to do our work. This cost-containment strategy seeks to control future growth in Judiciary accounts and to enable us to live within anticipated future appropriations. This is true for every Judiciary account, including Defender Services. Requesting sufficient appropriations from Congress for Judiciary programs and simultaneously stressing cost containment internally are not incompatible objectives.

6. There are reports in the media that groups such as the NACDL are concerned about the independence of the federal defense function, especially when difficult decisions must be made for allocating scarce resources within the Judiciary.

Question: How does the Judiciary plan to respond to such concerns?

Answer:

The Defender Services program benefits from being funded within the Judicial Branch. The current structure ensures that the funding needs for Defender Services are endorsed by the Judicial Conference of the United States after a rigorous internal justification process. We believe this process instills confidence within the Appropriations Committees in Congress that the funding needs for Defender Services, and for other Judiciary accounts that fall under the jurisdiction of the Judicial Conference, have received appropriate scrutiny and that the Judiciary is requesting only the minimum amount needed to meet workload demands.

Sequestration presented unprecedented challenges for the Judiciary, and there were no easy answers on how best to implement the 5 percent across-the-board sequestration cuts to Judiciary accounts. Sequestration cuts Judiciary-wide totaled nearly \$350 million. The Executive Committee of the Judicial Conference faced difficult choices. In implementing sequestration cuts for Defender Services in FY 2013, the Executive Committee carefully considered the views of the Committee on Defender Services as well as the impact of various proposals on federal defender organizations and CJA panel attorneys.

Federal defender organizations and CJA panel attorneys operate with complete independence on case related matters. That independence is unaffected by resource levels, but certainly resource scarcity can impair the quality of representation that federal defender organizations and CJA panel attorneys are able to provide.

7. Judge Gibbons stated in her testimony that defenders are reluctant to replace the staff they were forced to lay off during the sequester because the future is so uncertain.

Question: What is the Judiciary's plan to provide the defenders with stability so that they can have confidence to fill vacancies?

Answer:

As stated in an earlier response, the Executive Committee of the Judicial Conference and the House and Senate Appropriations Committees have approved a two-year hiring strategy to allow federal defender organizations to backfill, through the end of FY 2015, most of the 400 positions lost during sequestration.

We operate in an uncertain federal budget environment which makes hiring decisions difficult government-wide, including within the Judiciary. This is true not just for federal defender organizations but for clerks of court and probation and pretrial services offices as well. Managers understandably are cautious and do not want to have to repeat the difficult downsizing and furlough decisions they had to make during FY 2013 as a result of sequestration.

It is impossible to provide assurances to federal defender organizations for hiring beyond FY 2015. Additional hiring in FY 2016 and beyond in federal defender organizations, if needed, will be dependent on workload, results of the work measurement study, and on appropriations received from Congress. Federal defenders, like all other Judiciary managers, must make prudent hiring decisions that take into account the federal budget outlook as well as office workload needs.

8. During her testimony, Judge Gibbons mentioned that the wide variations in weighted caseloads among defender offices is an issue that the staffing formula study is meant to address. But she also mentioned that there is a wide disparity in weighted caseloads for judges.

Question: Why is the wide disparity among judges acceptable based on local practices yet not acceptable for federal defender offices for the same reasons?

Answer:

Disparity among weighted caseloads among judges for the most part is not based on local practices. Rather, caseload among judges is primarily based on the number of judgeships that Congress has authorized for a particular court, number of vacancies, and filing trends. Caseload disparity among judges thus does not represent a Judiciary choice. But the Judiciary does use various methods for adjusting disparities, including a rigorous inter-circuit assignment program, intra-circuit assignments, and use of visiting judges. There has not been a major judgeship bill enacted into law since 1990 so the number of authorized federal district judges across the country has essentially been a fixed number for the last 25 years despite significant workload growth over that period. Despite Congressional inaction on creating new judgeships, every two years the Judicial Conference transmits to Congress recommendations for new judgeships in

order to bring down the average weighted filings per authorized judgeship in certain judicial districts. In the absence of new district judgeships, average weighted filings over time will likely continue to rise in some districts and create even more of a disparity.

The causes for disparities in weighted caseload among judges and among federal defenders are significantly different, thus making comparisons between the two problematic. The Judiciary does not control the number of judges on board at any given time. While federal defenders' workload, like judicial caseload, is affected by many factors outside the control of federal defender organizations (prosecutorial practices and policies of the Department of Justice and local U.S. Attorney offices, district-specific requirements for attorneys, proximity of detention facilities, etc.), federal defender organizations do have some latitude to increase or decrease staff to accommodate workload needs.

9. The FY 2013 budget cuts to defender offices badly damaged the program. The program lost over 400 positions last year. The damage was so severe that we believe it will take at least two years to bring us back up to full staffing. Defenders are rightfully fearful that if they hire they will be told in FY 2015 or FY2016 that they will again have to lay off employees.

Question: How is the Judiciary planning to help the defenders build up their staffing in light of such a large loss of positions?

Answer:

The Executive Committee of the Judicial Conference and the House and Senate Appropriations Committees have approved a two-year hiring strategy to allow federal defender organizations to backfill, through the end of FY 2015, most of the 400 positions lost during sequestration.

We operate in an uncertain federal budget environment that makes hiring decisions difficult government-wide, including within the Judiciary. This is true not just for federal defender organizations but for clerks of court and probation and pretrial services offices as well. Managers understandably are cautious and do not want to have to repeat the difficult downsizing and furlough decisions they had to make during FY 2013 as a result of sequestration.

It is impossible to provide assurances to federal defender organizations for hiring beyond FY 2015. Additional hiring in FY 2016 and beyond in federal defender organizations, if needed, will be dependent on workload, results of the work measurement study, and on appropriations received from Congress. Federal defenders, like all other Judiciary managers, must make prudent hiring decisions that take into account the federal budget outlook as well as office workload needs.

10. The Executive and Budget Committees of the Judicial Conference have requested a new staffing formula be created for federal defenders to "flatten" the different caseloads for different offices and to require every attorney to carry the same caseload no matter what district they are in or what kind of cases they defend. If our lawyers are forced to take on more cases, they will be unable to effectively represent their clients and the costs will come out in different ways (longer prison sentences, more requests for new counsel resulting in more time and money spent per case, many more ineffective assistance of counsel law suits, loss of quality applicants, loss of morale, loss of staff, loss of innovation, etc.).

Question: Why is the Judiciary looking to change the way defenders are funded to create a "one size fits all" formula?

Answer:

The purpose of the work measurement study and the resulting formula is not to flatten caseloads, impair representation, or create a "one size fits all" formula. The Judiciary has no interest in achieving any of those things. As the Judiciary knows from the utilization of work measurement formulas in clerks of court offices, probation and pretrial services offices, and staff attorneys' offices, work measurement formulas are the best tool for accurately assessing staffing needs. While they are the best tool, they are not a precise tool and instead serve as an important guideline or starting point for determining staffing needs.

As background, the Judiciary has used the work measurement process for several decades to build staffing formulas for most of its non-chambers functions in appellate, district, and bankruptcy courts, and for probation and pretrial services offices. Those staffing formulas provide a detailed, quantitative way to understand and assess staffing requirements, help contain costs, justify staffing requirements in budget submissions, and serve as mechanisms to ensure equitable distribution of resources among the Judiciary's varied offices and locations. Recent staffing formula efforts have set a precedent for accommodating variances in local offices. For example, the staffing formula for bankruptcy clerks' offices uses six different size-based formulas rather than a one-size-fits-all solution.

Budgets for federal defender organizations are currently developed based on case weighting. The Judiciary believes the work measurement process and resultant staffing formulas will provide a more equitable distribution of staffing based on the work performed at each federal defender organization. The work measurement analysis for federal defender organizations is being led by the Judicial Conference Committee on Judicial Resources, which has jurisdiction over work measurement and staffing formulas within Judiciary accounts.

As mentioned above, we have no prediction as to the potential impact of the staffing formula development process on either national federal defender organization staffing requirements or on individual offices. The work measurement process is likely to produce a set of formulas addressing the requirements of similarly-situated groups of federal defender organizations. Although speculation at this early stage of the study is premature, a single formula seems unlikely due to the wide range in office sizes, and the broad array of demands on

federal defender organizations arising from differences in geography, population, types of cases, local rules, standing orders, number and locations of court divisions and detention facilities, and the prosecutorial initiatives of the respective U.S. Attorney's Office. The staffing study that is underway has been designed to collect data on district-specific factors that may impact the time an attorney must spend to resolve a case.

At a minimum, by incorporating case weights as a factor in the formula, the formula will account for differences among workload and cases. But if there are several formulas, their application will substantially increase individualized consideration of staffing needs of different offices and enhance representation. Under either scenario, none of the impacts the question assumes will materialize.

The Judiciary expects the Judicial Conference to consider staffing formulas for federal defender organizations at its September 2015 session, thus making the approved formulas available for use in the FY 2016 financial plan. The Judiciary will consider an implementation strategy covering multiple years, as appropriate.

11. Question: How will the new staffing formula study effect certainty and effective management in defender offices?

Answer:

As indicated in previous responses, it is simply not possible in this uncertain federal budget environment to provide certainty with regard to funding for Defender Services or any other Judiciary account. Like any other federal entity, the Judiciary is dependent upon Congress to provide the resources we need to do our work, but cannot predict precisely what future appropriations will be.

With regard to effective management, the Judiciary has used the work measurement process for several decades to build staffing formulas for most of its non-chambers functions in appellate, district, and bankruptcy courts, and for probation and pretrial services offices. Those staffing formulas provide a detailed, quantitative way to understand and assess staffing requirements, help contain costs, justify staffing requirements in budget submissions, and serve as mechanisms to ensure equitable distribution of resources among the Judiciary's varied offices and locations. Staffing formulas provide an initial starting point for establishing staffing needs on a national basis and for each individual court unit, but ultimately it is the funding provided by Congress through the annual appropriations process that is the chief determinant of what percentage of the staffing formula can be funded.

Staffing formulas provide court unit executives with a valuable management tool for assessing how projected workload changes in a circuit or district may impact staffing and associated salary costs. They should also serve as a valuable tool for managers in federal defender organizations.

Financial Services and General Government Subcommittee
Hearing on the Judiciary FY 2015 Budget
for The Honorable John D. Bates, Director, Administrative Office of
the United States Courts

Questions for the Record Submitted by Congresswoman Jaime Herrera
Beutler

Reporting Requirements

1. In Washington State, the biggest issue the Eastern and Western District Courts is facing is the large caseload of Social Security disability filings. Last year, there were over 800 cases for Social Security disability in the Western District and over 700 in the Eastern District. This year, the Western District expects that to rise to over 1,300 cases. With the limited number of judges in each court, there are over 150 cases for each judge in the Western District – far more opinions than each judge could write – and the weighted caseload is at 630. Currently, the Western District is being evaluated for an additional Magistrate Judge. I believe there is a formula for determining additional Magistrate Judges for the District Courts. However, despite the heavy caseload in the Eastern District they still have not received an additional Magistrate.

Question: Can you please provide additional information how the Administrative Office determines additional Magistrate Judges for District Courts? Also, please keep me updated as to the status of the evaluation and determination for an additional Magistrate in the Western District?

Answer:

Authorization of Magistrate Judge Positions

Magistrate judge positions are authorized by the Judicial Conference of the United States under the Federal Magistrates Act, 28 U.S.C. § 633. The Judicial Conference's recommendations concerning magistrate judge positions are subject to subsequent funding by the Congress through the annual appropriations process. In determining the number, locations, and arrangements of the magistrate judge positions, the Judicial Conference considers the recommendations of: (1) the appointing district court; (2) the pertinent circuit's judicial council; and (3) the Director of the Administrative Office of the United States Courts.

Acting through its Committee on the Administration of the Magistrate Judges System (Committee), the Judicial Conference considers the following criteria when evaluating requests for additional full-time magistrate judge positions:

- the comparative need of the district judges for the assistance of magistrate judges and the overall workload of the district court;

- the commitment of the court to the effective utilization of magistrate judges; and
- the availability of sufficient work of the sort that the district judges wish to assign to magistrate judges to justify the authorization of additional full-time positions.

An important factor in considering a court's comparative need for additional magistrate judge resources is its ratio of magistrate judges to district judges within the district. The current national average of full-time magistrate judge positions to district judgeships is 1:1.3.

Authorization of a higher ratio than the national average generally requires: (1) a heavy per district judgeship caseload; (2) effective utilization of existing magistrate judge resources; or (3) other special caseload factors or unusual circumstances.

The Committee further considers the areas and population to be served, convenience to the public and bar, the rights of criminal defendants to prompt court proceedings, the number and extent of federally-administered lands in the district, transportation and communication facilities, and other pertinent local conditions. When reviewing a court's request for conversion or consolidation of magistrate judge positions from part-time to full-time status, the Committee also considers the expressed preference of the Conference and the Congress for a system of full-time rather than part-time judicial officers. 28 U.S.C. § 633(a)(3).

In making its determinations as to the feasibility of each magistrate judge position, the Committee, the district court, and the circuit judicial council are provided with a survey report prepared by the Director of the Administrative Office containing detailed statistical data and other factual information on the workload and resources of the district court, together with the Director's specific recommendations. The survey analyzes the court's present and projected use of its magistrate judges and includes extensive information on the work performed by the magistrate judges. Statistics provide the foundation for the analysis and the recommendations presented by the Committee to the Conference. Because of the number and complexity of the factors to be considered, the variations in the sizes and caseloads of the districts, and the myriad ways magistrate judges are used by the courts, the Conference cannot apply a rigid statistical formula when authorizing magistrate judge positions. Rather, the Conference reviews each position on a case-by-case basis, taking into account all relevant factors.

The Request of the Western District of Washington for a Sixth Full-Time Magistrate Judge Position

The Western District of Washington has requested authorization of a sixth full-time magistrate judge position. The court's request has been placed on the agenda of the Committee for consideration at its June 2014 meeting. The Director of the Administrative Office is preparing a survey report analyzing the court's request. The report will be presented to the court and the Judicial Council for the Ninth Circuit Court of Appeals for comment prior to the Committee's June 2014 meeting. Should the Committee recommend that a sixth full-time magistrate judge position should be authorized for the court, that recommendation will then be considered at the September 2014 session of the Judicial Conference of the United States. And

should the Conference approve the authorization of a sixth full-time magistrate judge position for the Western District of Washington at its September 2014 session, funding for the position will be included in the Judiciary's FY 2016 budget request to Congress.

Questions for the Record Submitted by Ranking Member José Serrano

Law Clerk Diversity

1. As you know, I am interested in the diversity of law clerks in the federal court system.

Question: Please discuss your efforts to improve the diversity of law clerks in the Federal Judiciary and provide, for the record, the diversity breakdown of law clerks by race and gender, for appellate and district judges for the last five years.

Answer:

The Judiciary has long recognized the importance of diversity in its workforce, particularly among law clerks in federal trial and appellate courts. Despite continuous efforts, our statistics suggest there is room for improvement.

In recent years, the Judiciary has taken a number of actions to attract and retain minority law school candidates:

- The Judicial Resources Committee (JRC) has expanded its Diversity Recruiting and Outreach Program. To date, the program has facilitated the involvement of local court participation at 73 career fairs and legal recruiting events, resulting in direct contact with 7,300 students in 32 districts in all circuits.
- By working with undergraduate institutions, law schools, bar associations, and other groups, the Diversity Recruiting and Outreach Program aims to increase student awareness of the breadth and scope of legal and non-legal positions in the Judiciary by providing visibility and access to advertised vacancies and opportunities for internships.
- As its core mission, the program engages courts through direct participation by networking with a diverse pool of students, graduates, and other professionals through partner organizations, highlighting the U.S. Courts and the Judiciary as an employer of choice.
- During its fourth year, the Diversity Recruiting and Outreach Program continued to build a strategic network of partnerships between various program offices, local courts, and working groups of judges and court staff, as well as external organizations such as Just the Beginning Foundation (JTBF), Congressional Caucuses (Black, Asian, and Hispanic), Council on Legal Education Opportunity, Minority Corporate Counsel Association, National Association for Legal Career Professionals, and the American Bar Association.
- Since the development and inception of the federal Judiciary's partnership with JTBF, over 150 minority law students have been placed in the chambers of federal judges.

In its third year, the partnership between the JRC and the JTBF yielded 61 law students for judicial internships with 52 federal judges, an increase from the previous year.

To complement the activities at career recruiting events, the Judicial Resources Committee continues to engage in the following:

- Contacting minority law student and other minority organizations and bar associations in hopes of creating and maintaining potential minority pipelines for judicial law clerk positions, and
- Sending correspondence to law school deans espousing the benefits of clerking and requesting deans share information with students.

Following are three tables: (1) Chambers Law Clerks (Appellate) by Race/Ethnicity: FY 2008 – 2012, (2) Chambers Law Clerks (District) by Race/Ethnicity: FY 2008 – 2012, and (3) Chambers Law Clerks by Gender: FY 2008 – 2012.

Chambers Law Clerks (Appellate) by Race/Ethnicity: 2008 - 2012

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2008	86.7%	3.3%	2.2%	7.4%	0.1%	0.2%
FY 2009	87.6%	2.5%	2.0%	7.6%	0.1%	0.2%
FY 2010	88.2%	2.7%	2.5%	6.4%	0.0%	0.2%
FY 2011	83.6%	3.8%	6.1%	6.3%	0.1%	0.1%
FY 2012	84.1%	3.9%	6.3%	6.4%	0.1%	0.1%

Chambers Law Clerks (District) by Race/Ethnicity: FY 2008 – 2012

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2008	86.1%	4.1%	3.3%	6.2%	0.1%	0.2%
FY 2009	86.1%	3.9%	4.4%	5.4%	0.1%	0.1%
FY 2010	87.5%	3.7%	4.5%	4.9%	0.3%	0.1%
FY 2011	86.0%	4.0%	4.8%	5.1%	0.2%	0.1%
FY 2012	87.0%	3.6%	5.7%	3.4%	0.2%	0.1%

Chambers Law Clerks by Gender: FY 2008 – 2012

	APPELLATE		DISTRICT	
	Male	Female	Male	Female
FY 2008	56.0%	44.0%	41.8%	58.2%
FY 2009	57.8%	42.2%	42.1%	57.9%
FY 2010	55.8%	44.2%	39.4%	60.6%
FY 2011	55.8%	44.2%	38.8%	61.2%
FY 2012	55.4%	44.6%	36.9%	63.1%

Diversity of Judiciary Staff

2. I am also interested in the diversity of Judiciary staff.

Question: What efforts are you making to improve that diversity and please provide, for the record, the diversity breakdown of the clerks and support staff in the Federal Judiciary by race and gender, in total and separated by job title, seniority or pay scales as best may characterize the makeup of the Judiciary’s workforce?

Answer:

In addition to expanding the diversity of the law clerk workforce in the Judiciary, the Judicial Resources Committee Diversity Recruiting and Outreach Program also includes the wider Judiciary workforce. Many undergraduate students are not aware that there are more than lawyer positions in the Judiciary. Court representatives at the recruiting events include probation and pretrial services staff, IT, finance and human resources professionals.

To date the program has facilitated the involvement of local court participation at 73 career fairs and other recruiting events, resulting in direct contact with 7,300 students in 32 districts in all circuits promoting both legal and non-legal positions in the courts.

The federal Judiciary bi-weekly workforce is grouped into six occupational categories: Executive, Legal Professional, General Professional, Legal Secretary, Technical, and Office Clerical.

The following two pages include job titles under each occupational category and a statistical table titled “Judiciary Staff by Gender, Race/Ethnicity, and Occupational Category for FY 2012.”

Occupational Category	ASSOCIATED JOB TITLES
Executive	Circuit Executive, Deputy Circuit Executive Type II, Circuit Clerk of Court, Circuit Chief Deputy Type II, Circuit Librarian, Senior Staff Attorney, Chief Preargument/Conference Attorney, District Court Executive, Clerk of Court, Chief Deputy Clerk II, Bankruptcy Clerk of Court, Bankruptcy Chief Deputy Clerk Type II, Bankruptcy Administrator, Chief Probation Officer, Chief Probation/Pretrial Services Officer, Deputy Chief Probation Officer Type II, Chief Pretrial Services Officer, Deputy Chief Pretrial Services Officer Type II, Federal Public Defender.
Legal Professional	Law Clerk, Pro Se Law Clerk, Staff Attorney, Assistant Federal Public Defender, Research Writing Specialist.
General Professional	Administrative Manager/Officer, Administrative Analyst, Human Resource/Personnel Manager/Specialist, Financial Administrator, Budget Analyst/Specialist, System Manager/Specialist, Probation/Pretrial Services Officer, Paralegal, Sentencing Guidelines Specialist, Court Reporter, Deputy in Charge, Drug and Alcohol Treatment Specialist, Investigator.
Legal Secretary	Legal Secretary, Judicial Assistant, Secretary to the Federal Public Defender.
Technical	Human Resources Technician, Budget Technician, Financial Assistant, Case Administrator, Automation Support Specialist/Technician, Courtroom Deputy, Civil/Criminal Docket Clerk, Library Technician, Administrative Assistant, Data Quality Analyst, Electronic Court Recorder Operator, Executive Assistant, Case Manager.
Office Clerical	Receptionist, Generalist Clerk, Clerical Assistant, File Clerk, Records and Reproduction Clerk, Probation Clerk, Pretrial Services Clerk, Court Crier, Intake Clerk.

Judiciary Staff by Gender, Race/Ethnicity, and Occupational Category, FY 2012

Occupational Category	Total	Male	Female	RACE/ETHNICITY						
				Caucasian	African American	Hispanic	Asian	Native American	Pacific Islander	No Rept
Executive	748	440	308	634	59	30	11	6	3	5
	100.0%	58.8%	41.2%	84.8%	7.9%	4.0%	1.5%	0.8%	0.4%	0.7%
Legal Professional	6,902	2,938	3,964	5,722	296	337	360	12	5	170
	100.0%	42.6%	57.4%	82.9%	4.3%	4.9%	5.2%	0.2%	0.1%	2.5%
General Professional	11,516	5,199	6,317	7,721	1,421	1,784	422	64	26	78
	100.0%	45.1%	54.9%	67.0%	12.3%	15.5%	3.7%	0.6%	0.2%	0.7%
Legal Secretary	1,750	40	1,710	1,226	168	267	48	3	3	35
	100.0%	2.3%	97.7%	70.1%	9.6%	15.3%	2.7%	0.2%	0.2%	2.0%
Technical	7,182	1,429	5,753	4,437	1,351	950	322	25	18	79
	100.0%	19.9%	80.1%	61.8%	18.8%	13.2%	4.5%	0.3%	0.3%	1.1%
Office Clerical	2,171	261	1,910	1,119	408	536	73	12	5	18
	100.0%	12.0%	88.0%	51.5%	18.8%	24.7%	3.4%	0.6%	0.2%	0.8%
Total	30,269	10,307	19,962	20,859	3,703	3,904	1,236	122	60	385
	100.0%	34.1%	65.9%	68.9%	12.2%	12.9%	4.1%	0.4%	0.2%	1.3%

Questions for the Record Submitted by Congressman Mike Quigley

Public Disclosure and Access to Public Records

- 1. Like members of Congress, justices serving on the highest court in the land are required by law to annually disclose information about their personal investments. These are theoretically available to the public, but they are not made available online – except through third party sites.**

Question: Has the Administrative Office of the Courts considered making these accessible online in an easily searchable, structured data format?

Answer:

Yes, the question of the best method for public release of financial disclosure reports for federal judges and justices is one that the Judiciary has carefully considered, as has the Congress. At this time, however, the Judicial Conference does not support a shift away from the current request-based system, whereby the data is collected from all federal judges and relevant judicial employees but not made public until a specific request is made.

Federal judges, history has shown, are often at much greater physical risk of harm than most other government employees. The particular role of a court in resolving individual criminal and civil matters has historically made them targets of violence. Federal judges do not seek out the cases over which they preside; cases are brought to a specific court by claimants and then assigned to a judge.

Financial disclosure reports may contain some information that could be exploited by persons seeking to harm judges or members of their families. Examples include location of: residence; spouse's workplace; child's school; or vacation home. Congress has repeatedly acknowledged that the public release of certain information contained in a financial disclosure report could pose a security risk to a judge, a judicial employee, or their family, by reauthorizing (most recently in 2012) special statutory authority for the Judicial Conference, under Section 105(b)(3) of the Ethics in Government Act, to redact sensitive information contained in the report. The request-based system allows the Judiciary to conduct a risk assessment at the time of the request. By waiting until a specific request is made, the Judiciary, in consultation with the U.S. Marshals Service, can target redactions to those necessary at the time of the request, as opposed to speculating about what may be dangerous at any future time, or engaging in a resource-intensive review of financial disclosure information every time new information is learned about a threat against a judge.

The Judiciary's redaction authority necessitates that there be a rigorous process in place to ensure that sensitive information is not released in response to a specific request. For this reason, the Judiciary's current request-based system is more prudent than having disclosure statements accessible online.

- 2. Access to our federal courts and judicial branch should be available to all Americans, not only those with the ability to wait in line and attend a proceeding in person. I understand fourteen federal courts are participating in a video pilot program which has been well received.**

Question: What else is the Judicial Conference doing to improve and increase access to video and live audio transmission of oral arguments in our federal courts?

Answer:

The Judiciary has been a leader across the government in providing public access to a large amount of its data, proceedings, and records. The Judicial Conference is working on several initiatives to improve public access to federal court proceedings.

Since 1996, the Judicial Conference has allowed each court of appeals to decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments. In addition, each of the 13 courts of appeals makes audio recordings of oral arguments available to the public, and 11 courts of appeals do so free of charge on their websites. In addition, as noted in the question, the Judiciary's "cameras-in-the-courtroom" pilot, slated to continue through July 2015, is evaluating the effect of cameras in district courtrooms, video recordings of proceedings, and the publication of those videos. Fourteen district courts are participating and, as of February 2014, approximately 104 civil proceedings have been posted on the publicly-accessible website www.uscourts.gov. The recordings involve a variety of causes of action, including personal injury, libel and slander, trademark, patent, contract, habeas, and civil rights violations. The types of proceedings recorded have included injunction motions, summary judgment motions, motions to dismiss, and full jury trials.

The Judiciary has also increased public access to court proceedings in recent years through its digital audio initiative that makes digital audio recordings of courtroom proceedings available on the Public Access to Court Electronic Records (PACER) system, at www.pacer.gov. In 2007, the Judicial Conference began this initiative, used by all bankruptcy courts and a handful of district courts. The recordings are generally made available within 24 hours after the conclusion of a proceeding.

The federal Judiciary also maintains a YouTube channel, at www.youtube.com/uscourts, with video news and information from around the Judiciary. These videos span a diverse range of topics, including bankruptcy how-to's, profiles on careers with the Judiciary, educational resources, public warnings, and news broadcasts. All are publicly available for viewing and commenting. In addition, opinions in all federal courts are available for free and searchable on the GPO's Federal Digital System (FDsys).

The Judiciary recognizes the importance of public access to court proceedings and records. It remains dedicated to enhancing public confidence in the courts and allowing citizens to learn first-hand how our judicial system works, while also ensuring that the litigants appearing in court – both civil and criminal – receive their constitutional right to a fair trial.

- 3. I applaud your efforts to make final court opinions more freely accessible online through your partnership with the GPO. It is important that the American public is able to access not only final opinions, but to observe the judicial process as it unfolds. The right to access court proceedings has long been guaranteed in our country, and this access has been made available through the technology of the time. You currently provide access through the fee-based PACER web site. You have justified the fees as necessary to pay the costs of service. Despite your effort to offer partial fee waivers and other concessions, I am concerned that the public does not have timely and modern access to public records.**

Question: Would you accept an offer – from an independent non-profit – to provide permanent, free, online access to the public of all up-to-date court records found in PACER?

Answer:

The Judiciary would welcome a further dialog with interested parties and we encourage organizations to contact the Administrative Office's Electronic Public Access program staff directly regarding PACER issues.

The Judiciary's partnership with GPO to provide court opinions on-line without charge has been very successful and we appreciate the acknowledgment of the impact that program has had on public access. We can report that 11 of the 13 federal appellate courts have now joined this program and almost half of the district and bankruptcy courts currently participate as well – and the number is growing. The GPO reports that federal court opinions are one of the most utilized collections on FDsys, which includes the Federal Register and Congressional bills and reports. The Judiciary is proud of the commitment it has made to effective public access through the PACER system over the past 25 years. In addition to the GPO opinions program, we would note a number of other initiatives and policies designed to provide easy and affordable access to court information:

- Every courthouse has public access terminals in the clerk's office to provide access to PACER and other services, such as credit counseling. The \$0.10 per page fee is not charged for viewing case information or documents on PACER at the public access terminals in the courthouses.
- The Judicial Conference has a fee exemption and waiver policy in place. As a result, approximately 20 percent of all PACER usage is performed by users who are exempt from any charge – including indigents, case trustees, academic researchers, CJA attorneys, and *pro bono* attorneys. In addition, if an individual account does not reach \$15 quarterly, no fee is charged at all. In a given fiscal year, *approximately 75 percent* of active PACER users have some or all of their charges waived.
- The majority of fee revenue comes from a handful of users, with less than 1 percent of accounts generating more than 65 percent of revenue. The largest account belongs to the Department of Justice (DOJ) with approximately 16,500 users. Other than the

DOJ, the top users are major commercial enterprises, large law firms, and financial institutions. These users collect massive amounts of data, often for aggregation and resale, which is permissible.

- Parties to a court case receive a copy of filings in the case at no charge.
- In addition to PACER access, which allows users to "pull" information from the courts, approximately 55 district courts and 90 bankruptcy courts are using a common, free internet tool, RSS, to "push" notification of docket activity to users who subscribe to their RSS feeds, much like a Congressional committee might notify its RSS subscribers of press releases, hearings, or markups.

The Judiciary is very interested in collecting feedback from our users – which include independent, non-profit organizations. As recently as 2012, we conducted an assessment of user satisfaction which revealed that overall satisfaction increased significantly since an earlier assessment in 2009. Nearly all respondents are satisfied with PACER overall (90 percent), compared to 75 percent satisfied in 2009. The percent dissatisfied decreased substantially to 3 percent from 15 percent in 2009. Additionally, the current average satisfaction rating is 4.26 out of a possible 5, compared to 3.97 in 2009. In general, users express satisfaction with the current pricing of PACER. Users continue to be satisfied with the value of PACER for the money they pay, giving it an average satisfaction rating of 4.18 with 81 percent satisfied and 13 percent neutral. Users also continue to be satisfied with how PACER is priced, giving it an average satisfaction rating of 4.01 with 73 percent satisfied and 22 percent neutral.

Notwithstanding these accomplishments, we continue to work to improve and modernize PACER services. The initial releases of the next generation of the Judiciary's case management systems are scheduled to begin deployment later this year and they will bring improved services, interfaces and enhanced security to PACER users.

- 4. According to your appropriations justifications, the cost of offering online public access to court records has grown consistently and substantially. At the same time, the market cost of offering access to digital records has continued to plummet. The GSA has established special vehicles for federal entities use these services. The Department of Homeland Security, among many others, is using these security-certified services and saving a great deal of money.**

Question: Why haven't the US Courts done this for public court records?

Answer:

The development of case management systems that support electronic filing of court documents, and PACER, which provides electronic access to those records, has fundamentally changed how federal courts, and the lawyers, judges and staff who work in them, perform their jobs. PACER and Case Management and Electronic Case Files (CM/ECF) are dynamic systems

that provide real time access to electronic case files and require broad and comprehensive systems to maintain and update those records. This is unlike digital records from agencies that can be placed in a repository without any interface with systems that change/update that information daily.

At the same time, the Judiciary has worked diligently to contain costs and ensure that the costs associated with PACER access are reasonable. Significant investments have been made to improve the IT infrastructure that supports CM/ECF and PACER. Programs like Electronic Bankruptcy Noticing improve the service that bankruptcy courts provide to debtors and creditors and save millions of dollars each year.

It is important to note that the Judiciary's Electronic Public Access Program encompasses more than just offering real-time access to electronic records. Congress has authorized the Judiciary to utilize EPA fee revenue to fund program expenses and enhancements that increase public access to the courts, including court websites, on-line juror services, courtroom technology, the Judiciary's Case Management and Electronic Case Filing system (CM/ECF), electronic bankruptcy noticing and Violent Crime Control Act Victim Notification. The next generation of the Judiciary's case management systems will also offer additional services to the public.

Security

5. The issue of physical security at federal courts has been of major concern in recent years. At the same time, sequestration resulted in major cuts to existing security practices.

Question: Can you tell us about the current state of security of federal courts and what areas you've identified as in need of improvement?

Answer:

Currently, adequate security is provided at federal courts by the U.S. Marshals Service (USMS) and the Federal Protective Service (FPS). Going forward, the Judiciary is concerned about implementing the Homeland Security Presidential Directive (HSPD)-12 requirements for Personal Identity Verification (PIV) and Personal Identity Verification-Interoperable (PIV-I) cards throughout the federal court system. HSPD-12 established a mandatory, government-wide standard for a secure and reliable form of identification for federal employees and contractors in the executive branch. The Judiciary is not legally required to comply with HSPD-12; however, because the Judiciary is housed in facilities owned or controlled by the executive branch, and protected by executive branch entities, the Judicial Conference endorsed the Judiciary's participation in the program. The costs of implementing HSPD-12 are significant, and the specific requirements continue to evolve. The Judiciary's FY 2015 request includes \$3.5 million in the Judiciary Information Technology Fund for continued implementation of HSPD-12 requirements.

On a related issue, the USMS has advised the Judiciary that the physical access control systems (PACS) (e.g., card readers) at many court facilities are aging into obsolescence. Since FY 2010, the USMS has been upgrading old PACS with new equipment; however, the USMS has experienced difficulties in keeping up with the rate of system failure and the continually changing federal standards for PACS. This may be a challenging issue for the Judiciary in the near future. The Judiciary's FY 2015 request includes \$5.2 million for access control system upgrades.

6. Question: One year after the 30 percent cut in federal court security systems, how have the courts managed to bring security back to the levels necessary for adequate safety?

Answer:

The FY 2013 sequestration cut to security systems and equipment funding required the USMS to only complete the most essential security systems and equipment projects in FY 2013, and to postpone other important projects until later fiscal years. The FY 2014 enacted Court Security appropriation provided essentially the full amount requested for security systems and equipment. The USMS has sufficient funding this fiscal year to begin addressing many of the projects that were postponed in FY 2013 due to sequestration.

7. Question: You are requesting a 6.7 percent increase in court security account funds for FY2015, how will security be negatively affected if this request is not granted?

Answer:

Due to the annual wage rate adjustments for court security officers (CSOs) and FPS guards provided for under the provisions of the McNamara O'Hara Service Contract Act, Court Security costs increase each year even when there are no changes to the security services provided. If the FY 2015 enacted budget does not increase the Court Security appropriation, the Judiciary would need to cut the funding it provides to the USMS for CSOs and security systems and equipment. Authorized CSO posts, which are necessary to protect judges, court staff, litigants, and the public, would not be appropriately staffed because CSO hours would be reduced. Critical security systems and equipment projects would be cancelled or delayed. Hence, there would be a significant adverse impact on the security provided at federal court facilities.

Information Security

8. We've seen an increasing trend in the number of cyber attacks on government websites by hackers trying to improperly access government information. The steps that the Judiciary has taken in recent years to shift its case information to electronic form, while making the system more efficient and more easily accessible to the public, have also increased our chances for cyber attack. This is especially alarming given the kinds of personal information the courts keep on file.

Question: With the passing of the omnibus bill, what is the outlook for these programs?

Answer:

With enactment of the FY 2014 omnibus appropriations bill, some additional investments are being made to enhance the Judiciary's ability to detect, contain, and analyze attacks against Judiciary information systems. The new technologies being deployed will give visibility into attacks (often referred to as advanced persistent threats) that do not follow the same attack patterns as those readily identified by the Judiciary's current security technologies. Further, the Judiciary is enhancing its resistance to distributed denial of service (DDoS) attacks, which have become a source of service disruption for both government and commercial entities. IT security threats are growing in both number and sophistication, and to the extent funding allows, the Judiciary's national IT security program likewise evolves its defenses to ensure that the confidentiality, integrity, and availability of Judiciary information and information systems is maintained in an increasingly hostile environment.

9. Question: How have sequestration cuts adversely affected the present security of this important information?

Answer:

The Judiciary implements a defense-in-depth strategy as part of its national IT security program. Elements of this program include a number of perimeter defenses such as firewalls, host and network-based intrusion detection and prevention systems, internet proxies for web-based threat protection, and incident management support to all Judiciary organizations.

During sequestration, the Judiciary funded these IT security activities to the extent possible; fortunately, no significant security breaches are known to have occurred. However, some areas of the security program had to be curtailed during sequestration. For example, the number of IT security assessments done for local courts in order to evaluate their security posture was reduced, and funds were not available for some enhancements to the national security program. The Judiciary's FY 2014 financial plan contains funding to restore the number of assessments and fund certain IT enhancements as noted in the response to the previous question.

Mental Health Treatment Cuts

10. Sequestration's cuts to mental health services were especially troubling.

Question: Can you tell us about the mental health services that the judiciary currently provides and what the subcommittee can do to help bolster the impact these programs have on public safety?

Answer:

Substance abuse and mental health treatment are interventions that help U.S. probation and pretrial services officers supervise defendants and offenders in the community with the goal

of making them productive members of society. Substance abuse treatment, which includes drug testing and services such as intake assessments, individual counseling, group counseling, cognitive behavioral counseling, and residential treatment, is provided to persons who abuse illegal drugs, prescription drugs, or alcohol. Mental health treatment, which includes services such as psychological/psychiatric evaluations, individual counseling, family counseling, or group counseling, and medication monitoring, is provided to persons who suffer from mental health disorders. These persons either are under pretrial supervision while awaiting a court appearance, on probation, or on supervised release after serving time in prison.

Treatment is ordered by a U.S. district court as a condition of releasing defendants and offenders to the community. Substance abuse and mental health treatment provide officers with the ability to identify, assess, and provide care for defendants and offenders with substance abuse and mental health disorders. Treatment is key to enforcing the conditions set for their release, ensuring that they choose to obey the law rather than commit crimes, and controlling the danger they may pose to the community.

Treatment comes either from community programs that provide services at no cost to the Judiciary or from treatment providers who are under contract with probation and pretrial services offices around the country. Individuals with mental health disorders have varying degrees of biological, social, and environmental characteristics and the need for treatment often encompasses the entire term of supervision and beyond. Since the goal of mental health treatment is for the individual to become capable of sustaining his or her own mental health stability, the focus is linking them with community-based resources. Most individuals with mental health disorders are entitled to services from community mental health centers, and many in this population are also eligible for benefits through Social Security Disability Income, Medicare, Medicaid, and now also expanded coverage under the Affordable Care Act.

The Director of the Administrative Office of the U.S. Courts, under 18 U.S.C. § 3672, has the authority to “contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol dependent person, an addict, or a drug-dependent person, or a person suffering from a psychiatric disorder within the meaning of section 2 of the Public Health Service Act.” Similar authority to contract for services for pretrial defendants released in the community exists under 18 U.S.C. § 3154. Treatment providers nationwide provide services under contracts awarded through a competitive process. The national treatment services statement of work contains over sixty different services to address substance abuse testing and treatment, mental health treatment, and sex offender treatment, as no single treatment approach will help every person. To be able to address defendants’ and offenders’ individual risks and needs, officers require access to various types of treatment (both contract and non-contract).

Sequestration resulted in cuts to the funding allotted for contract treatment services. The courts managed these cuts by trying to find free services in the community, relying on private or public insurance programs, or in some cases, reducing the amount of testing and treatment that was offered to defendants and offenders. The Administrative Office will be measuring what impact these reductions in services may have had on supervision outcomes. As a result of the

funding Congress provided the Judiciary in the FY 2014 omnibus appropriations bill, drug and mental health testing and treatment services are fully funded.

Because effective treatment interventions rely on continuity of services, it is vital that the Financial Services and General Government appropriations subcommittee recommends, and Congress passes, sufficient appropriations for the Judiciary in FY 2015 and beyond so that disruptions in drug and mental health testing and treatment services do not occur.