Responses from FBA National President Christian K. Adams
To Questions for the Record from Senator Feinstein

1. Previously, when this Committee has considered creating new judgeships, questions have come up about the logistics of doing so. Specifically, each judgeship has associated costs, including staff, personnel, security, and other resources. And presumably a number of courthouses would need to be expanded to accommodate the needs of the new judgeships.

    a. In your view, what would be the most significant logistical barriers?

    b. How much do you estimate each new judgeship would cost?

    c. Which courthouses would likely need to be expanded, and what do you estimate would be the cost?

    MR. ADAMS' RESPONSE: These questions involve administrative and financial considerations within the knowledge and expertise of the Judicial Conference of the United States and the General Services Administration. I respectfully defer to their views on these specific questions. More broadly, I would note that the enacted FY 2020 appropriation of $7.5 billion in discretionary spending for the Judiciary represents only two-tenth of one cent of a taxpayer's dollar. This is an infinitesimal amount for a co-equal and coordinate branch of the federal government.

2. My understanding is that the Judicial Conference largely considers weighted filings — which determines caseload by taking into account the time and resources needed for criminal versus civil cases — when recommending additional district court judgeships.

    a. What other factors does the Judicial Conference consider in deciding which district courts need more judgeships?

    MR. ADAMS' RESPONSE: I respectfully defer to the Judge Miller in explaining the analytical methods and factors employed by the Judicial Conference in deciding which district courts need more judgeships.

    b. In your view, which district courts are in greatest need of additional judgeships?

    MR. ADAMS' RESPONSE: As my testimony noted, on April 28, 2020, in connection with its fiscal year 2021 supplemental appropriations request, the Judiciary repeated its request for the authorization of seven judgeships that were previously included in the Judicial Conference's larger judgeships request in 2019. The seven requested district judgeships are in the districts of: Southern Indiana; Delaware; New Jersey; Western Texas; Arizona; Southern Florida; and Eastern California. My testimony pointed to the dramatic underlying reasons in each of these districts that compel action. In addition, the Judiciary requested the conversion of eight temporary judgeships to permanent status in the following judicial districts: Kansas; Eastern

Missouri; Arizona; Central California; Southern Florida; New Mexico; Western North Carolina; and Eastern Texas.

I believe Congressional authorization of these specific judgeship requests is urgently warranted. As my testimony pointed out, the federal court system today is in greater need of these judgeships than even a year ago. The Judicial Conference noted in its supplemental funding request that a backlog of cases incapable of adjudication during the pandemic is building in many courts. One of the districts in urgent need of additional judgeships, the Eastern District of California, has declared a judicial emergency (under 18 U.S.C. § 3714(b)) due to the effects of the pandemic. This declaration was issued because the Eastern District of California has a calendar so congested that it is unable to meet certain statutory time limits to hear cases.

3. What are the major harms to the parties in districts where weighted caseloads are high? Please elaborate on the impacts on both civil and criminal dockets.

MR. ADAMS' RESPONSE: High weighted caseloads in federal court cause delay in the administration of justice, particularly in civil cases. The remedial and financial harm to civil litigants can be especially significant. Delay also contributes to an erosion in respect by litigants and the public at large for the federal judicial system.

Delay is often longer and more frequent in the civil docket than the criminal docket because of the requirements of the Speedy Trial Act (18 USC §§ 3161-3174), which establishes time limits for completing the various stages of a criminal prosecution. The statutory requirements of the Speedy Trial Act are buttressed by the Sixth Amendment, which guarantees the right of a criminal defendant to prompt justice. Under the Speedy Trial Act, for example, the government must file an indictment within 30 days from the date of arrest or service of the summons to a defendant (18 USC §§ 3161(b)). Similarly, trials must commence within 30 days from the date of arrest or service of the summons, although certain pretrial delays are automatically excluded from the Act's time limits, such as delays caused by pretrial motions (18 USC § 3161(c), 18 USC § 3161(h)(1)(F)).

But statutory controls to guard against delay in civil cases do not generally exist in federal court. There is no equivalent of the Sixth Amendment or the Speedy Trial Act to assure prompt justice to litigants. Delay can negatively affect a wide variety of disputes, particularly commercial disputes with millions of dollars hanging in the balance. Delay can be tactically used by defendants to unfairly extract settlements and avoid blame in meritorious cases. My testimony pointed to an illustrative example, involving an industrial trade secrets case in federal court involving well-funded defendants, in this case a Chinese manufacturing company and an American citizen, who exploited the federal court's case backlog, along with frivolous motions and obstreperous discovery delays, to avoid guilt and the payment of damages.

Responses from FBA National President Christian K. Adams
To Questions for the Record from Senator Grassley

Questions to Mr. Adams

1. As part of my 1999 report on appellate judgeships, I requested that the Government Accountability Office (GAO) look into non-case related judicial travel in circuits that had requested additional judgeships. The GAO study found 1,463 non-case related trips from 1995 through the end of 1997. That translated into an aggregate loss of 3,220 workdays. Years later, this still seems to be a problem. In 2015, GAO released another report not only highlighting the hefty price tag taxpayers paid for judges' non-case related travel—$11.5 million between Fiscal Years 2013 and 2014—but also detailing how the Administrative Office of the U.S. Courts wasn't adequately tracking non-case related travel costs paid by the taxpayer.

    a. Before Congress creates new judgeships, shouldn't we ensure that current judges are cutting down on unnecessary travel and, instead, spending as much of their time possible on hearing and deciding cases?

    MR. ADAMS' RESPONSE: All public officials, whether elected or appointed, should strive to perform their public duties with cost efficiency and the interests of the taxpayer in mind. Non-case related travel by the judiciary, however, is not necessarily contrary to these interests, nor does it represent an inappropriate use of time. "Non-case related travel", according to the Judiciary's *Guide to Judiciary Policy's Travel Regulations for Justices and Judges,* means travel undertaken by a judge (1) that is not directly related to any case or cases assigned to the judge; (2) that involves judicial administration, training, education, and extra-judicial activities as permitted by law and encouraged by the *Code of Conduct for United States Judges;* and (3) for which the necessary transportation, lodging, and miscellaneous expenses incurred by the judge are paid for directly or by reimbursement to the judge, by another person, an organization, or an agency of the federal government. A review of the 2015 GAO report reveals that "non-case related travel" encompassed a wide variety of travel essential to the operations of the federal courts and the administration of justice, including judicial meetings and activities within and outside the district or circuit; training, workshops, seminars and other activities sponsored by the Administrative Office of the U.S. Courts or the Federal Judicial Center; meetings and conferences pertaining to courthouse construction; and speaking engagements at meetings and seminars of bar associations, law schools, and other organizations.

2. In a 2005 Senate hearing on judgeships, the Chairman of the Committee on Judicial Resources for the Judicial Conference testified about protecting the collegiality of courthouses. He said, "We want to be careful about the number of judges that we have in the Nation. We certainly don't want to have any more than we absolutely need. I think there is a feeling in the judiciary that to add lots of judges in the system over time could diminish the special nature of the courts, and so I think we want to be very careful."

a. Do you agree? Should we still be concerned about the impact on collegiality if we add more judgeships?

MR. ADAMS' RESPONSE: The loss of collegiality may be implicated when extraordinary numbers of judges are added to a judicial district or circuit because of unusually high caseloads, but that outcome raises questions as to the size of the district or circuit, not necessarily the need for more judgeships. The 2019 recommendations of the Judicial Conference of the United States for additional judgeships are warranted and are at a level that would not diminish the collegiality of the affected circuit and districts. Reductions in caseloads through additional judgeships would diminish the heavy burden placed on judges and enhance collegiality.

b. Should the Judicial Conference give special consideration to the potential effects on collegiality within a court when determining if additional judgeships are warranted?

MR. ADAMS' RESPONSE: My above response to question (a) responds to this question.

Response from FBA National President Christian K. Adams
To Question for the Record from Senator Klobuchar

Many district court judges are hearing far more cases than the judicial conference recommends, which overburdens judges and staff and can lead to significant delays in the consideration of cases.

- How might overburdened courts impact access to justice, particularly for people who cannot afford to hire an attorney?

MR. ADAMS' RESPONSE: For unrepresented litigants in civil proceedings (referred to as "pro se litigants" in this response), high-caseloads in overburdened courts can potentially aggravate their access to justice. Delay is often longer and more frequent for litigants on the civil docket than the criminal docket due to the requirements of the Speedy Trial Act (18 USC §§ 3161-3174), which establishes time limits for completing the various stages of a criminal prosecution. Such statutory time limits do not exist in civil cases in federal court, putting impoverished pro se litigants more at risk. Pro se litigants typically are without the financial means to afford an attorney and may involve persons with mental and physical disabilities, including persons challenging the denial of Social Security disability benefits.

Fortunately, the good news is that cases involving pro se litigants in federal court typically are assigned to magistrate judges who have been trained to address the special needs of pro se litigants and provide assistance in navigating the procedural complexities of the federal court process. In addition, many federal courts maintain programs in collaboration with bar organizations to provide bro bono assistance through the enlistment of private attorneys who have volunteered to serve the needs of pro se litigants through referral by the bench. One of the most notable examples of such bench-bar collaboration involves the United States District Court for the District of Minnesota, which has joined with the Minnesota Chapter of the Federal Bar Association to establish *The Pro Se Project*, providing civil pro se litigants who receive a judicial referral the opportunity to consult with volunteer counsel and improve their access to justice. The *Pro Se* Project has served more than 1,400 pro se litigants over the past decade and has received national recognition for its work with indigent and disabled individuals.

In addition, the Federal Bar Association's Access to Justice Task Force in 2019 published a manual for pro se civil litigants, entitled "Representing Yourself in Federal District Court: A Handbook for Pro Se Litigants" (available at https://bit.ly/3fzPNG4). The Task Force has provided the handbook to all 94 federal district courts throughout the country for wide distribution to pro se litigants.

Responses from FBA National President Christian K. Adams
To Questions for the Record from Senator Tillis

There has been an increase in weighted overall filings in federal district courts from 386 per judgeship to 513 as of September 2018.

1. How many federal judicial districts currently have a caseload above average?
    i. Please provide a list of these districts with the weighted caseload
2. How many federal judicial districts currently have a caseload below average?
    i. Please provide a list of these districts and the weighted caseload.
3. How many, federal judicial districts, if any, saw a decrease in court filings since the previous report to Congress and the 2019 report?
    i. Please provide a list of these districts and the weighted caseload
4. In addition to a judge's salary, what are the other costs associated with a new judgeship?

MR. ADAMS' RESPONSE: To each of these questions, I respectfully defer to the views of Judge Miller and the Judicial Conference of the United States, who have greater command of the data and information necessary to respond.

I have attached a backgrounder on the 2020 Policy Priorities of the Federal Bar Association, which reflects the strong support of the Federal Bar Association for the Judicial Conference's judgeship recommendations.

Federal Bar Association

2020 Public Policy Priorities

The Federal Bar Association is the foremost national bar association devoted exclusively to the practice and jurisprudence of Federal law and the vitality of the United States Federal court system. Nearly 20,000 lawyers and judges belong to the Association, which believes the following priorities deserve attention.

Our Federal Courts Need Adequate Funding

The Federal Bar Association supports the Federal Judiciary's FY 2021 budget request and urges Congress to provide sufficient funding to permit the Judiciary to fulfill their Constitutional and statutory responsibilities. The Judiciary's FY 2020 budget request of $7.8 billion in discretionary appropriations reflects an increase of 4.4 percent above the Judiciary's FY 2020 enacted appropriation. The request includes funding to keep pace with increased criminal prosecutions, new judicial appointments, and the increased need for probation supervision of offenders released from prison. Funding for the Federal Judiciary, a coordinate branch of our Federal government, represents only two-tenths of one penny of a taxpayer's dollar.

Set a Higher 302(b) Budget Allocation for FSGG Funding

The FBA also urges Congress and its appropriations committees to set a higher 302(b) budget allocation for the Financial Services and General Government (FSGG) Appropriations Subcommittee, whose jurisdiction includes, among others, the Judiciary and General Services Administration (GSA) and its revolving Federal Buildings Fund. The Judiciary rents space in nearly 800 courthouses and pays $1.1 billion in rent annually into the FBF; however, an increasing number of courthouse repair projects remain unfunded due to FBF funding shortfalls. During most of the past decade, Congress appropriated an average of $1 billion per year less than FBF rents collected, leading to FBF funding shortfalls and major deferred maintenance problems. Many Federal courthouses are suffering from water intrusion issues, mold, broken elevators, broken HVAC systems, deteriorating exterior façades and seismic retrofit issues. A higher 302(b) budget allocation for the Subcommittee will permit courthouse repairs and renovations to proceed and better assure the safety of the public and courthouse employees and the judicial process.

The Need for Prompt Action in Filling District Court Vacancies

A significant number of district judge vacancies remain, despite substantial progress in filling appeals court vacancies. In late February 2020, there were 70 district court vacancies, including 42 vacancies whose duration and workload constitute a "judicial emergency," as defined by the Administrative Office of the U.S Courts. District courts are the trial courts of the federal court system. When district vacancies remain unfilled, increased caseloads delay the prompt delivery of justice, harm the economic interests of litigants,

and erode public respect for the courts. The Federal Bar Association calls upon the President and Congress to act promptly and responsibly in nominating and confirming well-qualified nominees to the Federal courts.

Growing Caseloads in our Federal Courts Require More Judgeships

Maintenance of the appropriate number and distribution of judicial officers throughout the federal courts is critical to the effective administration of justice. Congress has not approved comprehensive judgeship legislation since 1990, thirty years ago. In March 2019 the Judicial Conference transmitted a request to Congress for five new circuit judgeships, 65 new district judgeships, and the conversion of eight temporary district judgeships and 10 temporary bankruptcy judgeships to permanent status. Meanwhile, cases filings in the district courts and courts of appeals have significantly increased. The Federal Bar Association urges Congress to approve the Judicial Conference's judgeships request. More immediately the FBA urges Congress to extend for one year eight temporary district judgeships that meet the Judicial Conference's standard for conversion to permanent status. These temporary judgeships are in the following districts: Arizona, California-Central, Florida-Southern, Kansas, Missouri-Eastern, New Mexico, North Carolina-Western, and Texas-Eastern. Without these requested extensions, the administration of justice in the affected districts will be disrupted and delayed.

Congress Should Establish an Independent Immigration Court

There is broad consensus that our system for adjudicating immigration claims is broken and deserves systemic overhaul. Hiring more immigration judges, while urgent, will not address the longstanding management and operational deficiencies within the Executive Office for Immigration Review (EOIR) in the Department of Justice. Since 2013 the Federal Bar Association has urged Congress to replace EOIR with and establish an independent "United States Immigration Court" to serve as the principal adjudicatory forum under title II of the Immigration and Nationality Act. The June 2017 Government Accountability Office (GAO) report reported that a majority of immigration court experts and stakeholders favored EOIR replacement with an independent Article I immigration court. Establishing a specialty court would replace an overstaffed, bloated bureaucracy with a new structure, modeled on the federal courts, their case management expertise, and demonstrated record for delivering prompt, effective justice.

Support for Foundation of the Federal Bar Association Charter Amendments Legislation

The FBA urges the Senate to pass the bipartisan Foundation of the Federal Bar Association Charter Amendments Act, H.R. 1663, as approved by the House on November 18, 2019. The measure would make technical changes in the federal charter of the Foundation of the Federal Bar Association, as granted by Congress in 1954. It would permit the Foundation to better fulfill its role as the only institution chartered by Congress to promote the federal administration of justice, the advancement of federal jurisprudence and the practice of law in the federal courts.

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Responses from FBA National President Christian K. Adams
To Questions for the Record from Senator Booker

Mr. Adams, I discussed these issues with Judge Miller at the hearing, and I would like to ask for your responses to these questions as well.

1. The federal judiciary became significantly more diverse under President Obama—but much less diverse under President Trump. According to a recent study, 42 percent of President Obama's judicial appointees were women, and 36 percent were people of color. By contrast, only 24 percent of President Trump's appointees have been women, and only 14 percent have been people of color.[1]

    a. Do you think it is an important goal for there to be demographic diversity on the federal bench?

    b. Are you troubled by the fact that the federal judiciary is becoming significantly less diverse, in terms of race, ethnicity, and gender, because of President Trump's appointments to the bench?

MR. ADAMS' RESPONSE: The Federal Bar Association (FBA) supports the full and equal access to, and participation by, all individuals in the Association, the legal profession, and the justice system regardless of race, gender, ethnicity, national origin, religion, age, sexual orientation, gender identity, disability, or any other unique attribute. The FBA recognizes that achieving diversity in the legal profession requires the Association's continued effort and commitment. The FBA is committed to diversity throughout the Association and looks to the President and the Senate to embrace equal commitment to diversity on the federal bench in the performance of their Constitutional responsibilities involving the appointment and confirmation of candidates to the federal bench.

2. Thurgood Marshall was one of the great lawyers of our times. He founded and ran the NAACP Legal Defense Fund, and he argued cases that transformed American law and life, from education in *Brown v. Board of Education* to housing in *Shelley v. Kraemer*. He also served as a judge on the Second Circuit and as a Justice on the Supreme Court. But we see vanishingly few people join the federal bench who spent most of their careers advocating for the rights of the disadvantaged.

    According to a recent study, no sitting appellate judge spent the majority of their prior career at a nonprofit civil rights organization. And about 1 percent of all sitting federal appellate judges spent most of their prior careers as public defenders or legal aid attorneys.[2]

a. Do you think it is an important goal for there to be professional diversity on the federal bench?

b. Do you think the federal bench would be stronger if our judges came from a more diverse set of professional experiences?

MR. ADAMS' RESPONSE: By most measures, the legal profession remains one of the least diverse professions in the nation.[3] Statistics related to the demographic composition of the legal profession reveal the need for improvement. Women have accounted for approximately 36 percent of lawyers[4] and less than a quarter of partners[56] in law firms for the past six years, even though they make up roughly half of the population nationwide. Representation of African Americans and black lawyers has not improved in over the past decade. While African Americans and blacks comprise approximately 13 percent of the U.S. population, they account for only about 6 percent of lawyers and less than 2 percent of law firm partners. There are multiple *Am Law* 100 firms without a single black partner among their ranks. Similarly, Hispanics account for nearly 18 percent of the U.S. population, but only about 7 percent of lawyers generally and less than 3 percent of partners in law firms.

Fortunately, some areas of progress in diversity and inclusion have been achieved in the legal profession. While those who identify as Asian or Asian-American make up only 6 percent of the U.S. population, they comprise nearly 12 percent of associates and 4 percent of partners at law firms. In addition, the Association of Corporate Counsel reported that the percentage of women holding positions at in-house legal departments has reached a near 50-50 split with men on a global scale and that the number of minority lawyers working in-house across the nation mirrors the racial and ethnic composition of lawyers in the United States overall.[7] Data related to lawyers with disabilities is limited. However, 0.53 percent of lawyers surveyed by the National Association for Law Placement Inc. (NALP) reported having a disability. Moreover, almost 3 percent of lawyers surveyed by NALP identify as being a member of the LGBT community, which was an increase over previous years.

The association I am privileged to lead – the Federal Bar Association -- is committed to broadly embrace and impact diversity issues in federal practice as a whole. We have established a Standing Committee on Diversity & Inclusion (D&I) to drive and lead unequivocal and meaningful diversity and inclusion in every part of the legal community. Our D&I strategic plan is founded on the recognition that diversity can only be realized through active and meaningful inclusion.

We are committed to learn from, support, and build on the work that is being done in courts, law firms, and other organizations around the country. Our members are federal judges and lawyers from all practices and all levels of the federal court system. We span public and private arenas, organizations that are large and small, and generations ranging from law students to seasoned professionals. We are a broad umbrella and a common thread connecting judges, public, private, and in-house

lawyers, and law school students. Our responsibility is to ensure that federal practice and federal courts truly reflect the rich diversity of the nation we serve.

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[1] *Diversity on the Federal Bench*, AM. CONST. SOC'Y (Mar. 2020), https://www.acslaw.org/judicial-nominations/diversity-of-the-federal-bench (using data from the Federal Judicial Center).
[2] Maggie Jo Buchanan, *The Startling Lack of Professional Diversity Among Federal Judges*, CTR. FOR AM. PROGRESS (June 17, 2020), https://www.americanprogress.org/issues/courts/news/2020/06/17/486366/startling-lack- professional-diversity-among-federal-judges.
[3] Institute for Inclusion in the Legal Prof., IILP Review 2017: The State of Diversity and Inclusion in the Legal Profession (2017), http://www.theiilp.com/resources/Pictures/IILP_2016_Final_LowRes.pdf.
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[5] Nat'l Ass'n for Law Placement, 2018 Report on Diversity in U.S. Law Firms (Jan. 2019), https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms_FINAL.pdf.
[6] Vivia Chen, *Am Law Firms With Zero Black Partners—How Is This Possible in 2019?*, Am. Law. (June 6, 2019, 6:05 PM), https://www.law.com/americanlawyer/2019/06/06/am-law-firms-with-zero-black-partners-how-is-this-possible-in-2019.
[7] Ass'n of In-House Couns., 2015 ACC Global Census: A Profile of In-House Counsel (2015), https://www.acc.com/sites/default/files/resources/vl/purchaseOnly/1411926_2.pdf.