

## **RESPONSE TO QUESTIONS FROM SENATOR DIANNE FEINSTEIN**

**QUESTION: 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?**

**RESPONSE:** Following authorization of new Article III judgeships, each new judge appointed will be entitled to a staff allocation, which includes law clerks, paralegals, and judicial assistant/secretaries. New judges are typically provided existing chambers and courtroom space, or existing space is reconfigured to create a new chambers or courtroom for the new judge, consistent with Judicial Conference policy and standards. Additionally, each newly appointed judge receives small allocations for other overhead costs, including legal research resources, furniture, and IT equipment.

While it has been nearly 20 years since Congress authorized an additional Article III judgeship, the federal judiciary is prepared to provide the resources to support new judgeships. In fact, the federal judiciary regularly addresses logistical issues when a new judge comes on board for reasons other than a newly created judgeship. For example, when a judge takes senior status and that judge's replacement is appointed, when new magistrate judges are authorized, or when new bankruptcy judgeships are authorized, the judiciary allocates appropriate resources, space, and personnel to support that judge. The process will be similar for a newly authorized Article III judgeship. While there are logistical issues to address, they should not be considered barriers to authorizing needed additional judgeships.

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

**RESPONSE:** In addition to a judge's salary, which is mandatory or direct spending, there are other costs associated with supporting that new judgeship. These costs, which may include those listed below, are considered discretionary spending and would be covered by judiciary appropriations:

- pay and benefits for chambers support staff (such as law clerks and assistants) and for other court support personnel (such as courtroom deputies, court reporters/recorders or other court staff); and
- operations and maintenance expenses (such as security investigations, courtroom digital audio recording equipment, telephone systems, furniture, and other administrative costs).

- For a new circuit court judgeship, these associated costs are estimated at \$603,631 for the first year and then \$527,874 in annually recurring costs (based on projected costs for FY 2022).
- For a new district court judgeship, these associated costs are estimated at \$643,986 for the first year and then \$583,432 in annually recurring costs (based on projected costs for FY 2022).

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

**RESPONSE:** If Congress were to authorize new judgeships, it is very likely that additional space – both in terms of additional chambers and courtrooms – would be needed to house the judges that fill these new positions. However, while the judgeships would be created for a specific judicial district, it would be up to the individual district court to determine where to assign the new judge, i.e., where the new judge’s duty station would be located within the district. Without knowing the duty station of each judge, it is impossible to determine which specific courthouses would likely need to be expanded.

Some courthouses have existing space; others have space that can satisfy the new space needs. This would be done in accordance with all Judicial Conference policies. Over the past year, the average construction cost for judicial chambers was approximately \$0.9 million; the average construction cost for a new courtroom was approximately \$1.7 million. It should be noted that individual project costs are heavily influenced by building condition and the conditions of the local market.

If space could not be made available within the existing courthouse, the court would work with GSA, the judiciary’s statutory landlord, to identify available space elsewhere within the judge’s duty station. This could include leased space or new construction.

**QUESTION 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?**

**RESPONSE:** The Judicial Conference standard for considering recommendations for additional Article III judgeships in the district courts begins with the number of weighted filings per authorized judgeship. There are, however, several additional factors that the Conference considers when requesting additional judgeships or the conversion of existing temporary judgeships. These factors include the assistance provided by senior, visiting, and

magistrate judges, unique caseload situations such as multidistrict litigation cases, the geography of the court, an assessment of unusual fluctuations in caseload due to temporary factors, and any other information that a court provides when submitting a request for additional judgeships.

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

**RESPONSE:** While many courts throughout the nation are in need of additional judgeships, as reflected in our May 2019 request, several continue to struggle with extraordinarily high and sustained workloads. The Western District of Texas, the Eastern District of California, the Southern District of Florida, the Southern District of Indiana, and the Districts of New Jersey, Delaware, and Arizona require immediate action. The impact of COVID-19 has only exacerbated the need in these districts, as well as the need to convert the eight existing temporary judgeships to permanent status in the following districts: Arizona; California-Central; Florida-Southern; Kansas; Missouri-Eastern; New Mexico; North Carolina-Western; and Texas-Eastern to ensure that those judgeships are not lost after reaching their lapse dates in 2021.

**QUESTION: 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.**

**RESPONSE:** The harm to litigants in districts which need additional Article III judgeships is profound. Excessive caseloads lead to significant delays in the consideration of cases, especially civil cases which may take years to reach trial. For most of the districts with the highest weighted caseloads in the country, the median time from filing to trial for civil cases exceeds two and a half years, and can be as long as four years. Delays also increase expenses for civil litigants, which may disproportionately affect poor and middle-class litigants who are less able to afford the litigation costs. They may also increase the length of time criminal defendants are held pending trial. When defendants are detained for considerable periods of time prior to trial, and then found not guilty, that causes distrust in the court system and undermines the judiciary.

Substantial delays also diminish respect for the judiciary and the judicial process. In extreme cases, the problem may become so severe that potential litigants will opt to avoid federal court altogether. Delays in the resolution of civil litigation may also have negative economic effects on the communities which the court serves. These include small businesses that cannot afford to litigate for years, companies that look at the court system and how quickly they can get access to justice in deciding where to locate, and plaintiffs waiting years for financial relief owed to them, to name a few. While cases are delayed in court, the business world continues to operate. A case can be delayed so long that it is moot by the time the judge hears it. This is especially true in the areas of technology which quickly evolve.

In addition, for criminal dockets, the question about the impact of high judicial caseloads cannot be answered in isolation without also considering resources provided to the parties. The Department of Justice (specifically the U.S. Attorneys) has repeatedly sought and received increases in funding and positions to permit the prosecution of a greater number of cases. Funding for public defense has not kept pace. Just as there is a need to fill and fully fund judgeships to ensure that the rights of criminal defendants are not harmed, there is an equal need to fully fund and staff federal defender offices.

## **RESPONSE TO QUESTIONS FROM SENATOR CHUCK GRASSLEY**

**QUESTION: 1. A 2003 Government Accountability Office (GAO) report gave recommendations to the Administrative Office of the U.S. Courts regarding the process it uses to calculate caseloads of district and appellate judges. (<https://www.gao.gov/assets/100/91909.pdf>) Specifically, GAO recommended that the Judicial Conference “update the district court case weights using a methodology that supports an objective, statistically reliable means of calculating the accuracy of the resulting weights.” In 2013, however, GAO testified that the Judiciary still had no plans to adopt the recommendations or update the formula used to calculate “weighted filings” or “adjusted case filings.” At the hearing on June 30, 2020, I asked you whether the Administrative Office has made any efforts to institute GAO’s 2003 recommendations, as well as whether the current formula used to determine “weighted filings” and “adjusted case filings” accurately calculates the number of judges needed. You responded by saying, “in 2016, the Judicial Conference approved updated case weights for the district courts.” You acknowledged that GAO has “not yet reviewed” the updated methodology or case weights but said you believe GAO’s recommendations have been addressed.**

- a. What specifically did the Judicial Conference do in updating its case weights for district courts?**

**RESPONSE:** The Judicial Conference developed updated district court case weights using an event-based methodology that measures, on average, how often events (e.g., trials, hearings, conferences, etc.) occur in the resolution of cases and how long it takes judges to perform those events. Three general types of case events were incorporated into the most recent case weight study:

- proceedings such as jury and non-jury trials, evidentiary hearings (e.g., injunctive relief, temporary restraining orders, arraignments and pleas, sentencing), general hearings (e.g., discovery motions), and conferences (e.g., pretrial, status, scheduling, settlement);
- preparation for proceedings, hearings, and trials; and
- research, reading, writing, and editing orders responsive to specific types of motions.

Information on how often events occur was collected from docketing data maintained by the district courts. To ensure a nationally representative sample of case types and case processing procedures, the study relied on data from every civil and criminal case terminated in each district court during calendar year 2012. Information on how much time judges spent performing their work came from 1) objective data routinely and contemporaneously entered into the Case Management/Electronic Case Files (CM/ECF) system, the judiciary’s docketing database, which also documents the time judges spend on individual proceedings, and 2) judgments of how much time is spent on case events in chambers and other non-courtroom areas. The judgment-based times were obtained from a survey of more than 200 experienced district judges who had been selected to take part in the study. The study produced case weights which, when applied to 2016 case filings,

resulted in weighted filings that were seven percent lower, nationally, than weighted filings for the same period using the previous case weights.

**QUESTION: b. How do the 2016 case weight updates address GAO’s concerns and fully implement its 2003 case weights recommendation?**

**RESPONSE:** The district court case weights were previously updated in 2004 and the GAO raised two primary concerns about that update: that the caseload data were obtained from two different automated systems and that the judiciary did not use a time study to collect data not obtained from the automated systems. The first concern has been resolved as all district courts are using the same automated system (CM/ECF) and have been for over a decade, including during the time period assessed in the most recent case weight study. For the data not obtained from the automated system, the Conference did not use a time study for the 2016 update for two primary reasons. First, the updated automated system used by the judiciary enabled the Conference to collect substantially more empirical data, particularly with regard to non-trial proceedings such as hearings and conferences, than was collected in the previous case weight update. Second, the Conference believes that the survey method used to collect the data on time spent in chambers provided accurate results while, at the same time, offering significant resource savings and the ability to update case weights more frequently and efficiently. As noted above, based on 2016 case filings, the updated case weights resulted in a national total of weighted filings per authorized judgeship that was seven percent lower than if calculated using the 2004 case weights.

**QUESTION: c. GAO also recommended in 2003 that the Judicial Conference “develop a methodology for measuring the case-related workload of courts of appeals judges that supports an objective, statistically reliable means of calculating the accuracy of the resulting workload measures[.]” Please explain in detail whether the Judicial Conference has developed such a methodology and, if so, how it addresses GAO’s concerns and recommendations.**

**RESPONSE:** The Judicial Conference uses a standard of 500 adjusted filings per panel as the standard for considering requests for additional judgeships for the courts of appeals. Adjusted filings represent filings with each pro se case counted as one-third of a case and reopened appeals excluded. The standard of 500 adjusted filings per panel has been recognized outside the judiciary as a useful and appropriate standard for assessing the need for additional judgeships in the courts of appeals.

With regard to developing case weights for the courts of appeals, there are several reasons why it is problematic to develop a standard set of case weights that could be applied consistently across the circuit courts. One of the primary drawbacks to developing appellate court case weights is that cases of the same type at the district court level may raise vastly different issues on appeal, with varying degrees of complexity. For example, an appeal of a drug conviction could involve allegations of ineffective assistance of counsel, raise constitutional questions regarding the applicable statute, or allege improper application of sentencing guidelines. The complexity and resulting

judicial time burden of those three types of appeals would likely vary significantly, yet they would have the same case weight since all three were appeals involve drug prosecutions. Additionally, different circuits have different procedures and precedents, and the varying practices and circuit law mean that the amount of time, the intensity of energy, and the type of work invested in each case can differ markedly among the circuits. For example, at least one circuit affords oral argument to all parties (other than *pro se* litigants) unless the parties waive oral argument, while other circuits rely more on submissions of briefs. Also, some circuits issue one-word affirmances for certain cases, while other circuits tend to provide a statement of reasons for almost all merits decisions. Based on these and other factors, the judiciary has not developed case weights for the courts of appeals.

**QUESTION: 2. As part of my 1999 report on appellate judgeships, I requested that the 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 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?**

**RESPONSE:** On December 16, 2015, the GAO issued a report, GAO-16-70, *Federal Judiciary, Improvements Needed for Collecting Judges' Non-Case-Related Travel Information*, which found that the judiciary has followed applicable policies and procedures relating to the travel studied in the report and found no substantive concerns with the judiciary's travel spending. The report also noted that travel is currently less than one percent of the judiciary's spending. Judges' non-case related travel is a fraction of that amount (approximately one tenth of one percent).

The judiciary is committed to responsible and prudent use of taxpayer funds to support the administration of justice. When judges travel for official business that is not related to cases, it is most often for the purposes of judicial and court governance, such as meetings of the Judicial Conference and its committees, circuit judicial councils, and court meetings. Although not related to adjudicating cases, this is essential, official business travel. Like all other senior government officials, federal judges have administrative duties in addition to their responsibility for adjudicating cases. By statute (28 U.S.C. § 331), the judicial branch is governed by the Judicial Conference of the United States, and travel by judges for judicial administration includes travel for meetings of the Judicial Conference or its committees, circuit judicial conferences, meetings of courts of appeals, district courts, bankruptcy courts, and groups established by the Director of the Administrative Office, including Administrative Office advisory

councils and working groups. Non-case related travel also includes travel for education and training, sponsored by the Federal Judicial Center, the Administrative Office, and the U.S. Sentencing Commission. Federal judges preside over civil and criminal cases, with subjects ranging from civil rights to intellectual property to narcotics offenses to white collar crime. Ongoing judicial education is essential to assist judges in managing caseloads and administrative duties while keeping abreast of relevant developments in law, science, and technology. Judges on occasion may also engage in official travel unrelated to case adjudication at the request of other branches of government, for example, to assist the Department of Justice in training prosecutors on critical rule of law matters through DOJ's Office of Prosecutorial Development Assistance and Training.

**QUESTION: b. Has the Administrative Office fully implemented GAO's 2015 recommendations to improve data collection procedures for non-case related travel costs? If not, why?**

**RESPONSE:** Yes, the Administrative Office has implemented the one recommendation made by the GAO in its December 16, 2015 report. GAO subsequently closed the matter and considers the recommendation to be fully implemented.

The GAO recommended: *To better report information to Members of Congress on judiciary NCR [“non-case related”] travel costs, the Director of AOUSC should improve its data collection system to collect and identify NCR travel costs paid by the judiciary.* <https://www.gao.gov/products/GAO-16-70>.

In response to this recommendation, the Administrative Office added a radio button to the non-case related travel reporting mechanism so that filers can distinguish between non-case related travel funded by the judiciary (i.e., meetings of the Judicial Conference or its committees, training sponsored by the Federal Judicial Center, or an advisory group or orientation program sponsored by the Administrative Office) from that funded by the executive branch (i.e., the Department of Justice), and the legislative branch (i.e., the Library of Congress' Open World Program). The change in the reporting mechanism was announced to the courts in April 2016.

Furthermore, GAO's report found no substantive concerns with the judiciary's travel spending, nor flaws in the judiciary's accounting system, which the judiciary uses to carefully track travel expenditures for governance and education in the same manner as all other travel expenditures. The judiciary employs methodical accounting, financial, and auditing procedures to track all spending accurately, including the cost of travel by judges and staff, and to ensure careful stewardship of taxpayer money.

**QUESTION. 3. Senior, visiting, and magistrate judges are vital tools in assisting judges with caseloads and in maximizing efficiencies in a courthouse. However, it's unclear whether the Judicial Conference calculates the assistance of senior, visiting, and magistrate judges when making its recommendations for additional**

**judgeships. Based on the materials provided by the Administrative Office to the Senate Judiciary Committee, the Judicial Conference reportedly takes into account additional factors such as the assistance of senior, visiting, and magistrate judges when making its decisions for additional judgeships. However, during a 2018 hearing in front of a House subcommittee, the chair of the Committee on Judicial Resources testified that “When we do our judgeship assessment, we do not count the contribution of the magistrate judges.”**

- a. Does the Judicial Conference take into account the use of senior, visiting, and magistrate judges or not? If it does take their contribution into account, how much weight does the Judicial Conference give to these judges when analyzing whether the courts requesting more judgeships are fully utilizing these resources?**

**RESPONSE:** Yes. The work performed by magistrate judges, visiting judges, and senior judges is considered when making judgeship requests.

With regard to magistrate judges, each district court that requests additional judgeships provides significant detail on the duties performed by magistrate judges. This information includes the number of civil consent cases closed, whether the magistrate judges are on the wheel for the direct assignment of civil cases, information on the pretrial duties performed by magistrate judges in both civil and criminal cases, and whether the court has considered changes in the utilization of magistrate judges as an alternative to requesting additional Article III judges.

For senior judges and visiting judges, the Conference considers a number of factors when taking their contributions into account. For each court that requests additional judgeships or the conversion of existing temporary judgeships to permanent status, the Conference calculates the number of active judge equivalents provided by the court’s senior judges, considers information from the court regarding whether the contribution from senior judges is expected to change in the near future, and information on the number of active judges either currently eligible to take senior status or will become eligible to do so in the near future. The Conference also considers the number and type of cases handled by visiting judges as well as if there are factors that make it difficult for courts to make greater use of visiting judges.

The testimony provided to the House subcommittee in 2018 describing the Conference’s process for recommending new judgeships, noted that in addition to caseload statistics, it takes into account additional factors, including the number of senior judges available to a specific court, available magistrate judge assistance, and the use of visiting judges when assessing courts’ Article III judgeship needs. In response to a question related to the role of magistrate judges, the following clarification was made: *“When we do our judgeship assessment, we do not count the contributions of the magistrate judges. We look at the workload of the district courts, the weighted caseload per district judge, and then, when we come to a number as to what their weighted caseload is, and then we look at how they involve magistrate judges, how they involve visiting judges, how they involve senior*

*judges in determining whether their request for additional resources is reasonable.”* Because the case weights and resulting weighted filings per authorized judgeship are intended to measure the work of Article III judges, those calculations do not take into account the work of magistrate judges, but the contributions of magistrate judges and consideration of whether they are fully utilized is an integral part of the Conference’s analysis of judgeship needs.

**QUESTION: b. For each requested new judgeship, can you say with confidence that the district or circuit is already maximizing these available efficiencies?**

**RESPONSE:** Yes, based on the data that has been collected. Given the detailed information on the work of senior, visiting, and magistrate judges that is considered for every court that requests either additional judgeships or the conversion to permanent status of an existing temporary judgeship, the Conference is able to ensure that courts are maximizing the use of available judicial resources before requesting that Congress enact legislation to create additional Article III judgeships.

**QUESTION: c. Can you describe how a senior, visiting, or magistrate judge has assisted you and your chambers?**

**RESPONSE:** In the Eastern District of Arkansas, there are two senior district judges and five magistrate judges. The senior judges are assigned civil and criminal cases in the same manner as the active district judges, although at a reduced level. They also routinely take cases in other districts outside of Arkansas. Our magistrate judges conduct civil jury trials in cases that are referred to them, and they handle all pretrial matters in cases brought under 42 U.S.C. § 1983. They also conduct settlement conferences, help the district judges resolve discovery disputes, and issue recommended dispositions reports in habeas corpus cases. In criminal cases, magistrate judges conduct initial appearances, plea and arraignment, bond hearings, and revocations of pretrial release. They also issue search warrants and arrest warrants.

In districts with the heaviest caseloads, the assistance of senior, visiting, and magistrate judges is even more vital. Nationally, senior judges handle approximately 25 percent of the caseload in district courts. In 2019, magistrate judges handled 238,751 pretrial matters in criminal cases (e.g., non-dispositive motions, pretrial conferences, guilty plea proceedings), 332,706 pretrial matters in civil cases (e.g., non-dispositive motions, conferences, motion hearings), and closed 17,817 civil cases with the consent of the parties. With regard to visiting judges, in 2019 more than 200 judges provided assistance to other districts, closing over 1,000 civil cases and resolving criminal cases involving more than 4,000 defendants.

**QUESTION: 4. 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?**

**RESPONSE:** I agree that the judiciary does not wish to have more judgeships than we absolutely need, and as I stated in my opening remarks at the June 30 hearing, the judiciary recognizes that growth in the size of the judiciary must be carefully limited to the number of new judgeships needed to exercise federal court jurisdiction. I am not concerned about the impact of collegiality if we add the judgeships identified in the Judicial Conference’s March 2019 recommendation. Those recommendations are the result of three decades of caseload growth with only a minimal increase in Article III judicial resources, and no increase for nearly 20 years. Additionally, Judicial Conference policy requires that courts request additional judgeships in order to be considered for such a recommendation. In every two-year survey cycle, there will be courts with caseloads above the standard that will not request additional judgeships, and concerns about collegiality may be one factor in such decisions.

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

**RESPONSE:** The Judicial Conference’s process for considering judgeship requests already adequately accounts for the potential effects of additional judgeships on collegiality within a court. That process requires individual courts, which are in the best position to assess the impact of an additional judgeship on collegiality within a district, to prepare a detailed justification for all judgeship requests. Each justification must then be approved by the appropriate circuit judicial council and evaluated by the Judicial Conference’s Committee on Judicial Resources, before the Judicial Conference will consider recommending an additional judgeship to Congress.

## **RESPONSE TO QUESTIONS FROM SENATOR AMY KLOBUCHAR**

**QUESTION: I have led legislation with Senator Grassley for several years to expand the public's window into federal court processes and procedures by allowing television cameras in federal courtrooms, while protecting the identities of witnesses and jurors when necessary or upon request.**

- **What is your view on allowing cameras in federal courtrooms?**

**RESPONSE:** The fundamental mission of the federal judiciary is to adjudicate disputes fairly and impartially, and to do so while providing the greatest feasible degree of public access to the proceedings. Over the years, the Judicial Conference has carefully considered how cameras can be used to improve public access to trial and appellate court proceedings and has carefully developed policies on cameras and broadcasting that strike a balance between recognizing the right of public access to judicial proceedings and protecting litigants' rights to fair and impartial proceedings.

Under the Judiciary's policy, each court of appeals has the discretion to decide for itself whether to permit cameras in appellate proceedings. Consistent with this policy, four of the 13 federal courts of appeals (the Second, Third, Seventh, and Ninth) have adopted policies that permit video coverage of appellate proceedings, subject to the circuit's practices and procedures. While each of these circuits has approached the practice differently, this discretion has allowed each court to develop procedures that fit the court's local rules and internal operating procedures, while also responding to fairness considerations in individual appellate proceedings. In addition, every court of appeals posts audio recordings of oral arguments on its website and all but one court of appeals provide live audio access to oral arguments. The audio currently provided by circuit courts (whether as live streaming or as recordings) accomplishes the goal of ensuring public access to appellate court proceedings. In appellate proceedings, the attorneys present oral arguments from a podium and answer questions from the panel of judges—all of which is aptly captured by the audio recordings. There is rarely a visual component that needs to be memorialized or made available. Requiring circuit courts to provide video streaming or downloadable video, therefore, would not significantly enhance the public's access to the proceedings, but would cause the circuit courts to incur additional costs to provide the streams and store the electronic files.

The dynamics of district court proceedings, however, raise vastly different due process concerns. The core role of district courts is to serve and adjudicate disputes between litigants. Court proceedings often involve live testimony from parties and other witnesses and thoughtful assessment of the credibility of such testimony by the judge or jurors. After careful consideration and two multi-year studies, the Judicial Conference has consistently expressed the view that camera coverage can cause irreparable harm to a citizen's right to a fair and impartial trial. The Conference believes that the effect of cameras on litigants, witnesses, and jurors can have a profoundly negative impact on the trial process. In civil and criminal cases, cameras can intimidate defendants who, regardless of the merits of the case, might prefer to settle or plead guilty rather than risk

airing damaging accusations in a televised trial. In fact, the judiciary's most recent pilot project, which ran from 2011-2015 and evaluated the effect of cameras in district court courtrooms, found that in approximately 85 percent of eligible proceedings, at least one party declined to consent to have the proceeding video recorded. Cameras can also create security and privacy concerns for individuals, many of whom are not even parties to the case, but about whom personal information may be revealed at trial. Taking these considerations into account, the Judicial Conference policy prohibits video recording or broadcasting of district court proceedings.

Note that while video coverage of court proceedings is not permitted under the current policy, the policy does permit the use of cameras—as well as audio recording and photography—in several situations, most of which are designed to assist in the administration of justice. Specifically, a judge may authorize broadcasting, televising, recording, or taking photographs in the courtroom and in adjacent areas during investitive, naturalization, or other ceremonial proceedings. Aside from these proceedings, a judge may authorize broadcasting, televising, recording, or photography in the courtroom: (1) for the presentation of evidence; (2) for the perpetuation of the record of the proceedings; (3) for security purposes; (4) for other purposes of judicial administration; (5) for the photographing, recording, or broadcasting of appellate arguments; or (6) in accordance with pilot programs approved by the Judicial Conference.

**QUESTION: What is your view on other measures intended to bolster transparency in judicial proceedings, including the release of live audio recordings?**

**RESPONSE:** Ensuring public access to court proceedings is of paramount importance to the judiciary. As detailed above, every court of appeals currently posts audio recordings of oral arguments on its public website, which any member of the public can listen to and download at no cost. All but one of the courts of appeals now also provide real-time streaming of oral arguments. The public, therefore, has full and reliable remote access to appellate proceedings.

At the trial court level, at its March 2020 session, the Judicial Conference authorized a district court audio streaming pilot program. The pilot program, which is expected to launch this fall, will permit participating district courts to live stream audio of oral arguments in civil cases of public interest, upon request and with the consent of the parties, and subject to the ultimate discretion of the presiding judge. The goal of the pilot program is to identify issues courts may encounter when live streaming audio of hearings, including any operational, administrative, technical, security, and policy issues associated with the practice. By piloting live audio streaming and collecting information from district courts about their experiences with the practice, the Judicial Conference can better assess the feasibility of live audio streaming in district courts and evaluate methods to increase public access to district court proceedings.

**RESPONSE TO QUESTIONS FROM SENATOR THOM TILLIS**

**QUESTION:** 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

**RESPONSE:** For the 12-month period ending September 30, 2018, there were 29 district courts with weighted filings per judgeship greater than the national average of 513. The 29 districts are listed on the table below.

District Courts With Weighted Filings per Authorized Judgeship Above the National Average – FY 2018		
District	Authorized Judgeships	Weighted Filings per Judgeship
LA-E	12	1,219
NJ	17	1,012
IN-S	5	1,009
DE	4	898
LA-M	3	870
CA-E	6	855
FL-N	4	770
TX-W	13	745
FL-S	18	721
AZ	13	685
CA-S	13	640
GA-N	11	633
FL-M	15	628
CA-C	28	627
NC-E	4	626
CA-N	14	622
TX-N	12	593
TX-S	19	585
TX-E	8	579
CO	7	572
NY-W	4	562
NE	3	552
IL-S	4	551
ID	2	550
WI-W	2	548
NY-S	28	542
NY-E	15	539
NM	7	534
MI-W	4	517

**QUESTION:**

- 2. How many federal judicial districts currently have a caseload below average?**  
**i. Please provide a list of these districts and the weighted caseload.**

**RESPONSE:** For the 12-month period which ended September 30, 2018, there were 62 district courts with weighted filings per judgeship below the national average of 513. The 62 districts are listed on the table below.

District Courts With Weighted Filings per Authorized Judgeship Below the National Average – FY 2018		
District	Authorized Judgeships	Weighted Filings per Judgeship
MN	7	512
NV	7	496
MD	10	487
MO-E	8	486
TN-M	4	484
PA-M	6	483
IA-N	2	482
UT	5	482
AR-E	5	480
WA-W	7	479
MO-W	6	474
IN-N	5	464
AL-M	3	458
GA-S	3	456
IL-N	22	452
TN-E	5	443
SC	10	439
OR	6	434
WI-E	5	431
GA-M	4	430
OH-S	8	427
IL-C	4	419
NH	3	416
VA-E	11	415
MT	3	410
IA-S	3	408
TN-W	5	407
NC-M	4	404
WV-S	5	396
NC-W	5	396
WV-N	3	394
MS-S	6	392

SD	3	387
OH-N	11	385
OK-E	1.5	377
KY-W	4.5	374
PR	7	371
ND	2	370
AL-S	3	361
AR-W	3	355
CT	8	353
AL-N	8	347
VA-W	4	345
KS	6	345
MS-N	3	333
KY-E	5.5	331
MI-E	15	331
NY-N	5	326
MA	13	312
RI	3	308
WA-E	4	306
PA-W	10	304
PA-E	22	300
LA-W	7	299
OK-W	6	291
OK-N	3.5	276
DC	15	269
ME	3	251
AK	3	239
VT	2	207
HI	3	203
WY	3	169

While many of these districts have caseloads that fall below the national average, many are still above the 430 weighted filings standard used by the Judicial Conference in determining the need for additional judgeships.

**QUESTION: 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.**

**RESPONSE:** Between the 12-month period which ended September 30, 2016, and the 12-month period which ended September 30, 2018, a total of 30 district courts experienced a decline in weighted filings per judgeship. Just eight of the 30 courts were among the districts included in the 2019 Judicial Conference recommendation for additional judgeships or the conversion of an existing temporary judgeship to permanent status (AZ; IA-N; KS; NM; NV; PR; TX-W; and TX-E). Several of the eight districts experienced

only moderate declines, and the courts' weighted filings per judgeship remained extremely high. For example, in the Western District of Texas weighted filings fell less than one percent from 747 to 745 per judgeship, and in Arizona weighted filings declined just three percent from 707 to 685 per judgeship. The 30 districts are listed on the table below.

District Courts Where Weighted Filings per Authorized Judgeship Declined Between FY 2016 and FY 2018				
District	Authorized Judgeships	FY 2016 Weighted Filings per Judgeship	FY 2018 Weighted Filings per Judgeship	Percentage Decrease
TX-W	13	747	745	0.3
NC-E	4	629	626	0.5
NC-M	4	411	404	1.7
VA-W	4	352	345	2.0
AR-W	3	364	355	2.5
TN-E	5	455	443	2.6
GA-S	3	470	456	3.0
AZ	13	707	685	3.1
MN	7	532	512	3.8
PA-E	22	312	300	3.8
PA-M	6	505	483	4.4
SC	10	463	439	5.2
ME	3	268	251	6.3
MO-W	6	507	474	6.5
MI-E	15	356	331	7.0
NV	7	541	496	8.3
NY-N	5	357	326	8.7
KS	6	378	345	8.7
HI	4	226	223	10.2
OR	6	496	434	12.5
IA-N	2	553	482	12.8
WY	3	205	169	17.6
NM	7	685	534	22.0
SD	3	496	387	22.0
ND	2	487	370	24.0
VT	2	286	207	27.6
TN-M	4	688	484	29.7
PR	7	536	371	30.8
TX-E	8	1,050	579	44.9
WV-S	5	1,354	396	70.8

**QUESTION: 4. In addition to a judge's salary, what are the other costs associated with a new judgeship?**

**RESPONSE:** In addition to a judge's salary, which is mandatory or direct spending, there are other costs associated with supporting that new judgeship. These costs, which may include those listed below, are considered discretionary spending and would be covered by judiciary appropriations.

- pay and benefits for chambers support staff (such as law clerks and assistants) and for other court support personnel (such as courtroom deputies, court reporters/recorders or other court staff); and
- operations and maintenance expenses (such as security investigations, courtroom digital audio recording equipment, telephone systems, furniture, and other administrative costs).
- For a new circuit court judgeship, these associated costs are estimated at \$603,631 for the first year and then \$527,874 in annually recurring costs (based on projected costs for FY 2022).
- For a new district court judgeship, these associated costs are estimated at \$643,986 for the first year and then \$583,432 in annually recurring costs (based on projected costs for FY 2022).