

Testimony of
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November 16, 2005

STATEMENT OF ROBYN SPALTER
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BEFORE
THE SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ON

CREATING NEW FEDERAL JUDGESHIIPS:
THE SYSTEMATIC OR PIECEMEAL APPROACH
NOVEMBER 16, 2005

Chairman Sessions and Members of the Subcommittee:

I am Robyn Spalter, President of the Federal Bar Association. Thank you for convening this hearing and inviting me to appear today on behalf of the 16,000 lawyers and judges who comprise the Federal Bar Association, as well as the parties they serve. Ours is the premier nationwide bar association devoted exclusively to the practice and jurisprudence of federal law and the vitality of the United States federal court system.

The creation and maintenance of a sufficient number of judgeships in our federal courts are critical to the assurance of the prompt and efficient administration of justice. That is why we endorse the recommendations of the Judicial Conference of the United States for the comprehensive creation of 12 judgeships in the United States courts of appeal, 56 judgeships in the United States district courts, as well as 24 judgeships in the United States bankruptcy courts.

We support the creation of new judgeships necessary to exercise federal court jurisdiction with the full understanding that there will be costs involved. We are as interested as the Congress in assuring that the federal courts maximize the use of their resources to avoid the creation of additional judgeships as much as possible. We also believe that the federal courts need to continue to create efficiencies through the continuing use of a range of measures, including: temporary rather than permanent judgeships; shared judgeships; intercircuit and intracircuit assignment of judges; alternative dispute resolution; and technological advances to permit the assistance of judges in other districts or circuits without the need to travel.

We believe that the caseloads are so large and overwhelming in several judicial circuits and a considerable number of judicial districts that Congress should undertake a comprehensive, systematic approach toward the establishment of judgeships. This not the time for minor, piecemeal changes. As you know, the last comprehensive federal judgeships bill was enacted by Congress in 1990 and provided most, if not all, of the judgeships requested by the Judicial Conference. The Federal Judgeship Act of 1990 (Public Law 101-650) established 11 additional judgeships for the courts of appeals and 74 additional judgeships (including 13 temporary) for the district courts. Since that time, no judgeship has been created for the courts of appeals, and 34 district judgeships have been added to respond to particular problems in certain districts. Yet caseloads in both the appellate courts and district courts have increased dramatically in the past 15 years.

Accordingly, the Judicial Conference of the United States, the policy-making body of the federal judiciary, in March 2005, recommended that Congress establish 12 new judgeships in five courts of appeals and 56 new judgeships in 29 district courts. The Conference also recommended that 3 temporary district court judgeships created in 1990 be established as permanent positions, and that one temporary district court judgeship created in 1990 be extended for an additional five years. These recommendations were based upon an exhaustive biennial review by the Judicial Conference of court caseloads and other factors to assure the adequacy of the delivery of civil and criminal justice in the federal court system.

The Judicial Conference review showed that filings in the circuit courts of appeals since 1990 have grown significantly - by 46 percent - while district court case filings rose 39 percent (civil cases were up 33 percent and criminal felony cases grew by 77 percent). The national average circuit court caseload per three-judge panel has reached 1,127 cases -- the highest level ever. These numbers are dramatic because no additional judgeships have been created for the courts of appeals in the last 15 years. Despite the piecemeal addition of district judgeships over the last fifteen years, the average weighted filings rose to 529 per judgeship in 2004, a level that is 23 percent above the Judicial Conference's standard for considering recommendations for additional judgeships.

The number of criminal cases pending in the district courts has been continually increasing. Criminal felony case filings have increased 77 percent since 1991, and the number of criminal felony defendants is 57 percent higher. The largest increase, by far, has been due to heightened law enforcement activities on the southern border, causing immigration filings to rise from 2,000 in 1991 to 16,727 in 2004.

In February 2005, the Judicial Conference recommended the authorization of 47 additional bankruptcy judgeships (17 temporary and 30 permanent) in 31 judicial districts. The Conference also recommended converting three existing temporary bankruptcy judgeships into permanent judgeships. The Bankruptcy Abuse Prevention and Consumer Protection of 2005 (Pub. L. No. 109-8) authorized 28 additional temporary bankruptcy judgeships (only 23 of which were included in the Conference's February 2005 recommendation) and extended two of the three existing temporary judgeships that the Conference recommended for conversion.

We are appreciative of the actions that Congress undertook in bringing relief to those districts in which additional bankruptcy judgeships were created. However, the actions of the Congress in authorizing additional bankruptcy judgeships were based upon the Conference's 1999 recommendation, which has been superseded by subsequent Conference recommendations. The 18 judicial districts not included in the bankruptcy act's provisions still operate under the strain of significantly increased caseloads. Moreover, a significant increase in bankruptcy litigation (including motions practice, adversary litigation and appeals) is likely to arise under the new terms of the bankruptcy act, as well as from the anticipated national increase in activity in the bankruptcy courts brought by the new airline bankruptcy cases and the devastating effects of Hurricanes Katrina and Rita in the Gulf Coast region. This will bring greater burden to a significant number of bankruptcy courts that already are straining at the seams. As the Judicial Conference has pointed out, since the authorization of additional bankruptcy judgeships in 1992, bankruptcy weighted case filings per authorized judgeship have increased 18.3 percent.

All of this helps to put the national perspective on the need for additional judgeships into perspective. However, the Judicial Conference's recommendations for circuit, district and bankruptcy judgeships are not premised on national trends and aggregate data. They are based on specific needs of each judicial district on a court-by-court basis. The situation in courts where the Conference has recommended additional judgeships, in fact, is much more dramatic than indicated by national totals.

With this in mind, the perspective I particularly bring before you today represents the views of lawyers appearing before the federal bench, especially those in circuits and districts where additional judgeships have been recommended by the Judicial Conference. While this perspective may be less data-driven and more subjective than the outlook of the Judicial Conference, my viewpoint is based upon the real-world experience of lawyers and judges whose professional life revolves around advocacy and the search for justice in the federal courthouse.

Our members in circuits and districts where judgeships have been requested by the Judicial Conference are becoming increasingly frustrated by the substantial delays that are occurring in the disposition of civil and criminal cases. They believe that these growing delays are principally due to inadequate numbers of judges to address the growing dockets of cases. The significant increase in criminal cases undoubtedly has increased the workload burdens of judges in the adjudication of criminal motions, trials and sentencings. Civil practitioners are frustrated, yet understand, that criminal cases take priority over the hearing of civil cases, contributing to the extended period of time it sometimes takes to get civil motions decided and civil cases tried.

Our members tell us time and again of their respect for the diligence and hard work of their federal judges to attempt to hear and decide cases in a timely manner. But there are limits on how much the bench can accomplish with existing resources. The problem is simply that there are not enough judges. That is why we believe that Congress should promptly exercise its Constitutional authority to create additional circuit, district and bankruptcy judgeships consistent with the recommendations of the Judicial Conference - not incrementally, but comprehensively, and now.

Finally, we are aware of the House proposal to consider together two very important issues that are separate and distinct: the federal judiciary's recommendations for the creation of new

additional federal judgeships, and the legislative proposal to reorganize the Ninth Circuit Court of Appeals through the creation of a new Twelfth Circuit. We believe that the establishment of the additional 68 judgeships and the reorganization of the Ninth Circuit are two entirely different issues, embodying separate and distinct considerations. We commend the Subcommittee for its approach toward bifurcating these two issues, separately considering each of them on their own merits.

The creation and maintenance of a sufficient number of judgeships in our federal courts are critical to the assurance of the prompt and efficient administration of justice. It is not trite to underscore the refrain that "justice delayed is truly justice denied." It is time to provide for the efficient working of justice everywhere in the United States by authorizing the comprehensive creation of adequate numbers of judgeships in the federal circuit, district and bankruptcy courts, as recommended by the Judicial Conference. In conclusion, we strongly support and urge the comprehensive creation of these judgeships now.

Thank you, Mr. Chairman, for the opportunity to testify on behalf of the Federal Bar Association before your subcommittee today.