PREPARED STATEMENT

OF

HONORABLE CHARLES CLARK

CHAIRMAN

EXECUTIVE COMMITTEE
OF THE JUDICIAL CONFERENCE

BEFORE THE

SUBCOMMITTEE ON INTELLECTUAL PROPERTY
AND JUDICIAL ADMINISTRATION

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

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STATEMENT OF JUDGE CHARLES CLARK

Mr. Chairman and Members of the Subcommittee:

Mr. Chairman, I appear today as Chairman of the Executive Committee of the Judicial Conference of the United States.

The Judiciary appreciates the opportunity afforded by this oversight hearing to explain its status and express its views. We appreciate also, Mr. Chairman, your expression of willingness to work with us. The spirit of cooperation is fully reciprocated. We hope that this opportunity for communication between Congress and the Judiciary will be followed by many more. We assure you that any information you request will be forthcoming with complete candor and as promptly as possible.

This statement is structured around basic concepts that form the foundation for judicial service. It is intended to acquaint the Subcommittee with the past and present status of the courts to aid your consideration of future legislative needs. It also sets out and supports the courts' requests for your guidance and assistance.

Overview

The following compilation of statistical data outlines the fifty-year growth in the judicial institution you regulate. These figures cannot reflect the increasing complexity of cases confronting the courts. Both civil and criminal matters now routinely involve multiple parties and numerous significant and difficult issues of fact and law. Nor do the figures reflect the

increased administrative responsibilities which go with a larger court system or the time consumed in responding to new legislative initiatives such as the War on Drugs, Civil Justice Reform Act, sentencing guidelines, and the Childhood Vaccine Program.

JUDICIAL STATISTICS
Year Ended June 30,

	1950	1960	1970	1980	1990
Courts of Appeals[1]					
Judges	65	68	97	132	156
Appeals	2,830	3,899	11,662	23,200	40,898
Terminations	3,064	3,713	10,699	20,887	38,520
Pending	1,675	2,220	8,812	20,252	32,396
Terminations per judge	47	55	110	158	247
District Courts					
Judges	221	245	340[2]	516	575
Filing	92,342	89,112	127,280	197,721	266,783
Terminations	90,673	91,693	117,254	189,778	258,217
Pending	63,784	68,942	114,117	200,872	277,865
Terminations per judge	410	374	345	368	449
Bankruptcy					
Filings	33,392	110,034	194,399	360,957[3]	725,484
Personnel	4,345	5,562	7,395	14,011	22,399
Appointed Attorneys[4]	-	-	33,388	43,256	70,109
Appropriation ($)					
Actual	24,438,000	49,874,000	130,216,000	591,306,000	1,690,686,000
Adjusted to 1990 Dollars	132,454,000	220,443,000	438,828,000	940,177,000	1,690,686,000

[1]Excludes the Court of Appeals for the Federal Circuit.
[2]Based on authorized judgeships prior to June 2, 1970.
[3]Bankruptcy Reform Act (P.L. 95-598) became effective October 1, 1979.
[4]The effective date of the Criminal Justice Act was August 20, 1965.

Jurisdiction

To begin at the beginning: The first sentence of the first section of Article III of the Constitution states: "The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." We of the inferior courts owe our ordination and establishment to the Congress, which not only created us but also vests us with jurisdiction. In *Palmore v. United States*, 411 U.S. 389, 401 (1973), the Supreme Court affirmed the full power of Congress to create inferior tribunals and to invest them with, or withhold from them, jurisdiction "in the exact degrees and character which to Congress may seem proper for the public good."

The courts you create are service organizations. They initiate nothing. When you invest a court with jurisdiction, you open its doors to any litigant who files an action within the ambit of that jurisdiction. Therefore, we submit that Congress should look beyond any immediate problem and create new jurisdiction based on the overall service to be rendered, and with the understanding that such new jurisdiction can affect the courts' ability to furnish present services. When Congress determines either to create a court or to enlarge its jurisdiction, the decision ought to be accompanied by a determination to staff and fund the court so that the desired service can be rendered.

Title 28 of the United States Code contains grants of general jurisdiction to inferior federal courts. These statutes cover such broad jurisdictional areas as federal question, diversity, admiralty, bankruptcy, patents, copyrights, postal matters, internal revenue, civil rights, and suits in which the United States is a party. In Part IV of Title 28, one can determine what cases and controversies each court is empowered to adjudicate. However, an overview of legislation creating federal court jurisdiction indicates that this orderly structured congressional planning has not been consistently followed. Throughout the Code, a vast number of special-subject statutes also vest jurisdiction in district courts or courts of appeals. A survey made in March of 1985 disclosed there were then 314 such statutes. A tabulation is submitted for the record as Appendix A. These specialized acts stretch alphabetically from the Archaeological Resources Protection Act of 1979 to the War Hazards Compensation Act. They occur in the Code from Title 2 to Title 50. They cover such purely local interests as suits attacking the form of a $50 installment loan contract or the resetting of a used car's odometer. Congress obviously deemed these interests to be sufficient to justify federal jurisdiction. Many of their jurisdictional grants may fit under some general grant in Title 28. Where they merely duplicate existing general grants they are unnecessary. Whether they do is difficult to ascertain. If they do not, they may interfere with local court jurisdiction or detract from the ability of Congress

to maintain control of the jurisdiction it vests in federal courts. The problem is that any which do not, have resulted in unplanned extensions of functions our national court system must perform.

Jurisdiction is critical to the orderly operation of the court system. Congress should rely on general rather than specific and episodic grants of jurisdiction. Federal courts should not be assigned jurisdiction over all disputes arising under such unique enactments as the Apple Barrel Standards Act, the Egg Products Inspection Act, or the Horse Protection Act. Federal litigation ought to fit under one of the general grants of jurisdiction and special grants should be repealed.

A related problem concerns the role assigned to federal courts. Should Congress fix minimum dollar limits for the exercise of jurisdiction in minor actions by federal agencies? Should the federal forum be assigned the task of recovering defaulted student loans or overpayment of veterans' benefits? Does Congress want to use federal courts as collection agencies?

These jurisdictional problems, however, pale in comparison to the burden placed upon federal courts by the outmoded continuance of full diversity jurisdiction, which the Judicial Conference opposes. At the time such jurisdiction was placed in federal courts, commerce between states was in its infancy. Citizens of different states were strongly parochial because their ambit of travel was small and they felt a strong allegiance to their state or local area. Litigants from outside the state were often

disadvantaged by their "foreign" status. The basis for federalizing this jurisdiction is long gone in our shrinking modern world. However, the anachronism not only lives, it prospers. Even after the recent helpful increase in minimum jurisdictional amount, over 20 percent of the civil workload of the federal system still stems from what has now become an insult to the justness of state court systems. Lawyers bring tremendous political pressures to bear when any revision of diversity jurisdiction is proposed. It deprives them of the option to use one court system or another to affect the progress or outcome of litigation. But, in the context of this oversight hearing, we would be remiss not to present these facts and urge your consideration of this controversial issue.

Procedural Regulations

Jurisdictional legislation is not the only type of work assignment that impacts federal courts. Congress also regulates the manner in which a number of jurisdictional assignments must be carried out. Prominent among these is the Speedy Trial Act which, coupled with the astronomical growth in major drug and other prosecutions, now effectively forces some courts to abandon the trial of all civil litigation. Admiralty, civil rights, tax, and federal question cases are a few of the types of actions that must give way to the expedited criminal docket. Sentencing guidelines legislation has greatly increased the length of time required to complete criminal cases and has multiplied the number of appeals in criminal cases--even those in which the defendant has pleaded

guilty. The Civil Justice Reform Act adopted in the last Congress mandates the creation of administrative systems which will, at least in the short term, consume more judicial time and energy than they save.

We call these matters to your attention, not to complain, but to note the need for judicial impact assessments in connection with legislation. The Administrative Office recently established and now maintains a legislative impact staff to perform analyses which quantify the estimated impact in terms of additional personnel and funding needed. If you desire their help, they are ready to respond. Because courts have a finite ability to carry out their assigned jurisdictional tasks, such assessments are necessary to assure Congress and the public that the intended purposes of creating courts can be effected.

Judgeships

No overview of the present federal court system would be complete without attention to the process by which federal judgeships are authorized and the appointment power is exercised to convert that authorization into a judge on the bench. The latest summary of judicial vacancies is offered for the record as Appendix B. From it you may determine that 145 authorized judgeships are unfilled. Sixty of these vacancies are due to retirements and resignations. Eighty-five relate to new judgeships created by the 101st Congress.

Requests by the judiciary for creation of any judgeships traditionally have been based on existing rather than projected needs. In an expanding court system, this process creates a chronic lag between the time a needed new judge should be on the bench deciding cases and the time the position is authorized and an actual person is appointed and begins to function. Political factors also may delay the process of creating new judgeships. Improvements in the method now followed to create new judgeships are deserving of congressional attention.

An equal problem for the ability of the courts to perform the service assigned is the lengthy process of making and confirming appointment to existing vacancies. Despite the fact that new judgeships were just recently authorized, Appendix B establishes that the system now followed does not work well. The number of vacancies for which no nomination now exists -- 138 out of 145 -- documents that the preliminary investigation and presidential decision process now in place is very slow. The confirmation process may be expected to add to the delay. The lag in filling the vacancy is as debilitating to the courts' ability to serve as is the delay in creating authorized judgeships. We hope this area also will have congressional attention and consideration.

Bankruptcy

Bankruptcy courts deal with more people and affect the distribution of more assets than do the district courts in which they function. The service they perform is vital to those in

financial distress. Its prompt and proper discharge is equally important to the protection of creditors' rights.

Since the passage of the Bankruptcy Reform Act in 1979, filings have skyrocketed. Most bankruptcy courts are swamped. Some are in extremely critical condition.

This month, the Judicial Conference took action to revise its method for requesting additional bankruptcy judges. We anticipate submitting additional recommendations in the near future and ask the Judiciary Committee to expedite consideration of this much needed relief. At an appropriate time, we hope the Committee will review the method of authorizing bankruptcy judgeships. Allocating appointment authority to the Judicial Conference, similar to the process provided for creating magistrate judge positions under 28 U.S.C. §631, would reduce the response time, benefit the public and carry out the intent of Congress to broaden coverage of the bankruptcy system.

Judicial Administration

Tracing the development of enabling legislation provides a good overview of the administrative structure of the courts. This outline is intended to highlight matters covered in more detail in the prepared statement of Judge Elmo B. Hunter at this Committee's oversight hearing on May 6, 1981.

When former President William Howard Taft became Chief Justice in 1921, he faced the post-World War I problems of imbalances in business between courts in different areas. In busy courts,

dockets were long-delayed. In some, there was little to do. His response was to urge Congress to create a fact-based method of transferring judges from less busy districts to places where the case load had intensified "so judicial business in arrears could be brought current." Within a year, September 14, 1922, Congress had enacted his suggestions by establishing the Conference of Senior Circuit Judges.

These ten judges were to meet annually on call of the Chief Justice and bring with them reports from all senior district judges in their circuit on the condition of business in each court. The Conference was charged with making a comprehensive survey of court business and preparing plans to assign and transfer judges to or from circuits or districts as needed to bring current "business in arrears." It was also to submit suggestions to the various courts in the interest of uniformity and expedition of business so that transferee judges could function effectively in their temporary assignments.

On August 7, 1939, Congress added to the present administrative scheme by:

(1) creating the Administrative Office of the United States Courts - The Administrative Office acts under the supervision of the Judicial Conference. It replaced the Department of Justice which previously had furnished personnel, physical and fiscal support to the courts;

(2) establishing judicial councils in each circuit - These councils, initially composed of all circuit judges in each circuit, were established "to the end that the work of the district courts shall be effectively and expeditiously transacted." The councils were to meet twice a year, consider the reports of the director of the Administrative Office and make orders necessary for the administration of business of the district courts. In 1981, Congress required that councils have at least two district judge members. In 1990, it required that the number of circuit and district judge members be equal; and

(3) requiring that annual judicial conferences be held in each circuit - These conferences were designed to bring judges and members of the practicing bar together to discuss court administration.

On August 28, 1957, thirty-five years after it was created, the former Conference of Senior Circuit Judges assumed the configuration of today's Judicial Conference of the United States when it was expanded to include one elected district judge representative from each circuit. Today, the Conference still has its original statutory responsibility to survey the condition of business in the courts, prepare plans for the assignment of judges, and submit suggestions to promote uniformity of management procedures and expeditious conduct of court business. To these duties were added directives to provide a continuous study of rules of practice and procedure and make recommendations for needed

change, make an annual report to Congress, and make recommendations for legislation. More recently, the Conference's statutory powers have been broadened to include handling appeals from circuit councils of orders relating to judicial conduct and disability. *See* 28 U.S.C. §331.

The Conference surveys the business of the courts but does not prepare plans for the assignment of judges. Its principal *de facto* function is to serve as a clearinghouse for administrative concepts and procedures generated by 21 permanent and four ad hoc committees comprised of over 270 judges, lawyers, and professors. This committee structure has been reorganized at least four times--twice by Chief Justice Warren, in 1955 and 1968, by Chief Justice Burger in 1970, then most recently by Chief Justice Rehnquist in September, 1987. A brochure describing the Conference and its committee structure is submitted for the record as Appendix C.

Chief Justice Rehnquist's reorganization not only increased the number of committees, it also involved many more judges in Conference work. All appointments to Conference committees are made by the Chief Justice. The terms of service are three years with the possibility of one renewal. This results in providing expertise to the Conference in specific areas and provides broad representation to every judicial circuit. Every five years each committee must evaluate its mission and make a recommendation to the Conference as to whether the committee should be maintained, modified or abolished. An Executive Committee composed of seven

Conference members functions for the Conference between meetings. This representative structure enables the Judiciary to speak to Congress with a unified, informed voice.

At the operational level, the Conference regularly works with the Administrative Office to perfect the process of resource allocation. Work measurement formulae have been developed for many support services. These formulae fix appropriate staffing levels and ensure fairness in the allocation of personnel among the courts. New studies are about to be completed in several areas, some of which have not been studied before. The budget development process has been reorganized to minimize our annual requests for funding. The Chief Justice has recently appointed a long range planning committee to assure that we develop the best plans to meet future needs.

AUTOMATION

While the courts did not lead the way into the electronic age, you now have given us ample resources to bring the courts current with practitioners and publishers. In chambers, modern office automation equipment permits secretaries, law clerks, and judges to streamline document preparation and dissemination, and provides access to research databases. In clerk's offices, automation has restructured the way work is performed, improving the quality and access to case management information by court personnel and the public. Electronic mail allows efficient communication among judicial personnel. Computer-assisted legal research, now

available in chambers and libraries, permits access to the most current case information and eliminates much of the need for personal research using hard copy materials.

Federal Courts Study Committee Recommendations

Approximately a year ago, April 2, 1990, the Federal Courts Study Committee finished its very significant work. A number of recommendations of that Committee have been fulfilled and the Judiciary is obliged to Congress for that. An almost equal number of recommendations remain for consideration. Principal among them is the control of space and facilities by the Judiciary. Placing control and accountability of its space and facility needs in the Judiciary will obviate delays, reduce misunderstandings, save judge and contractor time, and achieve more satisfactory results. All of these factors will greatly enhance the ability of courts to render the service required. The just-completed session of the Judicial Conference of the United States adopted a substantially revised U.S. Courts Design Guide which serves to both define and limit the utilization and construction of space and facilities by the courts. We anticipate that legislation that embodies this concept will be introduced shortly. We hope that Congress will favorably consider it and that members of this Subcommittee can see fit to lend their support.

The compensation of judges is of vital importance to the ability of the Judiciary to attract and hold competent personnel for a lifetime commitment to public service. The need for judges

is as real as it is for the members of Congress and leaders of the Executive Branch. To avoid the accumulated impact of the failure to make periodic adjustments, the Report of the Study Committee urges the repeal of §140 of P.L. 97-92, 95 Stat. 1181, 1200. We join in requesting that this matter have your attention.

The Report also recommended that the Judicial Conference of the United States be given administrative rulemaking authority in areas where uniformity of practices among different courts is necessary. 28 U.S.C. §331 now authorizes the Conference only to submit suggestions to individual courts in the area where uniformity of practice is necessary to enable transferee judges to function efficiently. Since no plans for transfers are developed by the Conference, the prerogative to make such suggestions is meaningless. However, a number of statutes adopted by Congress now vest authority in the Conference to mandate uniformity in specific administrative areas. A list of those statutes is submitted for the record as Appendix D. They cover such matters as jury selection, priority of action, personnel matters, magistrate selection, fees, record keeping, and statistical reports. The recommendation to confer general administrative rulemaking authority on the Judicial Conference in areas where uniformity is necessary is controversial and a number of the present members of the Conference oppose it. The Conference has taken no position on its enactment. The matter deserves attention and study.

Another of the recommendations of the Federal Courts Study Committee involves authority for the intercircuit assignment of active judges. 28 U.S.C. §291 now conditions the authority of the Chief Justice of the United States to make such intercircuit assignments upon presentation of a certificate of necessity by the chief judge of the circuit where the need arises. This is interpreted to mean a necessity created by the lack of adequate judgepower to meet docket requirements. A limited program that would permit interchange of active judges would benefit the judicial system. Exchanged judges would be exposed to administrative and procedural systems as well as to the legal precedent of other courts. These judges would be expected to report back to their courts the ideas and principles they have learned which would make their own courts' procedures more efficient and effective. Given the structure of air fares today, there would be little, if any, difference in travel costs between intracircuit and intercircuit assignments. Per diem costs would be identical except where an exchanged judge was resident in the place of holding court. Again, we urge your consideration of proper authorizing legislation.

We appreciate the many helpful enactments by recent Congresses -- added judgeships, adequate appropriations, the Judicial Improvements Act, the Federal Courts Study Committee Act, pretrial services, and many more. We have devoted our best effort

to derive the intended benefits from all of these measures and will continue to do so.

We hope you will soon be able to evaluate the need for legislation in the area of overwhelming asbestos injury and mass tort litigation now backlogged in the courts so that the needs of these citizens for judicial services can be met. We have other legislative needs which we will be pleased to bring to your attention by supplementing this statement or by consultation with your staff.

Thank you for your interest and for your attention to our needs.