

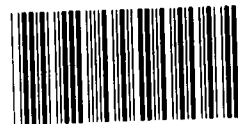
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Briefing Report to the Honorable
Frank R. Lautenberg
United States Senate

January 1987

FEDERAL COURTS

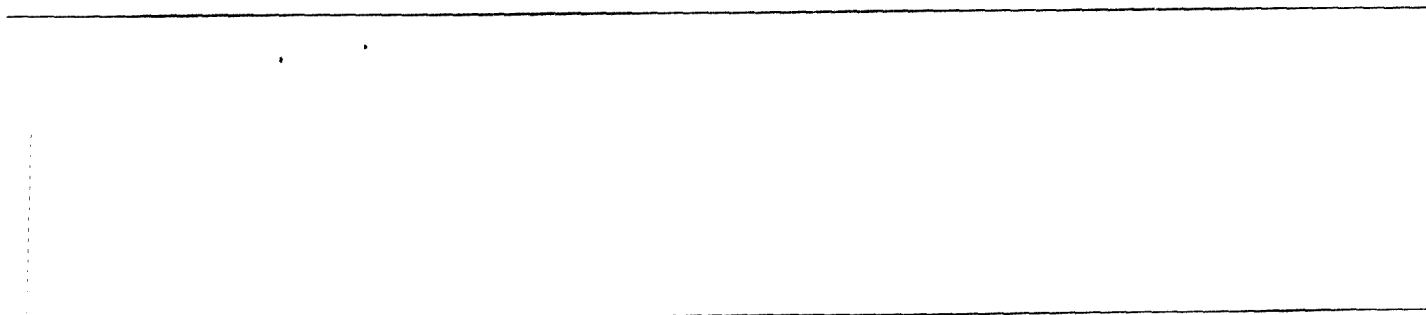
Determining the Need for Additional Judges



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United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-225319

January 8, 1987

The Honorable Frank R. Lautenberg
United States Senate

Dear Senator Lautenberg:

By letter dated April 18, 1986, you asked us to review the criteria used by the Judicial Conference of the United States in recommending to Congress additional judgeship positions for U.S. district, appeals, and bankruptcy courts. You were particularly concerned that the caseload criteria used for determining whether additional district judges are needed did not adequately measure the increasing work being handled by these judges. From June 30, 1980, to June 30, 1985, the number of cases filed a year in federal district courts increased 58.7 percent from 188,487 to 299,164.

On September 18, 1986, we briefed your office on the preliminary results of our work which was done at the Administrative Office of the United States Courts and the Federal Judicial Center in Washington, D.C., from June through August 1986. This letter summarizes the information presented at the briefing on the process for determining whether additional district judges are needed. More detailed information on the process used for district courts as well as the process used for determining judges needed for U.S. courts of appeals and bankruptcy courts are contained in the attached appendix. Information on the review objective, scope, and methodology is also contained in the appendix.

The need for additional judges is determined biennially. The process begins when the Judicial Conference, the policymaking body of the judiciary, conducts a survey of the courts asking each to provide information on the number of additional judges needed. The survey results, along with information on the courts' caseload supplied by the Administrative Office, are reviewed and evaluated by the Conference to determine the number of additional judgeship positions needed.

The caseload information used in the assessment process is the actual filings in each court for a 1-year period. The filings are weighted, based on a 1979 time study done by the Federal Judicial Center (the research and development arm to the judiciary) to take into consideration differences in the amount of time judges spend on various case types. The 1-year weighted caseload is divided by the number of judges authorized for the district. If the calculation shows that the average

caseload exceeds 400 cases per judge, it is an indication that the district may need additional judges to keep up with the courts' caseload in a timely manner. It does not mean that a district definitely needs more judges or will request additional judges. For example, in response to the 1982 biennial survey, 44 district courts requested 65 additional positions (63 new positions and the conversion of two temporary positions to permanent), and 50 courts requested no additional judges. The caseload formula supported 67 additional judges for 39 districts (55 judges for 29 of the 44 districts requesting judges and 12 judges for 10 of the 50 courts not requesting additional judges).

Because the formula does not reflect all factors that should be considered in deciding whether additional judges are needed for a district court, the courts are asked to cite other factors when completing the questionnaire that should be considered by the Judicial Conference. For example, other factors that the Judicial Conference considers are the court's pending caseload and unusual logistical problems within the district, such as a large geographical area requiring comparatively more travel time than is found in other locations. The Judicial Conference used factors such as these to justify 10 additional judges for eight courts in 1982 and two additional judges for two courts in 1984. Congress, which has not acted on the 1984 request, supported the Conference's 1982 recommendations of 53 judgeship positions for 36 courts and authorized 10 additional positions not requested by the Conference.

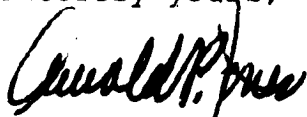
The Judicial Conference has directed the Federal Judicial Center to undertake a study to determine the feasibility of developing a more comprehensive caseload measure for the district courts' that would consider factors that the present method does not. Because of this ongoing study, it was agreed that further work by our office was not necessary.

As your office requested, we did not obtain official agency comments on this report. However, we obtained the views of officials from the Administrative Office and the Federal Judicial Center and incorporated their comments where appropriate. The officials who reviewed a draft of this report told us that they generally agreed with the information presented. We hope that the enclosed information answers your questions about the process for determining the need for additional judges. As arranged with your office, we plan no further distribution until 5 days from the date of this briefing report unless you publicly announce its contents earlier. After 5 days, we will send copies to other interested parties and make copies available to others upon request.

B-225319

If you have any questions regarding the contents of this document, please call me on (202) 275-8389.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Arnold P. Jones".

Arnold P. Jones
Senior Associate Director

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OVERVIEW OF THE PROCESS FOR DETERMINING
THE NEED FOR ADDITIONAL JUDGES IN
U.S. DISTRICT, APPEALS, AND BANKRUPTCY COURTS

BACKGROUND

The United States is divided into 13 judicial circuits: 12 regional circuits each containing a court of appeals and 1 circuit with national jurisdiction (Court of Appeals for the Federal Circuit). Within the 12 regional circuits, there are a total of 94 district courts and 92 bankruptcy courts. As of November 1, 1986, Congress had authorized 168 circuit, 575 district, and 284 bankruptcy judgeship positions. Circuit and district judges are lifetime appointments under Article III of the Constitution. Bankruptcy judges are appointed for 14 years (28 U.S.C. 153).

The Judicial Conference of the United States is the policymaking body for federal courts and is composed of the Chief Justice of the United States, the Chief Judge of the Court of Appeals for the Federal Circuit, the chief judge from each of the other 12 circuit courts, and 12 district court judges (1 from each of the 12 regional circuits). The Judicial Conference, which meets at least annually, is required by law (28 U.S.C. 331) to "...make a comprehensive survey of the condition of business in the courts..." and make recommendations to Congress which authorize the number of judges. Since 1979, the Conference has surveyed the district and appeals courts every 2 years to determine the number of judges needed to handle the workload. From 1964 to 1979, the survey was conducted every 4 years. For bankruptcy courts, the Conference conducted a judgeship survey in 1985. In the future the bankruptcy court survey will coincide with the appeals and district courts' biennial surveys.

Each of the 12 circuits has a judicial council consisting of the Chief Judge of the circuit, a fixed number of other circuit court judges, and at least two district court judges from the circuit. The councils, which are required to meet at least twice a year, oversee the administrative operations of the district courts within their circuit, including the assignment of judges to efficiently dispose of cases in each district and review the courts' requests for additional judges.

The Administrative Office of the United States Courts, under the supervision and direction of the Judicial Conference, is responsible for, among other things, preparing and submitting reports on the volume and distribution of the courts' workload to Congress, the circuits, and the Judicial Conference and providing legal and statistical services to committees of the Judicial Conference. The Administrative

Office is headed by a Director appointed by the U.S. Supreme Court.

The Federal Judicial Center is the research and development arm for the federal judiciary. It is headed by a Director who reports to a board made up of the Chief Justice of the United States, two circuit judges, three district judges, a bankruptcy judge, and the Director of the Administrative Office.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of this review was to obtain information on the process used to determine the need for additional judges. We interviewed officials at the Administrative Office and Federal Judicial Center to determine the process followed by the judiciary in assessing the need for additional judges. We reviewed Administrative Office reports on the federal courts' caseload, Judicial Conference proceedings on the needs determination process, and Federal Judicial Center studies on the district and bankruptcy courts' caseload measures.

To assess the results of the needs determination process, we compared the district and appeals courts' 1982 and 1984 requests for judges to the number of judges recommended by the judicial councils and the Judicial Conference and the number of judges authorized by Congress for 1982. In addition, we compared the district courts' requests for additional judges to the number of judges the caseload formula showed were needed. We also made a similar comparison for bankruptcy courts. Our review was conducted in accordance with generally accepted government auditing standards.

As of December 1, 1986, Congress had not acted on the Judicial Conference's 1984 recommendations for additional circuit and district judges and had not received the Conference's recommendations on the 1986 biennial survey.

PROCESS FOR DISTRICT COURT JUDGES

The biennial judgeship determination process for district courts takes approximately 18 months and begins with a survey sent by the Judicial Conference's Subcommittee on Judicial Statistics of the Committee on Court Administration to each court asking them to complete a questionnaire on the need for additional judges. The courts are asked to explain all caseload factors that justify their request for additional judges, such as pending caseload and case type mix, as well as other factors that should be considered including:

- recent legislation that could affect the court's workload;

- geographical problems within the district that affect the need for more judges; and
- the effect of present or past vacancies or long-term medical difficulties of active judges on the court's ability to handle the current workload.

The questionnaire also asks the district courts to provide information on the use of magistrates¹ in handling the caseload and whether the caseload burden could be reduced by the appointment of additional magistrates rather than judges.

The Subcommittee on Judicial Statistics makes a detailed review of the courts' requests and caseload statistics submitted by the Administrative Office and sends its preliminary recommendations on each district court to the appropriate judicial council and district court for further review and comment. After receiving the councils' and district courts' comments, the subcommittee makes its final recommendations to the full committee, which after review and revisions, sends its recommendations to the Conference for final approval. After the Conference acts on the committee's recommendations, it sends the request for additional judgeship positions to Congress for consideration. Congress has not always acted immediately on the Conference's recommendations and usually has made some modifications to the recommendations.

Caseload formula used to assess district court judgeship needs

The Subcommittee on Judicial Statistics uses a caseload formula to help assess a district court's request for additional judges. The caseload formula uses case weights developed from a 1979 Federal Judicial Center time study² which measured the amount of time judges spent on different types of cases during a 12-week period. Under the Judiciary's weighting system, a value of 1.0 represents the average time spent on a case. This 1979 study, which updated the case weights developed in 1969, showed that some cases, such as veterans benefit overpayment and student loan default cases, are relatively simple and do not require much time on the judges part. These cases are given a weight of 0.0326. Other cases, such as private antitrust suits, require a considerable amount of judges' time and are given a higher weight of 5.3499.

¹Magistrates are subordinate district court officials that assist district judges in the disposition of civil and criminal cases.

²S. Flanders, The 1979 District Court Time Study, Federal Judicial Center, October 1980.

The Administrative Office takes the actual case filings for each district court for the most recent 1-year period and multiplies each case times the weight assigned for that case. The weighted cases are then totalled for each period and divided by the number of judgeship positions authorized for the district. The calculations result in an average weighted caseload for each authorized full-time district court judgeship position. In 1975 the Senate Judiciary Committee recommended that an average of 400 weighted case filings, which had been used by the Judicial Conference in the 1972 biennial survey, was an appropriate number of cases for a judge to handle each year. Exceeding this average is an indication that the district may need additional judges.

Research conducted on the
case weighting system

In 1985, the Federal Judicial Center conducted a study to determine if the 400 weighted case filings per judgeship criteria was a good cut-off point for deciding that a district court's capacity had been reached and more judges are needed.³ In making the assessment, the Center used several levels of filings--ranging from 350 to 500 cases per judge--to see which was a better indicator of predicting court burden, i.e., inability of the courts to keep up with the caseload in a timely manner. The study found that the 400 weighted case filings criteria, when applied to the caseload experience of the district courts over a 12-year period (1972-83), was better than the other levels of filings tested in predicting court burden. However, the study concluded that the weighted case filings criteria must be used in conjunction with other factors in order to more accurately predict or explain overburden in specific district courts. These factors could include case type mix, pattern of caseload fluctuations over time, court size, area population characteristics, use of personnel (magistrates, senior or visiting judges, personal staff), and approaches to case management. The study reported that at the present time, factors such as these are considered on a case-by-case basis and that it may be possible to include them in a statistical model for assessing judgeship needs.

Because the 1979 time study is 8 years old, changes that have occurred in the nature and distribution of the courts' workload are not reflected in the case weights. For example, asbestos and civil RICO (Racketeering Influenced and Corrupt Organizations Act) cases have increased significantly during the 1980s. According to judiciary officials, cases such as

³B.S. Mierhoefer & E.V. Armen, The Caseload Experiences of the District Courts From 1972 to 1983: A Preliminary Analysis, Federal Judicial Center, 1985.

these may warrant separate classifications and weights but the system does not permit routine updating of case weights without undertaking a new and burdensome survey of district judges. Therefore, these cases are included under other categories (i.e., asbestos is classified as product liability) whose weights may not accurately reflect the demands or time spent by judges on these cases.

In an effort to improve the case-weighting system, the Federal Judicial Center is conducting a pilot time study in five district courts: northern California, Minnesota, eastern Missouri, New Mexico, and eastern North Carolina. According to a Center official, the methodology developed for the pilot study differs from the 1969 and 1979 time studies which identified the time judges spent on civil and criminal cases during a 12-week period. In the pilot study which started in November 1985, the official said that the Center selected all civil and criminal cases that were filed in the pilot courts during a 2-week period and are having the courts identify the number of attorneys and parties involved in each case at time of filing and termination, the type of relief sought in civil cases, and the action that best describes the actual disposition of the case. During the life of the case, the Center is asking judges and magistrates to record the time spent on the study cases and the nature of the task contributing to time consumption, such as general case review, pretrial conferences, and jury selection. The Center is scheduled to provide a progress report on the study to the Subcommittee on Judicial Statistics in December 1986. The subcommittee will assess the Center's report to determine whether the pilot study approach is a valid method for establishing case weights and will decide whether to pursue an expanded study involving all district courts.

According to the Federal Judicial Center official, an expanded study could take 3 to 5 years to complete before sufficient data would be available to compute case weights. He said that while the new study approach should produce a more accurate weighted filings measurement, there will probably continue to be factors that affect the amount of time that judges spend on cases that cannot be readily measured and converted to a workload formula. As a result, the official believed that the judiciary and Congress will always have to consider factors not measured by a workload formula in deciding on the number of judges needed.

Results of the 1982 and 1984 district courts' biennial judgeship survey

In response to the 1982 biennial survey, 44 district courts requested 65 judgeship positions which included the conversion of two temporary positions to permanent positions. As table I.1 shows, the judicial councils and Judicial

Conference supported the majority of the courts' who requested more judges. For example, the councils recommended 56 positions, which included two conversions from temporary to permanent, for 39 of the 44 courts who requested judges. The Conference recommended 53 positions for 36 of the 44 courts which included the two conversions requested by the courts. In July 1984, Congress acted on the 1982 biennial survey of judgeship needs, and as table I.1 shows, it supported the Conference recommendations by authorizing additional positions for 36 courts. However, Congress authorized three more positions than the Conference requested for those courts. Congress also authorized seven positions for seven courts which did not request additional judges. Table I.1 also shows that for the 1984 biennial survey, the councils and the Conference generally supported the courts' requests.

Table I.1:
Results of the 1982 and 1984 District Courts Biennial Survey

	Courts requesting additional judges		Courts not requesting additional judges		Total requested, recommended, or authorized	
	Number of courts	Number of positions	Number of courts	Number of positions	Number of courts	Number of positions
1982 Biennial survey results (note a)						
Survey questionnaire	44	65	50	0	44	65
Councils' recommendation	39	56	1	1	40	57
Conference's recommendation	36	53	0	0	36	53
Congressional authorization	36	56	7	7	43	63
1984 Biennial survey results (note b)						
Survey questionnaire	51	66	43	0	51	66
Councils' recommendation	47	60	0	0	47	60
Conference's recommendation	39	49	0	0	39	49
Congressional authorization (note c)						

Note a: Two of the positions requested, recommended, and authorized were not new positions but involved converting temporary positions to permanent. The councils also recommended that a temporary position that would expire in 1984 be converted to a permanent position. However, the Conference did not support this conversion and the position expired in 1984.

Note b: Two of the positions requested by the courts were not new positions but involved converting temporary positions to permanent positions. The councils and the Conference recommended that 4 temporary positions be converted to permanent. In addition, they recommended that 3 judgeship positions in three circuits, where the judges divide time between more than one district, be assigned full-time to one of the districts where they were serving on a part-time basis.

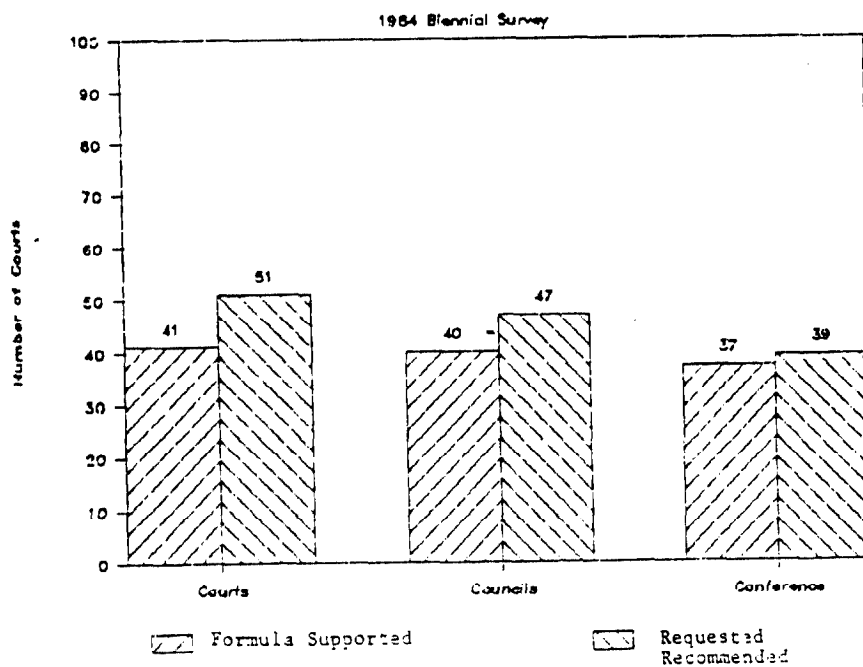
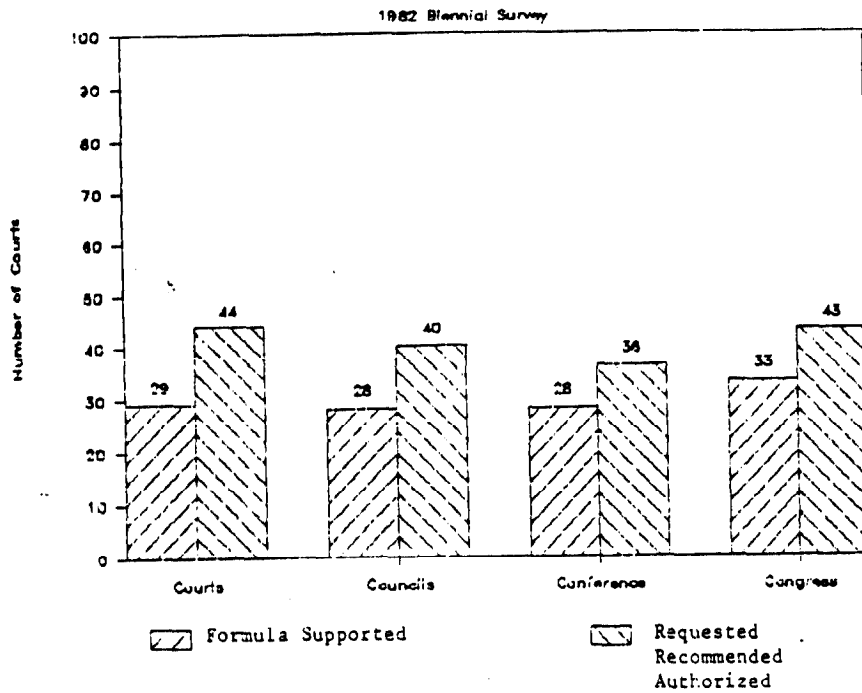
Note c: As of December 1, 1986, Congress had not acted on the judiciary's 1984 request for additional judges.

Source: Data supplied by the Administrative Office.

As figure I.1 shows, the caseload formula supported the majority of the courts (29 of 44) in their request for additional judges in 1982. The figure also shows that the councils and the Conference did not adhere strictly to the caseload formula in making their recommendations, although the caseload formula supported the majority of the courts recommended for additional judges. For example, the Conference approved judgeship positions for eight of the courts requesting judges even though the formula indicated that additional judges were not warranted for these courts. These recommendations were based on other factors, such as a rising pending caseload, heavy travel requirements on the judges, and numerous cases requiring an inordinate amount of judges' time. Of those courts supported by the formula, the number of positions requested or recommended by the councils and the Conference were the same as the formula showed were needed in about 70 percent of the cases. For the 1984 survey, as figure I.1 shows, the caseload formula also supported the majority of the courts' request for additional judgeship positions as well as the councils' and Conference's recommendations.

Of the 43 courts authorized additional judges by Congress in 1984, the caseload formula supported the need for additional judges in 33 of the courts, including five courts which did not request additional judges (see figure I.1). This indicates that Congress also considers other factors besides the caseload formula in making decisions on the judgeship allocation process.

Figure I.1:
Comparison of Caseload Formula to
Courts' Requests, Judicial Councils' and Judicial
Conference's Recommendations, and Congressional
Authorization for Additional Judges



Details on district judges
requested in 1982 and 1984

Tables I.2 and I.3 show the results of the 1982 and 1984 biennial surveys for each district court by judicial circuit. You were specifically interested in the New Jersey district court. The New Jersey district court requested three additional judges in 1982. As table I.2 shows, the caseload formula showed that these judges were needed. The Third Circuit Council, the Judicial Conference, and Congress approved the request for three additional judges for New Jersey. In 1984, the New Jersey district court requested one additional judge, although the caseload formula supported the need for two additional judges in this district (see table I.3). The Third Circuit Council and the Judicial Conference supported the court's request for one additional judge.

Table I.2:

District Judgeship Positions Requested In 1982

Circuit and district	Judgeships authorized as of 6/30/81	Additional positions requested	Judges warranted per formula	Judicial council recommen- dations	Judicial Conference recommen- dations	Additional judgeships authorized by Congress
TOTAL	515 (note a)	65 (note a)	67	57 (note a)	53 (note a)	63 (note a)
DISTRICT OF COLUMBIA CIRCUIT						
District of Columbia	15	0	0	0	0	0
FIRST CIRCUIT	23	4	4	3	3	3
Maine	2	0	0	0	0	0
Massachusetts	10	2	2	2	2	2
New Hampshire	2	1	1	0	0	0
Rhode Island	2	1	1	1	1	1
Puerto Rico	7	0	0	0	0	0
SECOND CIRCUIT	50	5	6	5	5	5
Connecticut	5	1	2	1	1	1
New York(N)	3	1	1	1	1	1
New York(E)	10	2	3	2	2	2
New York (S)	27	0	0	0	0	0
New York(W)	3	1	0	1	1	1
Vermont	2	0	0	0	0	0
THIRD CIRCUIT	50	3	3	3	3	4
Delaware	3	0	0	0	0	1
New Jersey	11	3	3	3	3	3
Pennsylvania(E)	19	0	0	0	0	0
Pennsylvania(M)	5	0	0	0	0	0
Pennsylvania(W)	10	0	0	0	0	0
Virgin Islands	2	0	0	0	0	0
FOURTH CIRCUIT (note b)	44	5	2	3	3	3
Maryland	9	1	0	1	1	1
No. Carolina(E)	3	1	0	1	1	1
No. Carolina(M)	3	0	0	0	0	0
No. Carolina(W)	3	0	0	0	0	0
South Carolina	8	1	0	0	0	0
Virginia(E)	8	1	2	1	1	1
Virginia(W)	4	0	0	0	0	0
West Virginia(N)	1.5	1	0	0	0	0
West Virginia(S)	4.5	0	0	0	0	0

Circuit and district	Judgeships authorized as of 6/30/81	Additional positions requested	Judges warranted per formula	Judicial council recommen- dations	Judicial Conference recommen- dations	Additional judgeships authorized by Congress
FIFTH CIRCUIT	57	8	12	7	7	8
Louisiana(E)	13	0	0	0	0	0
Louisiana(M)	2	0	1	0	0	0
Louisiana(W)	5	1	1	1	1	1
Mississippi(N)	2	1	1	1	1	1
Mississippi(S)	3	3	2	2	2	2
Texas(N)	9	0	2	0	0	1
Texas(E)	4	2	2	2	2	2
Texas(S)	13	0	2	0	0	0
Texas(W)	6	1	1	1	1	1
SIXTH CIRCUIT (note b)	51	7	11	8	7	8
Kentucky(E)	5.5	0	0	1	0	0
Kentucky(W)	3.5	1	1	1	1	1
Michigan(E)	13	2	3	2	2	2
Michigan(W)	4	0	0	0	0	0
Ohio(N)	10	2	2	2	2	2
Ohio(S)	6	0	1	0	0	1
Tennessee(E)	3	1	1	1	1	1
Tennessee(M)	3	0	1	0	0	0
Tennessee(W)	3	1	2	1	1	1
SEVENTH CIRCUIT	36	7	11	7	6	7
Illinois(N)	16	4	9	4	4	5
Illinois(C)	3	0	0	0	0	0
Illinois(S)	2	1	1	1	1	1
Indiana(N)	4	1	0	1	1	1
Indiana(S)	5	1	0	1	0	0
Wisconsin(E)	4	0	0	0	0	0
Wisconsin(W)	2	0	1	0	0	0
EIGHTH CIRCUIT (note b)	35	6	2	4	3	4
Arkansas (E)	4	2	0	1	0	0
Arkansas (W)	2	1	0	1	1	1
Iowa(N)	1.5	0	0	0	0	0
Iowa(S)	2.5	0	0	0	0	0
Minnesota	6	1	1	1	1	2
Missouri(E)	5	1	1	1	1	1
Missouri(W)	6	0	0	0	0	0
Nebraska	3	1	0	0	0	0
North Dakota	2	0	0	0	0	0
South Dakota	3	0	0	0	0	0

Circuit and district	Judgeships authorized as of 6/30/81	Additional positions requested	Judges warranted per formula	Judicial council recommendations	Judicial Conference recommendations	Additional judgeships authorized by Congress
NINTH CIRCUIT	75	10	8	9	9	12
Alaska	2	1	0	1	1	1
Arizona	8	0	0	0	0	0
California(M)	12	0	0	0	0	0
California(E)	6	0	0	0	0	0
California(C)	17	4	4	4	4	5
California(S)	7	0	0	0	0	0
Hawaii	2	1	0	1	1	1
Idaho	2	1	0	0	0	0
Montana	2	1	1	1	1	1
Nevada	3	0	1	0	0	1
Oregon	5	0	1	0	0	0
Washington(E)	2	0	0	0	0	1
Washington(W)	5	2	1	2	2	2
Guam	1	0	0	0	0	0
No. Marianas	1	0	0	0	0	0
TENTH CIRCUIT (note b)	27	2	6	2	2	4
Colorado	6	0	1	0	0	1
Kansas	5	0	0	0	0	0
New Mexico	4	0	0	0	0	0
Oklahoma(M)	2.67	0	0	0	0	0
Oklahoma(E)	1.67	0	0	0	0	0
Oklahoma(W)	3.67	1	3	1	1	1
Utah	3	0	1	0	0	1
Wyoming	1	1	1	1	1	1
ELEVENTH CIRCUIT	52	8	2	6	5	5
Alabama(M)	7	0	0	0	0	0
Alabama(M)	3	0	0	0	0	0
Alabama(S)	2	1	1	1	1	1
Florida(N)	3	0	0	0	0	0
Florida(M)	9	1	0	1	0	0
Florida(S)	12	5	0	3	3	3
Georgia(N)	11	0	0	0	0	0
Georgia(M)	2	1	1	1	1	1
Georgia(S)	3	0	0	0	0	0

Legend: The letters N, M, C, W, E, and S after some courts are abbreviations for northern, middle, central, western, eastern, and southern.

Note a: Three of the 515 authorized judgeships were temporary positions. Two of the positions requested, recommended, and authorized involved converting temporary positions to permanent. The council also recommended that the other temporary position should be converted to a permanent position. The Conference did not recommend that the position be converted to permanent, and Congress did not authorize it. The temporary position expired in 1984.

Note b: These circuits have roving judges dividing their time between districts as denoted by fractional numbers (1.5, 1.67, etc.)

Source: Data supplied by the Administrative Office.

Table I.3:

District Judgeship Positions Requested In 1984

Circuit and district	Judgeships authorized as of 7/10/84	Additional positions requested	Judges warranted per formula	Judicial council recommen- dation	Judicial Conference recommen- dation
TOTAL	575 (note a)	66 (note a)	113	60 (note a)	49 (note a)
DISTRICT OF COLUMBIA CIRCUIT					
District of Columbia	15	0	0	0	0
FIRST CIRCUIT	26	2	4	2	1
Maine	2	1	0	1	0
Massachusetts	12	1	3	1	1
New Hampshire	2	0	1	0	0
Rhode Island	3	0	0	0	0
Puerto Rico	7	0	0	0	0
SECOND CIRCUIT	55	5	8	5	5
Connecticut	6	1	2	1	1
New York(N)	4	1	1	1	1
New York(E)	12	1	2	1	1
New York(S)	27	1	2	1	1
New York(W)	4	1	1	1	1
Vermont	2	0	0	0	0
THIRD CIRCUIT	54	3	4	2	2
Delaware	4	0	1	0	0
New Jersey	14	1	2	1	1
Pennsylvania(E)	19	0	1	0	0
Pennsylvania(M)	5	1	0	0	0
Pennsylvania(W)	10	0	0	0	0
Virgin Islands	2	1	0	1	1
FOURTH CIRCUIT	47	6	6	6	3
Maryland	10	1	1	1	1
No. Carolina(E)	4	1	1	1	1
No. Carolina(M)	3	0	0	0	0
No. Carolina(W)	3	1	1	1	0
South Carolina	8	1	0	1	0
Virginia(E)	9	1	1	1	1
Virginia(W)	4	0	1	0	0
West Virginia(N)	2	1	0	1	0
West Virginia(S)	4	0	1	0	0

Circuit and district	Judgeships authorized as of 7/10/84	Additional positions requested	Judges warranted per formula	Judicial council recommen- dation	Judicial Conference recommen- dation
FIFTH CIRCUIT	65	8	18	7	7
Louisiana(E)	13	0	3	0	0
Louisiana(M)	2	1	1	1	1
Louisiana(W)	6	0	1	0	0
Mississippi(M)	3	0	1	0	0
Mississippi(S)	5	1	2	1	1
Texas(M)	10	0	3	0	0
Texas(E)	6	2	0	1	1
Texas(S)	13	3	5	3	3
Texas(W)	7	1	2	1	1
SIXTH CIRCUIT (note b)	57	6	15	6	4
Kentucky(E)	4.5	0	1	0	0
Kentucky(W)	4.5	0	0	0	0
Michigan(E)	15	2	4	2	2
Michigan(W)	4	1	1	1	0
Ohio(M)	11	1	4	1	1
Ohio(S)	7	1	3	1	1
Tennessee(E)	4	0	1	0	0
Tennessee(M)	3	1	1	1	0
Tennessee(W)	4	0	0	0	0
SEVENTH CIRCUIT	43	7	17	7	6
Illinois(M)	21	3	9	3	2
Illinois(C)	3	1	1	1	1
Illinois(S)	3	0	1	0	0
Indiana(M)	5	1	1	1	1
Indiana(S)	5	1	2	1	1
Wisconsin(E)	4	0	2	0	0
Wisconsin(W)	2	1	1	1	1
EIGHTH CIRCUIT (note b)	38	7	10	8	7
Arkansas(E)	4	1	1	3	2
Arkansas (W)	3	1	1	1	1
Iowa(M)	1.5	1	1	1	1
Iowa(S)	2.5	1	1	1	1
Minnesota	7	0	1	0	0
Missouri(E)	6	2	3	1	1
Missouri(W)	6	0	1	0	0
Nebraska	3	1	1	1	1
North Dakota	2	0	0	0	0
South Dakota	3	0	0	0	0

Circuit and district	Judgeships authorized as of 7/10/84	Additional positions requested	Judges warranted per formula	Judicial council recommendation	Judicial Conference recommendation
NINTH CIRCUIT	87	9	13	7	7
Alaska	3	0	0	0	0
Arizona	8	0	0	0	0
California(N)	12	2	4	2	2
California(E)	6	1	1	0	0
California(C)	22	3	5	3	3
California(S)	7	0	0	0	0
Hawaii	3	0	0	0	0
Idaho	2	1	1	1	1
Montana	3	0	0	0	0
Nevada	4	0	0	0	0
Oregon	5	1	2	1	1
Washington(E)	3	0	0	0	0
Washington(W)	7	1	0	0	0
Guam	1	0	0	0	0
No. Marianas	1	0	0	0	0
TENTH CIRCUIT (note b)	31	5	12	5	5
Colorado	7	1	2	1	1
Kansas	5	1	2	1	1
New Mexico	4	0	1	0	0
Oklahoma(N)	2.40	0	1	0	0
Oklahoma(E)	1.35	0	1	0	0
Oklahoma(W)	5.25	3	4	3	3
Utah	4	0	1	0	0
Wyoming	2	0	0	0	0
ELEVENTH CIRCUIT	57	8	6	5	2
Alabama(N)	7	1	2	1	1
Alabama(M)	3	1	0	1	0
Alabama(S)	3	1	0	1	0
Florida(N)	3	0	0	0	0
Florida(M)	9	2	1	2	1
Florida(S)	15	3	0	0	0
Georgia(N)	11	0	1	0	0
Georgia(M)	3	0	1	0	0
Georgia(S)	3	0	1	0	0

Legend: The letters N, M, C, W, E, and S after some courts are abbreviations for northern, middle, central, western, eastern, and southern.

Note a: Eight of the 575 authorized judgeships are temporary positions. Two of the positions requested involved converting temporary positions to permanent. The councils and the Conference recommended that 4 temporary positions be converted to permanent. In addition, they recommended that the 3 roving judges, who divide their time between districts, be assigned full-time to one of the districts where they were serving on a part-time basis.

Note b: These circuits have roving judges dividing their time between districts as denoted by fractional numbers (1.35, 5.25, etc.).

Source: Data supplied by the Administrative Office.

PROCESS FOR CIRCUIT COURT JUDGES

Courts of appeals are surveyed biennially at the same time district courts are surveyed and the review process is also the same. However, the process for determining whether additional circuit judges are needed is affected by the way the courts operate. The cases brought before the courts are primarily appeals of district court cases. The circuit courts generally form panels of at least three judges to review cases. In evaluating their requests for additional judges, the Judicial Conference's Subcommittee on Judicial Statistics uses a factor of 450 actual case filings per three-judge panel as a starting point. An Administrative Office official told us that just as they do in assessing district needs, the subcommittee does not consider the case filings criteria a concrete measure for determining appeals court needs. In making its recommendations, the Conference relies more on other factors, such as procedural processes of the circuits and the percentage of cases requiring a full panel.

Our review of the courts of appeals' 1982 and 1984 Biennial Survey requests showed that the courts requested 24 additional judges in 1982, which was the number recommended by the Judicial Councils and Judicial Conference and approved by Congress. For 1984, both the Councils and the Conference are supporting the courts' requests for five additional judges.

PROCESS FOR BANKRUPTCY COURT JUDGES

Before the 1978 Bankruptcy Reform Act (Public Law 95-598), the Judicial Conference, subject to congressional appropriations, authorized additional bankruptcy judges as the courts demonstrated an increase in their caseload. Also, at that time the Conference had the authority to decrease the allocation of judges as caseload demands lessened. With the passage of the 1978 Act and the subsequent Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353), several changes were made to the bankruptcy laws which affected the need for bankruptcy judges. These included (1) the transfer of power to authorize bankruptcy judgeship positions from the Conference to Congress and (2) the separation of judicial and administrative functions, such as eliminating the requirement for bankruptcy judges to preside at the first meetings of creditors.

As a result of these changes, the Judicial Conference developed in 1985 a new statistical measure to replace the "600 case filings" criteria used previously for assessing the number of bankruptcy judges needed. The new measure developed was (1) 1,800-2,000 total bankruptcy filings per judge and (2) 100 chapter 11--business reorganization petition--filings per judge. This formula was based on a Federal Judicial Center

1981 bankruptcy court time study⁴, the caseload experience of these courts over a 5-year period (1981 through 1985), and a survey of bankruptcy courts' judgeship needs. Just like the district and circuit judgeship determination process, factors other than the caseload formula are considered in approving requests for additional judges, such as travel requirements and the complexity of the chapter 11 cases.

In June 1985, 45 bankruptcy courts requested 67 additional bankruptcy judges. In December 1985, the Judicial Conference requested that Congress authorize 48 judges for 34 courts (47 judges for 33 of the courts' requesting additional judges and one judge for one court that did not request additional judges). The caseload formula supported the need for additional judges in 30 of the 34 courts (18 courts met both the total and chapter 11 filings criteria and 12 met only one of these criterion). In October 1986, Congress authorized 52 additional judges for 38 courts which included the 48 judgeships recommended by the Conference for the 34 courts.

⁴J.E. Shapard, The 1981 Bankruptcy Court Time Study, Federal Judicial Center, 1982.

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