BANKRUPTCY JUDGESHIP ACT OF 2003

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 1428

MAY 22, 2003

Serial No. 27

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://www.house.gov/judiciary

U.S. GOVERNMENT PRINTING OFFICE

87–239 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

F. JAMES SENSENBRENNER, JR., Wisconsin, *Chairman*

HENRY J. HYDE, Illinois
HOWARD COBLE, North Carolina
LAMAR SMITH, Texas
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
WILLIAM L. JENKINS, Tennessee
CHRIS CANNON, Utah
SPENCER BACHUS, Alabama
JOHN N. HOSTETTLER, Indiana
MARK GREEN, Wisconsin
RIC KELLER, Florida
MELISSA A. HART, Pennsylvania
JEFF FLAKE, Arizona
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
JOHN R. CARTER, Texas
TOM FEENEY, Florida
MARSHA BLACKBURN, Tennessee

JOHN CONYERS, JR., Michigan
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
MARTIN T. MEEHAN, Massachusetts
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
LINDA T. SÁNCHEZ, California

PHILIP G. KIKO, *Chief of Staff-General Counsel*
PERRY H. APELBAUM, *Minority Chief Counsel*

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

CHRIS CANNON, Utah *Chairman*

HOWARD COBLE, North Carolina
JEFF FLAKE, Arizona
JOHN R. CARTER, Texas
MARSHA BLACKBURN, Tennessee
STEVE CHABOT, Ohio
TOM FEENEY, Florida

MELVIN L. WATT, North Carolina
JERROLD NADLER, New York
TAMMY BALDWIN, Wisconsin
WILLIAM D. DELAHUNT, Massachusetts
ANTHONY D. WEINER, New York

RAYMOND V. SMIETANKA, *Chief Counsel*
SUSAN A. JENSEN, *Counsel*
DIANE K. TAYLOR, *Counsel*
JAMES DALEY, *Full Committee Counsel*
STEPHANIE MOORE, *Minority Counsel*

CONTENTS

MAY 22, 2003

OPENING STATEMENT

WITNESSES

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

BANKRUPTCY JUDGESHIP ACT OF 2003

THURSDAY, MAY 22, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 11:03 a.m., in Room 2237, Rayburn House Office Building, Hon. Chris Cannon (Chairman of the Subcommittee) presiding.

Mr. CANNON. We welcome the Vice-Chairman of the Commercial Subcommittee, Mr. Feeney, from Florida, and with the presence of two Members, are ready to begin this hearing. You actually get up here—the Vice-Chairman should have his name up here next to the——

Mr. FEENEY. I get the front-row seat.

Mr. CANNON. Ah. Well, actually, why don't you switch and just come up here?

Mr. FEENEY. Okay.

Mr. CANNON. Okay, just to inform you, we have a vote in about 30 minutes. Hopefully we can move forward with testimony and perhaps not inconvenience the panel by waiting. That will, of course, depend on how many people we have with how many questions after your testimony.

As you all know, bankruptcy filings have continued to escalate in recent years. Just last week, the Administrative Office of the United States Courts released the latest record-breaking filing statistics. According to the AO, annual bankruptcy filings, for the first time in our Nation's history, exceeded 1.6 million cases for the 12-month period ending last March. These numbers are absolutely astounding.

In addition to underscoring the need for additional judgeships, they also may highlight the need for comprehensive bankruptcy reform.

For those of you who don't know, my State, Utah, according to a recent study by Utah State University, ranks first in the Nation in the number of consumer bankruptcies per household. I also note that Utah would be authorized a bankruptcy judge under the bill that is the focus of today's hearing.

As some of us well know, additional bankruptcy judges, or judgeships, have not been authorized since 1992. Although this body has on at least two occasions since 1997 passed stand-alone legislation authorizing additional bankruptcy judges as well as included such authorization in omnibus bankruptcy reform legislation pending

since 1998, the other body has not acted on this long-overdue measure.

In response to the exponential increase in bankruptcy filings nationwide, my colleague from Georgia, Mr. Kingston, introduced H.R. 1428, the "Bankruptcy Judgeship Act of 2003," which memorializes the Judicial Conference's latest request for additional bankruptcy judges. It authorizes a total of 36 bankruptcy judgeships—29 on a permanent basis and seven on a temporary basis—in 22 judicial districts.

The need for this legislation is largely premised on a comprehensive study of judicial resource needs conducted by the Judicial Conference. With the excellent expertise of our witnesses, today's hearing should provide a useful opportunity for the Members of this Subcommittee to obtain a greater understanding of how the Judicial Conference assesses the Nation's bankruptcy judgeship needs and how the Conference assures that all currently authorized judicial resources are maximized.

Is Mr. Watt——

We shall turn to Mr. Watt, who is the distinguished Ranking Member of the Subcommittee when he arrives. We have a great deal going on today, unfortunately. It looks like we're going to be out of session after today, and so people are running around helter-skelter. We'll give Mr. Watt time for an opening statement when he arrives.

Without objection, his entire statement will be placed in the record. Also without objection, all Members may place their statements in the record at this point. Is there any objection?

[No response.]

Mr. CANNON. Hearing none, so ordered.

We would like to welcome Mrs. Blackburn from Tennessee—thank you for joining us—and Mr. Chabot, is it? I've got to get my glasses on. Mr. Chabot from Ohio has joined us.

Without objection, the chair will be authorized to declare a recess of the Committee so that we can meet today at any point. Hearing none, so ordered.

On unanimous consent, I request that Members have five legislative days to submit statements for inclusion in today's hearing record. Without objection, so ordered.

We want to welcome Mr. Coble, the gentleman from North Carolina. And I understand you may be in and out today. Are you—you're going to be here with us. Good. Thank you. I thought I'd heard that you had another—something else you needed to be doing, but——

Mr. COBLE. Well, I've got to be in two or three different places. Thank you, Mr. Chairman. Not unlike everybody else.

Mr. CANNON. Yes, pretty much. Also, if there's no objection, I wish to submit for the record, in addition to the testimony we will receive today from the witnesses, written statements from my two colleagues. One is a statement by the author of H.R. 1428, Mr. Kingston of Georgia. In addition, I have a statement from my colleague from the State of California, Mr. Thomas, in which he explains the need for a permanent bankruptcy court in Bakersfield, CA.

[The prepared statement of Mr. Kingston follows:]

PREPARED STATEMENT OF THE HONORABLE JACK KINGSTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman and members of the committee, I wish to thank you on behalf of myself and the 25 other Members of Congress who have joined me in support of this legislation. I also wish to thank Chairman Sensenbrenner for his attention to this bill and for his continued work on the Bankruptcy Reform package. I support the Bankruptcy Reform package and hope that it continues to move forward. The members who support H. R. 1428 realize that it is one small part of the work the 108th Congress will undertake for our bankruptcy system, but we feel it is an especially important bill.

Despite an enormous increase in bankruptcy filings in recent years, Congress has not authorized any new bankruptcy judgeship positions since 1992. Bankruptcy filings now number over 1.5 million per year, a 59% increase in the caseload of bankruptcy judges. This tremendous case load prevents cases from advancing as they should, and new judgeships are essential in moving our nation's economy toward recovery. The vast majority of Americans who are parties to federal litigation are in the bankruptcy system, and it is important that those people remain confident in the system. With an overwhelming number of bankruptcy cases being filed every day, our judicial system is approaching chaos.

Judges are crucial to the bankruptcy process. They, and they alone, ensure that work is completed, creditors paid and assets properly dispersed. Without congressional action this year, in some districts it will be impossible to appoint any new judges should any sitting judge die or retire.

This bill will make a difference in the lives of my constituents. It allocates for Georgia two additional bankruptcy judgeships in the Northern District, one additional permanent bankruptcy judgeship in the Southern District and one temporary bankruptcy judgeship in the Southern District. Most of my congressional district is in the Southern District of Georgia, where the weighted filings per judge is 2,293. Given that the national average of weighted filings per judge is 1,772, that number is quite high.

Thank you again for your consideration of H. R. 1428, the Bankruptcy Judges Bill of 2003.

[The prepared statement of Mr. Thomas follows:]

PREPARED STATEMENT OF THE HONORABLE WILLIAM M. THOMAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, thank you for the opportunity to provide input on the question of the need for legislation authorizing the creation of additional bankruptcy courts and, in particular, the need for a bankruptcy court to conduct proceedings on a daily basis in Bakersfield, California. As my constituents have informed me that neither they, nor justice, is well-served by the status quo, I recently introduced legislation, H.R. 2158, to improve the situation.

Bakersfield, with a population of 247,057, is the county seat of Kern County, California, which I represent. Kern County encompasses 8,141 square miles, has a population of 676,367, and is one of 34 counties that lie within the jurisdiction of the United States Bankruptcy Court for the Eastern District of California. That Court is served by six judges and three recalled judges and has three divisions: the Sacramento Division, the Modesto Division, and the Fresno Division, which includes Kern County. As you know, no new bankruptcy courts have been authorized since 1992, despite the fact that nationwide total bankruptcy filings have increased from 971,517 in 1992 to 1,577,651 in 2002; during that period, total filings in the United States Bankruptcy Court for the Eastern District of California have increased from 24,045 to 31,497.

In 1999, the Kern County Bar Association commissioned a study by Dr. R.B. Cazares, professor of sociology at Bakersfield College, of some 690 attorneys representing a broad spectrum of the legal community to determine priorities for the Association. The study revealed strong support among Kern County attorneys for the establishment of a United States Magistrate Court, Bankruptcy Court, and District Court in Bakersfield, and a subsequent study by the Administrative Office of the Courts led to the recent establishment of a Magistrate Court in Bakersfield. The Kern County Bar firmly believes that current conditions warrant the establishment of a United States Bankruptcy Court in Bakersfield.

Kern County attorneys familiar with the perspectives of both bankruptcy petitioners and creditors indicate several significant problems with the status quo, under which Bakersfield is designated as a location where court is conducted once a month, with other matters disposed of through the use of video/teleconferencing.

I have been asked to convey that practitioners believe that these problems persist despite the fact that the judges are doing their best to work within the confines of the current system and attempt to appear live in Bakersfield as often as possible.

One particularly significant problem is the distance that parties must travel in order to personally appear in the Fresno Division of the United States Bankruptcy Court for the Eastern District of California. As I mentioned above, Kern County encompasses a vast area, and those persons involved in contested proceedings who wish to be heard in Fresno must travel 110 miles from Bakersfield. Moreover, 429,310 of Kern County's residents live in outlying communities and areas, and must travel much further to be heard in Fresno. For example, those persons living in the communities of Boron, Frazier Park, or Rosamond with business before the Bankruptcy Court have to travel 172, 143, and 160 miles respectively to appear in Fresno. If those persons could appear in Bakersfield, they would only have to travel less than half as far—80, 37, and 57 miles respectively—and would be relieved of some of the hardships and costs inherent in traveling such distances. This travel is especially difficult for those parties who are sick, elderly, or have small children.

While a video/teleconferencing system is in place, I am told the system works well only approximately 70 percent of the time and that on occasion the video fails, leaving only teleconferencing. My constituent practitioners firmly believe that appearances through the use of the video/teleconferencing system not only decrease the decorum of the proceedings, but also decrease the parties' ability to effectively communicate, resulting in proceedings that are less efficient and fair than proceedings conducted in person before a live court and witnesses.

By way of example, Kern County bankruptcy practitioners point out that one cannot hand various pleadings, orders, or other documents to a judge appearing through the use of the video/teleconferencing system, and that this reportedly leads to delays in getting critical orders signed and necessitates travel to Fresno if one must have orders signed at a hearing. In addition, because practitioners cannot file documents in Bakersfield, Kern County parties incur increased costs in the form of overnight or courier charges. As couriers leave once a day, Kern County parties are further disadvantaged because, while deadlines are rightly the same for everyone, the de facto result is shortened deadlines for Kern County parties.

The status quo also results in the almost automatic conduct of short proceedings via video/teleconferencing as well as the conduct of proceedings through a mixture of live and video/teleconferencing appearances. For example, during the conduct of a hearing in Bakersfield, opposing counsel may appear live in Fresno with the Bakersfield counsel forced by economics to appear by video. Kern County practitioners advise me that this places the parties they represent at a distinct disadvantage.

A strong case exists for the daily conduct of bankruptcy court proceedings in Bakersfield when one considers the number of filings submitted by Kern County parties and general demographic data. In 2002, Kern County parties made 4,168 total bankruptcy filings, and through March 31, 2003, have made 1,042 total filings. During those time periods, total filings in the entire four-county Modesto Division were 5,045 and 1,324 respectively. Moreover, Kern County's 4,168 total filings in 2002 were greater than the 3,696 total filings in Fresno County and constituted over one-third of the 11,912 total filings in the entire eight-county Fresno Division. Finally, nationwide there are approximately 700,000 people per bankruptcy court, and Kern County, one of the fastest growing areas in the nation, has a population in excess of 676,000. By comparison, Stanislaus County, where the Modesto Division is located, has a population of 468,566.

In closing, my constituents and I appreciate the opportunity to provide input as this Subcommittee and the full Committee on the Judiciary consider the need for legislation to authorize the establishment of additional bankruptcy courts, and I look forward to working with you as you work to ensure that our legal system is structured in a manner that allows for the effective and fair administration of our bankruptcy laws.

Mr. CANNON. I should note that earlier this month I formally requested the Judicial Conference to review this matter and to report to this Subcommittee on the results of its review.

Now I'm pleased to introduce today's witnesses for this hearing. Our first witness is Judge Michael J. Melloy of the Eighth Circuit Court of Appeals. Preceding his appointment to that court last year, Judge Melloy served as a United States district court judge as well a bankruptcy judge. Judge Melloy currently chairs the Bankruptcy Administration Committee of the Judicial Conference.

Thank you, Mr. Watt. We're just introducing the panel, but when we finish that—do you have an opening statement you'd like to make?

Mr. WATT. No.

Mr. CANNON. Great. Thank you. You're welcome to submit one for the record. I appreciate Mr. Watt from North Carolina joining us for the hearing.

Before his appointment to the bench, Judge Melloy was in private practice in Dubuque, Iowa, where he specialized in general, civil, and commercial litigation. Judge Melloy is a graduate of Loras College and obtained his law degree with high distinction from the University of Iowa College of Law.

Our next witness, Dr. William Jenkins, Jr., is the Director of Homeland Security and Justice Issues at the General Accounting Office. Over the course of his nearly 30-year tenure with the GAO, Dr. Jenkins has worked on a variety of matters, including budgetary issues, the administration of justice, and defense matters. In his current capacity at GAO, Dr. Jenkins is principally responsible for issues pertaining to the judiciary, emergency preparedness, elections, and corrections. Dr. Jenkins obtained his bachelor of arts degree from Rice University. He thereafter obtained his master's and doctorate in public law from the University of Wisconsin at Madison.

Joining Dr. Jenkins is Dr. Gordon Bermant. Dr. Bermant is a principal author of the seminal bankruptcy judge time study conducted by the Federal Judicial Center during the late 1980's and which is still used by the Judicial Conference to assess its judicial resource needs in the bankruptcy court system. Over the course of his 21-year tenure at the FJC, Dr. Bermant served as the Director of the Innovations and Systems Development Division and later for the Division of Planning and Technology. Upon his retirement from the FJC in 1997, Dr. Bermant was a consultant for the Executive Office for United States Trustees, a component of the Justice Department charged with administrative oversight of the bankruptcy system. During his years at the FJC and Executive Office, Dr. Bermant conducted numerous studies of bankruptcy courts and trustee operations. Dr. Bermant received his Ph.D. in psychology from Harvard University and a J.D. from George Mason University. He is currently a consultant in private practice specializing in research planning and systems development, and is a lecturer in the Department of General Honors at the University of Pennsylvania.

Our final witness is Judge Paul Manners—or Mannes. Pardon me. Paul Mannes, who is a United States bankruptcy judge for the District of Maryland. Judge Mannes appears on behalf of the National Conference of Bankruptcy Judges, an organization founded in 1926, whose membership includes virtually all of the active and retired bankruptcy judges in the United States. The Conference works to improve the administration of bankruptcy laws and court system.

Judge Mannes is a 1958 graduate of Georgetown University Law Center. Before joining the bankruptcy bench in 1981, Judge Mannes was in private practice in Maryland and the District of Columbia. He has previously served as president of the National Con-

ference of Bankruptcy Judges and of the Montgomery County Bar Association in Maryland. He was appointed by the Chief Justice to the Judicial Conference's Advisory Committee on Bankruptcy Rules in 1987, and served as its chairman from 1993 to 1996.

I extend to each of the witnesses my warm regards and appreciation for their willingness to participate in today's hearing. I also ask each of you to limit your remarks to 5 minutes. Your written statements will be included in the hearing record, so feel free to summarize or highlight the salient points of your testimony. As a matter of just moving things forward, I'll give a tap of the gavel when the 5 minutes runs. You don't have to stop immediately, as you do on the floor of the House, but if you could more or less wrap up fairly quickly, that will allow us to move forward and then we'll do the same thing for Members of the panel who have questions and try and keep them within the 5-minute time limit as well.

Judge Melloy, please proceed with your testimony.

STATEMENT OF THE HONORABLE MICHAEL J. MELLOY, UNITED STATES CIRCUIT JUDGE, COURT OF APPEALS OF THE EIGHTH CIRCUIT, ON BEHALF OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

Judge MELLOY. Thank you, Mr. Chairman, Members of the Committee. I appreciate this opportunity to testify here today in support of H.R. 1428. As you've already indicated, Mr. Chairman, I chair the Bankruptcy Administration Committee of the Judicial Conference and appear here today as a representative of the conference. I have a prepared witness statement which has been submitted to the Subcommittee. I would like to briefly emphasize a few points which I hope the Subcommittee will consider when it takes up the bill providing for new bankruptcy judgeships.

No new bankruptcy judgeships have been authorized since 1992. Since then, we have seen bankruptcy filings increase from a low of 833,000 to over 1.6 million. As you indicated, Mr. Chairman, just last week statistics were released showing that filings for the 12 months ending March 31, 2003, had again reached a new record, with over 1 million 611 cases—1,611,000 cases being filed.

The bankruptcy courts of our country have used a number of strategies to address their overcrowded dockets. Many innovative case management techniques have been utilized. However, there is a limit to the number of hours in the day that can be worked and management techniques employed. Eventually, the quality of justice will suffer. I'm fearful we are at that point.

The bankruptcy courts of our Nation are addressing some of the largest and most complex commercial issues facing the Federal judiciary. Cases involving companies that are household names, such as United Airlines, USAir, Kmart, and Enron, impact thousands of creditors, tens of thousands of employees and their jobs and pensions, and greatly affect the American public. We need the resources to ensure that these cases can be effectively and efficiently dealt with.

Delay in dealing with the difficult issues these cases present is not an option. If a major airline files a chapter 11, the questions of vendor payments, employee salaries, rent to the airports, the myriad of other issues that these cases present, must be resolved

with resolved within hours of the case being filed if the airline is going to continue to fly, the jobs of the airline employees, vendors, and airport employees saved, and the flying public guaranteed continued service. We need these additional judges to make sure these cases are quickly resolved in a manner that is consistent with the Bankruptcy Code and fair to all parties concerned.

Because these issues in chapter 11 cases are so time-sensitive and have to be dealt with, the lack of resources often means that other important issues that do not have the same time urgency, such as adversary complaints involving preferences and fraudulent transfers, often get put off for far too long. Creditors and debtors are impacted by the inability to get these important issues resolved in a timely fashion.

I believe we have taken a very conservative approach to our request for additional judges. A benchmark for consideration of a request for additional judges has traditionally been a district in which the filings show more than 1,500 weighted case filings per judge. Based on the recent numbers for the year ending March 31, 2003, no district for which we are requesting an additional judge has weighted filings under 1,800 filings, and only two of the 22 districts for which we are requesting additional judges have weighted filings under 2,000 filings. Most are well in excess of 2,000 filings, and three are over 3,000 weighted filings per judge.

Finally, I urge you to enact this legislation as a matter of fundamental fairness to the existing judges in the affected districts. Judges in districts such as Delaware, the Southern District of New York, my friend Judge Mannes's district in Maryland, and all the other districts in the legislation are putting—the judges in those districts are putting in hours and working under pressures that no judge should have to endure. If we are not able to provide them some relief soon, I'm afraid that either their health will suffer or excellent judges will start leaving the bench. We desperately need relief for these severely overworked judges.

Again, thank you for allowing me to testify in support of this legislation. It is of great importance to the Federal judiciary. I'll be happy to answer any questions you might have. Thank you, Mr. Chairman.

[The prepared statement of Honorable Michael Melloy follows:]

PREPARED STATEMENT OF MICHAEL J. MELLOY

Chairman Cannon and Members of the Subcommittee,

My name is Michael J. Melloy. I am a Circuit Judge with the Court of Appeals for the Eighth Circuit. I am also Chair of the Judicial Conference Committee on the Administration of the Bankruptcy System (the Bankruptcy Committee) and in that capacity I appear before you today.

Thank you for the opportunity to testify to the need for additional bankruptcy judgeships. Pending bankruptcy judgeship legislation sponsored by Congressman Kingston (H.R. 1428) reflects the Judicial Conference's recent recommendation to Congress for the authorization of 36 more judgeships in 22 judicial districts.

Additional judgeships are critical to ensure that the bankruptcy courts have sufficient judicial resources to effectively and efficiently adjudicate the rights and responsibilities of parties in bankruptcy cases and proceedings. New bankruptcy judgeships have not been authorized by Congress since 1992. Since that time, case filings have increased nationally by 61 percent. In response to this increase, the Judicial Conference—as part of its process of reviewing bankruptcy judgeship needs every two years—made recommendations to Congress for additional bankruptcy judgeships in 1993, 1995, 1997, 1999, and this year.

Today I ask for your assistance in completing the process of securing authorization for the additional bankruptcy judgeships needed by the bankruptcy system. For your convenience, I have provided as Attachment A to my written testimony a chart listing the 36 bankruptcy judgeships recommended by the Judicial Conference.

Understanding the process and criteria used in evaluating requests for additional bankruptcy judgeships is important and should be, I believe, included as part of the official record for every judgeship request. I have therefore included a detailed description of the process as Attachment B to my written testimony. The attachment also provides a description of the various programs used by the judiciary to fully and efficiently utilize its existing judicial resources.

The Judicial Conference is required by statute (28 U.S.C. § 152(b)(2)) to submit recommendations to Congress for new bankruptcy judgeships. To assist the Conference in performing this responsibility, the Bankruptcy Committee biennially conducts national judgeship surveys pursuant to a policy statement adopted by the Conference in 1991.

The policy statement sets out a number of workload factors that the Committee considers in assessing a district's request for additional bankruptcy judgeships, the first of which is the weighted caseload of that district. Generally, it is expected that, in addition to other judicial duties, a bankruptcy court should have a threshold caseload of 1,500 annual case-weighted filings per judgeship to justify additional judgeship resources. Other factors the Committee considers include the nature and mix of the court's caseload; historical caseload data and filing trends; geographic, economic, and demographic factors in the district; the effectiveness of case management efforts by the court; and the availability of alternative solutions and resources for handling the court's workload.

2003 RECOMMENDATION FOR ADDITIONAL BANKRUPTCY JUDGESHIPS

As Chair of the Bankruptcy Committee, I initiated the most recent judgeship survey in March 2002 with a letter to all chief circuit judges asking that they assess the bankruptcy judgeship needs within their circuits and report on whether additional judgeships are warranted. At its June 2002 meeting, the Bankruptcy Committee evaluated the requests based on the criteria provided in the 1991 Conference policy statement. The Committee noted that, in addition to other justifying factors, the weighted filings per judgeship (based on the twelve month period ending September 30, 2002) in every district included in our current judgeship recommendation were above the 1,500 level, and that each district had a demonstrated need to increase its judicial resources.

It is important to note that an overburdened court may use several strategies to alleviate its caseload burden temporarily, such as streamlined case management procedures, assistance from other districts or circuits, expansion of automation programs, or addition of more support personnel. Rising case filings and increasing weighted caseloads per judgeship, however, quickly outpace the benefits of these programs. A circuit's request for additional judicial resources is made only after a pattern demonstrates the judicial caseload of a district can no longer be administered by other methods. Thus, each district for which a new judgeship is requested has already experienced a sustained elevated caseload that exceeds the capabilities of the judicial resources of that district.

The Bankruptcy Committee recommended that the Judicial Conference ask Congress to authorize 36 additional judgeships in 22 judicial districts. The Committee noted that each of these districts experienced a sustained period of heavy per judgeship weighted case filings, straining the abilities of its judges to administer its caseload effectively. I have provided as Attachment C to my written statement a chart indicating the weighted caseload per judgeship for each of the 22 districts at issue. Additionally, based upon the circuits' requests, the Bankruptcy Committee recommended converting two existing temporary judgeship positions to permanent judgeship positions, extending two existing temporary bankruptcy judgeships, and transferring a permanent bankruptcy judgeship shared by two districts into a permanent judgeship for only one district. The Judicial Conference approved these recommendations in September 2002, and forwarded them to Congress in March 2003.

The Judicial Conference recommends that 29 of the 36 additional judgeships be authorized as permanent positions. This is a mathematical determination based upon weighted filings. In those districts in which weighted filings per judgeship would remain above 1,500 notwithstanding the addition of a bankruptcy judgeship, we are requesting that the position be authorized as permanent. The underlying rationale is that the workload of the court can be expected to remain at a sufficiently high level to warrant the new judgeship for an indefinite period.

The Judicial Conference recommends that the other seven judgeship positions be created as temporary judgeships. A temporary bankruptcy judgeship provides a district with a minimum of five years of additional judgeship resources. We believe that this approach is a prudent use of our scarce federal funds. It meets the immediate and foreseeable future needs of the bankruptcy system, yet affords an opportunity to reassess resources allotted to a district where immediate need is clear but long-term need is uncertain.

THE NEED FOR ADDITIONAL JUDGESHIPS

The need for the required additional judicial officers is at a critical level.

Nationally, the volume of bankruptcy filings has increased substantially in recent years. Bankruptcy filings have risen 61 percent nationally since 1992 when new bankruptcy judgeships were last authorized. In addition, as of December 31, 2002, the average weighted filings per bankruptcy judgeship nationally was 1,744, substantially above the threshold level of 1,500 weighted filings that the Judicial Conference uses to consider additional judgeships for a district.

In addition to record case filings over the past ten years, bankruptcy courts now face cases that are more complex and time-consuming than anything previously handled. Cases such as Enron, Global Crossing, and K-Mart consume a tremendous amount of a bankruptcy court's time. Complex airline industry cases, cases involving debtor's mass tort liabilities, and cases with hundreds of subsidiary filings or adversary proceedings are overwhelming certain judges and courts.

The Bankruptcy Judgeship Act of 1992 created 35 new bankruptcy judgeships, including ten temporary bankruptcy judgeships, increasing the number of authorized bankruptcy judgeships to 326 nationally. Since enactment of that law, the temporary bankruptcy judgeships in the District of Colorado and the District of South Carolina have expired under the terms of the authorizing statute. The bankruptcy system has operated since 2000 with only 324 judgeship positions—fewer than authorized by Congress 11 years ago.

For ten years, the judiciary has sought to secure additional bankruptcy judgeships. In response to our requests, in the 104th Congress the House Judiciary Committee favorably reported a bankruptcy judgeship bill (H.R. 2604). And, in the 105th Congress, the House passed stand-alone bankruptcy judgeship legislation (H.R. 1596). This bill was subsequently incorporated into the conference report on the Bankruptcy Reform Act of 1998 (H. Rept. 105–794) that failed enactment. Since 1998, Congress has continued to tie bankruptcy judgeship legislation to still-pending bankruptcy reform legislation that we respectfully suggest is unrelated to our need for additional judicial resources.

Six judicial districts have been forced to wait for additional judicial resources since 1993. The Northern District of New York, the District of New Jersey, the Eastern District of Pennsylvania, the District of Maryland, the Eastern District of Michigan, and the Southern District of Florida were included in every Judicial Conference recommendation for additional judgeships since 1993. Further, most districts included in this current recommendation of the Judicial Conference have experienced weighted case filings in excess of 1,500 since 1997.

The number of additional bankruptcy judgeships recommended by the Judicial Conference has increased with each biennial request since 1997. The Conference requested 18 judgeships in 1997, 24 judgeships in 1999, and now 36 judgeships this year. The number of requested judgeships increases with each new request because of the backlog of requested judgeships that were not authorized, coupled with escalating case filings.

The Judicial Conference is aware of the budget crisis and the importance of government frugality with taxpayers' dollars. With that key reality in mind, a Judicial Conference recommendation for authorization of additional bankruptcy judgeships is not undertaken lightly. The judicial districts included in H.R. 1428 have waited many years for additional judicial resources, under great stress and overburdened by burgeoning caseloads. We respectfully suggest that it is now time to pass bankruptcy judgeship legislation to alleviate the overcrowded dockets and assure that the bankruptcy system continues to operate in a timely, efficient, and effective manner.

CONCLUSION

We share a common interest in ensuring that the bankruptcy court system has adequate judicial resources to manage its caseload justly, speedily, and economically. An unprecedented number of cases are pending in our bankruptcy courts. Many of the 22 districts for which additional bankruptcy judgeships are sought have had overwhelming filings dating back years, in some cases to 1993, shortly after

Congress last authorized additional judgeship positions. Although the judiciary has developed creative and innovative techniques to fully utilize its existing judicial resources and manage increasing caseloads—including the use of temporary bankruptcy judges, recalled bankruptcy judges, inter- and intracircuit assignments, and advanced case management techniques—the bankruptcy courts can no longer operate as effectively as the American public deserves because of the heavy weighted per judge caseloads. Our judicial resources are strained, and the cost to society of an overburdened bankruptcy system is enormous.

I therefore urge you to provide for 36 additional bankruptcy judgeships as requested by the Judicial Conference.

Thank you, once again, for your consideration of our request and your continued support to the system. I look forward to our continuing joint efforts to improve the administration of the bankruptcy system and believe that the authorization of these long-needed additional judgeships will be our most important first step.

I would be pleased to answer any questions or provide any assistance in this matter.

ATTACHMENT A

Judicial Conference of the United States
2003 Recommendation for Additional Bankruptcy Judgeships
(Based on statistics for the year ended 12-31-2002)

District	2003 Judicial Conference Recommendation
Puerto Rico	1 temporary
New York (N)	1 temporary
New York (S)	2 permanent
Delaware	4 permanent
New Jersey	1 permanent
Pennsylvania (E)	1 permanent
Pennsylvania (M)	1 temporary
Maryland	3 permanent and 1 temporary
North Carolina (E)	1 permanent
South Carolina	1 permanent
Virginia (E)	1 permanent
Mississippi (N)	1 temporary
Mississippi (S)	1 temporary
Michigan (E)	2 permanent
Tennessee (W)	2 permanent
Arkansas (E&W)	1 permanent
Nevada	2 permanent
Utah	1 permanent
Florida (M)	2 permanent
Florida (S)	2 permanent
Georgia (S)	1 permanent and 1 temporary
Georgia (N)	2 permanent
Total:	36

ATTACHMENT B

Assessing the Need for Bankruptcy Judgeships

In the late 1980's, encouraged by urging from Congress, the Bankruptcy Committee requested that the Federal Judicial Center conduct a detailed, quantitative study of the bankruptcy judges' workloads and recommend a comprehensive case measurement system. A copy of the report containing the Federal Judicial Center's work, entitled "A Day in the Life: The Federal Judicial Center's 1988—1989 Bankruptcy Court Time Study" by Gordon Bermant, Patricia Lombard, and Elizabeth Wiggins, is enclosed for the record.[1] Based on time records of the activities of 97% of all bankruptcy judges recorded over a 10-week time frame, staggered throughout a one-year period, the Federal Judicial Center designed a work measurement system consisting of a case weight for each of the 17 specific case types within the jurisdiction of the bankruptcy courts. These case weights categorized bankruptcy cases filed under chapters 7, 9, 11, 12, and 13 of the Bankruptcy Code and adversary proceedings, i.e., a lawsuit within a case usually initiated by filing a complaint. The cases or proceedings are generally grouped by type and by the amount of assets or scheduled debts. For example, chapter 13 cases are categorized into subgroups according to the amount of liabilities—one subgroup applies to cases in which the liabilities are less than $50,000 and another to those with scheduled liabilities of $50,000 or more. While the chapter 13 case weights are based on liabilities, case weights for chapter 11 cases and both the business and non-business chapter 7 cases are based on assets.

Through this comprehensive work measurement system, the "weighted judicial caseload" in the United States bankruptcy courts can be determined and analyzed. Based upon the case weight assigned to each of the 17 categories of case types before the bankruptcy courts and the actual cases pending before the bankruptcy courts, a quantitative measurement of the judicial caseload can be made per district. This thorough system helps the judiciary ascertain the minimum number of bankruptcy judges needed in each district and throughout the country.

At its January 1991 session, the Judicial Conference carefully reviewed the Federal Judicial Center's Time Study and adopted the proposed case weighting system. The Judicial Conference acknowledged the Center's determination that 1,280 hours was the "average" amount of time spent by bankruptcy judges on "case related" matters, noting that this figure excludes the 660 hours per year that the average judge spends handling general office-chambers matters, addressing personnel issues, traveling to divisional locations, attending meetings and seminars, conducting general research, and other matters related to the judicial role. The Judicial Conference determined, however, that a district should have an even higher weighted judicial case load, a minimum of 1,500 annual "case related" hours per bankruptcy judge, before that district's request for an additional bankruptcy judge should be considered.

The Bankruptcy Committee's Judgeship Subcommittee thoroughly screens, reviews, analyzes, and assesses the pending requests for additional judgeships from the circuit councils, and applies the weighted case filing criteria to all requests for new judgeships. The subcommittee separates the requests into categories, identifying needs that could be met without adding a judgeship and securing short-term relief for those in the greatest distress. In short, the subcommittee tries to stabilize those situations deemed most critical while awaiting the authorization of new bankruptcy judges.

The weighted judicial caseload is not the sole determinant of whether the Judicial Conference endorses or denies a judgeship request. Other factors considered include:

1) the nature and mix of the court's caseload;
2) historical caseload data and filing trends;
3) geographic, economic, and demographic factors;
4) the effectiveness of the court's case management efforts;
5) the availability of alternative resources for handling the court's caseload; and
6) any other relevant factors.

It is only after all these factors are considered that a decision is made regarding whether an additional judgeship should be requested from Congress.

---

[1] *A Day in the Life: The Federal Judicial Center's 1988–1989 Bankruptcy Court Time Study,* reprinted from 65 American Bankruptcy Law Journal (1991), is not reprinted in this hearing but is on file with the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law.

Not all requests of the judicial councils are endorsed by the Judicial Conference. Some are denied based upon information obtained during on-site surveys. An "on-site survey" generally consists of a review at the requesting district by a survey team composed of a judge from the Bankruptcy Committee and one or more members of the Bankruptcy Judges Division from the Administrative Office of the U.S. Courts. The survey team reviews the court's policies and practices, focusing particularly on the court's calendaring procedures and docket sheets. Interviews are held with key court personnel, members of the local bar, the U.S. Trustee's office, panel trustees, and judges of the bankruptcy, district, and circuit courts. Before completing the on-site survey, the judge member of the survey team often meets with the judges of the bankruptcy court and furnishes a candid evaluation of that court's practices. Suggestions for improvements and ways to achieve greater efficiencies and productivity are discussed. This form of "peer review" has proven to be extremely helpful both to the courts and the Bankruptcy Committee in determining whether additional judges or better case management is the solution to the court's heavy workload.

Continuous improvements and enhanced efficiencies are a constant goal and, as satisfied as we have been with the case weight and assessment system designed by the Federal Judicial Center, we recognize that periodic refinements are necessary. Thus, the Bankruptcy Committee asked the Center to re-examine and to attempt to quantify more precisely the judicial work required by chapter 11 "mega cases"—an area that the Center had noted at the outset of its report that the system may have undervalued. The Federal Judicial Center responded to this request by developing a prototype for adjustment to the case weight system in districts with a number of the mega cases, which the Bankruptcy Committee accepted and authorized at its June 1996 meeting.

We anticipate that additional adjustments to the case weighting system will be made as we gain experience with this system, to ensure that it provides as accurate an assessment as possible of the judicial workload for the various categories of bankruptcy cases and proceedings.

JUDICIAL MANAGEMENT TOOLS

Resource management tools and processes currently used by the judiciary to maximize its resources include:

- **Temporary positions:** The Judicial Conference recommends temporary judgeship positions in those instances where the need for an additional bankruptcy judgeship is demonstrated through the on-site survey process, but it is not clear that the need will exist permanently in the district. Ten of the 35 new positions created by Congress in 1992 were temporary positions (where the first vacancy resulting from the death, resignation, or removal of a sitting judge occurring after 5 years cannot be filled). In January 2003, the Judicial Conference recommended that of the 36 additional judgeships, seven be created as temporary bankruptcy judgeships.
- **Recall:** The judiciary also meets its judicial resource needs through the recall by any circuit of retired bankruptcy judges to serve in a district on either a full-time or part-time basis. Currently, approximately 33 recalled bankruptcy judges are serving nationwide. The number of bankruptcy judges available for recall increases almost every year.
- **Shared Positions:** The judiciary turns to shared bankruptcy judgeship positions when possible to meet the resource needs of more than one district, thus avoiding the cost of an additional judgeship.
- **Cross Designation:** The judiciary also has the authority to designate a bankruptcy judge to serve in more than one district pursuant to 28 U.S.C. § 152(d) which permits designation of a bankruptcy judge to serve in any district adjacent to or near the district for which the judge was appointed.
- **Intercircuit and Intracircuit Assignments:** The judiciary uses the systems for intercircuit and intracircuit assignment of bankruptcy judges to furnish short-term solutions to the disparate judicial resource needs of districts within circuits and between circuits.
- **Additional Law Clerks:** The judiciary has developed several programs through which the bankruptcy judges in the busiest districts may be able to receive additional law clerk help through emergency funds provided by the circuit councils, funds for supplemental law clerks provided by the Judicial Conference, and by allowing a bankruptcy judge to hire an additional law clerk in lieu of a secretary.

- **Judicial Education:** Recognizing that the number of bankruptcy judgeships authorized has not kept pace with the dramatic increase in case filings, the judiciary relies on continuing judicial education provided by the Federal Judicial Center to help the incumbent judges do more with less. Ongoing improvements in case management—through publications such as Case Manual for United States Bankruptcy Judges and specialized management seminars, including those covering mega-cases and ADR processes—allow the bankruptcy judges to handle more cases than before. To enhance the management process further, the Administrative Office provides each court with an annual "case processing measures report" that reflects how that court is managing its caseload. Moreover, the caseloads are constantly analyzed and monitored through the case weight tables developed by the Federal Judicial Center.
- **Other Ongoing Initiatives:** The Ninth Circuit has a pilot project designed to balance the disparate bankruptcy caseloads more evenly within that circuit by transferring pretrial work in adversary proceedings to districts with lighter caseloads.
- **Technology:** The judiciary continues to explore other innovative and novel ways to alleviate overly burdensome caseloads through technical advancements, where judges can help other districts through "virtual courtrooms," video-conferencing, and the use of educational programs broadcast over the FJTN, a judiciary-wide satellite television network.

ATTACHMENT C

Summary of Recommended Additional Judgeships, Extensions, Conversions and Transfers with Recent Weighted Filings per Currently Authorized Judgeship

District	Current Authorized Judgeships	Additional Judgeships Recommended by the Judicial Conference of the United States	Weighted Filings per Authorized Judgeship (Year Ended December 31) 1998	1999	2000	2001	2002
District of Puerto Rico	3	1	1,808	1,903	1,656	1,768	1,769
Northern District of New York	2	1	2,117	1,917	1,858	2,153	2,321
Southern District of New York *	9	2	1,046	928	1,269	2,336	3,346
District of Delaware *	2	4	3,259	5,073	7,193	14,174	12,171
District of New Jersey	8	1	1,931	1,958	1,804	1,876	1,926
Eastern District of Pennsylvania	5	1	1,573	1,598	1,671	1,890	2,106
Middle District of Pennsylvania	2	1	1,828	1,652	1,788	2,009	2,028
District of Maryland	4	4	3,024	2,637	2,851	2,804	3,604
Eastern District of North Carolina	2	1	1,768	1,728	2,187	2,326	2,617
District of South Carolina	2	1	1,250	1,330	1,381	2,502	2,898
Eastern District of Virginia	5	1	1,794	1,586	1,527	1,772	2,100
Northern District of Mississippi	1	1	2,218	1,974	2,066	2,284	2,538
Southern District of Mississippi	2	1	2,073	1,918	1,988	2,389	2,283
Eastern District of Michigan	4	2	1,897	2,006	1,902	2,485	3,281
Western District of Tennessee	4	2	2,529	2,527	2,392	2,904	2,975
Arkansas (Eastern & Western)	3	1	1,649	1,538	1,778	2,001	2,217
District of Nevada	3	2	1,651	1,610	1,634	2,179	2,643
District of Utah	3	1	1,399	1,500	1,455	1,850	2,125
Middle District of Florida	8	2	1,608	1,619	1,601	1,883	1,996
Southern District of Florida	5	2	1,958	1,969	2,032	2,319	2,344
Northern District of Georgia	8	2	1,479	1,366	1,592	1,681	1,955
Southern District of Georgia	2.5	2	1,990	1,807	2,070	2,188	2,237

* Reflects the FJC adjustment for mega-11 cases.

District	Current Authorized Judgeships	Recommended Action per JCUS Report	Weighted Filings per Authorized Judgeship (Year Ended December 31) 1998	1999	2000	2001	2002
District of Puerto Rico	3	Convert	1,808	1,903	1,656	1,768	1,769
Northern District of Alabama	6	Extend	1,370	1,221	1,268	1,359	1,345
Eastern District of Tennessee	4	Extend	1,176	1,202	1,177	1,480	1,426
District of Delaware	2	Convert	3,259	5,073	7,193	14,174	12,171
Middle District of Georgia	2.5	Transfer .5 from GA.S	1,935	1,831	1,932	2,275	2,312
Southern District of Georgia	2.5	Transfer .5 to GA.M	1,990	1,807	2,070	2,188	2,237

Mr. CANNON. Thank you, Judge Melloy. Dr. Jenkins?

STATEMENT OF WILLIAM O. JENKINS, JR., DIRECTOR OF HOMELAND SECURITY AND JUSTICE ISSUES, UNITED STATES GENERAL ACCOUNTING OFFICE

Mr. JENKINS. Mr. Chairman and Members of the Subcommittee, I'm pleased to be here today to discuss the results of our review and assessment of bankruptcy weighted case filings, the judicial workload measure the Judicial Conference first considers in assessing the need for additional bankruptcy judgeships. You asked us to assess whether weighted case filings were a reasonably accurate measure of bankruptcy judge case-related workload and to assess any proposal to revise the current weights.

To meet this objective, we reviewed the documentation provided by the Administrative Office of the United States Courts and the Federal Judicial Center and interviewed officials in these two agencies. I wish to emphasize that our analysis and my testimony are limited to an assessment of the weighted filings workload measure itself. The scope of our work did not include how the Judicial Conference used weighted filings, and other factors, to develop its current request for additional bankruptcy judgeships.

Weighted case filings are a statistical measure of the average amount of a judge's time that a specific number and mix of cases filed in a bankruptcy court are expected to require. Each case filed in a bankruptcy court is assigned to one of 17 case-weight categories. Each of these categories has a weight representing the average number of judge hours this type of case is expected to require. For example, a business chapter 7 bankruptcy case with assets of $50,000 to $499,999 is expected to require, on average, about two and a half times as much judge time as a non-business chapter 7 case of the same asset size.

Annual weighted filings are the total weighted value of all cases filed in a bankruptcy court in a year. Weighted filings per judgeship is the total weighted filings divided by the number of authorized judgeships in that court. The Judicial Conference has established at threshold of 1,500 weighted filings per authorized judgeship as its initial indicator that a bankruptcy court may need one or more additional judgeships.

In assessing the needs for new bankruptcy judgeships, the Judicial Conference relies on the weighted filings to be a reasonably accurate measure of case-related judge workload. Whether weighted filings are in fact a reasonably accurate workload measure rests in turn on the soundness of the methodology used to develop the weights. The original case weights were approved for use in 1991, with adjustments made in 1996 to reflect the workload associated with mega business chapter 11 cases, generally complex cases with assets at at least $100 million and 1,000 creditors.

We believe the methodology used to develop the original 1991 weights is likely to produce a reasonably accurate measure of bankruptcy judge case-related workload. The weights are based on a time study in which bankruptcy judges recorded the time they spend on a sample of cases over a 10-week period. The methodology included a valid sampling method, the participation of almost 97

percent of eligible bankruptcy judges, and a reasonable means of adjusting for such factors as missing data.

Recognizing that the original case weights may not have fully reflected the workload associated with complex mega chapter 11 cases, the Committee on the Administration of the Bankruptcy System asked the Federal Judiciary to study and develop an adjustment to the case weights for such cases, which generally affect few districts. Basically, the adjustment gives the court extra credit for such mega cases based on the number of filings and other docketed events associated with these cases. Given the size and unusual characteristics of these cases, the overall strategy used to make the adjustment for these cases was a reasonable one.

The current case weights are about 12 years old, based on times data that are about 15 years old, and changes in the last 12 years, such as changes in case characteristics or case management practices, may have affected how accurately the weights continue to measure case-related judge workload. Recognizing this, in June 2002, the Committee on the Administration of the Bankruptcy System approved a two-phase study to create new bankruptcy case weights. The first phase would include a new time study in which judges would record the time they spend on a sample of cases. The new weights would then be developed using this time data.

The second phase would be experimental research to determine whether it would be feasible to update the case weights in the future without a new time study. The data from the time study can be used as one means of assessing the usefulness and accuracy of case weights developed using this proposed event-based methodology.

In conclusion, Mr. Chairman, we found that the 1991 weight case filings and subsequent adjustments to them are likely to produce a reasonably accurate measure of case-related bankruptcy judge workload. We also believe that the methodology for updating the bankruptcy case weights is appropriate and can be used to develop case weights whose accuracy can be specifically assessed.

This concludes my statement and I'd be happy to answer any questions you or other Members of the Committee may have.

[The prepared statement of Mr. Jenkins follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, House of Representatives

For Release on Delivery
Expected at 11:00 a.m. EDT
Thursday, May 22, 2003

FEDERAL BANKRUPTCY JUDGES

Weighted Case Filings as a Measure of Judges' Case-Related Workload

Statement of William Jenkins, Jr., Director
Homeland Security and Justice Issues

GAO-03-789T

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the results of our review and assessment of bankruptcy court-weighted case filings, the workload measure the Judicial Conference first considers in assessing the need for additional bankruptcy judgeships. Weighted filings are a statistical measure of the estimated judge time that specific types of bankruptcy cases are expected to take. For example, a business chapter 7 bankruptcy case with assets of $50,000 to $499,999 is expected to take about twice as much judge time as a nonbusiness chapter 7 case with assets of $50,000 to $499,999. You asked us to assess whether weighted case filings are a reasonable means of measuring bankruptcy judges' case-related workload and to assess the methodology of any proposal to update the current case weights.

My statement today focuses on the weighted case filings as a measure of case-related bankruptcy judge workload. My testimony is based on the results of our review of documentation provided by the Federal Judicial Center (FJC) and the Administrative Office of the U.S. Courts (AOUSC) and interviews with officials in each organization. My statement includes the following major points:

- The time demands on bankruptcy judges are largely a function of the number and complexity of the cases on their dockets. Not all cases necessarily take the same amount of judge time. Some types of cases may take more judge time than others.

- In assessing the need for new bankruptcy judgeships, the Judicial Conference relies on the weighted case filings to be a reasonably accurate measure of case-related bankruptcy judge workload. Whether weighted case filings are a reasonably accurate workload measure rests in turn on the soundness of the methodology used to develop the case weights.

- On the basis of the documentation provided for our review and discussions with FJC and AOUSC officials, we concluded that weighted case filings, as approved by the Judicial Conference in 1991 and amended in 1996, are likely to be a reasonably accurate means of measuring the case-related workload of bankruptcy judges.

- The original case weights are now about 12 years old and were based on time data that are now about 15 years old. Changes in the intervening years in such factors as case characteristics and case

management practices may have affected whether the case weights continue to be a reasonably accurate measure of case-related judge workload. Some of these changes may have increased the time demands on bankruptcy judges and others reduced time demands. To the extent that the case weights may now understate or overstate time demands on bankruptcy judges, the weights could potentially result in the Judicial Conference understating or overstating the need for new bankruptcy judgeships. The Judicial Conference's Committee on the Administration of the Bankruptcy System has approved a revision of the current weights whose methodological design is reasonable.

- The accuracy of the case weights is also dependent upon accurately assigning each case filed in each bankruptcy court to the appropriate case weight category. AOUSC said that its staff took a number of steps to ensure that individual cases were assigned to the appropriate case weight category. These are described in appendix I. We did not evaluate how effective these measures may be in ensuring data accuracy.

Background

Biennially, the Judicial Conference, the federal judiciary's principal policymaking body, assesses the judiciary's needs for additional judgeships.[1] If the Conference determines that additional judgeships are needed, it transmits a request to Congress identifying the number, type (courts of appeals, district, or bankruptcy), and location of the judgeships it is requesting. In 2003, the Judicial Conference sent to Congress requests for 93 new judgeships—11 for the courts of appeals, 46 for the district courts, and 36 for the bankruptcy courts.

The demands upon judges' time are largely a function of both the number and complexity of the cases on their dockets. Some types of cases may demand relatively little time, and others may require many hours of work. The federal judiciary has developed workload measures for bankruptcy judges to estimate the national average amount of a judge's time that different types of cases may require. Individual judges may actually spend more or less time than this average on specific cases within each type—such as personal chapter 7 bankruptcy cases with assets of less than $50,000 or chapter 13 cases with liabilities of $50,000 or more (see app. II).

[1]The Chief Justice of the United States presides over the Conference, which consists of the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade. The Conference meets twice a year.

In assessing the need for additional bankruptcy judgeships in a bankruptcy court, the Judicial Conference first considers the court's weighted case filings. The Judicial Conference has established 1,500 annual weighted case filings per authorized judgeship as an indicator of a bankruptcy court's potential need for additional judgeships. This represents about 1,500 annual hours of case-related judge time. The Conference's policy for assessing bankruptcy judgeship needs recognizes that judges' workloads may be affected by factors not captured in the bankruptcy-weighted case filings. Examples of such factors include historical caseload data and filing trends; geographic, economic, and demographic factors in the bankruptcy district; and the availability of alternative solutions and resources for handling a court's workload, such as assistance from judges outside the district. However, our analysis focused solely on the weighted case filings workload measure.

Each case filed in a bankruptcy court is assigned a case weight. The case weight statistically represents the national average amount of judicial time, in hours, each type of bankruptcy case would be expected to require. The case weights are based on a 1988-1989 study in which bankruptcy judges completed diaries on how many hours they spent on specific types of cases and noncase-related work. Total annual weighted case filings for any specific bankruptcy court is the sum of the weights associated with each of the cases filed in the court in a year. Total annual weighted case filings per judgeship represent the estimated average amount of judge time that would be required to complete the cases filed in a specific bankruptcy court in a year.

Weighted case filings per judgeship is the total weighted filings divided by the number of authorized judgeships. For example, if a bankruptcy court had 5,100 weighted case filings and three authorized judgeships, the weighted case filings per judgeship would be 1,700. Because this exceeds the 1,500 threshold, the Judicial Conference would consider this court for an additional judgeship. However, it should be noted that the Judicial Conference's policy is to consider additional judgeships only for those courts that request them. Thus, if a court would otherwise be eligible for an additional judgeship, but did not request one, the Judicial Conference would not request a judgeship for that court.

How the Case Weights Were Developed

The Federal Judicial Center (FJC) developed the weights, adopted by the Judicial Conference in 1991, based on a 1988-1989 time study in which 272 bankruptcy judges (97 percent of all bankruptcy judge in those years) recorded the time they spent on specific cases for a 10-week period.

Unlike the District Court time study, whose goal was to follow each sample case from filing to disposition—a "case tracking" study—this study was a "diary study" in which judges recorded in a time diary the hours spent on each case in the study and for other judicial work for the 10-week period. This period of time may or may not have covered the entire life of the case from filing through disposition. Appendix III includes a more detailed comparison of case-tracking and diary time studies as methods of capturing judge time spent on specific cases.

The case weights were developed using a two-step process.[2] First, time data were collected from 272 judges (97 percent of the total of 280 bankruptcy judges at the time of the study). The judges recorded the time they spent on a sample of cases and other judgeship work over a 10-week period. The judges were subdivided into five groups and the recording time period for each group was staggered over a 1-year period. Second, the researchers assessed the relative impact on judicial workload of different types of cases—that is, which types of cases seemed to take more or less time—and developed individual case weights for specific case categories. The basic case weight computations involved calculating the average amount of time spent on cases of each type during each month of their life. These averages were then summed to determine the total amount of time for each case type.

Once the case weights had been created, total weighted case filings were calculated for each bankruptcy court. Then, weighted caseloads were transformed into initial estimates of required judgeships. These initial estimates were adjusted to account for factors other than those covered by the case weight calculation, such as the court's case management practices and the time required to travel to divisional offices. After all adjustments, the study concluded that bankruptcy judges spent about 1,280 hours annually on direct case-related work and an average of 660 hours on matters not directly related to specific cases (e.g., on court and chambers administration, work-related travel, and other matters related to the judicial role).

When it approved the case weights in 1991, the Judicial Conference stated that it expected that in addition to other judicial duties, a bankruptcy court

[2]The methodology is described in detail in Gordon Bermant, Patricia Lombard, and Elizabeth Wiggins, *A Day in the Life: The Federal Judicial Center's 1988-1989 Bankruptcy Court Time Study*, American Bankruptcy Law Journal, Vol. 65 (Lexington, SC: 1991).

should have at least 1,500 annual case-related hours per judgeship to justify additional judgeships. The federal work year is 2,080 hours per year, based on a 40-hour work week. Assuming that judges spent 1,500 hours annually on cases, there would remain 580 hours for federal holidays, annual leave, training, and noncase-related administrative tasks. Of course, the actual time that individual judges spend on case-related and non case-related work will vary.

Assessment of Case Weight Methodology

Overall, the methodology used to develop the bankruptcy case weights appears to be reasonable. The methodology included a valid sampling strategy, a very high participation rate among bankruptcy judges, and a reasonable means of adjusting for such factors as missing data. A notable strength of the methodology was the high participation rate by judges—97 percent of the bankruptcy judges at the time of the study. Thus, participating judges represented almost the entire universe of bankruptcy judges that could be included. The sampling period was not limited to a single time of year, thus minimizing potential bias due to variations in case filings by time of year. FJC researchers systematically used the reported time data to develop the case weights and made an effort to address all known limitations in the data. In computing the case weights, assumptions, and adjustments needed to be made to account for time data that were not linked to specific cases, missing data, and other factors. Both the assumptions and the methods used to make these adjustments appeared to be reasonable. It is important to note that the case weights were designed to estimate the impact of case filings on the workload of bankruptcy judges. Noncase-related time demands, such as time spent on court administration tasks, are not included in the case weights. The Judicial Conference focuses its analysis of the need for additional judges primarily on the demands that result from caseload, not noncase-related tasks and responsibilities.

Potential limitations of the methodology included the possibility of judges using different standards and definitions to record their time. Although the judges had written instructions on how to record their time, judges may have varied in how they interpreted case-related and noncase-related hours. To the extent this occurred, it may have resulted in the recording of noncomparable time data among judges. Because some cases require longer calendar time to complete than others, not all cases in the sample were completed at the end of the 10 weeks in which judges recorded their time. In particular, the study captured only a small portion of the total time required for very large business bankruptcies. Where the cases were not completed, it was necessary to estimate the judge time that would have

been required to complete the case. However, the method used to make these estimates was also reasonable.

Amending the Case Weights—"Mega" Chapter 11 Cases

The size and time demands of chapter 11 business bankruptcies vary considerably. The bankruptcy case weights, which the Judicial Conference approved for use in 1991, included a weight of 11.234 hours for chapter 11 business filings involving $1 million or more and a weight of 4.021 hours for chapter 11 business filings with assets between $50,000 and $99,999.

In 1996, a new method was used for measuring the workload required for very large ("mega") chapter 11 business cases. This measure was also developed by the FJC and approved by the Judicial Conference's Bankruptcy Committee. The mega cases were defined as "those involving extremely large assets, unusual public interest, a high level of creditor involvement, complex debt, a significant amount of related litigation, or a combination of such factors." The Administrative Office of the U.S. Courts defines mega chapter 11 cases as a single case or set of jointly administered or consolidated cases that involve $100 million or more in assets and 1,000 or more creditors. Mega chapter 11 cases are distinct from other large chapter 11 cases in that they generally involve a larger number of associated filings and extend over a longer period of time.

The 1991 case weights did not fully reflect the judge time required for these very large, complex bankruptcy filings. The weighting scheme was a particular problem for the Southern District of New York and the District of Delaware, both of which have a high number of mega cases. At the time of the 1988-1989 bankruptcy time study, the highest value for chapter 11 cases in the bankruptcy administrative database was $1 million or more. Subsequently, changes were made to the database, which now includes several subcategories for cases above $1 million, the highest being $100 million and above. Also, the time study estimated the judge time required by cases for the first 22 months after the case was filed, a period which may not have encompassed the entire calendar time required to dispose of the case. Both of these factors contributed to the inability to create case weights for the mega chapter 11 cases.

Beginning in 1996, the adjustment of weighted case filings to account for mega chapter 11 cases was implemented in the two districts where most of these cases have been filed—first in the Southern District of New York and later in the District of Delaware. FJC's research suggested there was no clear linear relationship between asset size and judge time in mega chapter 11 cases. Instead, FJC selected an adjustment method using data routinely collected on docketed events in bankruptcy cases, such as docketed

hearings. The method used to adjust the case weights for mega chapter 11 cases consists of a preliminary weighted caseload computation, followed by a ratio adjustment step. The preliminary weighted caseload is the sum of the bankruptcy case weights for each case filing associated with the mega chapter 11 cases. For example, if a mega case consisted of two consolidated cases, one with assets of between $50,000 and $99,999 (weight: 4.021) and one with assets greater than $1 million (weight: 11.234), the preliminary case weight would be 15.255 (4.021 plus 11.234). In the Southern District of New York, this preliminary case weight is adjusted by the ratio of docketed events per weighted case-hour for mega chapter 11 cases to the docketed events per weighted case-hour for nonmega chapter 11 cases involving more than $1 million in assets.[8] In the District of Delaware, where mega chapter 11 cases tended to have a larger number of consolidated filings, several ranges of the number of associated filings are used to classify mega chapter 11 cases. For each range, a separate docketing ratio adjustment is calculated in the same manner as it is for the District of Southern New York. In both districts, the final step is to report these calculations over a period of several years and use the average value across the years as the adjusted weighted caseload for mega chapter 11 cases. The purpose of this final step is to moderate the effect of fluctuations in the number of mega chapter 11 cases filed from year to year.

Assessment of Mega Case Weighting Method

The methodology used to adjust the weighted caseload for mega chapter 11 cases, specifically the ratio adjustment step, cannot be thoroughly assessed because there are no objective time data to use for comparison. The FJC selected this methodology after extensive research on other possible methods. The overall strategy of applying a ratio adjustment using auxiliary information, followed by use of a multiyear average, is a reasonable approach.

[8]This determines "how the level of docketing in mega cases differs from the docketing in non-mega cases of one million dollars or more."

Research Design for Updating the Bankruptcy Case Weights

In June 2002, the Judicial Conference Committee on the Administration of the Bankruptcy System decided to begin a study to create new bankruptcy case weights. The preliminary design for the study has a two-phase structure. In the first phase, a diary time study would be conducted, and the time study data would be used to develop new case weights. In the second phase, research is planned to assess whether it is possible to develop "event profiles" that would allow future updating of the weights without the necessity of conducting a time study for each update. Future updating of the weights could include revision of case weight values and/or developing case weights for new case categories. The data from the time study can be used to validate the feasibility of the new approach.

The preliminary design for the study appears to be reasonable. In the first phase, new weights would be constructed using objective data from the time study. The second part represents experimental research to determine if it is possible to make revisions to the weights in the future without the requirement of conducting a time study. If the research determines this is possible, it would be possible to update the case weights more frequently with less cost than required by a time study.

If enacted, it is likely that the bankruptcy reform legislation passed by the House of Representatives would probably affect the time bankruptcy judges would need to devote to personal bankruptcy cases. Personal bankruptcy filings accounted for 97 percent of the total 1,547,669 bankruptcy filings in fiscal year 2002. Currently, the great majority of those who file for personal bankruptcy (70 percent in fiscal year 2002), file under chapter 7, in which their eligible debts are discharged. Under the terms of the proposed legislation, a greater proportion of those who file for personal bankruptcy will be required to file under chapter 13 and enter into a 5-year debt repayment plan. If the bankruptcy reform is enacted during the course of the new bankruptcy time study, FJC officials said they would recommend halting the time study and allowing some period for the implementation of the new law before restarting the study. Because personal bankruptcy filings represent the vast majority of bankruptcy filings, this seems to be a prudent plan.

Conclusions

On the basis of the documentation provided for our review and discussions with FJC and AOUSC officials, we concluded that weighted case filings, as approved by the Judicial Conference in 1991 and amended in 1996, was a reasonably accurate means of measuring the case-related workload of bankruptcy judges. The 1991 bankruptcy case weights—which cover all but mega chapter 11 business filings—are now about 12

years old, and the data on which they were based are about 15 years old. Changes since 1991 in such factors as case characteristics and case management may have affected whether the weights continue to be a reasonable measure of case-related bankruptcy judge workload. The design for revising the current bankruptcy case weights seems reasonable. The new weights would be based on the same type of objective time data as are the current weights, and the time data from the new bankruptcy case weight study can be used to validate the feasibility of using an event-based approach for future updates of the weights.

Mr. Chairman, this concludes my prepared statement, I would be pleased to answer any questions that you or other members of the Subcommittee may have.

Contacts and Acknowledgments

For further information regarding this testimony, please contact William Jenkins, Jr., at (202) 512-8777. Individuals making key contributions to this testimony included David Alexander, Kriti Bhandari, Chris Moriarity, and R. Rochelle Burns.

Appendix I: Quality Assurance Steps the Judiciary Takes to Ensure the Accuracy of Case Filing Data for Weighted Filings

All current records related to bankruptcy filings that are reported to the Administrative Office of the U.S. Courts and used for the bankruptcy court case weights are generated by the automated case management systems in the bankruptcy courts. Filings records are generated monthly and transmitted to AOUSC for inclusion in its national database. On a quarterly basis, AOUSC summarizes and compiles the records into published tables, and for given periods, these tables serve as the basis for the weighted caseload determinations.

In responses to written questions, AOUSC described numerous steps taken to ensure the accuracy and completeness of the filings data, including the following[1]:

- Built-in, automated quality control edits are done when data are entered electronically at the court level. The edits are intended to ensure that obvious errors are not entered into a local court's database. Examples of the types of errors screened for are the district office in which the case was filed, the U.S. Code title and section of the filing, and the judge code. Most bankruptcy courts have staff responsible for data quality control.
- A second set of automated quality control edits are used by AOUSC when transferring data from the court level to its national database. These edits screen for missing or invalid codes that are not screened for at the court level, such as dates of case events, the type of proceeding, and the type of case. Records that fail one or more checks are not added to the national database and are returned electronically to the originating court for correction and resubmission.
- Monthly listings of all records added to the national database are sent electronically to the involved courts for verification.
- Courts' monthly and quarterly case filings are monitored regularly to identify and verify significant increases or decreases from the normal monthly or annual totals.
- Tables on case filings are published on the Judiciary's intranet for review by the courts.

[1]Given the limited time for our review, AOUSC was unable to obtain input to our questions on data quality control procedures from individual courts.

- Detailed and extensive statistical reporting guidance is provided to courts for reporting bankruptcy statistics. This guidance includes information on general reporting requirements, data entry procedures, and data processing and reporting programs.

- Periodic training sessions are conducted for bankruptcy court staff on measures and techniques associated with data quality control procedures.

In addition to the quality control procedures listed above, AOUSC indicated that an audit was performed in 1997 by Clifton Gunderson L.L.C., a certified public accounting firm, to test the accuracy of the bankruptcy statistical data maintained by bankruptcy courts and the AOUSC. The firm compared individual case records in 11 courts nationwide with data in the national database for cases filed in 1993, 1994, and 1995 for completeness and accuracy. Excluding problems in one district, the overall match rate of all statistical data elements captured exceeded 97 percent, and the fields with most mismatches were not relevant to the bankruptcy weighted caseload. AOUSC was unaware of any other efforts to verify the accuracy electronic data to "hard copy" case records for bankruptcy courts. AOUSC noted that it did not have time to seek detailed information from the individual bankruptcy courts on this issue within the short time available to respond to our questions.

Appendix II: Bankruptcy Case Weights and Confidence Intervals for All Cases Except "Mega" Chapter 11 Business Filings

Type of case	Case weight in hours	Confidence interval
Chapter 7—Business		
Assets less than $50,000	0.335	0.312 - 0.359
Assets $50,000-$499,999	0.413	0.382 - 0.444
Assets greater than $499,999	1.704	1.426 – 1.982
Chapter 7—Nonbusiness		
Assets less than $50,000	0.089	0.079 - 0.099
Assets $50,000-$499,999	0.160	0.144 - 0.176
Assets greater than $499,999	0.302	0.239 – 0.365
Chapter 11		
Assets less than $50,000	5.372	5.054 – 5.690
Assets $50,000-$99,999	4.021	3.692 – 4.350
Assets $100,000-$499,999	4.285	3.991 – 4.579
Assets $500,000-$999,999	5.143	4.769 – 5.517
Assets of $1 million or more	11.234	10.397 – 12.071
Chapter 12	4.040	3.558 – 4.522
Chapter 13		
Liabilities less than $50,000	0.310	0.269 - 0.351
Liabilities at least $50,000	0.457	0.410 - 0.504
Other cases	0.194	0.074 - 0.314
Adversary proceedings		
Dischargeability	1.346	1.232 – 1.460
Other	2.016	1.722 – 2.310

Source: Federal Judicial Center.

Appendix III: Measuring Judicial Workload Using the Collection of Time Study Data

The current Bankruptcy Court and District Court workload measures were developed using data collected from time studies. The District Court time study took place between 1987 and 1993, and the Bankruptcy Court time study took place between 1988 and 1989. Different procedures were used in these two time studies. The Bankruptcy Court time study protocol is an example of a "diary" study, where judges recorded time and activity details for all of their official business over a 10 week period. The District Court time study protocol is an example of a "case-tracking" study, where a sample of cases were selected, and all judges who worked on a given sample case recorded the amount of time they spent on the case. Time studies, in general, have the substantial benefit of providing quantitative information that can be used to create objective and defensible measures of judicial workload, along with the capability to provide estimates of the uncertainty in the measures.

Estimating Judge Time in Diary and Case Tracking Studies

At the conclusion of a case-tracking study, total time spent on each sample case closed during the study period is readily available by summing the recorded times spent on the case by each judge who worked on the case. For a given case type, the summed recorded times can be averaged to obtain an estimate of the average judicial time per case for that case type.

For a diary study, however, it is necessary to make estimates of judicial workload for all cases that were not both opened and closed during the data collection period. This estimation step requires information from the caseload database, and thus the accuracy of estimates depends in part on the accuracy of the caseload data. Two kinds of information are required from the caseload database: case type and length of time the case has been open.

With the diary approach, the total judicial time that is required for lengthy case types is estimated by combining "snap shots" of the time required by such cases of different ages. Thus, in theory, reducing accurate weights for lengthy case types is not problematic. In practice, however, difficulties may be encountered. For example, in the 1988-1989 bankruptcy time study, the asset and liability information for cases older than 22 months was inadequate and appropriate adjustments had to be made. In addition, difficulties may arise if only a small number of cases of the lengthy type are in the system. This is an issue FJC said it is considering as it finalizes how to assess the judicial work associated with mega cases in the upcoming bankruptcy case-weighting study.

Comparing Case-Tracking Studies and Diary Studies	Each study type has advantages and disadvantages. The following outlines the similarities and differences in terms of burden, timeliness of data collection, post-data collection steps, accuracy, and comprehensiveness.
Burden on Participants	Each study type places burden on judicial personnel during data collection. It is not clear that one study type is less burdensome than the other. The diary study procedure requires more concentrated effort, but data are collected for a shorter period of time.
Timeliness of Data Collection	Data collection for a *diary study* can be completed more quickly than for a case-tracking study.
Post Data Collection Steps	More effort is needed to convert diary study data to judicial workload estimates than case tracking study data. Also, the accuracy of estimates from diary study data depends in part on the accuracy and objectivity of the information in the caseload database.
Data Accuracy	It is not clear that one study type collects more accurate data than the other study type. Some of the Bankruptcy Court case-related time study data could not be linked to a specific case type due to misreporting errors and/or errors in the caseload database. Some error of this type likely is unavoidable because of the requirement to record all time rather than record time for specific cases only. However, it is plausible that a *diary study* collects higher quality data, on average, because all official time is to be recorded during the study period; judicial personnel become accustomed to recording their time. In contrast, the data quality for a case-tracking study could decline over the study's length; for example, after a substantial proportion of the sample cases are closed, judicial personnel could become less accustomed to recording time on the remaining open cases.
Comprehensiveness and Efficiency	In theory, a case-tracking study collects more comprehensive information about judicial effort on a given case than a diary study, because data for a sampled case almost always are collected over the duration of the case. (Data collection may be terminated for a few cases that remain open, or are reopened, many years after initial filing.) For case types that

simultaneously stay open for a long period and require a substantial amount of judicial effort, it is possible that a diary study would not be able to produce suitable estimates of judicial workload due to a lack of data.

Mr. CANNON. Thank you, Dr. Jenkins. Dr. Bermant?

STATEMENT OF GORDON BERMANT, CONSULTANT

Mr. BERMANT. Mr. Chairman, Members of the Subcommittee, I am pleased to be here today to testify regarding the methodology used to determine the need for judicial resources in the bankruptcy courts. I was an author of the Federal Judicial Center's 1988–89 bankruptcy court time study. I have also conducted many other studies of bankruptcy courts and trustee operations, first as a staff member of the Federal Judicial Center and then as a consultant to the Executive Office for U.S. Trustees. I am here today, however, simply in my own capacity.

Mr. COBLE. Mr. Chairman, I would ask Mr. Bermant to pull the mike a little closer. The folks in the back may——

Mr. BERMANT. Better?

Mr. COBLE. That's much better, yes.

Mr. BERMANT. Thank you.

I will make four points briefly and then be happy to answer any questions that you may have.

First, the bankruptcy court time study was designed and conducted with high standards of scientific rigor and professional responsibility. The bankruptcy judges were completely responsive to the burden we placed on them, recording every official act in a diary for a 10-week period. Ninety-seven percent of the judges then serving participated in the study.

Second, there were nevertheless two limitations inherent in the categories of cases and proceedings to which we assigned case weights. The first limitation was at the high end of the case-weight spectrum, namely, the large chapter 11 cases. In those days, all chapter 11 filings with $1 million or more in scheduled assets were placed in the same asset category on the filing form. The form has since been amended to provide for more high-end categories, and the FJC has provided a separate formula for the so-called mega cases. The second limitation was that the available records required us to aggregate the various kinds of adversary proceedings into only two categories. It would have been better for us to have separate case weights for each kind of adversary proceeding.

My third point is this: It has been 15 years since we conducted the time study, and that fact alone probably justifies revising the case weights. But in addition, much has changed in the bankruptcy world in that time. The numbers of filings have increased from 680,000 for calendar year 1989 to 1.6 million for the 12 months ending March 31, 2003.

There are some notable features of the growing caseload. The percentage of business cases has fallen from about 9 percent of all filings in 1989 to about 2.3 percent for the most recent report. Most of the growth in raw filing numbers comes from chapter 7 filings that turn out to be so-called no-asset cases, in which the trustee determines that there no non-exempt property worth liquidating for the benefit of the creditors. The amount of judge time expended on these cases is in many if not most courts essentially zero—or at least less than the average of about 5 minutes per case now used for the smallest chapter 7 category. It would be helpful in any new

time study to have a case weight specifically for such no-asset cases.

Although chapter 11 filings are fewer than before, many seem to be larger and much more complex than before. It is in this area especially that we may expect to find additional demands on judge time.

During this period of increased filings chapter 13 cases have remained fairly constant as a proportion of the total, but many chapter 13 filings are concentrated in a relatively few districts. These concentrations produce economies of scale in operating efficiency that may lead to some lessening of judicial burden.

There is no way to figure out theoretically how these changes, or others that we might discuss, affect the courts' weighted caseloads. But it is clear that the changes are large enough to justify investing in a new bankruptcy court time study, which the conference and the agencies are doing.

Fourth and finally, the Judicial Conference has always insisted that the weighted caseload is the first but not the only factor to be considered in evaluating a court's request for new judgeships. Each request is scrutinized at a number of levels, including the district court, the Circuit Judicial Council, and the Bankruptcy Committee of the Judicial Conference. The administrative office provides technical support throughout this process. So when a request finally reaches this Committee, it has been vetted thoroughly. This scrutiny protects against misinterpretations of a court's needs based solely on a court's weighted caseload.

In conclusion, then, I would like to emphasize my judgment that positive action on new bankruptcy judgeships need not and should not await the results of a new time study.

Thank you, Mr. Chairman, for inviting me to testify today. I'll be happy to answer any questions you may have for me.

[The prepared statement of Mr. Bermant follows:]

PREPARED STATEMENT OF GORDON BERMANT

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to testify regarding the methodology used to determine the need for judicial resources in the bankruptcy courts. My specific qualifications include my role as an author of the Federal Judicial Center's 1988–1989 Bankruptcy Court Time Study, which is the quantitative foundation upon which the Judicial Conference begins its review of requests for new judgeships. I have also conducted many other studies of bankruptcy court and trustee operations, first as a member of the staff of the Federal Judicial Center and subsequently as a consultant to the Executive Office for U.S. Trustees in the Justice Department. I am here today, however, simply in my own capacity.

I have four points to make.

First, the Federal Judicial Center's 1988–1989 Bankruptcy Court Time Study was designed, conducted, and published with high standards of scientific rigor and professional responsibility. The FJC committed significant resources to enable thorough data collection and detailed analysis. The bankruptcy judges were completely responsive to the burden we placed on them: recording every official act in a diary for a 10-week period. Ninety-seven percent of the judges then sitting participated in the study. Also, the Administrative Office of the Courts cooperated fully with us as we used the AO's centralized administrative database to check the judge's diary reports against the docket numbers of filed cases. Our published report (copies of which have been supplied for the record) fully explains the methods that we used, including the assumptions and extrapolations that we made when there were gaps in the administrative database or judicial diaries. The resulting case weights, and court weighted case loads, were as valid and reliable as possible.

Second, there were nevertheless two limitations inherent in the seventeen categories of cases to which we assigned case weights. The first limitation was at the high end of the case weight spectrum, namely the large chapter 11 cases. In those days, all chapter 11 filings reporting $1 million or more in scheduled assets were placed in the same category on the filing form. But even then there were multi-billion dollar filings, including Texaco ($36 billion) in 1987, Financial Corporation of America ($34 billion) in 1988, and MCorp. ($20 billion) in 1989. These "mega-cases" create unique challenges for judges' workloads that we did not measure fully in the original study.

In 1996, the FJC, recognizing the special character of mega-cases, developed a mega-case formula to supplement the chapter 11 case weights. The supplemental formula factors into the case weight two important features of mega-cases. First, it accounts for the number of filings that are consolidated when a mega-case comprises a parent company and many affiliates, each of which has filed a separate chapter 11 petition. In the ordinary course of calculating a weighted case load, each of the separate filings is credited with its case weight, even if the parent and the subsidiaries are treated as one case in the bankruptcy court.

For example, if a corporate parent and 20 affiliates or subsidiaries file on the same day, and each claims at least $1 million in assets, then the weighted case load for that entity will be 236 judge-hours (each of the 21 filings will receive the 11.234 hour case weight, which comes to 235.9 hours). If this effect of related cases on the work load measurement is not accounted for, the case weight of a mega-case might overestimate the amount of judicial work required.

The supplemental formula also estimates additional judicial effort based on the increased number of docketed matters in mega-cases. Mega-cases, with more lawyers and more parties in interest than other chapter 11 cases, generate more contested matters, adversary proceedings, fee requests, and so on. The second factor estimates how much of this additional work there is. In sum, these two factors applied to mega-cases guard against either over-estimating or under-estimating the amount of judicial work that will likely be required. The Center's formula used a three-year window of mega-cases to arrive at a final calculation. In my opinion, the formula represents a sound approach to weighting the unusual features of mega-cases.

A second limitation of the original study was that the available records required us to aggregate the numerous types of adversary proceedings into only two categories: dischargeability actions under section 523 of the Bankruptcy Code, and all the other adversary proceeding types lumped together. It would have been better to have separate case weights for each type of adversary proceeding. But how much difference this makes, as a practical matter, I don't know.

My third main point is this: Much has changed in bankruptcy since the FJC time study was completed. The numbers of filings have, of course, increased dramatically, from 680,000 for calendar year1989 to 1.6 million for the 12 months ending March 31, 2003. There are some notable features of the growing case load. The numbers of consumer cases have grown out of proportion to the increases in business cases. In 1989, about 9% of all filings were business cases; in the last 12 months, by contrast, only 2.3% of filings were business cases.

Most of the growth comes from chapter 7 filings that turn out to be "no-asset" cases, in which the trustee determines that there is no non-exempt property worth liquidating for the benefit of the creditors. The amount of judge time expended on these cases is, in many if not most courts, essentially zero, or in any event less than the average of about five minutes per case that we originally calculated for all cases in the $0–$50,000 category. It would be helpful to have a case weight specifically for such no-asset cases. There are certain technical problems that would have to be overcome to calculate a no-asset case weight, but I believe that the FJC could accomplish the task.

During this period of increased filings, chapter 13 cases have remained fairly constant as a proportion of the total, at about 28%. However, a large proportion of chapter 13 filings are concentrated in a relatively few districts. These concentrations lead to economies of scale and operating efficiencies for the chapter 13 standing trustees and bankruptcy court clerks' offices, which in turn lead to some lessening of judicial burden.

There is no way to figure out, theoretically, how these changes have affected judicial case weights. But it is plausible that the changes are large enough to justify investing in a thorough new bankruptcy court time study.

Fourth and finally, the Judicial Conference has always insisted that the weighted case load is the first but not the only factor to be considered in evaluating the courts' requests for new judgeships. Each request is scrutinized at a number of levels, including the district court where the bankruptcy court is situated, the Circuit Judicial Council, and of course the Judicial Conference Committee on the Adminis-

tration of the Bankruptcy System. Staff members of the Administrative Office support the process of reviewing each application. So when a request finally reaches this committee, it has been vetted at a number of levels and for a number of characteristics. In my opinion, this scrutiny protects against any over-interpretation or misinterpretation of a court's needs based solely on the court's weighted case load.

In conclusion, I offer my opinion that for the reasons I have provided, positive action on new judgeships should not await the results of a new time study.

Thank you, Mr. Chairman, for inviting me to testify today. I will be happy to answer questions in my area of competence that you may have for me.

Mr. CANNON. Thank you, Dr. Bermant. And Judge Mannes, would you please give us your testimony now?

STATEMENT OF THE HONORABLE PAUL MANNES, UNITED STATES BANKRUPTCY JUDGE FOR THE DISTRICT OF MARYLAND, ON BEHALF OF THE NATIONAL CONFERENCE OF BANKRUPTCY JUDGES

Judge MANNES. Yes, I appear this morning on behalf of the National Conference of Bankruptcy Judges, a voluntary organization of practically all the bankruptcy judges in the country. I hold court in Greenbelt, Maryland, at the end of the Green Line of the Metro system.

The Conference strongly endorses the recommendations of the Judicial Conference on the need for additional judgeships. Since the last legislation for additional bankruptcy judges in August 1992, there has been a 59 percent increase in the number of bankruptcy cases filed. Additional bankruptcy judgeships are critical to ensure that our bankruptcy court system continues to function for the benefit of creditors and debtors. The 36 judgeships in H.R. 1428 reflect the current recommendation of the Judicial Conference based upon the most recent data. These judgeships are requested for those districts with a justified need for help. The judgeships that were provided in H.R. 975 track provisions in last year's bankruptcy reform bill and reflect older data.

As far as Maryland is concerned, in the year 1991, before the passage of the act of August 26, 1992, that allotted a fourth bankruptcy judge, we had 14,652 cases filed in our district. Last year, we had 35,534 cases filed. Our weighted caseload is 3,656 filings per judge and, like many of our colleagues, we are swamped. Cases are more complicated. Because of the cost of the delivery of legal services, more and more people are—debtors are representing themselves, and any bankruptcy judge will tell you that this representation by individuals representing themselves causes the consumption of a lot of time for the judge both in preparation and in trial. And the plain truth is that we do not have the time to devote to our caseload that it requires, and the public suffers.

The suffering takes many forms. For example, in a chapter 11 reorganization, as Judge Melloy pointed out, it is imperative that hearings be held as quickly as possible. For example, businesses cannot operate in bankruptcy without cash, and the debtor very often must get court approval to borrow money or to use cash collateral. These are time-consuming and often bitterly contested matters that should be scheduled on an expedited basis.

Chapter 11 is a very expensive and difficult neighborhood for any business to operate in. A company cannot emerge from chapter 11 as a going concern without first having a hearing on confirmation

of its plan. And often, because of the crowded dockets and problems in our districts, these lengthy hearings cannot be scheduled for months. Often hearings must be scheduled or have to be set at inconvenient times or over several non-consecutive days—a very unsatisfactory way of trying a case. Likewise, creditors such as landlords should not have to wait long periods of time to have hearings to retake their property. In order to manage our docket, debtors in chapter 13 are handled in large numbers, often 250, in an afternoon sitting.

As hard as we may try, the appearance of justice suffers because often litigants simply do not understand what is taking place, and do not feel that they have been fully heard, and we do not have the time to fully explain what we have decided. This is especially true with respect to those pro se debtors, those representing themselves, some of whom come in armed with some wrong-headed Internet information.

We thank you for your help. The National Conference of Bankruptcy Judges strongly supports the legislation for the authorization of the 36 judges. The system cannot afford to wait any longer.

[The prepared statement of the Honorable Paul Mannes follows:]

PREPARED STATEMENT OF PAUL MANNES

The National Conference of Bankruptcy Judges (NCBJ) appreciates the opportunity to express its views on HR 1428, which creates 36 additional judgeships based on the January 21, 2003 Judicial Conference recommendation to Congress. The NCBJ, founded in 1926, represents virtually all of the Bankruptcy Judges across the country. Over the years, the NCBJ has been a resource for the Congress on Bankruptcy Court operations.

NCBJ strongly endorses the recommendation of the Judicial Conference on the need for additional judgeships. There has not been an additional bankruptcy judgeship slot authorized since August 1992. Yet in those 10 years, there has been a tremendous increase in the caseload. As the Judicial Conference has reported, the volume of bankruptcy filings reached an historic high of over 1.5 million filings for fiscal year 2002. This is a 59% increase in the caseload since Congress last authorized judgeships in 1992. These additional judgeships are critical to ensure that our bankruptcy court system continues to function effectively.

The 36 judgeships in HR 1428 reflect the most current recommendation of the Judicial Conference, based on the most recent data. These judgeships are requested for those districts with a justified need now for additional assistance. The judgeships provided for in HR 975 (The Bankruptcy Abuse Prevention and Consumer Protection Act of 2003) track provisions contained in last year's Bankruptcy Reform Bill and are based on older data.

One of the key factors used by the Judicial Conference to determine the need for additional judgeships is the weighted caseload of the bankruptcy court. It is expected that in addition to other judicial duties, that a bankruptcy court should have a caseload of 1500 annual case weighted filings per judgeship to merit additional judgeships. A review of the latest weighted filings per judge data for the 12 months ending March 31, 2003, shows that in 20 of the 22 districts that qualify for judgeships, the weighted filings are over 2000 per judgeship. For example, in the District of Utah, the weighted caseload per judge is 2,115. In the District of Delaware, the weighted caseload per judge is 12,566.

The shortfall in judges means delay to all the constituent parties in a bankruptcy case. Creditors cannot gain timely adjudication of motions and adversary proceedings. Debtors' plans are delayed in confirmation and hence distributions of many millions of dollars to creditors and back into the economy cannot happen until the hearings can be concluded. Right now there are often 250 Chapter 13 confirmations scheduled to be heard in one overcrowded courtroom on each confirmation hearing date. We are often hours behind the time set for a particular case to be heard, causing debtors to lose wages and employers to lose their services.

In Chapter 11 cases, companies cannot emerge from reorganization, make distributions to creditors and return to full participation in the market place until after confirmation hearings are held and plans confirmed.

Judges of courts with extra-heavy caseloads do not have the time to sift through files and find those inconsistencies that are the tip of the iceberg of a fraudulent filing. Such courts also do not have the time to prepare and try motions pursuant to § 707(b) of the Bankruptcy Code to dismiss abusive filings, or the time to draw out the position of the unrepresented debtor or to explain to litigants why we have ruled as we have. Often people will leave court without the feeling that they have had the chance to be heard, and that is a deplorable situation. With time constraints as they are, it is difficult to prepare for the next day's dockets and yet take up those emergency hearings that occur in many bankruptcy cases.

The situation in my own District of Maryland illustrates the critical present need for these judgeships. In 1991, the year before the last judgeship bill was enacted, the number of cases filed totaled 14,642 and 926 related lawsuits that are called adversary proceedings. In the year 2002, the totals were 35,334 cases filed and 1,573 adversary proceedings to be handled by the four Maryland bankruptcy judges. Within these cases were countless motions or contested matters for decision.

The resources of the bankruptcy system have been strained for years and the historic number of bankruptcy filings has pushed the system to the limit. It is imperative that the Congress take action in response to the clear case for additional judgeships, which has been made over the last 8 years and only continues to grow as the years go by.

The existing critical need for these judgeships is without regard to the additional need for judicial resources that HR 975 will create. Hence, the need discussed is not conditioned on the passage of that legislation. In addition, given the time that it takes to select, investigate and appoint additional bankruptcy judges, if the increase in judgeships is delayed until passage of HR 975, the critically needed new judges will not be on board when the effect of the legislation is felt in the courts.

On behalf of the 308 active bankruptcy judges in the United States, we request that the Congress enact 36 additional judgeships contained in HR 1428 during the 108th Congress. Enactment of these new judgeships will contribute to more efficient adjudication of bankruptcy cases across the country.

Mr. CANNON. Thank you, Judge. I want to thank all of our panel members for their testimony. I think you'll see that people on the dias are actually pretty much predisposed in favor of what we're doing. And I'd like to remind all Members that we can submit questions in writing. And I know that Mr. Watt has some questions. I'm going to turn the time over to him in just a moment. But I'm hoping that for—just for the information of the panel, I'm hoping that we can move from this hearing into our markup fairly expeditiously.

And so, Mr. Watt, you'd like to——

Mr. WATT. Thank you, Mr. Chairman. I'll try to move quickly, although I do have a number of questions. And maybe I will just submit them to the panel. Most of my questions are to Mr. Melloy and Mr. Mannes, I guess, more than—oh, actually, for the whole panel.

I'm wondering whether the bankruptcy system is paying for itself. Should it pay for itself? And to what extent is it now being underwritten by taxpayers as opposed to being financed through user fees and the people who use the system? Do we know—does anybody know that? If you don't, I mean, it'd be quicker just to say no, and we'll submit the question to you and maybe you can——

Judge MELLOY. The short answer is I don't know, Congressman.

Mr. WATT. Anybody on this panel know that? Does anybody have a particular philosophy about whether it ought to be a user fee-supported system or supported by the taxpayers? I notice Mr. Mannes was careful to say that it's for the benefit of creditors and debtors, both of whom are users of the system. So is there any particular perspective on whether it ought to be self-supporting? And I don't especially have a perspective on that, either. I'm just—I'm asking whether anybody here has a particular perspective on that.

Judge MANNES. I have to say that's an issue that I have never thought about.

Mr. WATT. Well, that's part of our responsibility, to try to figure out how we pay for it, whether the society at large pays for it or whether the users of a particular part of our Government pay for it. So, I'll—if anybody has perspectives on that——

The other thing that I—and none of this should be taken as an indication of—I mean, I think the statistics are overwhelming, the growth in the numbers is overwhelming, and it's hard for anybody not to be sympathetic to the need for additional judges in light of the growth.

One of the concerns, though, I have is that the proponents of this new bankruptcy reform bill, which probably will pass, have suggested to us that it's going to either decrease the number of bankruptcy filings to get rid of all the people who ought not be in the bankruptcy system, or—and/or that it is going to increase the efficiency of processing cases regardless of whether there is an increase or a decrease in filings in the bankruptcy system.

The question is can we responsibly act on this bill without knowing the impact or having some assessment of the impact of the new bankruptcy reform bill. That's a separate question than the one Mr. Bermant raised about whether we need a new efficiency study or whatever the time-management study is, which is an issue also. But our responsibility is to do this in a responsible way. And if this new reform legislation is going to have an impact either on increasing or decreasing filings or on increasing or decreasing efficiency, shouldn't that be taken into account in our evaluation of what bankruptcy judges are needed?

Judge MELLOY. Well, Congressman, if I can take a shot at that answer, let me say this. I think the response to that question is severalfold. First of all, as I indicated in my comments, we believe we took a very conservative approach in the first instance when we used—when we have no districts under 1,800 weighted filings. Secondly, and I'm certainly not an expert on all the intricacies of the reform legislation, but based upon what I do know about it, I think it will have, in the short run, at least, the effect of imposing additional burdens upon the bankruptcy system and the bankruptcy judges. And I say that for several reasons.

First, we're going to—if it has its desired effect, as I understand it, we're going to see a lot more cases in chapter 13 as opposed to chapter 7. Chapter 13 cases are in the system for 5 years, they involve considerably more time in administration than a chapter 7 case, from the judge's perspective. There's confirmation issues, there's administration issues, there's plan default issues, and as I say, they're around for 5 years, whereas a chapter 7's in and out in 60 to 90 days. So I think at a minimum we're going to see a lot more work if there's more chapter 13s.

Secondly, the reform legislation is going to impose additional burdens on the bankruptcy court through this whole system of means testing. And we really don't have a good handle yet on what that's going to involve, but we have every reason to believe that it will at least be some additional burden.

And then finally, the 1978 Bankruptcy Code is, I guess for want of a better word, a very mature piece of legislation. A lot, or most

of the really tough issues have been litigated, have been up to the courts of appeal, and as a result, creditors and debtors alike, when they come into court, have a pretty good idea of what's going to happen. When we pass a piece of legislation as comprehensive and as far-reaching as the reform legislation, for at least the next several years we're going to be inundated with cases and motions and hearings dealing with what do each of these provisions really mean, how do they affect an individual case, and so on. So I think, if anything, the reform legislation's going to require more work of bankruptcy judges.

Mr. WATT. Mr. Chairman, I've got a whole bunch of questions, but I guess in light of our time constraints I—the best thing for me to do is just submit them in writing.

Judge MANNES. Mr. Watt, may I add two things.

Mr. CANNON. Certainly, Judge Mannes.

Judge MANNES. We need judges now. We're severely——

Mr. WATT. Well, nothing that I'm saying should be taken as an indication that I have a bias against that. But I think our responsibilities are a little bit different than just—I think we can intuitively say yes, we need additional judges. But there are some factors that we have to consider that I think go beyond.

Judge MANNES. There's one other fact that I would point out. Simply because Congress authorizes the creation of the judgeships doesn't mean that judges serve. There are, for example, four judgeships authorized that have never been filled. There are at the present time six judgeships that are vacant that have not been filled for a year because the circuits have decided that there is not a need for an additional judge in South Dakota.

Mr. CANNON. The circuits have decided?

Judge MANNES. The decisions are made by the circuit councils.

Mr. CANNON. I suspect that we're actually going to revisit this issue after we find out the implications of the Bankruptcy Reform Act if it passes, and I suspect it—that, as Judge Melloy has suggested, we may have in fact a need for more judges.

Are there any Members to my right that would like to ask questions at this point?

[No response.]

Mr. CANNON. Thank you. Are there any Members to the left that would like to ask questions?

[No response.]

Mr. CANNON. Thank you. I might point out that we have Ms. Baldwin from Wisconsin, Mr. Delahunt from Massachusetts, Mr. Flake from Arizona, Mr. Crater from Texas. And I think we've introduced everyone else on the panel.

We want to thank you for being here with us today. We appreciate your input. This is an issue that we want to move on expeditiously, and you've been very helpful. We—I suspect we will have some questions in writing that we'll submit to you, and if you could get those back to us within a reasonable period of time, we'd appreciate that.

Again, thank you for your service in being here today with us.

[Whereupon, at 11:41 a.m., the Subcommittee proceeded to other business.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

June 6, 2003

The HONORABLE MICHAEL J. MELLOY
United States Circuit Judge
United States Court of Appeals for the Eighth Circuit
625 First Street, S.E.
Suite 200
Cedar Rapids, Iowa 52401

Dear Judge Melloy:

Thank you for appearing before the Subcommittee on Commercial and Administrative Law at the hearing on H.R. 1428, the "Bankruptcy Judgeship Act of 2003," on May 22, 2003. Your testimony, and the efforts you made to present it, are deeply appreciated and will help guide us in whatever action we take on this matter.

Pursuant to the unanimous consent request agreed upon at the hearing, Subcommittee Members were given the opportunity to submit written questions to the witnesses. These questions are annexed. Your response will help inform subsequent legislative action on this important topic.

Please submit your written response to these questions by 5:00 p.m. on Friday, June 13, 2003, to: Susan Jensen, Subcommittee on Commercial and Administrative Law, B353 Rayburn House Office Building, Washington, DC 20515. Your responses may also be submitted by e-mail to: *susan.jensen@mail.house.gov*

In addition, we have enclosed for your review a copy of the official transcript of this hearing. The transcript is substantially a verbatim account of remarks actually made during the hearing. Accordingly, please only make corrections addressing technical, grammatical, or typographical errors. No substantive changes are permitted. Please return any corrections you have to: Susan Jensen, Subcommittee on Commercial and Administrative Law, B353 Rayburn House Office Building, Washington, DC 20515 by June 20, 2003.

If you have any questions regarding the enclosed questions or transcript, please feel free to contact Ms. Jensen at (202) 225–2825.

Thank you for your continued assistance.

Sincerely,

CHRIS CANNON,
CHAIRMAN
SUBCOMMITTEE ON COMMERCIAL AND
ADMINISTRATIVE LAW

Enclosures

CC/sj

c: The Honorable Mel Watt
The Honorable Tom Feeney

QUESTIONS FOR THE HONORABLE MICHAEL J. MELLOY

From Chairman Chris Cannon:

1. What steps does the Judicial Conference undertake to ensure that judicial resources are maximized before it seeks additional judicial resources?

2. Does the Judicial Conference have a system in place to require a judge serving in a low-volume district to serve on a temporary basis in a high-volume district? Can a judge refuse to be transferred on either an intra- or inter-district basis?
3. For those districts for which judgeships have been requested, does each judge's caseload equal at least 1,500 weighted filings? If not, why not?
4. With respect to each district for which additional bankruptcy judgeships have been requested, what factors were considered in assessing whether there were alternatives to requesting additional judicial resources? Why were those alternatives considered to be insufficient?
5. In addition to assessing the need for additional bankruptcy judgeships, has the Judicial Conference established any criteria for determining when a bankruptcy judgeship should be eliminated? When was the last time the Judicial Conference recommended that a bankruptcy judgeship be eliminated?
6. Are there districts in which the weighted filings per authorized judgeship would qualify for an additional judgeship, but no judgeships were requested? If so, why were additional judgeships for these districts not requested?
7. Is a bankruptcy clerk authorized to correct case information supplied by a debtor? For example, if a debtor erroneously checks the "More than $100 million" estimated asset box on the Voluntary Petition official form, may a clerk correct that information before it is entered into the court's data system? Please explain in detail what quality control or quality assurance procedures are in place to ensure the accuracy of case information.
8. Dr. Bermant observes that the FJC study only characterized adversary proceedings into two categories. Please explain whether or not the judicial time requirement data would be more accurate if there was a greater range of categories for these proceedings.
9. During 2002, only 66 Chapter 11 cases were filed in the Middle District of Pennsylvania, which is served by two bankruptcy judges. The latest request seeks an additional bankruptcy judgeship, which if authorized, would calculate to be 22 Chapter 11 cases per judge. Why is this additional judgeship necessary?
10. For at least 5 districts for which additional judgeships are requested, the projected weighted filings for authorized and requested judgeships would be less than 1,500 weighted filings. Would you recommend that any additional judgeships for those districts be authorized, if at all, on anything other than a temporary basis?

From Congressman Tom Feeney:

1. What effects would HR 1428 have on bankruptcy reform?
2. Are there any studies or proposals that show that increasing the number of judges under HR 1428 would reduce the burden on bankruptcy courts or substantially modify them?

From Ranking Member Mel Watt:

1. What is the bankruptcy court system costing the U.S. taxpayer?
2. Shouldn't the bankruptcy system be funded based on a user fee theory, i.e., based on contributions from debtors and/or creditors?
3. Who benefits from the bankruptcy system as a whole? Who benefits from the mega bankruptcy cases?
4. Has there been a study on the projected impact on the bankruptcy system of the Bankruptcy reform bill if it passes?
5. Will there be an increase or decrease in bankruptcy filings as a result of the new law if it passes?
6. Will there be an increase in the efficiency of processing cases, whether or not there is an increase or decrease in filings, if the Bankruptcy reform bill passes?
7. Shouldn't we have the results of the new bankruptcy time study and the results of the impact of the new bankruptcy law if it passes before we proceed with H.R. 1428?

JUDICIAL CONFERENCE OF THE UNITED STATES
COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM

Honorable Michael J. Melloy, ***Chair***
United States Court of Appeals

Federal Building and
United States Courthouse
101 First Street, SE
Cedar Rapids, IA 52401-1202

Telephone: *319-286-2330*
Fax:
319-286-2331

June 13, 2003

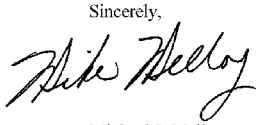
Honorable Chris Cannon
Chairman, Subcommittee on
Commercial and Administrative Law
House Judiciary Committee
Room 2138, Rayburn House Office Building
Washington, D.C. 20515-6216

Dear Chairman Cannon:

Enclosed are my responses to the questions submitted to me by letter dated June 6, 2003, following the May 22, 2003, hearing before your Subcommittee on Commercial and Administrative Law on H.R. 1428, the "Bankruptcy Judgeship Act of 2003."

Thank you for convening the hearing and permitting the Judicial Conference to present both oral and written testimony on H.R. 1428 and the need for additional bankruptcy judgeships. I look forward to our continued efforts to achieve the most effective and efficient bankruptcy system possible.

Sincerely,



Michael J. Melloy
Chair

Enclosure

cc: The Honorable Mel Watt
The Honorable Tom Feeney

RESPONSES FROM JUDGE MICHAEL J. MELLOY TO WRITTEN QUESTIONS RECEIVED FROM THE HOUSE JUDICIARY SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW IN LETTER DATED JUNE 6, 2003

From Chairman Chris Cannon:

1. What steps does the Judicial Conference undertake to ensure that judicial resources are maximized before it seeks additional judicial resources?

The Judicial Conference thoroughly reviews each district for which additional judicial resources are requested to determine whether other means of handling that court's docket are available before approving a request for additional judgeships and making such a recommendation to Congress.

At the start of each 2-year bankruptcy judgeship survey, every judicial district's current weighted caseload is calculated to determine which districts meet or exceed the baseline per judgeship weighted filings of 1,500. This information is provided to the circuits to assist in their decision whether to request additional bankruptcy judgeships. After all requests for additional bankruptcy judgeships are received from the circuits, the Judicial Conference's Bankruptcy Committee's Subcommittee on Judgeships reviews each requesting district's current per judgeship caseweight, historical caseweights, annual case filings, and prior requests for additional judicial resources. The subcommittee also reviews any additional information submitted by the circuit or the district, including the nature and mix of the district's caseload, filing trends, and geographic, economic, and demographic factors.

Information gathered during an on-site survey conducted at the requesting district is also reviewed to determine the effectiveness of the court's case management efforts and the use or availability of alternative resources for handling the court's caseload.

The subcommittee separates the requests into categories, identifying districts with needs that could be met without adding a judgeship and securing short-term relief for those districts in the greatest distress. In short, the subcommittee tries to stabilize those situations deemed most critical while awaiting the authorization of new bankruptcy judges.

It is only after all of these factors are considered that the Judicial Conference determines whether a district has maximized all available resources and an additional judgeship should be requested from Congress.

2. Does the Judicial Conference have a system in place to require a judge serving in a low-volume district to serve on a temporary basis in a high-volume district? Can a judge refuse to be transferred on either an intra- or inter-district basis?

The judiciary does not assign bankruptcy judges to intra- and intercircuit assignments. Participation in the intra- and intercircuit system is voluntary, both for the judge who provides assistance and the district requesting assistance. An intercircuit assignment of a bankruptcy judge is agreed upon between the two circuits involved, while intracircuit assignments are coordinated within the circuit. Intra- and intercircuit assignments can be of varying length, but usually involve several weeks of service per year in another district in addition to that judge's duties and obligations in his or her home district.

During the twelve-month period ending March 31, 2003, 51 bankruptcy judges nationwide (including some recalled bankruptcy judges) reported 7,271.5 hours of intracircuit and 3,350 hours of intercircuit assistance to other districts.

There is a range of factors determining a bankruptcy judge's ability to voluntarily travel to assist in an overburdened bankruptcy court. The first factor would be the judge's home district's ability to lend a judge. Of the courts with relatively low judicial workload, virtually all are either one- or two-judgeship courts. It is impractical in most cases for a judge sitting in one of these courts to provide significant services as a visiting judge in another district because it would leave the judge's home district without a bankruptcy judge or could overburden the remaining home district judge.

Some courts with low to mid-range caseweighted filings are unable to participate in the intra- and intercircuit assignment system. In some states, bankruptcy judges travel extensively to hold court around a geographically vast area (e.g. the Eastern and Western Districts of Arkansas) and therefore do not have extra time to assist outside their district. Some bankruptcy judges use their spare time to provide service to the bankruptcy community by teaching at Federal Judicial Center seminars, writing scholarly articles, serving as a member of a bankruptcy appellate panel, or participating in Circuit and Judicial Conference activities. Other judges with lighter caseloads are unable to travel based upon individual family circumstances, such as

aged parents or special needs children. Lastly, some bankruptcy judges are precluded from providing intercircuit assistance because of the judiciary's "lender-borrower" rule, whereby a circuit that receives intercircuit assistance cannot simultaneously provide intercircuit assistance.

Therefore, although the judiciary encourages bankruptcy judges to volunteer for intra- and intercircuit assignments, not all judges from "low-volume" districts are able to participate and no bankruptcy judge is involuntarily transferred to or required to serve in another district.

3. For those districts for which judgeships have been requested, does each judge's caseload equal at least 1,500 weighted filings? If not, why not?

The statistical system maintained by the Administrative Office of the United States Courts is capable of tracking the weighted caseload of judges based only on the cases initially assigned to the judge. In most cases this is adequate. It can result, however, in misleading workload figures. Of the 87 judges in the requesting districts, only four had weighted caseloads of less than 1,500 (excluding a number of judges who were not on the bench for the full year) based on filed case assignments. One of these four judges has had to recuse himself from a number of large and complex cases, and has been assigned other cases which the AO is not able to quantify. Another judge has responsibility for all cases in her division, the workload of which is somewhat less than 1,500. As a result, this judge has provided extensive services to the main divisional office in mediating and adjudicating adversary proceedings. The remaining two judges have caseloads slightly under 1,500 because they sit in divisional offices for which it would be impractical to assign significant numbers of cases from other offices.

4. With respect to each district for which additional bankruptcy judgeships have been requested, what factors were considered in assessing whether there were alternatives to requesting additional judicial resources? Why were those alternatives considered to be insufficient?

One of the factors examined by the Judicial Conference before recommending additional bankruptcy judgeships is whether alternative resources or caseload management tools could be used to manage a court's caseload in lieu of requesting additional judicial resources. The judiciary uses many different programs and resources to efficiently and effectively utilize its judicial resources and time: temporary bankruptcy judgeships; recalled bankruptcy judges; shared judgeship positions; cross designation of districts; intercircuit and intracircuit assignments; additional law clerks; judicial education; and advanced technology. If a circuit requests additional judicial resources, the judiciary reviews data concerning the requesting district's use of additional resources and caseload management tools, reviews the district's historical and current weighted caseload and filing statistics, and conducts an on-site survey of the district.

An on-site survey generally consists of a review at the requesting district by a survey team composed of a judge from the Bankruptcy Committee and one or more members of the Bankruptcy Judges Division from the Administrative Office of the United States Courts. The survey team reviews the court's policies and practices, focusing particularly on the court's calendaring procedures and docket sheets. Interviews are held with key court personnel, members of the local bar, the U.S. trustee's office, panel trustees, and judges of the bankruptcy, district, and circuit courts. An on-site survey often produces information about the district's geographic, historic, economic, and demographic situation.

During the on-site survey, the judge member of the survey team often meets with the judges of the bankruptcy court and furnishes a candid evaluation of that court's practices. Suggestions for improvements and ways to achieve greater efficiencies and productivity are discussed. This form of "peer review" has proven to be extremely helpful both to the courts and the Bankruptcy Committee in determining whether better case management and alternative resources or additional judgeships are the solution to the court's heavy workload.

Before approving a circuit's request for additional judicial resources and recommending to Congress the authorization of additional bankruptcy judgeships, the Judicial Conference reviews the Bankruptcy Committee's recommendation that is based upon all information provided by the circuit, the district, the survey team, and the judiciary concerning the district's use of alternative resources. Each of the 22 requesting districts has exhausted alternative caseload management tools before requesting additional judicial resources.

5. In addition to assessing the need for additional bankruptcy judgeships, has the Judicial Conference established any criteria for determining when a bankruptcy judgeship should be eliminated? When was the last

time the Judicial Conference recommended that a bankruptcy judgeship be eliminated?

The Judicial Conference is under a statutory duty to periodically review existing bankruptcy judgeships. Section 152(b)(3) of title 28, United States Code, requires that "Not later than December 31, 1994, and not later than the end of each 2-year period thereafter, the Judicial Conference of the United States shall conduct a comprehensive review of all judicial districts to assess the continuing need for the bankruptcy judges authorized by this section, and shall report to the Congress its findings and any recommendations for the elimination of any authorized position which can be eliminated when a vacancy exists by reason of resignation, retirement, removal, or death." The Judicial Conference examines any district in which elimination of a judgeship would result in a case weighted filings of less than 1000 for each remaining authorized judgeship to see if retention of such judgeships is justified.

Since 1994 the Judicial Conference has not recommended the statutory elimination of any existing bankruptcy judgeships. The Judicial Conference has recommended, however, that certain judgeships not be filled in the event a vacancy occurs until an increase in workload justifies filling the vacancy. The Judicial Conference submitted its most recent biennial report to Congress in December 2002.

The continuing need for authorized bankruptcy judgeship positions is directly related to each judicial district's weighted caseload and bankruptcy case filings. These statistics complement each other by approaching judicial workload from different perspectives. Weighted caseloads measure a district's judicial workload by focusing on complexity of cases filed in the district. Bankruptcy case filings measure the district's workload by focusing on the volume of cases filed. These statistics can be calculated on a per district and a per judgeship basis. In addition to statistical data, the Judicial Conference also considers other factors, such as local economic and demographic trends, when assessing the continuing need for authorized bankruptcy judgeships.

During the 2002 continuing need survey, the Judicial Conference decided to preserve all current authorized bankruptcy judgeships for two reasons. First, bankruptcy filings and the corresponding weighted caseloads are not static, and are generally increasing. Second, the process by which additional bankruptcy judgeships are authorized by statute and funded proceeds slowly and often lags behind the need for the additional positions. By retaining all currently authorized bankruptcy judgeships, the circuit councils can manage their judicial resources, both now and in the future, without having to seeking congressional action to re-authorize a judgeship provision that was eliminated and then later needed due to increasing filings and caseload. In conjunction with its policy to not eliminate authorized judgeships, the Judicial Conference determined that the judicial councils should continue the practice of only filling bankruptcy judgeship vacancies when doing so is essential to ensure the effective operation of the bankruptcy system. This practice continues to yield significant cost savings, while retaining the flexibility essential to permit prompt response to the bankruptcy system's urgent need for additional judicial resources.

For example, in accordance with the Judicial Conference policy, the Third Circuit and the Fourth Circuit previously held vacancies open in the Western District of Pennsylvania and the Middle District of North Carolina bankruptcy courts, respectively, until a need arose to fill those vacancies. Based upon current workload in the subject judicial districts, those circuits now seek to fill those vacancies.

6. Are there districts in which the weighted filings per authorized judgeship would qualify for an additional judgeship, but no judgeships were requested? If so, why were additional judgeships for these districts not requested?

As of March 31, 2003, twenty districts that did not request additional judgeships during the 2002 additional judgeship survey were above the threshold of 1,500 weighted case filings. This may be for several reasons. Informal discussions with those courts indicate that the principal reason these districts have not requested additional judgeships is the desire to insure that the increases are not of a purely transitory nature. In the interest of fiscal economy, districts first try to use judicial resource management techniques, recalled bankruptcy judges, cross designation of districts, intercircuit and intracircuit assignments, additional law clerks, judicial education, advanced technology, and other tools to alleviate a burdensome caseload before requesting additional judgeships. Only after sustained high levels of case filings and weighted caseloads do districts request additional judgeships.

7. Is a bankruptcy clerk authorized to correct case information supplied by a debtor? For example, if a debtor erroneously checks the "More than $100 million" estimated asset box on the Voluntary Petition official form, may a clerk correct that information before it is entered into the court's data system? Please explain in detail what quality control or quality assurance procedures are in place to ensure the accuracy of case information.

No, the bankruptcy clerk has no authority to correct information supplied by a debtor in a case file. The clerk's office will perform an initial screening of all filings for completeness and correctness and to ensure that all forms and information required by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure are included. If any necessary documents or information is not included, the clerk will call the deficiency to the attention of the bankruptcy judge and will prepare a deficiency notice that gives the petitioner a grace period in which to correct the deficiency. If the clerk's office staff notices other deficiencies in the petition of a more substantive nature (e.g., the debtor does not appear to be eligible for relief under the chapter under which the petition was filed), the matter will be referred to the bankruptcy judge for appropriate action. The case trustee in each bankruptcy case has a fiduciary duty to ensure that the case is fairly and efficiently administered. Case trustees review the information provided by the debtor to ensure that it does not include any inaccurate or incorrect information.

8. Dr. Bermant observes that the FJC study only characterized adversary proceedings into two categories. Please explain whether or not the judicial time requirement data would be more accurate if there was a greater range of categories for these proceedings.

All adversary proceedings are associated with a bankruptcy case filed under one of the chapters of the Bankruptcy Code. In planning for the 1988–89 study, the Judicial Conference's Bankruptcy Committee and the Federal Judicial Center's researchers considered whether the time associated with adversary proceedings should be reflected in the chapter case weights or whether a separate weight or weights should be created for them. They chose the latter option reasoning that this would enhance the precision of the case weighting system. Moreover, instead of a single weight for adversary proceedings, they chose to develop two weights: one weight for dischargeability proceedings, which tend to be the most frequent or second most frequent type of proceeding in every district, and another weight for all other types of proceedings. The Bankruptcy Committee and FJC researchers believed at the time that this categorization was reasonable based on filing trends, and that calculating a unique weight for every type of adversary proceeding would lead to an unmanageable number of weights. The decision was not due to shortcomings of the available records. We continue to believe the current categorization of adversary proceedings to be reasonable, but are considering whether additional categories should be added in the upcoming study. It is impossible to determine at this point whether that would lead to "more accurate" weights.

9. During 2002, only 66 Chapter 11 cases were filed in the Middle District of Pennsylvania, which is served by two bankruptcy judges. The latest request seeks an additional bankruptcy judgeship, which if authorized, would calculate to be 22 Chapter 11 cases per judge. Why is this additional judgeship necessary?

The need for additional bankruptcy judgeships is not based upon the number of chapter 11 cases filed in a district. The need is demonstrated by a district's per judgeship weighted caseload in excess of 1,500 hours. The weighted caseload is calculated from all bankruptcy cases filed in the district (chapters 7, 9, 11, 12, and 13, and adversary proceedings). Additionally, a district's per judgeship weighted caseload is not the sole determinant of whether the Judicial Conference endorses or denies a request for additional judgeships. Other factors considered include: the nature and mix of the court's caseload; historical caseload data and filing trends; geographic, economic, and demographic factors; the effectiveness of the court's case management efforts; the availability of alternative resources for handling the court's caseload; and any other relevant factors.

In 2002, the Third Circuit and the Middle District of Pennsylvania demonstrated to the Judicial Conference that district's need for an additional bankruptcy judgeship. For the 12 months ended March 31, 2003, there were 76 chapter 11 cases filed in the Middle District of Pennsylvania. During the same period, there were 9,894 chapter 7 cases filed, 3,105 chapter 13 cases filed, and 695 adversary proceedings filed. The total estimated judicial time required by this level of filings is 4,394 direct hours and 1,320 indirect hours, of which only 546 are accounted for by chapter 11

filings. In other words, as of March 31, 2003, the workload per judge in the Middle District of Pennsylvania was 2,197 direct hours or 2,857 total hours, excluding any and all vacation, holiday, and sick leave.

Therefore, the number of cases filed under a particular chapter of the Bankruptcy Code in a district is not, in itself, a determining factor whether a court needs additional judicial resources.

10. For at least 5 districts for which additional judgeships are requested, the projected weighted filings for authorized and requested judgeships would be less than 1,500 weighted filings. Would you recommend that any additional judgeships for those districts be authorized, if at all, on anything other than a temporary basis?

The Judicial Conference uses a per judgeship weighted caseload of 1,500 as a baseline for a request for additional judgeships for a district, not as a recommended or required work volume. A district with per judgeship caseweighted filings at or above 1,500 is already strained and in need of additional resources. That the addition of judicial resources would lessen a district's weighted caseload below 1,500 is the goal to ensure a manageable workload for the bankruptcy judges.

The use of temporary judgeships, where warranted, gives the Judicial Conference and the Congress more flexibility in responding to requests for additional bankruptcy judgeships. The Judicial Conference policy on temporary bankruptcy judgeships provides a means of responding to situations in which sudden increases in bankruptcy filings may not be sustained in the future. The policy is to factor the requested additional judgeship(s) for each district into the most recent weighted filings per judgeship for that district. If, with the additional judgeship(s), a district would have per judgeship weighted filings in excess of 1,500, then the Judicial Conference requests permanent additional judgeship(s) for that district. If inclusion of the additional judgeship(s) into the calculation results in per judgeship weighted filings below 1,500 for a district, then the Judicial Conference requests a temporary judgeship for that district. The only exception is when a district specifically requests an additional temporary judgeship, even though that district's weighted filings with the additional judgeship would be in excess of 1,500.

Based upon its calculations, the Judicial Conference recommends additional temporary judgeships for the five districts at issue.

From Congressman Tom Feeney:

1. What effects would HR 1428 have on bankruptcy reform?

The additional judgeships authorized by H.R. 1428 would not have a direct effect on bankruptcy reform legislation, but would greatly assist the judiciary in managing the increased work that will generate from a massive change to the existing system. Following enactment of bankruptcy reform legislation, the bankruptcy bench will face increased litigation on issues of first impression and statutory interpretation, as well as increased procedural duties and required findings. The additional judicial resources recommended to Congress in January 2003 by the Judicial Conference will alleviate the pressure on today's overburdened courts. Without the additional judicial resources, the judicial districts here at issue will be completely overwhelmed by their existing caseload coupled with the additional burdens of interpreting the reform act and processing cases under that law. Regardless of passage of the bankruptcy reform measure, the judiciary has a critical need for additional judicial resources to manage its existing caseload, and a continuing need for the additional judicial resources as projections indicate that case filings will continue to increase in the future.

2. Are there any studies or proposals that show that increasing the number of judges under HR 1428 would reduce the burden on bankruptcy courts or substantially modify them?

The Federal Judicial Center developed a system to measure the weighted caseload of each bankruptcy court. The Judicial Conference adopted this system as a means to measure the need for judicial resources in each district. When one applies the caseweights to the current caseload in each district, the results indicate the need for 36 more bankruptcy judges in 22 judicial districts.

From Ranking Member Mel Watt:

1. What is the bankruptcy court system costing the U.S. taxpayer?

In fiscal year 2003, the judiciary apportioned $766 million for the bankruptcy program, as follows:

	($ millions)
Salaries & Benefits	$375
Office space	$149
Contracts, Travel & Other	$242

2. Shouldn't the bankruptcy system be funded on a user fee theory, i.e. based on contributions from debtors and/or creditors?

The bankruptcy system should not be solely funded by user fees. The fee principles endorsed by the Judicial Conference committees having jurisdiction over this issue recognize that, as a coordinate branch of government, the judiciary should be funded primarily by appropriations. At the same time, however, the fee principles recognize that users of the judicial system derive substantial direct benefits from it, and therefore should contribute through fees to its maintenance. Fees are also charged to discourage frivolous use of the system. The Judicial Conference is currently examining its miscellaneous fees schedule to assure that appropriate fees are imposed.

The judiciary's share of bankruptcy fees collected during fiscal year 2002 was an estimated $162,330,000. The judiciary only keeps a portion of the total bankruptcy fees collected. A portion of the total bankruptcy fees collected are remitted to the United States Treasury for general use and to the United States trustee system. Therefore, the bankruptcy fees retained by the judiciary would be inadequate to fund the (FY 2002) $766 million allocation to the bankruptcy system by the judiciary.

3. Who benefits from the bankruptcy system as a whole? Who benefits from the mega bankruptcy cases?

Creditors and the economy in general benefit from a system within which the competing claims against a debtor's assets can be parsed and satisfied (in whole or in part) in the context of a system of priorities which reflect avowed public policy goals. Moreover, the public benefits from a system which gives a fresh start to individuals to mitigate the effects of overwhelming medical bills, divorce, job loss, and other events. The alternative is to saddle otherwise productive members of society with burdens from which they may never recover. For the wage earner to face a seemingly endless stream of garnishments and income seizures is to effectively destroy the incentive to produce, to try to improve his economic lot in life, or to seek ever more productive positions. For businesses, the availability of a system within which to reorganize can often mean the difference between preservation of jobs and the loss of employment for thousands of individuals. Mega-bankruptcies, whether caused by managerial excesses or bad luck, can benefit, first and foremost, the hundreds of thousands of employees who otherwise would be thrown out of work, and the suppliers who would otherwise see significant markets evaporate.

The U.S. bankruptcy system stands apart from that of most other major economies in providing an individual or business with an escape from bad decisions made in good faith. Unlike other systems throughout Europe and Asia, it is possible in the United States for entrepreneurs with innovative ideas to pursue trying to take their ideas to market without exposing personal wealth to the claims of creditors and mortgaging the future of their children. It is the availability of this "escape hatch" which can help explain the differentially higher historical growth rate of the U.S. economy and the consistently high level of innovation it exhibits compared to other countries. Small business has always been the backbone of the economy and the engine for much technological innovation. Among other factors, it is the U.S. bankruptcy system which has helped make this possible.

4. Has there been a study on the projected impact on the bankruptcy system of the Bankruptcy reform bill if it passes?

Neither the judiciary nor the Federal Judicial Center has conducted such a study. The Judicial Conference transmitted to Congress its positions on discrete issues in the reform bill that would impact the administration of the bankruptcy system. There has been, however, an analysis of the added cost to the judiciary of H.R. 975 by the Administrative Office of the United States Courts. Assuming enactment on October 1, 2003, the estimated cost in fiscal year 2004 is $53 million, and the estimated annual cost in fiscal year 2005 is $35.7 million. These costs relate to judges, support staff, modification of data systems, and promulgation of new rules and forms. The cost estimate also includes the impact of lost fee revenue.

5. Will there be an increase or decrease in bankruptcy filings as a result of the new law if it passes?

The effect of enactment of the bankruptcy reform bill upon future bankruptcy case filings is unknown.

6. Will there be an increase in the efficiency of processing cases, whether or not there is an increase or decrease in filings, if the Bankruptcy reform bill passes?

Initially, we anticipate that enactment of the bankruptcy reform bill will increase the work required to process a bankruptcy case for the judges, the clerks' offices, the United States trustees, the panel trustees, and the attorneys. The bankruptcy reform legislation would impose new and additional duties and requirements on all participants in the bankruptcy system. Additionally, it is anticipated that the volume of bankruptcy litigation (adversaries and appeals) will substantially increase in the initial years following enactment of the reform measure, as bankruptcy attorneys (creditor and debtor) seek court interpretation of the meaning, scope, and effect of many of the provisions in the reform bill. It is unknown whether the new procedures will be more time-efficient, but eventually, as the new procedures become routine and legal issues are resolved, all participants in the bankruptcy system will become accustomed to the required process.

7. Shouldn't we have the results of the new bankruptcy time study and the results of the impact of the new bankruptcy law if it passes before we proceed with H.R. 1428?

No. As I stated during the hearing on H.R. 1428, Congress has not authorized new bankruptcy judgeships since 1992, and the need for more judgeships is critical. Moreover, the Federal Judicial Center and the Judicial Conference think the current case weights continue to provide a reliable means for assessing judgeship needs. At the hearing, Dr. Bermant testified that positive action on additional bankruptcy judgeships should not await a new study.

The process to update the case weights with a new time study will take a minimum of 2½ years to complete, and perhaps more, if omnibus legislation is passed. If the judiciary were to suspend its recommendation for new bankruptcy judgeships pending completion of the proposed study or enactment of bankruptcy reform legislation, many districts would go without the help they need for a substantial period of time. It is feared that the judiciary may lose qualified members of the bench to private practice or retirement in reaction to overburdened, over-stressed dockets. A continuing shortage of bankruptcy judgeships detrimentally affects the public, whose economic, credit, employment, and retirement fund issues are directly related to the prompt resolution of bankruptcy cases.

June 6, 2003

Dr. William Jenkins, Jr., Director,
Homeland Security & Justice
United States General Accounting Office
441 G Street
Washington, DC 20548

Dear Dr. Jenkins:

Thank you for appearing before the Subcommittee on Commercial and Administrative Law at the hearing on H.R. 1428, the "Bankruptcy Judgeship Act of 2003," on May 22, 2003. Your testimony, and the efforts you made to present it, are deeply appreciated and will help guide us in whatever action we take on this matter.

Pursuant to the unanimous consent request agreed upon at the hearing, Subcommittee Members were given the opportunity to submit written questions to the witnesses. These questions are annexed. Your response will help inform subsequent legislative action on this important topic.

Please submit your written response to these questions by 5:00 p.m. on Friday, June 13, 2003, to: Susan Jensen, Subcommittee on Commercial and Administrative Law, B353 Rayburn House Office Building, Washington, DC 20515. Your responses may also be submitted by e-mail to *susan.jensen@mail.house.gov*.

In addition, we have enclosed for your review a copy of the official transcript of this hearing. The transcript is substantially a verbatim account of remarks actually made during the hearing. Accordingly, please only make corrections addressing technical, grammatical, or typographical errors. No substantive changes are permitted. Please return any corrections you have to: Susan Jensen, Subcommittee on Commercial and Administrative Law, B353 Rayburn House Office Building, Washington, DC 20515 by June 20, 2003.

If you have any questions regarding the enclosed questions or transcript, please feel free to contact Ms. Jensen at (202) 225–2825.

Thank you for your continued assistance.
Sincerely,

CHRIS CANNON,
CHAIRMAN
SUBCOMMITTEE ON COMMERCIAL AND
ADMINISTRATIVE LAW

Enclosures

CC/sj

c: The Honorable Mel Watt
The Honorable Tom Feeney

QUESTIONS FOR DR. WILLIAM JENKINS

From Chairman Chris Cannon:

1. In light of the fact that the Judicial Conference is in the process of updating its time study data, would you recommend that Congress await the results of that updated study and apply its results to the current case filings?
2. You observed that the accuracy of the case weights is dependent upon accurately assigning the appropriate case weight category for each case filed in each bankruptcy court. If the case data system contains inaccurate case information, how would this affect the process by which judicial resources are determined?
3. Did the General Accounting Office assess the Judicial Conference's criteria for characterization of a judgeship as "permanent" or "temporary?" If so, were you satisfied about the appropriate designation of these judgeship requests?
4. Given the potential fluidity of bankruptcy case filings, especially in light of the fact that comprehensive reforms to the bankruptcy law may be enacted in the near future, would you recommend that—at least for now—that any additional bankruptcy judgeships be authorized on a temporary basis?

From Vice-Chairman Tom Feeney:

1. What effects would HR 1428 have on bankruptcy reform?
2. Are there any studies or proposals that show that increasing the number of judges under HR 1428 would reduce the burden on bankruptcy courts or substantially modify them?

From Ranking Member Mel Watt:

1. What is the bankruptcy court system costing the U.S. taxpayer?
2. Shouldn't the bankruptcy system be funded based on a user fee theory, i.e., based on contributions from debtors and/or creditors?
3. Who benefits from the bankruptcy system as a whole? Who benefits from the mega bankruptcy cases?
4. Has there been a study on the projected impact on the bankruptcy system of the Bankruptcy reform bill if it passes?
5. Will there be an increase or decrease in bankruptcy filings as a result of the new law if it passes?
6. Will there be an increase in the efficiency of processing cases, whether or not there is an increase or decrease in filings, if the Bankruptcy reform bill passes?
7. Shouldn't we have the results of the new bankruptcy time study and the results of the impact of the new bankruptcy law if it passes before we proceed with H.R. 1428?

June 13, 2003

The HONORABLE CHRIS CANNON, Chairman,
Subcommittee on Commercial and Administrative Law
House Committee on the Judiciary
United States House of Representatives

Dear Chairman Cannon:

Thank you for the opportunity to respond to questions from the members of the Subcommittee regarding our work on bankruptcy judges' case-related workload. Enclosed are our written answers to those questions.

If you have any questions, please call me at 202–512–8757 or contact me via e-mail at *jenkinswo@gao.gov*.

Sincerely yours,

WILLIAM O. JENKINS, JR.
Director, Homeland Security & Justice Issues

Enclosure

From Chairman Chris Cannon:

1. In light of the fact that the Judicial Conference is in the process of updating its time study data, would you recommend that Congress await the results of that updated study and apply its results to the current case filings?

Weighted case filings are the first, but not the only, indicator of judgeship needs that the Judicial Conference uses to assess the need for additional bankruptcy judgeships. In reviewing the Judicial Conference's request for additional bankruptcy judgeships, Congress can review the totality of the information provided by the Judicial Conference and determine whether the weight of the evidence supports additional bankruptcy judgeships for any specific bankruptcy court.

The results of the updated time study are unlikely to be available for a year or two. It will take some time to finalize the study protocols, collect and analyze the data, and develop final case weights. Once the new weights are available, Congress can request that the Judicial Conference review the judgeship needs for all bankruptcy courts, using the new case weights, and report on the continuing need for all existing bankruptcy judgeships, including any new judgeships that Congress may approve this year.

2. You observed that the accuracy of the case weights is dependent upon accurately assigning the appropriate case weight category for each case filed in each bankruptcy court. If the case data system contains inaccurate case information, how would this affect the process by which judicial resources are determined?

The net effect of any errors in correctly assigning case weights could understate or overstate a bankruptcy court's weighted case filings. To the extent that the net effect of any errors was to understate the weighted case filings for a specific court, it could potentially result in the Judicial Conference not requesting a judgeship for a court whose case-related workload would support an additional judgeship. To the extent that the net effect of the errors overstated the weighted case filings, it could potentially result in the Judicial Conference requesting a judgeship for a court whose case-related workload did not support an additional judgeship.

3. Did the General Accounting Office assess the Judicial Conference's criteria for characterization of a judgeship as "permanent" or "temporary"? If so, were you satisfied about the appropriate designation of these judgeship requests?

We did not assess the Judicial Conference's criteria for determining whether a specific judgeship request should be for permanent or temporary judgeship(s).

4. Given the potential fluidity of bankruptcy case filings, especially in light of the fact that comprehensive reforms to the bankruptcy law may be enacted in the near future, would you recommend that—at least for now—any additional bankruptcy judgeships be authorized on a temporary basis?

We did not examine the need for or advisability of permanent versus temporary new bankruptcy judgeships.

From Vice-Chairman Tom Feeney:

1. What effects would HR 1428 have on bankruptcy reform?

We have not examined that issue and are not in a position to answer this question.

2. Are there any studies or proposals that show that increasing the number of judges under HR 1428 would reduce the burden on bankruptcy courts or substantially modify them?

Other than the Judicial Conference's analysis, we know of no such studies or proposals.

3. What is the bankruptcy court system costing the U.S. taxpayer?

We have not examined that issue and cannot provide a complete answer. The taxpayer portion of the costs of the bankruptcy system is largely for the federal judiciary's costs of operating the bankruptcy courts. The Administrative Office of the U.S. Courts could provide an estimate of the judiciary's expenditures for the 90 bankruptcy courts. This would include taxpayer costs, if any, for the bankruptcy trustees in 6 bankruptcy districts in North Carolina and Alabama.

In the remaining 84 bankruptcy districts, the Executive Office of U.S. Trustees, within the Department of Justice, is responsible for the trustees who review debtor income, assets, and liabilities, and administer bankruptcy court-approved reorganizations and repayment plans. In fiscal year 2004, the Executive Office has requested a total of 1,211 FTEs and $175,172,000, to be funded by the U.S. Trustee System Fund. The Fund's income is based on various user fees, including a portion of bankruptcy court filing fees, and interest earned on the fund's balances.

From Ranking Member Mel Watt:

1. Shouldn't the bankruptcy system be funded based on a user fee theory, i.e., based on contributions from debtors and/or creditors?

We have not examined that issue and therefore are not in a position to provide an answer to this question. Generally, the costs of bankruptcy trustees and the Executive Office of the U.S. Trustees are funded by user fees and the costs of operating the U.S. Bankruptcy courts is funded by annual appropriations.

2. Who benefits from the bankruptcy system as a whole? Who benefits from the mega bankruptcy cases?

We have not examined that issue and are not in a position to answer this question.

3. Has there been a study on the projected impact on the bankruptcy system of the Bankruptcy reform bill, if it passes?

The House Report (108–40) accompanying H.R. 975, has some information on the potential impact of reform on the bankruptcy system. Other studies, including ours, have examined the potential amount of debt that debtors could repay under bankruptcy reform (see, for example, *Personal Bankruptcy: Analysis of Four Reports on Chapter 7 Debtors' Ability to Pay*, GAO/GGD–99–103, June 21, 1999).

With regard to the costs of bankruptcy reform, the Congressional Budget Office has estimated the cost of enacting and implementing H.R. 975 for fiscal years 2003–2008. CBO estimated that it would increase costs for U.S. Trustees by about $280 million, offset by an estimated $282 million in increased bankruptcy filing fees. CBO also estimated that the enactment of H.R. 975 would result in filling 28 additional temporary bankruptcy judgeships. Using information from the Administrative Office of the U.S. Courts, CBO estimated the mandatory pay and benefits for these additional judgeships would total about $23 million over the 5-year period, and the supports costs—such as space and facilities and support staff, would be about $77 million.

4. Will there be an increase or decrease in bankruptcy filings as a result of the new law if it passes?

Any increase or decrease in filings after the law takes effect is difficult to estimate. However, if bankruptcy reform is enacted, there could be a surge of personal bankruptcy filings prior to the statute's effective date by those who believe that their ability to have their eligible debts discharged through chapter 7 proceedings would be circumscribed under bankruptcy reform.

5. Will there be an increase in the efficiency of processing cases, whether or not there is an increase or decrease in filings, if the Bankruptcy reform bill passes?

Initially, there may be less efficiency in processing cases affected by bankruptcy reform as procedures for implementing the law's provisions are developed, tested, refined, and perhaps litigated. If efficiency is measured by the speed with which cases are processed, then the law may reduce the efficiency of handling consumer bankruptcy cases, the vast majority of which currently are chapter 7 cases that are disposed of quickly with minimal judge time. To the extent that a substantial portion of those who file for chapter 7 proceedings under bankruptcy reform and are required to enter into chapter 13 repayment plans, it may require additional judge and trustee time to process such cases.

6. Shouldn't we have the results of the new bankruptcy time study and the results of the impact of the new bankruptcy law if it passes before we proceed with H.R. 1428?

Weighted case filings are the first, but not the only, indicator of judgeship needs that the Judicial Conference uses to assess the need for additional bankruptcy judgeships. In reviewing the Judicial Conference's request for additional bankruptcy judgeships, Congress can review the totality of the information provided by the Judicial Conference and determine whether the weight of the evidence supports additional bankruptcy judgeships for any specific bankruptcy court.

The results of the updated time study are unlikely to be available for a year or two. It will take some time to finalize the study protocols, collect and analyze the data, and develop final case weights. Once the new weights are available, Congress can request that the Judicial Conference review the judgeship needs for all bankruptcy courts, using the new case weights, and report on the continuing need for all existing bankruptcy judgeships, including any new judgeships that Congress may approve this year.

June 6, 2003

GORDON BERMANT, Ph.D., J.D.
5603 Tilia Court
Burke, Virginia 22015

Dear Dr. Bermant:

Thank you for appearing before the Subcommittee on Commercial and Administrative Law at the hearing on H.R. 1428, the "Bankruptcy Judgeship Act of 2003," on May 22, 2003. Your testimony, and the efforts you made to present it, are deeply appreciated and will help guide us in whatever action we take on this matter.

Pursuant to the unanimous consent request agreed upon at the hearing, Subcommittee Members were given the opportunity to submit written questions to the witnesses. These questions are annexed. Your response will help inform subsequent legislative action on this important topic.

Please submit your written response to these questions by 5:00 p.m. on Friday, June 13, 2003, to: Susan Jensen, Subcommittee on Commercial and Administrative Law, B353 Rayburn House Office Building, Washington, DC 20515. Your responses may also be submitted by e-mail to: *susan.jensen@mail.house.gov*

In addition, we have enclosed for your review a copy of the official transcript of this hearing. The transcript is substantially a verbatim account of remarks actually made during the hearing. Accordingly, please only make corrections addressing technical, grammatical, or typographical errors. No substantive changes are permitted. Please return any corrections you have to: Susan Jensen, Subcommittee on Commercial and Administrative Law, B353 Rayburn House Office Building, Washington, DC 20515 by June 20, 2003.

If you have any questions regarding the enclosed questions or transcript, please feel free to contact Ms. Jensen at (202) 225–2825.

Thank you for your continued assistance.

Sincerely,

CHRIS CANNON,
CHAIRMAN
SUBCOMMITTEE ON COMMERCIAL AND
ADMINISTRATIVE LAW

Enclosures

CC/sj

c: The Honorable Mel Watt
The Honorable Tom Feeney

QUESTIONS FOR DR. GORDON BERMANT

From Chairman Chris Cannon:

1. Given the fluctuating nature of bankruptcy filings, would you recommend that any additional bankruptcy judgeships be authorized on a temporary as opposed to a permanent basis?
2. Please explain your observation about the FJC's mega-case formula as it applies to consolidated cases and whether there is a potential that the amount of judicial work required for these cases may be overestimated.
3. Although overall bankruptcy filings have generally increased over the past few years, the number of Chapter 11 case filings has remained somewhat stable. In fact, Chapter 11 cases decreased by 6.6% in 2002 as compared to the prior year. Indeed, business filings overall between 1998 and 2002 have decreased by nearly one-third. Is not the vast bulk of judge time consumer by Chapter 11 cases? If so, would you agree that the need for judicial resources may not be that substantial in light of the relatively minor increase in the number of Chapter 11 cases filed in the last 10 years?
4. Is it possible for a bankruptcy judge to not expend any time on most Chapter 7 cases filed in his or her district?

From Vice-Chairman Tom Feeney:

1. What effects would HR 1428 have on bankruptcy reform?
2. Are there any studies or proposals that show that increasing the number of judges under HR 1428 would reduce the burden on bankruptcy courts or substantially modify them?

From Ranking Member Mel Watt:

1. What is the bankruptcy court system costing the U.S. taxpayer?
2. Shouldn't the bankruptcy system be funded based on a user fee theory, i.e., based on contributions from debtors and/or creditors?
3. Who benefits from the bankruptcy system as a whole? Who benefits from the mega bankruptcy cases?
4. Has there been a study on the projected impact on the bankruptcy system of the Bankruptcy reform bill if it passes?
5. Will there be an increase or decrease in bankruptcy filings as a result of the new law if it passes?
6. Will there be an increase in the efficiency of processing cases, whether or not there is an increase or decrease in filings, if the Bankruptcy reform bill passes?
7. Shouldn't we have the results of the new bankruptcy time study and the results of the impact of the new bankruptcy law if it passes before we proceed with H.R. 1428?

June 11, 2003

The HONORABLE CHRIS CANNON, *Chairman*
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
B353 Rayburn House Office Building
Washington, DC 20515
VIA e-mail to susan.jensen@mail.house.gov

Dear Chairman Cannon:

Here are answers to the questions that you sent to me regarding H.R. 1428 on behalf of the Subcommittee. My answers are necessarily brief. Where I had factual information to support my answer, I have used it. But many of the questions require judgment calls that go beyond readily available information. In that regard, I want to reiterate that I am not representing any individuals or groups. My opinions are solely my own, for better or worse.

From Chairman Chris Cannon:

1. . . . *bankruptcy judgeships be authorized on a temporary as opposed to a permanent basis?* The authorization of permanent bankruptcy judgeships (which are time-limited in an important sense) will not create a problem of judicial surplus.

The Judicial Conference has been scrupulous in its assessment of judgeship needs. Moreover, there have been occasions when a bankruptcy judgeship has gone unfilled when the need was absent in the district where the judgeship was authorized. A very interesting question is whether there might be some way to increase the flexibility given to the Judicial Conference regarding the geographic distribution of judicial resources, so that judgeships could be moved with fluctuations in demand across districts and circuits.

2. . . . *the FJC mega-case formula potentially overestimates required judicial work?* This is not a risk. The FJC mega-case formula has two components. The first guards against overestimation of judicial work and the second guards against underestimation. The first component corrects the inflationary effect on chapter 11 weighted case load created by related cases filed under the umbrella of a single huge corporate entity. This component has worked effectively, especially in Delaware, to reduce the weighted case load of that court from the value that would have been calculated without the mega-case correction. There is essentially zero risk that the second factor, an estimation of work load based on prior cases meeting an objective definition of a mega-case, will increase a court's weighted case load beyond what is due. The 1996 mega-case correction was an important addition to the measurement technology of the 1988–1989 time study.
3. . . . *given that the vast bulk of judge time consumed by chapter 11 cases, and given the current chapter 11 case load, is there a need for substantial additional judicial resources?* Though the numbers of business cases generally, and chapter 11 cases specifically, have not grown at the rate that the numbers of consumer cases have grown, many have become more complex and litigious. That fact alone would caution against using the percentages of such cases in the total mix of cases as a sign that the Judicial Conference's assessment of need is inaccurate. But in addition, looking forward, the absolute and relative numbers of chapter 11 cases are likely to increase and stay up for a while. There are lags between changes in the economy and changes in business bankruptcy filings. Moreover, good times do not necessarily equate to fewer filings, because good times occasion the establishment of marginal businesses-the dot-com bubble is just the latest example. The history of bankruptcy filings is one of phased increases growing as the population, GDP, and reliance on credit grow. None of these is likely to show long term decline, so we shouldn't expect a long term decline in businesses that start then fail.
4. . . . *possible for a bankruptcy judge to not expend any time on most chapter 7 cases filed in his or district?* Not only is it possible, it is likely that judges do not spend time on many no-asset cases that move through their courts in routine, virtually administrative fashion. Having said that, I hasten to add three comments to avoid the point being misconstrued: *First,* the case weight for the smallest chapter 7 cases, which is approximately 5 minutes, already incorporates the fact that the actual time spent on many cases is essentially zero. That is why we have case weights, to iron out these kinds of differences. So long as the category of the smallest cases lumps uncontested no-asset cases (most of them) with relatively rare litigious no-asset cases and small asset cases (in which the trustee is able to liquidate the estate for a value of up to $50,000), then it will be true that the average time for cases in the category (i.e. the case weight) is about 5 minutes, even though most cases in the category absorb zero time. This is just a statistical reality and nothing that needs to be worried about at the policy or legislative level. Second, the fact that judges spend zero time on these cases is exactly as it should be. Where the facts about the debtor's condition are clear to the trustee and the creditors, and no one objects, neither need nor virtue attaches to a pro forma judicial involvement. Third, it would be useful, but technically difficult and hence expensive, to sort no-asset cases out from small asset cases in the next time study. I suspect that the research people at the FJC are quite aware of both the value and the costs of making this separation, and I would certainly trust their judgment in making the final cost-benefit decision.

From Vice-Chairman Tom Feeney:

1. . . . *effects of H.R. 1428 on bankruptcy reform?* I am not certain how to interpret the phrase bankruptcy reform here. If, on the one hand, the reference is to the bankruptcy reform bill that may pass, then I believe that positive action on H.R. 1428 is, if possible, even more crucial than otherwise. This is because a lot of new judicial work will be required under the pending reform legislation, particularly on the consumer side. If, on the other hand, the reference is to the health of the bankruptcy system more generally, then the effects will still be salutary.

The system needs the judicial resources that are proposed in H.R. 1428 with or without the passage of the new reform legislation.

2. . . . *studies or proposals that show that increasing the number of judges under H.R. 1428 would reduce the burden on bankruptcy courts or substantially modify them?* The weighted case load calculations presented as part of the Judicial Conference's justification for the judgeship requests are a direct demonstration of the reductions of burden that would follow from appointments made under the new judgeships. These calculations are as good a job as can be done to justify the need for new resources in an objective fashion. On-site judgeship surveys and interviews conducted by the Judicial Conference Bankruptcy Committee assisted by the Administrative Office go further to ensure that the quantitative aspect of the justification does not paint a misleading picture of work load.

From Ranking Member Mel Watt:

1. *What is the bankruptcy court system costing the U.S. taxpayer?* A truly adequate answer can be supplied only by the Administrative Office, which has all the requisite numbers. It is important to emphasize, nevertheless, that filing fees, and other costs of bankruptcy borne by parties, substantially reduce the costs to taxpayers. There is a tricky problem associated with marking where the "court system" ends and ancillary institutions begin. One example is the oversight of panel and standing trustees now accomplished by the U.S. Trustee Program within the Department of Justice for 48 states. (In Alabama and North Carolina, the function is still accomplished in the Third Branch). By statute, the U.S. Trustee Program runs on user fees, largely the quarterly payments made by chapter 11 debtors-in-possession prior to plan confirmation. Also, the work of the panel and standing trustees is supported by payments from chapter 7 and chapter 13 estates. Though coming directly from the debtors, these payments obviously reduce the amounts that creditors might finally receive. So both bankruptcy estates and creditors pay large portions of the cost of operating both business and consumer bankruptcy operations. These are not usually considered to be costs of the courts per se, but they are absolutely essential components of the bankruptcy courts' ability to function effectively. The point is that users already pay a very large portion of the costs of running the bankruptcy system.
2. . . . *bankruptcy system be based on a user fee theory?* To a significant extent, as described just above, the system already is based on user fees.
3. . . . *Who benefits from the bankruptcy system as a whole? Who benefits from the mega bankruptcy cases?* It has been correctly said that America's reliance on free contracting for goods and services depends on a trustworthy system for resolving the problems that arise when contracts are not honored because of consumer and business failures. Bankruptcy law, along with state debtor-creditor laws, supports our reliance on contract law in a trustworthy way. The current contours of bankruptcy law arose from the problems encountered in sorting out the multistate debts of failed railroads during the nineteenth century. The need for national jurisdiction and service of process has only increased since that time, and only bankruptcy law can provide these functions. Further, the combination of bankruptcy discharge ("a fresh start for the honest but unfortunate debtor"), opportunity for repayment to preserve non-exempt assets (in chapters 11, 12, and 13), a court-administered, statutorily-defined system of re-payment priorities, and the all-important "automatic stay" (preventing the chaos of races to the courthouse under state law)—in brief, the key components of our bankruptcy system—benefit everyone: creditors, debtors, consumers, taxpayers. As to mega-bankruptcies, the key beneficiaries, in principle, are the reorganized debtor and those creditors of the debtor-in-possession whose treatment by the plan of reorganization is satisfactory to them. If mega-bankruptcies result in continuing operations of entities that would otherwise close their doors, then the employees and ongoing trade creditors of the entities also benefit. It is also well-known and sometimes lamented that the lawyers and other bankruptcy professionals who are retained by chapter 11 estates are very highly paid for their services. Whether their fees are too large is a question I am not prepared to address here. It is also clear, but perhaps not sufficiently emphasized, that small equity holders are almost always complete losers in these cases. Of course, they might have been casualties under any other legal outcome as well, so one cannot merely lay blame on the priority system of the Bankruptcy Code for the unfortunate effects of share-price collapse. When the chapter 11 filing is accompanied by fraud or rank strategizing, however, there perhaps is a question of whether small equity should take such a big hit as a result of such a "strategic" bankruptcy filing.

4. . . . *study on the projected impact on the bankruptcy system of the Bankruptcy reform bill if it passes?* I will mention two studies. The first is the GAO report 99–103, PERSONAL BANKRUPTCY: ANALYSIS OF FOUR REPORTS OF CHAPTER 7 DEBTORS' ABILITY TO PAY. This report clearly and accurately summarizes four separate studies of the likely impact, in terms of increased creditor payments in chapter 13, of the means-testing regime that was proposed under H.R. 833 (or the closely related S.625) during the 106th Congress. Two points about the research described by GAO in this report: 1) in the interest of full disclosure, I note that I was an author of one of the four studies; and 2) nothing has happened in the meantime to change my opinion about the accuracy of our findings and their significance for evaluating consumer means-testing proposals. The second study was a modest effort at predicting the effects of reform legislation on filings. It was published in the May, 2001 issue of the American Bankruptcy Law Journal, and may be retrieved in manuscript form at *http://www.usdoj.gov/ust/press/articles/abi01maynumbers.html* This paper, of which I was also an author, concluded that passage will lead to an immediate run-up in filings as attorneys and their clients hurry to file under a familiar rubric. We also believe that there will be a brief lull immediately after implementation, as practitioners catch their breath and begin to assess more carefully their new obligations and risks under the law, which are considerable. However, after this dust settles, the usual secular trends in bankruptcy will reassert themselves. Filings will grow, in phases, with growth in population, GDP, and use of credit. The impact of mandatory credit counseling may slow the rate of growth in filings but not reverse its direction. The burdens on debtors's lawyers under the new act are likely to make it more difficult for deserving debtors to obtain adequate representation. There will be a period of substantially increased litigation over the implementation of many provisions of the legislation, both on the business and consumer sides. Whether creditors or anyone else will have benefited much from these new burdens imposed on debtors and their counsel remains to be seen.
5. . . . *increase or decrease in filings as a result of the new law?* Please see the answer just above.
6. . . . *increase in efficiency of processing cases if the reform bill passes?* No, there will not be. Efficiency gains have been taken to just about the limit in many if not most bankruptcy courts around the country. These gains have been driven to the place where there is a risk that the quality of judicial work per case either has become inadequate or soon will become so. The additional administrative and regulatory apparatus associated with the reform legislation (means testing, record keeping, lawyer sanctioning, etc.) is not designed to increase efficiency—quite the contrary is true. Of course the burdens associated with the legislation may slow or reduce filings, but it would be an error to believe that this is because undeserving or crooked would-be debtors have been selectively barred by the new provisions from cheating the system. Legal services for debtors may be harmed by the legislation, but this should not be counted as an example of efficiency.
7. . . . *should action on new judgeships await the results of the new time study and the impact of reform legislation?* Absolutely not. The courts need the judges now, and in many cases have needed them for a while. As noted above, efficiency gains have been wrung out about as far as possible, and perhaps already are eroding quality of judicial oversight in some courts.

Thank you for giving the opportunity to answer these questions. Please do not hesitate to call on me again if I can be useful to you.

Sincerely,

/S/
GORDON BERMANT

June 6, 2003

The HONORABLE PAUL MANNES,
United States Bankruptcy Judge,
United States Bankruptcy Court for the District of Maryland
6500 Cherrywood Lane
Greenbelt, Maryland 20770

Dear Judge Mannes:

Thank you for appearing before the Subcommittee on Commercial and Administrative Law at the hearing on H.R. 1428, the "Bankruptcy Judgeship Act of 2003,"

on May 22, 2003. Your testimony, and the efforts you made to present it, are deeply appreciated and will help guide us in whatever action we take on this matter.

Pursuant to the unanimous consent request agreed upon at the hearing, Subcommittee Members were given the opportunity to submit written questions to the witnesses. These questions are annexed. Your response will help inform subsequent legislative action on this important topic.

Please submit your written response to these questions by 5:00 p.m. on Friday, June 13, 2003, to: Susan Jensen, Subcommittee on Commercial and Administrative Law, B353 Rayburn House Office Building, Washington, DC 20515. Your responses may also be submitted by e-mail to: *susan.jensen@mail.house.gov*

In addition, we have enclosed for your review a copy of the official transcript of this hearing. The transcript is substantially a verbatim account of remarks actually made during the hearing. Accordingly, please only make corrections addressing technical, grammatical, or typographical errors. No substantive changes are permitted. Please return any corrections you have to: Susan Jensen, Subcommittee on Commercial and Administrative Law, B353 Rayburn House Office Building, Washington, DC 20515 by June 20, 2003.

If you have any questions regarding the enclosed questions or transcript, please feel free to contact Ms. Jensen at (202) 225–2825.

Thank you for your continued assistance.

Sincerely,

CHRIS CANNON,
CHAIRMAN
SUBCOMMITTEE ON COMMERCIAL AND
ADMINISTRATIVE LAW

Enclosures

CC/sj

c: The Honorable Mel Watt
The Honorable Tom Feeney

QUESTIONS FOR THE HONORABLE PAUL MANNES

From Chairman Chris Cannon:

1. In light of the fact that the current Judicial Conference request for additional bankruptcy judgeships eliminates judgeships previously requested for several districts, why should any newly authorized judgeship be appointed on a permanent as opposed to a temporary basis?
2. Although no bankruptcy judgeships have been authorized for more than ten years, during a period in which bankruptcy filings skyrocketed and some of the largest Chapter 11 cases in our nation's history were filed, the federal bankruptcy judiciary was able to accommodate this increased case load without additional resources. Given this fact, why is it necessary at this time, after an elapse of ten years, to have additional bankruptcy judgeships authorized?
3. Although overall bankruptcy filings have generally increased over the past few years, the number of Chapter 11 case filings have remained somewhat stable. In fact, Chapter 11 cases decreased by 6.6% in 2002 as compared to the prior year. Indeed, business filings overall between 1998 and 2002 have decreased by nearly one-third. Is not the vast bulk of judge time consumer by Chapter 11 cases? If so, would you agree that the need for judicial resources may not be that substantial in light of the relatively minor increase in the number of Chapter 11 cases filed in the last 10 years?
4. In certain districts, the number of Chapter 11 cases filed can be fairly nominal. For example, in the District of Vermont, only 7 Chapter 11 cases were filed during the last year. Likewise, only 6 Chapter 11 cases were filed in the District of Rhode Island during 2002. To your knowledge, are all judges in low-volume districts helping out in districts with high volumes?

From Vice-Chairman Tom Feeney:

1. What effects would HR 1428 have on bankruptcy reform?

2. Are there any studies or proposals that show that increasing the number of judges under HR 1428 would reduce the burden on bankruptcy courts or substantially modify them?

From Ranking Member Mel Watt:

1. What is the bankruptcy court system costing the U.S. taxpayer?
2. Shouldn't the bankruptcy system be funded based on a user fee theory, i.e., based on contributions from debtors and/or creditors?
3. Who benefits from the bankruptcy system as a whole? Who benefits from the mega bankruptcy cases?
4. Has there been a study on the projected impact on the bankruptcy system of the Bankruptcy reform bill if it passes?
5. Will there be an increase or decrease in bankruptcy filings as a result of the new law if it passes?
6. Will there be an increase in the efficiency of processing cases, whether or not there is an increase or decrease in filings, if the Bankruptcy reform bill passes?
7. Shouldn't we have the results of the new bankruptcy time study and the results of the impact of the new bankruptcy law if it passes before we proceed with H.R. 1428?

June 13, 2003

The HONORABLE CHRIS CANNON, *Chairman,*
Subcommittee on Commercial and Administrative Law
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Cannon:

Attached are the answers to the June 6 follow up questions to the May 22 hearing on H.R. 1428, the Bankruptcy Judgeship Act of 2003.

These answers are submitted on behalf of the National Conference of Bankruptcy Judges ("NCBJ"). It has long been the policy of the NCBJ not to take positions as to substantive questions of bankruptcy law. Our comments as an organization are limited to matters of procedure only. We see our role as limited to making suggestions with respect to improvements in administration of the law as enacted. My answers also reflect my personal experience as a judge in the Bankruptcy Court for the District of Maryland. For some questions, I have deferred to the answers of the Judicial Conference.

Sincerely,

THE HONORABLE PAUL MANNES,
UNITED STATES BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
6500 CHERRYWOOD LANE
GREENBELT, MD 20770
(301) 344–8040

From Chairman Chris Cannon:

1. In light of the fact that the current Judicial Conference request for additional bankruptcy judgeships eliminates judgeships previously requested for several districts, why should any newly authorized judgeship be appointed on a permanent as opposed to a temporary basis?

The Judicial Conference's decision to propose a temporary or permanent judgeship for a judicial district is based upon the most recent caseweighted filings for that district. Additionally, the Judicial Conference reviews several other factors in determining whether to recommend a temporary or permanent judgeship. Such factors may anticipate the continuation or recession of a particular court's high case weight levels. The factors include the requesting district's present and historic case weights and filing trends, the nature and mix of the district's caseload, any geographic, economic, and demographic factors, the effectiveness of the court's case management efforts, and the availability of alternative resources for handling the court's caseload. The Judicial Conference will also consider a specific request by a circuit for a temporary or permanent judgeship for the judicial district at issue.

The Conference does not automatically recommend that all new bankruptcy judgeships be temporary judgeships because many of the judicial districts at issue will continue to experience increasing case filings and burdensome case weight levels requiring permanent judgeships. To create only temporary judgeships promises the Judicial Conference's repeated return to Congress to request extension or conversion of those positions on a piece-meal basis. For example, in 1997, the Judicial Conference recommended an extension of the temporary judgeship in the district of Delaware. Following two more years of sustained high case weight levels in that district, the Judicial Conference revised its recommendation for the district of Delaware's temporary judgeship in 1999, and now requests that judgeship be converted to permanent. If that judgeship were to remain temporary, the Judicial Conference may be required to return repeatedly to Congress for extensions.

Further, an additional temporary judgeship may not be the most effective solution for a judicial district. For example, in 1992, bankruptcy judgeship legislation authorized one temporary bankruptcy judgeship for the District of South Carolina, increasing the authorized judgeships for that district from two to three. Prior to receiving the additional judgeship, South Carolina's weighted case filings were 1,947; after the new judgeship the district's weighted case filings fell to 1,336. In December 2000 that temporary judgeship expired pursuant to the terms of the statute. Although its workload required three judges, the District of South Carolina was unable to prevent the statutory elimination of one of its judgeships. South Carolina now struggles with only two bankruptcy judges and a weighted caseload per judgeship of 2,898.

In January 2003, the Judicial Conference transmitted its recommendation for additional bankruptcy judgeships to Congress. This recommendation did not include requests for additional judgeships for three judicial districts that were included in the Judicial Conference's 1999 recommendation. The Conference recommends additional temporary judgeships as a means to stabilize a district that needs immediate assistance, but for which the long term needs are uncertain. From 1995 through 1999, the Judicial Conference recommended a temporary judgeship for the Eastern District of New York. This is a district that exemplifies that theory. If a temporary judgeship had been created for the Eastern District of New York in 1995, that judgeship today would be past the five year mark at which point the next judgeship vacancy in that district would not be filled.

There is a significant difference between merely accommodating a caseload and handling that caseload efficiently and effectively. As a result of the crush of cases felt in many districts, procedures have been adopted which attempt to expedite case resolution without the need for judicial intervention. For example, negative noticing has been used in some courts to eliminate the need for an appearance by the parties at a confirmation hearing unless one of the parties in interest provides written notice of intent to appear. This procedure has made it possible for judges in such districts to handle calendars of 150 to 300 cases in a day. However, most judges would prefer to have an opportunity to hear from and speak to the debtor prior to confirmation. The reality is that the opportunity is too costly in terms of time.

Another symptom of the pressure under which many districts are operating is the near impossibility of scheduling a hearing on short notice. In many districts, calendars are so crowded that a hearing which ordinarily would take several hours or a day is spread over months with snatches of time grabbed where possible. One result of this crowding is that it is not always possible to hear a matter as quickly as might otherwise be desired, with the consequence that one or more party's interests are impaired, as in the case of a dissipating asset.

It is also important to note the critical function of the councils of the circuit courts of appeal in appointing bankruptcy judges. Circuit councils act as careful stewards of funds appropriated for the administration of the bankruptcy system. The fact that an unfilled bankruptcy judgeship position exists does not mandate that a judge be appointed to fill that position. For example, four authorized bankruptcy judgeships have never been filled. There are now six bankruptcy judgeships that are vacant as a result of decisions by the circuit courts not to fill them. These positions will remain so until the need arises for appointing a judge to fill that position. On the other hand, if temporary judgeships are created, and the district's needs continue to justify the continuance of the temporary judgeship, those needs are unfilled with respect to vacancies occurring five years after the appointment of the temporary judge. For example, because the retirement of Judge J. Bratton Davis of South Carolina occurred on December 31, 2000, more than five years after the appointment of Judge John Waites to a temporary bankruptcy judgeship position in 1994, that district has been seriously understaffed ever since.

2. Although no bankruptcy judgeships have been authorized for more than ten years, during a period in which bankruptcy filings skyrocketed and

some of the largest Chapter 11 cases in our nation's history were filed, the federal bankruptcy judiciary was able to accommodate this increased caseload without additional resources. Given this fact, why is it necessary at this time, after an elapse of ten years, to have additional bankruptcy judgeships authorized?

The Judicial Conference has requested Congressional authorization of additional bankruptcy judges for ten years. Many of the same districts repeatedly request additional judgeships and increase the number of requested judgeships because the need in those districts has not abated. The backlog of recommended additional bankruptcy judges coupled with rising case filing has caused the need for 36 additional judgeships. The judiciary is unable to authorize additional judgeships when they are needed, and must rely upon Congress to do so. In the absence of Congressional action on the Judicial Conference's bankruptcy judgeship request, the judiciary has done its best to assist overburdened courts with temporary measures, such as recalled bankruptcy judges, intercircuit assignment of bankruptcy judges, advanced case management techniques, and the use of technology, such as video conferencing. At this point, however, even the temporary measures are at capacity. The overburdened courts are unable to provide the level of service that litigants deserve—the most frequently heard complaint from the bar is the lack of access to hearing time and overcrowded dockets. In light of record-breaking case filings, rising weighted caseload per judgeship, and complex mega-cases, the judiciary cannot continue to accommodate the increasing workload with existing judicial resources.

With the heavy caseloads affecting the districts for which help is being sought, bankruptcy judges are unable to give cases the attention that they require. This failure is felt in many sectors. In business cases, it is critical that companies not stay in the expensive mode of doing business a minute longer than necessary while these companies operate under the regime of Title 11. This is an expensive and awkward means of handling the affairs of an ongoing business. Favorable transactions often fall through because of the inability to get rapid court approval, particularly if a party in interest objects. In the course of administration of a bankruptcy case many matters do not get the close attention that the bankruptcy code requires because of the lack of judicial resources. Examples of such are complex fee applications, motions to settle disputes arising on claims or in actions by the bankruptcy estate to recover money, and motions to assume executory contracts. Individual debtors, particularly those representing themselves, often leave the court with the bitter impression with some justification that their cases have not received enough time for serious consideration. They do not understand what has taken place. Pro se representation occurs in more and more cases with the passage of time, because of the escalating costs of delivery of legal services puts adequate representation out of the reach of poor debtors most in need of the fresh start that Congress has provided by the bankruptcy discharge. Pro se cases generally take up multiples of the amount of time required to handle a matter where the parties are represented by counsel. Parties representing themselves will adopt wild theories downloaded from the Internet as to such matters as the Federal Reserve System or their obligation to pay income tax. Finally, in those few cases where fraudulent schemes are woven through the case, the judges do not have the time to unweave the complexities of the case where only the tip of the iceberg appears.

3. Although overall bankruptcy filings have generally increased over the past few years, the numbers of Chapter 11 case filings have remained somewhat stable. In fact, Chapter 11 cases decreased by 6.6% in 2002 as compared to the prior year. Indeed, business filings overall between 1998 and 2002 have decreased by nearly one-third. Is not the vast bulk of judge time consumer by Chapter 11 cases? If so, would you agree that the need for judicial resources may not be that substantial in light of the relatively minor increase in the number of Chapter 11 cases filed in the last 10 years?

While it is true that the most time consuming type of case is the average Chapter 11 case, Chapter 11 cases do not consume most, or even the majority of judge time. For the year ended March 31, 2003, the average Chapter 11 case required 8.4 hours of direct judge time. But, there were many more cases filed in other chapters. Thus, while the average Chapter 7 case required on 0.12 hours of judge time, there were 106 such cases filed for each Chapter 11 case. Chapter 13 cases required on average about 0.4 hours of judge time apiece, but there were 43 filed for each Chapter 11 case filed.

For the year ended March 31, 2003, the average judge was assigned 33 Chapter 11 cases, AND was assigned 3,504 Chapter 7 cases, 1,433 Chapter 13 cases, and 491 adversary proceedings. The Chapter 11 cases will require a total of about 277

judge hours, but the other cases, together, will require 1,493 hours of judge time. In addition, the Federal Judicial Center estimates that the average judge will spend about 660 hours in research, court and chambers administrative matters and other activities not directly traceable to a specific case. This total of 2,430 hours of judicial time per year excludes any time for vacation, holidays or sick time.

The individual debt repayment cases of Chapter 13 can be enormously complex with several valuation hearings, claims objections and motions for relief from stay in addition to confirmation issues. Dischargeability and discharge cases brought under 11 U.S.C. § 523(a) and § 727(a) can be time consuming as they are fact intensive. A case can take several days that is brought by the ex-spouse of a debtor in proper person under 11 U.S.C. § 523(a) (15) against the debtor who can no longer afford an attorney to defend. Chapter 7 cases of failed businesses bring with them large numbers of adversary proceedings to collect outstanding bills or to recover preferences and fraudulent conveyances. In order for a bankruptcy judge to proceed in the capacity of prosecuting cases for substantial abuse of Chapter 7 of the bankruptcy code under 11 U.S.C. § 707(b), that judge must have the time to sift through schedules. Few judges in impacted courts have the time to devote to this function, and as a consequence these cases are left only to the United States Trustee to prosecute.

4. In certain districts, the number of Chapter 11 cases filed can be fairly nominal. For example, in the District of Vermont, only 7 Chapter 11 cases were filed during the last year. Likewise, only 6 Chapter 11 cases were filed in the District of Rhode Island during 2002. To your knowledge, are all judges in low-volume districts helping out in districts with high volumes?

Of the courts with relatively low judicial workload, virtually all are either one- or two-judgeship courts. It is impractical in most cases for a judge sitting in one of these courts to provide significant services as a visiting judge in another district because it would leave the judge's home district with no bankruptcy judge (in the case of one-judge courts) or because it would overburden the remaining home district judge (in the case of a two-judge court).

Through intercircuit and intracircuit assignment, bankruptcy judges are able to provide assistance to overburdened courts in other districts and circuits. Participation in the intercircuit and intracircuit system is voluntary, both for the judge who provides assistance and the district requesting assistance. Intercircuit assignment of a bankruptcy judge is agreed upon between the two circuits involved; the judiciary does not assign bankruptcy judges to intercircuit assignments. Intercircuit assignments can be of varying length, but usually involve several weeks of service in another district per year in addition to that judge's duties and obligations in his or her home district.

However, judges in low volume districts have in the past and will continue to help out their overloaded colleagues. In my court for example, we have received help from judges from Illinois, New Mexico, West Virginia, Virginia, North Carolina, Oklahoma and Louisiana among other districts. However, the help rendered by a visiting judge must be limited to certain well-defined matters such as discrete adversary proceedings or objections to specific claims, as much of the bankruptcy judge's work involves application of local law. Delegating parts of larger cases to visiting judges does not work in the most part as there is a great benefit to having a single judge handle a case from beginning to end. Often parties take advantage of visiting judges by changing positions in mid-stream and "forgetting" what they said to the judge assigned to the case. In addition, the visiting judge often has to rely upon the legal assistant or law clerk of the judge being assisted. This detracts from the benefit, as that judge must take time to do matters that the staff would otherwise do.

Further, there are more factors than home district case filings involved in a bankruptcy judge's ability to voluntarily travel to assist an overburdened circuit. In some states, bankruptcy judges travel extensively to hold court around a geographically vast area (e.g. the Eastern and Western Districts of Arkansas, the District of Alaska, the District of North Dakota). Those judges who have time beyond that required administering their own districts often serve on the Bankruptcy Appellate Panels of several circuits, a process that produces speedy and informed reviews of the judgments of bankruptcy judges. This process takes a large caseload of unfamiliar matter off the backs of District Judges, who must give priority in administering their caseload to criminal cases. Additionally, some judges with lighter caseloads are unable to travel based upon individual family circumstances, such as aged parents or special needs children. Therefore, all bankruptcy judges from "low volume" districts are not assisting in overburdened courts.

From Vice-Chairman Tom Feeney:

1. What effects would H.R. 1428 have on bankruptcy reform?

H.R. 1428 will provide the judicial resources to deal with the existing and crushing overload on the system, so that the implementation of Bankruptcy Reform legislation will be far less burdensome to the system. In the 180 days following enactment of Bankruptcy Reform, judges, particularly those in the impacted districts, will have more time to become familiar with the massive revision of bankruptcy law. However it should be observed that the process of selecting and appointing bankruptcy judges can take considerable time. In my district our fourth position was created by the Act of August 26, 1992, P.L. 102–361. The position was not filled until the appointment of Judge Duncan Wray Keir on November 12, 1993.

2. Are there any studies or proposals that show that increasing the number of judges under H.R. 1428 would reduce the burden on bankruptcy courts or substantially modify them?

I will defer to the Judicial Conference on the issues of studies. In my opinion, having more judges to share the load will be a great benefit to the administration of justice. Parties in impacted districts will get quicker hearings that are not artificially limited by the need of the bankruptcy judge to get to other matters. Judges will have time to review papers in advance of the hearings and to explain decisions. In addition there will be more time available to smoke out those few but very disturbing cases involving bankruptcy fraud or oppressive creditor conduct.

From Ranking Member Mel Watt:

1. What is the bankruptcy court system costing the U.S. taxpayer?

I understand that the answer to this question will be provided by Judge Melloy representing the Judicial Conference.

2. Shouldn't the bankruptcy system be funded on a user fee theory, i.e., based on contributions from debtors and/or creditors?

This question is one of policy. As stated earlier the NCBJ does not take positions on such matters.

3. Who benefits from the bankruptcy system as a whole? Who benefits from the mega bankruptcy cases?

The benefits to the bankruptcy system are manifest by asking the question, "What would the situation be, if Title 11 did not exist?" This inquiry begins with the honest debtor who has incurred debt beyond any reasonable ability to repay. These debts could have arisen from such causes as uninsured medical expenses, loss of employment, failed business ventures, imprudent borrowing and so forth. If the person is employed, earnings will be attached. Any property owned is subject to seizure for payment of the debts. The individual is left to live from day to day at the subsistence level, without hope of acquiring anything. The individual must live on in a state of perpetual indentured servitude. There is a temptation to live "off the books" and engage in other unlawful activity. Further as Prof. Thomas H. Jackson points out in *The Logic and Limits of Bankruptcy Law*, 231 (1986), "if there were no right of discharge, an individual who lost his assets to creditors might rely instead on social welfare programs." Congress decides what debts are not discharged, such as taxes, child support and those arising out of dishonest actions of the debtor. For the most part, state exemption laws determine how much property of the debtor is exempt from the claims of creditors. These vary among the states, for example, Maryland allots $6,000.00 in exemptions to debtors, while some states allow unlimited homestead exemptions.

Bankruptcy provides an efficient collective means of debt collection. With insolvent debtors, such assets as exist are divided among creditors of equal priority. The rush to the courthouse to devour the carcass of a failing business are of no avail, because the trustee may recapture those pre-bankruptcy payments as a preference and divide them equitably among creditors. To assist with the collective effort, the trustee has extraordinary powers to avoid fraudulent conveyances, recover property and collect accounts. Bankruptcy provides an efficient forum to maximize returns to creditors.

Chapter 11 provides a means to provide to creditors the value of a going concern as opposed to the liquidation of buckets of used parts. If the debtor can propose a plan to meet the rigorous test of 11 U.S.C. § 1129 and obtain necessary creditor approval, then the debtor as an ongoing business will be able to pay back far more over the course of the plan then would be paid back through liquidation of its assets through forced sales. The business remains intact, and jobs of working people are

saved. It is a "win win" situation. Companies file cases under Chapter 11 for a variety of reasons. An important customer may default on an account. A bank that has dealt with a debtor for 30 or more years may be swallowed up in a merger, and the mega-bank taking over may have no interest in continuing to do business with a company that has never been late in any payment and never defaulted in any respect. In many cases, the bankruptcy court is the only place to turn for that company and others facing a temporary liquidity problem. The bankruptcy process allows that company time to recover and make arrangements.

Chapters 12 and 13 of the bankruptcy code allow individuals and farmers to enter into arrangements supervised by a trustee where future income is devoted to plans for the extension or composition of debts. This enables families to save their homes and to remain together when the wage earner is laid off or sustains an injury. It is especially helpful in cases involving the elderly who are often victimized and make unwise choices. Unlike younger debtors who have income and little property, the older debtor may have property and little income aside from social security or a pension. One untoward event can disturb the delicate equilibrium keeping their financial ship afloat. In Chapter 13 they are able to work out a plan to live out their lives in dignity.

4. Has there been a study on the projected impact on the bankruptcy system of the Bankruptcy reform bill if it passes?

I will defer to the Judicial Conference on the answer to this question.

5. Will there be an increase or decrease in bankruptcy filings as a result of the new law if it passes?

I think that the same numbers of debtors will seek relief under the bankruptcy code. I suspect that more cases will be filed or converted to cases under Chapter 13, and cases under Chapter 13 are generally more time-consuming for the bankruptcy judge. In any event, if history is any reference, there will be an extraordinary number of cases filed immediately before the Reform Bill becomes law. In 1981, when Maryland opted out of the federal scheme of exemptions pursuant to 11 U.S.C. § 522(b)(1), there were so many cases filed that the clerk accepted petitions in the parking lot of the court much like last minute tax return filings on April 15.

6. Will there be an increase in the efficiency of processing cases, whether or not there is an increase or decrease in filings, if the Bankruptcy reform bill passes?

I will defer to the Judicial Conference on the answer to this question. I would also observe that there will be additional work for bankruptcy judges in implementing the means test for individual debtors. Findings of fact would be required for each case. My experience is that trustees have quite a struggle in getting pro se debtors to produce records. I see this often in cases under Chapter 13 where debtors take a great deal of time to come up with records as to income and expenses, and where the trustee must have proof of payment of taxes that if unpaid would be entitled to priority.

7. Shouldn't we have the results of the new bankruptcy time study and the results of the impact of the new bankruptcy law if it passes before we proceed with H.R. 1428?

We should not wait for the results of the bankruptcy time study and results of the impact of the new bankruptcy law if it passes before H.R.1428 is enacted. There has not been an additional bankruptcy judgeship slot authorized since August 1992. Yet in those 10 years, there has been a tremendous increase in the caseload. As the Judicial Conference has reported, the volume of bankruptcy filings reached an historic high of over 1.5 million filings for fiscal year 2002. This is a 59% increase in the caseload since Congress last authorized judgeships in 1992. These additional judgeships are critical to ensure that our bankruptcy court system continues to function effectively.

The 36 judgeships in HR 1428 reflect the most current recommendation of the Judicial Conference, based on the most recent data. These judgeships are requested for those districts with a justified need now for additional assistance. A review of the latest weighted filings per judge data for the 12 months ending March 31, 2003, shows that in 20 of the 22 districts that qualify for judgeships, the weighted filings are over 2000 per judgeship. For example, in the District of Utah, the weighted caseload per judge is 2,115. In the District of Delaware, the weighted caseload per judge is 12,566.

○