106TH CONGRESS
2d Session

SENATE

REPORT
106–379

FEDERAL COURTS BUDGET PROTECTION ACT

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

together with

ADDITIONAL VIEWS

TO ACCOMPANY

S. 1564

TO PROTECT THE BUDGET OF THE FEDERAL COURTS

AUGUST 25, 2000.—Ordered to be printed

Filed under authority of the order of the Senate of July 26, 2000

U.S. GOVERNMENT PRINTING OFFICE

79–010 WASHINGTON : 2000

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AUGUST 25, 2000.—Ordered to be printed

Filed under authority of the order of the Senate of July 26, 2000

Mr. THOMPSON, from the Committee on Governmental Affairs submitted the following

REPORT

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ADDITIONAL VIEWS

[To accompany S. 1564]

The Committee on Governmental Affairs, to which was referred the bill (S. 1564) to protect the budget of the Federal courts, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. PURPOSE

The purpose of S. 1564 is to allow the judiciary to communicate directly to Congress its needs for appropriations without mediation from the executive branch, thereby preserving its independence as a separate branch of government.

II. SUMMARY OF S. 1564

The legislation would make two changes in the process through which the budget for the judicial branch is submitted to Congress.

First, it would provide that the judiciary budget request be submitted directly to Congress. It would also be submitted, without change, in the unified budget as submitted by the President. The Act emphasizes that the President may not in his budget request impose or recommend any alteration, negative allowance, rescission, or other change in the judiciary's request, directly or indirectly. However, the President would not be precluded from commenting on the judiciary's request outside of the formal budget document.

Second, the legislation requires that the judiciary budget request submitted to Congress include a request for funding for courthouse construction, acquisition, and repairs and alterations. S. 1564 would direct that such funds be appropriated directly to the judiciary for deposit into GSA's Federal Buildings Fund. Under current law, requests for courthouse construction and related funding are contained in the President's budget request and are subject to review and modification by the executive branch prior to the budget's submission to Congress.

The Act would retain existing procedures for GSA to develop prospectuses which assess facility requirements, specifications and costs of actual construction or alteration work, and the housing needs of executive branch agencies located in courthouses. GSA would provide these prospectuses to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House which would continue their current role in authorizing this work. GSA would continue to provide similar information for future project to the Director of the Administrative Office of the United States Courts.

This bill would affect solely the manner in which the judiciary's budget request is submitted to Congress; it does not otherwise affect Congress' role in the budget process.

III. Background and Need for Legislation

The Budget and Accounting Act of 1921 (the Budget Act or the Act), as amended, calls for the President to submit annually to Congress the budget for the entire Government, containing among other things "estimated expenditures and proposed appropriations the President decides are necessary to support the Government," 31 U.S.C. § 1105(a)(5). Budget requests of executive branch agencies are subjected to an extensive pre-submission screening, as each agency is required to submit its requests for appropriations to the Office of Management and Budget (OMB), which in turn advises the President on which requests he should "change" under 31 U.S.C. § 1108(b)(1).

A different course is provided for requests from the judicial and legislative branches. These two branches are excluded from the definition of "agency" which encompasses the category of appropriations requests the President may change, 31 U.S.C. § 1101(1). Section 201 of the Act specifically provides that the budget requests for the legislative and judicial branches shall be transmitted by the President to Congress "without change," 31 U.S.C. § 1105(b).

This process was intended to protect the judiciary's budget request from changes made by the executive branch. Yet four times since 1990, the President's budget submission has proposed multi-hundred million dollar "negative allowances." In order to keep its budget within the limits mandated by the spending cap legislation, the President included a "negative allowance" at the end of his budget request, equal to the amount that the entire budget exceeded the budget caps. The negative allowance, while not explicitly applied to the judiciary's budget, is by default attributable to it. Because OMB already has trimmed executive branch agencies' budget requests to comply with the spending caps, the negative allowance has been attributed as the amount by which OMB believes the judiciary's budget request should be cut.

S. 1564 is intended to stop the use of negative allowances. It provides that the judiciary's request be submitted directly to Congress and expressly prohibits the executive branch from imposing any negative allowance against that request in the formal budget document.

In addition to the operational resources included in the judiciary's budget request and appropriations, the judiciary must conduct its business in adequate courthouse facilities. Like most other government entities, the judiciary relies on GSA, an executive branch agency, to construct and repair its buildings. Pursuant to existing law, the funds for such projects are requested by GSA as part of the executive branch's budget submission. Because GSA is an executive agency, its budget requests have been subject to screening and change by OMB. For that reason, the need has arisen to protect the judiciary's ability to request directly from Congress the amount that it believes appropriate to fund courthouse construction.

For the last several years, the judiciary has had to respond to major increases in its workload and to the need for an overhaul of the nation's aging inventory of federal courthouses. Therefore, GSA and the judiciary have engaged in an extensive construction and alteration program. While many projects have been successfully completed, both the judiciary and GSA agree that more work remains to be done. However, for the last four fiscal years OMB has eliminated or substantially reduced GSA's courthouse construction requests from the budget, "zeroing out" the entire request in two of these years as part of its prioritization of the budget requests from all executive branch agencies. Although Congress restored this request in fiscal year 1999, the Administration reduced the judiciary's courthouse funding request in its fiscal year 2001 budget request from $755 million to $488 million.

Both Congress and the judiciary would be much better served by having the judiciary's construction request submitted directly and unchanged from the outset.

IV. Legislative History of S. 1564

On August 5, 1999, Senator Cochran, along with Senators Collins, Roth, and Stevens, introduced S. 1564. Senators Hatch and Leahy were added as cosponsors on September 14, 1999. The bill requires the judiciary's budget request to be submitted directly to Congress and to include requests for funds for courthouse construction, acquisition, and repairs and alterations.

On June 14, 2000, the Committee held a business meeting at which S. 1564 was considered. Senator Cochran offered an amendment in the nature of a substitute, which was approved by voice vote.

With no other amendments being offered, Chairman Thompson moved adoption of S. 1564, as amended. The bill was ordered to be favorably reported by voice vote. Present for the vote were Senators Stevens, Collins, Voinovich, Cochran, Lieberman, Akaka, Torricelli, Cleland, Edwards and Thompson. (Senator Voinovich expressed opposition by voice vote.)

V. SECTION-BY-SECTION ANALYSIS

Section 1 states the title of the legislation, the "Federal Courts Budget Protection Act".

Section 2 amends Section 605 of title 28, United States Code, to revise the way the judiciary's budget requests are submitted to Congress and to expand what is included in those requests.

Section 2(a) requires the Director of the Administrative Office of the United States Courts to submit directly to Congress before January 25 of each year, cost estimates for the annual operating budget of the judicial branch, as approved by the Judicial Conference or appropriate courts, as well as for federal courthouse construction, acquisitions, repairs and alterations. The Director's budget request for courthouse projects will be based on prospectuses and cost estimates prepared by GSA. To ensure that the judiciary can prepare the courthouse projects budget request in a timely manner, the Administrator of General Services is directed to prepare and submit to the Director prospectuses, including cost estimates, and preliminary planning, design and cost estimates for courthouse projects. These prospectuses shall also be provided to the Senate Committee on Environment and Public Works, the House Committee on Transportation and Infrastructure, and the Senate and House Committees on Appropriations. Funds are authorized to be appropriated to the judicial branch for deposit into the Federal Buildings Fund for courthouse projects. These funds may be obligated only if the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives have approved a prospectus, if such is required by law. (This is a repeat of standard language included each year in the Treasury, Postal Service and General Government appropriations bill.) The Director is also required to submit the same cost estimates under subsection (a) to the President for inclusion in the budget of the United States. The President must include these estimates without change in the national budget submitted pursuant to the first sentence of section 1105(a) of title 31, United States Code, and is prohibited from using a negative allowance, rescission or any other direct or indirect form of reduction to such estimates. Nothing in this legislation precludes the President, however, from making comments about the judiciary's funding request in a medium outside of the formal budget submission process. To assist the President in preparing the unified Federal budget, the Director is required to transmit preliminary estimates prepared under subsection (a) to the President before October 16 each year and final estimates before December 24 each year. The final estimates transmitted to the President must be identical to those submitted to Congress under subsection (a). The Director is required to have periodic examinations made of the judicial survivors annuity fund by an outside actuary and to transmit those findings and recommendations to the Judicial Conference. (This is an existing requirement in Section 605.)

Section 2(b) amends section 1105(b) of title 31, United States Code to make conforming changes regarding inclusion of the judiciary's budget request in the budget submitted by the President.

Section 2(c) clarifies that, with the exception of the new process for providing prospectuses and cost information to the Director and

to Congress under subsection (a), the role of the Administrator of General Services with regard to courthouse construction, acquisitions, repairs and alterations, including housing plans of executive branch elements which should be included in these buildings, shall remain the same as it is now.

VI. Regulatory Impact of Legislation

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the regulatory impact which would be incurred in carrying out this bill."

The enactment of this legislation will not have a significant regulatory impact. S. 1564 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would affect the budgets of state, local or tribal governments.

VII. Congressional Budget Office Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 20, 2000.

Hon. Fred Thompson,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1564, the Federal Courts Budget Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. the CBO staff contact is Lanette J. Keith.

Sincerely,

Steven Lieberman
(For Dan L. Crippen, Director).

Enclosure.

S. 1564—Federal Courts Budget Protection Act

CBO estimates that enacting S. 1564 would have no impact on the federal budget. Because enactment of S. 1564 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, tribal governments.

S. 1564 would require that the Administration submit the budget request of the judicial branch to the Congress without charge. The bill also would require that the funding request for court construction and maintenance be included in the budget request of the judicial branch instead of the General Services Administration. Because enactment of S. 1564 would change the procedure for submitting the budget and would not authorize additional amounts, CBO estimates that this legislation would have no impact on the federal budget.

The CBO staff contact is Lanette J. Keith. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VIII. Additional Views

I write to express my opposition to S. 1564, the Federal Courts Budget Protection Act, sponsored by my good friend from Mississippi, Senator Cochran and co-sponsored by four members of this Committee, as well as the Chairman and Ranking Member of the Senate Judiciary Committee. I regret having to take this position, but as Chairman of the Senate Committee on the Budget I feel it is my responsibility to make clear that this legislation is both an unnecessary and unwarranted amendment to the federal budget process.

Let me begin by explaining how the request for construction of new federal courthouses is produced. First, the Administrative Office of the United State Courts (AO) compiles a five-year plan which prioritizes the Judiciary's request for new courthouses. Second, based on AO's prioritization, the General Service Administration (GSA) uses the ranking in preparing its annual budget request to the Office of Management and Budget (OMB) and to Congress for the authorization and funding of new courthouse construction.

Although the Judiciary has the responsibility to identify and propose courthouse construction projects, the GSA, as the primary federal real property agency, must formally request the courthouse funding as part of its annual budget request to Congress. Acquiring real property and constructing federal buildings is GSA's mission. GSA bases its funding request for new courthouse projects on two plans, which are updated annually by the AO, the Long-Range Facility Plan (LRP) and a Five-Year Rolling Plan.

As executive agencies and departments such as GSA formulate their budget request, they maintain continuous contact with OMB examiners. Once these agencies complete their budget request, OMB, in consultation with the President and his aides, has the oversight duty of reviewing them all for consistency with presidential policy and to ensure they all fit within a framework of a fiscally responsible budget which meets the needs of the American people.

I understand the concerns of the proponents of S. 1564. I also believe that Congress should have full and complete information when making funding decisions, especially for courthouse construction. I would submit that it already does. The President's budget presents the Judiciary budget in full. In fact, page 6 of the Appendix to the President's 2001 budget Request, states the following:

> In accordance with the law or established practice, the presentations for the Legislative Branch, the Judiciary * * * have been included, without review, in the amounts submitted by the agencies.

Moreover, nothing prevents the Judiciary from directly submitting its own budget request to Members and staff for consideration.

As a matter of fact, this is regularly done. For the Committee's review, I have included in the record a copy of the AO's budget request which they provided my staff earlier this year. This given, it remains the President's constitutional prerogative to request appropriations (and Congress's to fund all, none or part of such a request) for any or all of the courthouses requested by the Judiciary.

The proponents of S. 1564 believe that it will reinforce the "balance of powers" within our constitutional form of government by ensuring that the Judiciary's Budget is not used as a "political football." I disagree.

In my view, the Judiciary's budget is appropriately presented in the President's budget and any prioritizing surrounding the funding of courthouse construction is properly handled by the GSA in the normal appropriations process. If "politics" has played a role, I suggest to my colleagues that it is the result of the usual "give and take" that goes on between members of Congress in exercising their most revered constitutional prerogative: the "power of the purse." Building courthouses is a fiscal matter, not a separation of powers issue.

I believe that S. 1564 will simply leapfrog the proper budgetary and management role that OMB provides to the President. If S. 1564 were to become law, OMB would no longer be able to analyze the details of each request made for courthouse construction—thus removing a crucial layer of much needed oversight.

As members of this Committee may recall, past reports issued by the General Accounting Office (GAO) and news accounts have highlighted the excesses of the federal courthouse construction program. Based partly on these accounts of excessive costs, inadequate management, inefficient oversight and inconsistent execution across the country, Members of Congress requested that the GSA help find ways to make the federal government's real estate program more cost effective. In 1994, the GSA responded by identifying $1.2 billion (including $227 million from courthouse construction) in savings for the federal government in its Time-Out and Review Report of nearly 200 major new construction, modernization and lease projects. As a result, the AO complies a five-year plan which prioritizes the Judiciary's request for new courthouse and assists in determining project urgency. Since then the AO, GSA, Congress, as well as the increased oversight role of OMB, have all played a positive role in effectively managing the courthouse construction program.

Proponents of S. 1564 have also argued that the President's use of "negative allowances" has been unfairly (and presumably unconstitutionally") applied against the Judiciary's budget request. I believe that this view arises from a misunderstanding of the various components of the President's budget. The fact is, "negative allowances" are applied to the "bottom line"—the President's budget in its totality. They represent unspecified reductions in spending and are often referred to, in budget jargon, as a "plug"—a way to make the number add up. They are not applied to any specific program or federal agency within the President's budget—this includes the Judicial and Legislative branch. So to argue that the existence of a "negative allowance" within the President's nearly $2 trillion annual budget submission is somehow a misrepresentation of, or a re-

duction to, the Judiciary's $3.96 billion budget belies a serious misunderstanding of the federal budget process.

I also understand the frustration of those who believe that recently courthouse construction has not received adequate levels of funding. And while it is true that no funds were requested for courthouse construction by the President for the past three years and Congress appropriated funds in only one of those years, the passage of S. 1564 is not the answer. I would like to remind my colleagues that the President's 2001 Budget does request $488 million for courthouse construction and the Senate version of the 2001 Budget Resolution assumed $700 million.

I support responsible funding of courthouse construction and as a member of the Senate's Committee on Appropriations, I welcome the opportunity to work with the members of the federal Judiciary to ensure that they have appropriate facilities in which to perform their crucial role in our federal system. Now that federal budget deficits have turned into surpluses, I believe the time is right to revisit the level of courthouse funding.

The following table (which does not include funds requested or provided for repairs and alterations and any possible rescissions of courthouse construction funds) shows the amounts for new courthouse construction funded through GSA's Federal Buildings Fund for the past fifteen years. It highlights the cyclical nature of budgeting for courthouse construction. In some years funding may be minimal, while in other years a sizable amount of money may be appropriated.

Fiscal year	Amount requested in President's budget ($ in thousands)	Total appropriated by Congress ($ in thousands)
2001	488,000	N/A
2000	0	0
1999	0	462,290
1998	0	0
1997	622,744	583,940
1996	0	335,973
1995	0	519,932
1994	566,336	760,517
1993	132,189	222,082
1992	13,572	317,235
1991	231,644	545,816
1990	24,027	13,727
1989	72,660	89,418
1988	850	5,036
1987	1,057	1,057
1986	0	182,173

Source: Appendix, Budget of the United States Government, Fiscal Years 1986–2001 (as compiled by the Congressional Budget Office).

This bill is not the answer to the "problem" of insufficient funding for courthouse construction—the answer lies within the appropriations process. It will strip OMB of its proper oversight role and it will handicap the President as he develops his yearly budget request. As Chairman of the Committee on the Budget, I cannot support S. 1564; nonetheless, as a member of the Committee on Appropriations I have and will continue to work to support appropriate levels of funding.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

Chapter 41—ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

* * * * * * *

SEC. 605. BUDGET ESTIMATES.

[The Director, under the supervision of the Judicial Conference of the United States, shall submit to the Office of Management and Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the courts and the Administrative Office and the operation of the judicial survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The Director shall cause periodic examinations of the judicial survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the Director to the Judicial Conference.

[Such estimates shall be approved, before presentation to the Office of Management and Budget, by the Judicial Conference of the United States, except that the estimate with respect to the Court of International Trade shall be approved by such court and the estimate with respect to the United States Court of Appeals for the Federal Circuit shall be approved by such court.]

(a) The Director, under the supervision of the Judicial Conference of the United States, shall submit to Congress before January 25 of each year annual estimates of the following:

(1)(A) The expenditures and appropriations necessary for the maintenance and operation of the courts and the Administrative Office and the operation of the judicial survivors annuity fund and any supplemental and deficiency estimates as may be required for such purposes according to law.

(B) The estimates required by this paragraph shall be approved, before presentation to Congress, by the Judicial Conference of the United States, except that the estimate with respect to the Court of International Trade shall be approved by that court and the estimate with respect to the United States

Court of Appeals for the Federal Circuit shall be approved by that court.

(2)(A) The expenditures and appropriations necessary for real property construction activities, including construction and acquisitions and repairs and alterations, related to United States courthouses and other space occupied by entities of the judicial branch.

(B) Estimated expenditures and appropriations under this paragraph shall be based on prospectuses and other information provided by the Administrator of General Services.

(C) For the purpose of preparing estimated expenditures and appropriations under this paragraph, the Administrator of General Services shall, at such times as are required by Congress or the judicial branch to ensure timely development and consideration of courthouse needs and budget requests, prepare and submit directly—

(i) prospectuses, including cost estimates, for future judicial branch construction, acquisition, and repair and alteration projects to the Director, the Committee on Environment and Public Works of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committees on Appropriations of the Senate and House of Representatives; and

(ii) preliminary planning, design and cost estimates of future judicial branch construction, acquisition, and repair and alteration projects to the Director.

(D) In accordance with estimates prepared under this paragraph, funds may be appropriated to the judicial branch for deposit into the Federal Buildings Fund for the construction, acquisition, and repair and alteration of Federal courthouses. Funds deposited into the Federal Buildings Fund under this subparagraph shall not be available for expenses in connection with any construction, acquisition, and repair and alteration project for which a prospectus, if required by section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606), has not been approved by the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, except that necessary funds may be expended for each project for required expenses in connection with the development of a proposed prospectus.

(b)(1) The estimates submitted to Congress under subsection (a) shall also be submitted to the President for inclusion in the budget of the United States. In each budget of the United States Government submitted by the President under the first sentence of section 1105(a) of title 31, the President shall make no change or alterations whatsoever, and shall not impose or otherwise recommend, directly or indirectly, implementation of a negative allowance, rescission, or any other form of reduction or change to such estimates.

(2) For the purpose of preparing a unified Federal budget by the President, the Director shall transmit to the President—

(A) preliminary estimated expenditures and proposed appropriations for the judicial branch before October 16 of each year; and

(B) final estimated expenditures and proposed appropriations for the judicial branch before December 24 of each year, and such final estimates shall be identical to the estimates to be submitted to Congress under subsection (a).

(C) The Director shall cause periodic examinations of the judicial survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the Director to the Judicial Conference.

* * * * * * *

TITLE 31—MONEY AND FINANCE

CHAPTER 11—THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION

* * * * * * *

SEC. 1105. BUDGET CONTENTS AND SUBMISSION TO CONGRESS.

(b) Estimated expenditures and proposed appropriations for the legislative branch and the judicial branch to be included in each budget under subsection (a)(5) of this section shall be submitted to the President before October 16 of each year and included in the budget by the President without change. *Estimated expenditures and proposed appropriations for the judicial branch described under section 605 of title 28 shall be included in the budget and submitted to the President in accordance with that section.*

The Judiciary's Fiscal Year 2001 Budget Request

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OVERVIEW

Constitutional Framework

The responsibilities of the judiciary are set forth in Article III of the Constitution which states "The Judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

In additional to establishing courts, Congress retains the sole power to create Article III judgeships. Article III judges, including Supreme Court justices and appellate and district court judges, are appointed for life and receive a salary which may not be reduced while during their tenure in office.

The Judiciary Today

The Congress has established a sophisticated system of courts that, collectively, make up our federal court system. Today, this includes 13 appellate courts, 94 districts (each including a district court, bankruptcy court and probation/pretrial office), a federal claims court, a court of international trade, and other federal courts to handle the work of the judiciary. Geographically, the federal court system extends to all fifty states, Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands.

There are 852 active Article III judgeships, 486 senior Article III judges, 447 magistrate judges, 16 federal claims judgeships, and 326 bankruptcy judgeships. Combined, there are more than 2,000 judges presiding over the work of the judiciary.

The judiciary is staffed by over 30,000 dedicated civil servants who work in all areas of the federal court system. They are employed as deputy clerks, court security officers, criminal defense attorneys, interpreters, probation officers, court reporters, circuit executives, librarians, staff attorneys, and law clerks.

The Judicial Conference of the United States is the judiciary's central policy-making body. It is comprised of 27 judges and chaired by the Chief Justice of the United States.

The federal court system is a three-tiered hierarchy as follows:

Tier I
Supreme Court

Tier II
12 geographic-based appeals courts
U.S. Court of Appeals for the Federal Circuit

Tier III
94 district courts
U.S. Court of International Trade
U.S. Court of Federal Claims

other judiciary organizations include:

Administrative Office of the U.S. Courts
Federal Judicial Center
U.S. Sentencing Commission

The following chart compares workload factors for fiscal year 1997 through fiscal year 2000 (projected), to court staffing for fiscal year 1998 through the fiscal year 2001 request.

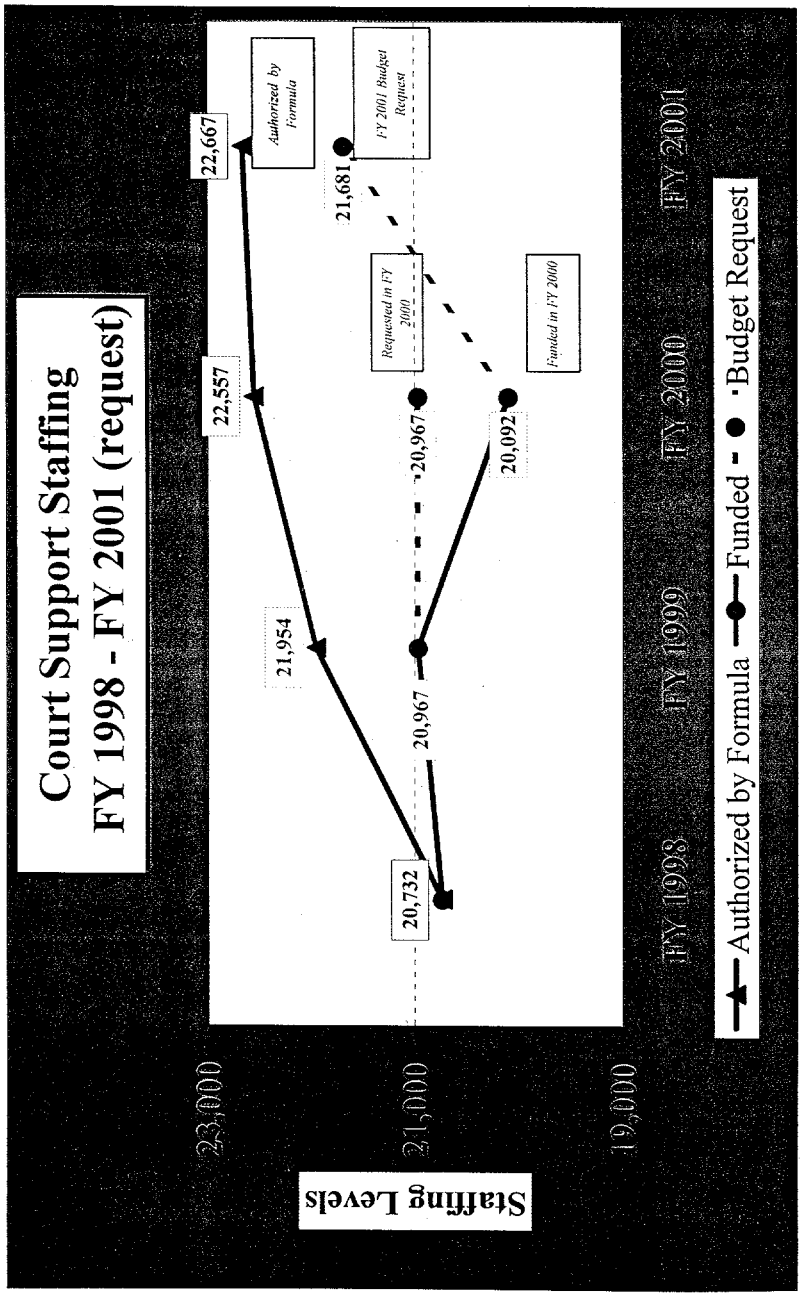
Comparison of Judiciary Workload Factors and Court Support Staffing

WORKLOAD FACTOR	FY 1997 Actual	FY 1998 Actual	FY 1999 Actual	FY 2000 Projected[1]	Change FY 1997 - FY 2000 projected
Criminal Filings	50,363	57,691	59,923	64,600	**14,237**
Yr-to-Yr Change:		+15%	+4%	+8%	**+28%**
Criminal Defendants Filed	70,201	79,008	80,822	86,600	**16,399**
Yr-to-Yr Change:		+13%	+2%	+7%	**+23%**
Bankruptcy Filings	1,367,364	1,436,964	1,354,376	1,378,000	**10,636**
Yr-to-Yr Change:		+5%	-6%	+2%	**+1%**
Appellate Filings	52,319	53,805	54,693	53,900	**1,581**
Yr-to-Yr Change:		+3%	+2%	-1%	**+3%**
Civil Filings	272,027	256,787	260,271	260,500	**-11,527**
Yr-to-Yr Change:		-6%	+1%	-	**-4%**
Criminal Justice Act Representations[2]	90,032	101,133	104,928	108,800	**18,768**
Yr-to-Yr Change:		+12%	+4%	+4%	**+21%**
Probation: Persons Under Supervision	91,434	93,737	97,190	102,600	**11,166**
Yr-to-Yr Change:		+3%	+4%	+6%	**+12%**
Pretrial Services: Reports to the Courts	69,283	78,603	80,154	85,900	**16,617**
Yr-to-Yr Change:		+13%	+2%	+7%	**+24%**
COURT STAFFING	FY 1998 Actual	FY 1999 Actual	FY 2000 Fin. Plan	FY 2001 Request	Change FY 1998 - FY 2001 Request
Funded Work Units[3]	**20,732**	**20,967**	**20,092**	**21,681**	**949**
Yr-to-Yr Change:		**+1%**	**-4%**	**+8%**	**+5%**

[1]FY 2000 workload factors were calculated in June 1999 based on filings and caseload data through March 1999. Workload factors will be updated in Spring 2000.

[2]Projected CJA representations for FY 2000 exclude panel attorney capital representations. Actual representations for FY 1995 through FY 1999 include panel attorney capital representations.

[3]Court staffing requirements are based on the previous year's actual workload. For example, court staffing requirements in the FY 2001 request are based on the FY 2000 workload projections that were calculated in June 1999. This row compares funded work units for FY 1998 through the FY 2001 request to the previous year's workload factors.


Court Support Staffing
FY 1998 - FY 2001 (request)
Staffing Levels
23,000
21,000
19,000
FY 1998
FY 1999
FY 2000
FY 2001
22,667
22,557
21,954
20,732
20,967
20,967
20,092
21,681
Authorized by Formula
FY 2001 Budget Request
Requested in FY 2000
Funded in FY 2000
Authorized by Formula
Funded
Budget Request

The Judiciary
Summary of Budgetary Requirements

($000) Account	FY 2000 Appropriation *	FY 2001 Requested Appropriation	% Approp. Change FY 2001 over FY 2000	% Obligation Change FY 2001 over FY 2000
Supreme Court				
Salaries and Expenses	35,528	37,745	6.2%	4.0%
Buildings and Grounds	8,002	7,530	-6.3%	-21.4%
Court of Appeals for the Federal Circuit	16,845	19,533	13.8%	16.4%
Court of International Trade	11,971	12,506	4.3%	3.4%
Courts of Appeals, District Courts and Other Judicial Services				
Salaries and Expenses				
Direct Appropriation	2,967,651	3,498,694		
Crime Trust Fund	156,539	-		
Vaccine Injury Trust Fund	2,515	2,602		
Sub-Total, Salaries and Expenses	3,126,705	3,501,296	12.0%	9.0%
Defender Services				
Direct Appropriation	358,848	440,351		
Crime Trust Fund	26,247	-		
Sub-Total, Defender Services	385,095	440,351	14.3%	9.1%
Fees of Jurors and Commissioners	60,918	60,821	-0.2%	-3.5%
Court Security	193,028	215,353	11.6%	7.2%
Sub-Total, CADCOJS	3,765,746	4,217,821	12.0%	8.7%
Administrative Office Of the U.S. Courts	55,000	61,215	11.3%	6.9%
Federal Judicial Center	18,000	19,337	7.4%	7.6%
Payment to Judiciary Retirement Funds	39,700	35,700	-10.1%	-10.1%
U.S. Sentencing Commission	8,500	10,600	24.7%	12.0%
Total	**3,959,292**	**4,421,987**	**11.7%**	**8.5%**
Section 301 Rescission	(13,961)			

* Includes Section 304 Judges' COLA transfer.

4.0 1

Summary of the Judiciary's Fiscal Year 2001 Budget Request

The judiciary's request totals $4.6 billion in obligations, an 8.5% or $363 million increase over FY 2000's level of $4.3 billion. Almost all of this increase is required to maintain the staffing and space needs funded in fiscal year 2000, as well as to bring staffing levels back up to the FY 1999 level of service. A summary follows:

Base Adjustments to Continue Current Operations ($258 million or 6.0%)

- Higher space-related costs, mostly for full year rent on new court facilities delivered in FY 2000 and rent for new space GSA will deliver in FY 2001 ($64 million).
- Pay and benefit cost adjustments for judicial officers and supporting personnel, to include the annualized cost of the FY 2000 pay adjustment and other salary changes, FY 2001 pay and benefit increases, annualized cost of new employees hired in FY 2000, and a net reduction in contributions to the judiciary retirement trust funds ($183 million).
- Net increase in costs associated with increasing Defender Services representations and projected changes in the overall case mix ($10 million).
- Increase in contract rates and other inflationary increases ($14 million).
- Court automation-related increases ($12 million)
- Nonrecurring costs (-$25 million)

Major Program Changes to Address Workload Demands ($105 million or 2.5%)

- 1,255 FTE required to return staffing levels in probation and pretrial services offices as well as district, bankruptcy and appellate courts to the numbers needed to provide FY 1999 levels of service ($83 million).
- 9 additional magistrate judges and associated staff to provide better service in districts with heavy caseloads or significant travel requirements ($4 million).
- 72 additional court security officer positions and court security equipment to provide adequate protection for members of the judiciary and the public in new Federal courthouses and at existing facilities with known security problems ($8 million).

Obligations ($ in millions)

	FY 2000	Adjustments to Base	Program Changes	2001 Request	% Increase
Courts' S&E	3,406	217	90	3,712	9.0%
Defender Services	407	36	1	444	9.1%
Fees of Jurors	63	-2	0	61	-3.2%
Court Security	201	6	8	216	7.5%
Subtotal	4,077	257	99	4,433	8.7%
Other Accounts	206	1	6	213	3.4%
Total Judiciary	4,283	258	105	4,646	8.5%

Sources of Funds ($ in millions)

	FY 2000	2001 Request	% Increase
Appropriations	3,959	4,421	11.7%
Recission	(14)		
Fee Collections	160	164	2.5%
Information Technology Funds Carry Over & EPA Revenue	61	25	-59.0%
Carry Over & Reimbursements	155	36	-76.8%
Funds available to carry over to FY 2001	(38)		
Subtotal	4,283	4,646	8.5%
Anticipated savings expected to carry over to FY 2001	(21)		
Total	4,262	4,646	9.0%

U.S. Supreme Court
Salaries and Expense ($000)

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increases	% Increase	Appropriation/ Obligations
36,281	1,356	3.7%	108	0.3%	1,464	4.0%	37,745

Adjustments to base:
- $2.1 million requested for standard pay and non-pay adjustments to base.
- $411,000 requested to annualize the cost of new police officer positions.
- -$1.1 million for non-recurring costs.

Resources for Program Increases
- $108,000 requested to fund two additional FTE (computer specialist, mail services clerk and research librarian).

U.S. Supreme Court
Care of Buildings and Grounds ($000)

FY 2000	FY 2001						
Appropriation (less .38%)	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Appropriation
7,972	(2,413)	-30.3%	1,971	24.7%	(442)	-5.5%	7,530

Adjustments to base:
- $189,000 requested for pay and non-pay inflationary increases.
- -$2.6 million in non-recurring costs

Program Increase and Capital Budget
- $2.0 million requested for building improvements and utilities systems upgrades.

U.S. Court of Appeals for the Federal Circuit ($000)
Obligations

FY 2000	FY 2001						
Obligations:	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations (Appropriation)
16,788	1,089	6.5%	1,656	9.9%	2,745	16.4%	19,533

Adjustments to base:
- $1.1 million requested for standard adjustments to base.

Program Increases
- $156,000 requested for 4 additional positions (3 FTE) in the clerk's office: secretary, automation, calendar deputy clerk and a records manager.
- $600,000 requested for 5 technical assistants (TA) (4 FTE) - Currently the court has 7 TAs. The request will provide each judge with a TA who would have a law degree and a science or engineering degree and would provide legal and technical assistance to the judges of the court.
- $900,000 for courtroom renovations.

U.S. Court of International Trade ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
12,431	425	3.4%	0	0.0%	425	3.4%	12,856

Financing

FY 2000 Appropriation (includes Judge's COLA)	11,971
FY 2000 Obligations	12,431
Increases	425
FY 2001 Obligations	12,856
Fees, Unobligated Balances and Reimbursements	(350)
FY 2001 Requested Appropriation	12,506
Appropriation Change	535

Adjustments to Base

- $425,000 requested for standard adjustments to base.

Resources Available to Offset Direct Appropriation Requirement

- $350,000 is available in the Judiciary Information Technology Fund to fund information technology projects in fiscal year 2001.

Courts of Appeals, District Courts, and Other Judicial Services
Salaries and Expenses ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
3,405,839	216,644	6.4%	89,891	2.6%	306,535	9.0%	3,712,374

Financing

FY 2000 S&E Approp. (includes Judge's COLA)	2,967,651
Crime Trust Fund	156,539
Vaccine Injury Trust Fund	2,515
FY 2000 Appropriations	3,126,705
FY 2000 Obligations	3,405,839
Increases	306,535
FY 2001 Obligations	3,712,374
Fees and Unobligated Balances	(211,078)
FY 2001 Requested Appropriation	3,501,296
Vaccine Injury Fund Request	(2,602)
S&E Direct Appropriation Request	3,498,694
Total Appropriation Change	374,591

FY 2001 Offsets	
FY 2000 Fee Carryover	(29,583)
Utilization of EPA Collections	(4,834)
Appeals Comm. Balances	(443)
No-Year Info. Tech. Funds	(20,000)
FY 2000 Fee Collections	(156,218)
Total, Fees & Unobl. Balances	(211,078)

Adjustments to Base:

Judicial Officers $22.4 million

- $12.8 million in pay and benefit adjustments for judicial officers including: annualizing the January 2000 pay increase of 3.4 percent, a January 2001 pay increase of 3.7 percent and benefit increases.
- $4.0 million to provide for an additional 9 senior judge FTE and 29 support staff FTE.
- $7.0 million to fund an increase in the Article III Judges filled rate by 12 FTE.
- -$1.4 million reduction for one-time expenses associated with new senior judges and magistrate judges appointed in fiscal year 2000.

Pay & Benefits for Supporting Personnel $119.0 million

- $119.0 million in pay and benefit adjustments for supporting personnel to: annualize the January 2000 pay increase (4.8 percent), provide a January 2001 pay increase (3.7 percent), fund salary progression (2 percent), a reduction for one less compensable day, annualize the new staff (187 FTE) provided in the FY 2000 Financial Plan for courts with extraordinary workload, and provide benefit increases.

GSA Rental Payments $63.2 million

- $16.2 million is for inflation on GSA space rental costs (2.1%).
- $37.9 million to provide the full annual cost of 1.8 million square feet of space expected to be delivered in fiscal year 2000.
- $9.1 million for the partial year cost of 0.5 million square feet of new space expected to be delivered in fiscal year 2001.

Inflationary Increase $10.6 million

- $10.6 million for standard inflationary increase for O&M costs and inflation for lawbooks and computer assisted legal research.

Information Technology $13.1 million

- $12.1 million for automation O&M costs.
- $1.5 million to continue to develop new systems and applications such as a replacement accounting systems, a new personnel system, an electronic case filing system, and courtroom technologies.
- $229,000 inflationary increase for the Court Automation Support program.
- -$786,000 for the Voice Telecommunications program resulting form an anticipated decline in Federal Telephone System rates.

Other Adjustments to Base -$11.7 million

- The base is reduced by $11.7 million of non-recurring costs in the space and facilities program and consulting services.

Program Increases ($89.9 million)

- $3.8 million to provide 9 new magistrate judges and related support staff.

- $82.7 million to return court staffing levels to the fiscal year 1999 level of service, adjusted for workload changes. This request provides for 695 probation and pretrial services FTE, 74 appellate and circuit FTE, 186 district court FTE, and 300 bankruptcy court FTE.

  In fiscal years 1999 and 2000, the courts did not receive additional funds to manage the courts' growing workload. The fiscal year 2001 request includes funding to restore court staffing not to the level required to process the judiciary's workload according to our work measurement studies, but only to level of service provided in fiscal year 1999 as measured by the level of the work measurement formulas provided in fiscal year 1999.

  One of the primary reasons this request is necessary is the explosion of workload on the Southwest Border including the districts of Arizona, California Southern, New Mexico, Texas Western and Texas Southern. These increases over the past few years are attributed to increases in law enforcement resources at the border. Since 1994, the number of border patrol agents has increased by 99 percent; INS agents, 93 percent; and DEA agents 155 percent. However, authorized court staffing has remained basically flat since fiscal year 1998.

  If this requested staffing increase is not funded, it will result in a lower level of supervision of federal offenders and defendants by probation and pretrial services officers, a decline in clerks' offices ability to provide the public with information, delay court decisions in civil and bankruptcy cases, and increased attorney costs.

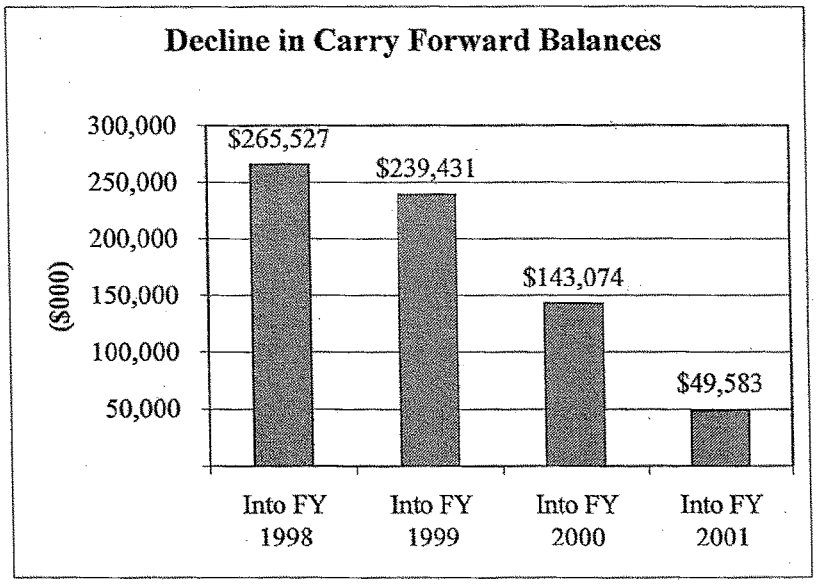
- $3.4 million to provide additional space alterations to install for courtroom technologies.

Estimated Resources Available to Offset Appropriation Requirements - $211.1 million

- $29.6 million in anticipated fee carry over from fiscal year 2000.
- $156.2 million in new fee collections for fiscal year 2001.
- $20.0 million in anticipated Judiciary Information Technology Fund carry over.
- $4.9 million of Electronic Public Access fee revenue.
- $443,000 in unencumbered no-year balances associated with the Commission on Structural Alternatives for Federal Courts of Appeals. The Commission has completed its work and a general provision has been included allowing the remaining available budget authority to fund court operating costs.

Declining Levels of Carry Forward in the Salaries and Expenses Account

Type ($000)	Into FY 1998	Into FY 1999	Into FY 2000	Into FY 2001
Fee Balances	186,876	178,598	78,746	29,583
Information Technology Balances	66,924	43,005	48,643	20,000
No-Year Alteration and Furniture Balances	11,727	17,828	15,685	-
Total, Available Balances	**$ 265,527**	**$ 239,431**	**$ 143,074**	**$ 49,583**



The Southwest Border

For the past three years, Congress has authorized major increases in the number of law enforcement agents on the southwest border with Mexico. The number of actual border patrol officers on the southwest border increased by a total of 1,445 from FY 1997 through FY 1999. Authorized staffing for border patrol officers is expected to increase by 900 additional positions in FY 2000. As a result, the five southwest border court districts (Arizona, California Southern, New Mexico, Texas Western and Texas Southern) have experienced a phenomenal increase in workload. The intensified enforcement of border-related crimes has resulted in caseload increases for the five district courts on the southwest border to the extent that these five districts now handle 27 percent of all federal criminal filings.

Since 1995, criminal caseload in these five border districts, mostly drug and immigration cases, has increased dramatically, as shown in table 5.6.

Table 5.6 Criminal Filings in the Southwest Border

District	FY 1995	FY 1999	Change	Percent
Arizona	1,113	3,274	2,161	194%
Calif. Southern	2,282	3,813	1,531	67%
New Mexico	929	1,405	476	51%
Texas Western	1,506	4,301	2,795	186%
Texas Southern	1,350	3,387	2,037	151%

Meanwhile, the increase in funded court support staff for the district courts and probation/pretrial services offices in these five districts has lagged behind the growth in criminal caseload, as shown in table 5.7.

Table 5.7 Funded Court Support Staff for District Courts & Probation/Pretrial Services Offices Along the Southwest Border

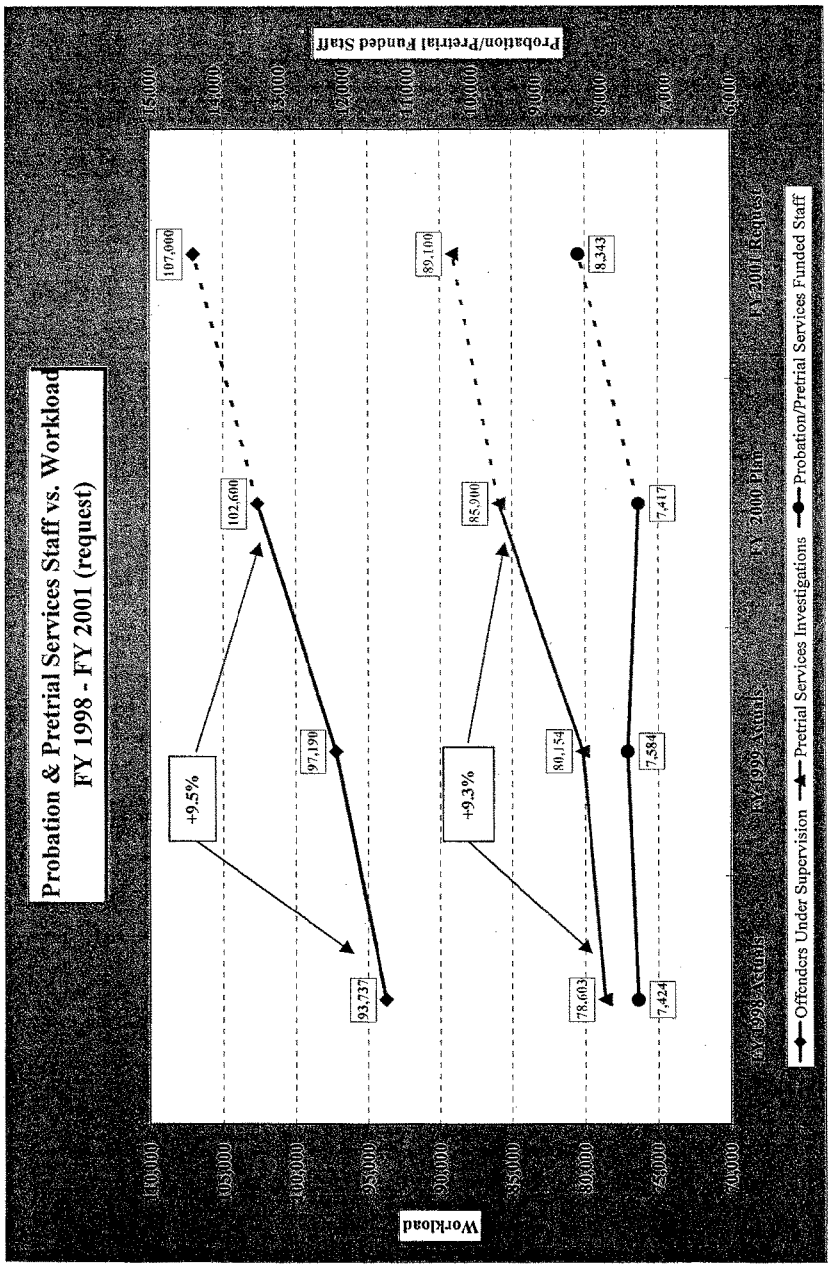
	FY 1996	FY 2000	Change	Percent
Funded Court Support Staff	1,285	1,669	383	30%

Note: Funding for court support staff in a particular fiscal year is based on caseload in the previous year.

Currently, temporary staff and employees from other courts are being used as a short-term, stopgap solution for dealing with the huge caseloads in the southwest border courts.

A "judicial emergency" has been declared in the Fifth Circuit Court of Appeals, by Chief Judge Carolyn Dineen King. Judge King has led the way in planning a Southwest Border Conference to discuss techniques for coping with the ever-increasing number of trials, defendants, and home confinement cases. A panel format will be used to discuss topics including arraignments and sentencing; case management; use of magistrate judges; and support staff and resources. The conference idea has been very well received as evidenced by the more than 130 judges and unit executives who plan to attend. The conference, to be held in Albuquerque, New Mexico, in February 2000, may also be attended by Attorney General Janet Reno and other key officials whose functions support and interact with trial judges along the southwest border.

Of the nine additional judgeships authorized by Congress in the judiciary's FY 2000 appropriation, three are for the district of Arizona, indicating Congressional recognition of the increasing caseload on the southwest border.


Probation & Pretrial Services Staff vs. Workload
FY 1998 - FY 2001 (request)
Workload
Probation/Pretrial Funded Staff
+9.5%
+9.3%
93,737
97,190
102,600
107,000
78,603
80,154
85,900
89,100
7,424
7,584
7,417
8,343
FY 1998 Actuals
FY 1999 Actuals
FY 2000 Plan
FY 2001 Request
Offenders Under Supervision
Pretrial Services Investigations
Probation/Pretrial Services Funded Staff

Defender Services ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
406,982	36,486	9.0%	600	0.1%	37,086	9.1%	444,068

Financing

FY 2000 Defender Appropriation	358,848
Crime Trust Fund	26,247
FY 2000 Appropriations	385,095
FY 2000 Obligations	406,982
Increases	37,086
FY 2001 Obligations	444,068
Unobligated Balances	(3,717)
FY 2001 Requested Appropriation	440,351
Defender Appropriation Change	55,256

Adjustments to Base

- $14.7 million for standard pay and benefit adjustments. – federal public defenders
- $11.3 million to increase the non-capital hourly rate for panel attorneys in all districts to $75 beginning April 1, 2001.
- $1.0 million for general pricing adjustment and general administrative expenses.
- $436,000 for increased space rental costs. – GSA rent
- $9.7 million net increase associated with a workload increase of 3,700 representations. This increase is partially offset by a projected reduction in the cost-per-representation due to a change in overall case mix that will result in more immigration cases that tend to be less expensive.
- -$600,000 decrease for non-recurring expenses.

Program Increases

- $600,000 for start-up costs to establish two new Federal defender organizations.

Resources Available to Offset Direct Appropriation Requirement

- $3.7 million is projected carry forward from fiscal year 2000.

Excerpt from Chief Justice William H. Rehnquist's 1999 Year-End Report on the Federal Judiciary issued January 1, 2000.

Panel Attorney Compensation

Some progress has been made on another issue I raised last year, but more work remains: in 1999, the Judiciary embarked on a major initiative to obtain funding to increase the rates of pay for private "panel" attorneys accepting appointments under the Criminal Justice Act (CJA). By statute, the Judiciary bears the responsibility for ensuring that defendants who cannot afford counsel in federal criminal cases receive legal representation. In 1986, Congress amended the CJA to authorize the Judicial Conference to set maximum hourly rates of up to $75 and to implement cost-of-living adjustments. While the Judicial Conference has determined that the $75 rate is needed in every judicial district, funding has not been available for its nationwide implementation, and in most judicial districts panel attorneys have been paid only $65 for hours in court and $45 for out-of-court time.

Inadequate compensation for panel attorneys is seriously hampering the ability of courts to recruit and retain qualified panel attorneys to provide effective representation. The maximum CJA hourly rates have been eroded by inflation and are substantially below prevailing rates in the legal profession. Accordingly, the Judiciary requested funding in fiscal year 2000 to make the $75 rate applicable in every district. Congress approved a $5 raise, to $70 in court, $50 out of court.

While providing some relief, compensation rates still do not meet many attorneys' non-reimbursable overhead costs. Adequate pay for appointed counsel is important to ensure that a defendant's constitutional right to counsel is fulfilled. Thus, there is widespread support among the components of the federal criminal justice system for the $75 rate, including judges, the Department of Justice, private bar associations, former federal prosecutors, and federal defenders.

Since 1984, most judicial districts have received only two $5 increases (including the one in fiscal year 2000). At its September 1999 session, the Judicial Conference decided to renew its request for the $75 rate in fiscal year 2001 in the event that Congress did not provide funding for that rate in fiscal year 2000. Because of the urgency of this need, once again, I respectfully ask Congress to make adequate compensation for panel attorneys a high priority, and to fund the Defender Services appropriation at a level sufficient to pay the $75 rate.

Defender Services
Financing

Sources of Funds ($000)	FY 2000	FY 2001	% Change FY 2000 to FY 2001
Direct Appropriation	358,848	440,351	
Crime Trust Fund	26,247	-	
Sub-Total, Appropriations	**385,095**	**440,351**	**14.3%**
Available No-Year Balances	35,604	3,717	-89.6%
Section 301 Rescission	(6,243)	-	-100.0%
Transfer to S&E	(3,757)	-	-100.0%
Carry Forward to Next Fiscal Year	(3,717)	-	-100.0%
Estimated Obligations	**406,982**	**444,068**	**9.1%**

Fees of Jurors ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
63,000	(2,179)	-3.5%		0.0%	(2,179)	-3.5%	60,821

Financing

FY 2000 Enacted Appropriation	60,918
FY 2000 Obligations	63,000
Increases	(2,179)
FY 2001 Obligations	60,821
Unobligated Balances	0
FY 2001 Requested Appropriation	60,821
Appropriation Change	(97)

Adjustments to Base

- $510,000 is requested as a general pricing increase.
- -$2.7 million reduction resulting from a decrease in juror days.

Court Security ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
200,917	5,971	3.0%	8,465	4.2%	14,436	7.2%	215,353

Financing

FY 2000 Appropriation	193,028
FY 2000 Obligations	200,917
Increases	14,436
FY 2001 Obligations	215,353
Unobligated Balances	0
FY 2001 Requested Appropriation	215,353
Appropriation Change	22,325

Adjustments to Base ($6.0 million)

- $0.3 million in pay and benefit increases for AO reimbursable and U.S. Marshals Service personnel.
- $2.8 million for annualization of 120 CSOs partially funded in fiscal year 2000.
- $6.5 million in increased hourly wage rates payable to CSOs as determined by the Department of Labor.
- $0.7 million in standard inflationary increases.
- -$4.3 million reduction for non-recurring fiscal year 2000 equipment expenditures.

Program Increases ($8.5 million)

- $2.3 million for 72 additional CSO positions to provide a security presence in existing, new and renovated facilities housing a full-time judicial officer.
- $3.9 million is requested to begin Phase 1 of a four-year transition to provide narrowband capable digital radios as mandated by section 104 of the National Telecommunications and Information Administration Organization Act.
- $2.3 million to upgrade security systems and equipment at probation and pretrial services offices including access control systems and duress alarm systems.

Administrative Office of the U. S. Courts ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
98,166	5,409	5.5%	1,375	1.4%	6,784	6.9%	104,950

Financing

FY 2000 Enacted Appropriation	55,000
FY 2000 Obligations	98,166
Increases	6,784
FY 2001 Obligations	104,950
Fees and Reimbursements	(43,735)
FY 2001 Requested Appropriation	61,215
Appropriation Change	6,215

Adjustments to Base

- $5.4 million for standard inflationary increases.

Program Increases

- $360,000 to partially restore staffing to level provided in fiscal year 1999 (4 FTE). The additional staff will be devoted to the highest priorities to support court operations and improvement initiatives.
- $1.0 million to restore equipment and services levels to the level funded in fiscal year 1999.

Resources Available to Offset Direct Appropriation Requirement - $43.7 million

- $8.3 million in fiscal year 2001 fee revenue.
- $1.5 million in prior year fee carry forward.
- $301,000 in reimbursements for Independent Counsel support.
- $33.6 million in AO reimbursable programs for 278 FTEs funded by the S&E, Defenders, and Court Security appropriations.

Federal Judicial Center ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
18,496	834	4.5%	563	3.0%	1,397	7.6%	19,893

Financing

FY 2000 Enacted Appropriation	18,000
FY 2000 Obligations	18,496
Increases	1,397
FY 2001 Obligations	19,893
Fees, Unobligated Balances and Reimbursements	(556)
FY 2001 Requested Appropriation	19,337
Appropriation Change	1,337

Adjustments to Base ($834,000)

- $834,000 in standard pay and non-pay inflationary increases.

Resources for Workload Increases and Improvements in Services ($563,000)

- $563,000 to support and enhance the use of satellite/video broadcasting and distance learning technologies (8 FTE).

Resources Available to Offset Direct Appropriation Requirement - $556,000

- $556,000 in reimbursements from the FJC Foundation and federal agencies.

Payment to the Judiciary Trust Fund ($000)

Obligations

FY 2000	FY 2001						
Obligations: Appropriation	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations: Appropriation
39,700	(4,000)	-10.1%	0	0.0%	(4,000)	-10.1%	35,700

Adjustments to Base

- -$3.8 million decrease in payment to the Judicial Officers' Retirement Fund.
- $100,000 increase in payments to the Judicial Survivors' Annuities Fund.
- -$300,000 reduction in payment to the Court of Federal Claims Judges' Retirement Fund.

United States Sentencing Commission ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
9,553	1,147	12.0%	0	0.0%	1,147	12.0%	10,700

Financing

FY 2000 Enacted Appropriation	8,500
FY 2000 Obligations	9,553
Increases	1,147
FY 2001 Obligations	10,700
Unobligated Balances	(100)
FY 2001 Requested Appropriation	10,600
Appropriation Change	2,100

Adjustments to Base ($1.1 million)

- $645,000 for standard pay and non-pay inflationary increases.
- $1.5 million to fund restoration of 20 FTE still within the Commission's ceiling of 108. During fiscal year 1999, the Commission was without any voting members. The Commission's fiscal year 2000 appropriation was reduced as a result of the vacant commissioners. In fiscal year 2000, all seven Commissioners have been nominated and confirmed. As a result, the fiscal year 2001 budget requests funding to restore the Commissions staffing levels back up to the level required to support a fully functioning agency with a full complement of Commissioners.
- -$985,000 for a reduction for non-recurring costs.

Resources Available to Offset Direct Appropriation Requirement - $100,000

- $100,000 is available in the Judiciary Information Technology Fund to fund automation projects in fiscal year 2001.

The Judiciary's FY 2001 Courthouse Construction Request

Courthouse Projects Included in the President's FY 2001 Budget Request

Location	Phase	Original Estimate	OMB Action
Los Angeles, California	Site & Design	$ 36,203,000	$ 31,523,000
Seattle, Washington	Construction	$ 179,365,000	$ 177,930,000
Richmond, Virginia	Site & Design	$ 19,581,000	$ 19,476,000
Gulfport, Mississippi	Construction	$ 42,715,000	$ 42,715,000
Washington, DC	Construction	$ 109,498,000	$ 104,050,000
Miami, Florida	Construction	$ 121,948,000	$ 110,950,000
Little Rock, Arkansas	Add'l Design	$ 5,428,000	$ 1,820,000
	Total	$ 514,738,000	$ 488,464,000

Courthouse Projects not Included in the President's FY 2001 Request for which the Judiciary Seeks Funding

Location	Phase	Original Estimate	OMB Action
Buffalo, New York	Site & Design	$ 3,599,000	$0
Springfield, Massachusetts	Add. Design & Construction	$ 41,378,000	$0
El Paso, Texas	Site & Design	$ 7,208,000	$0
Mobile, Alabama	Site & Design	$ 7,537,000	$0
Fresno, California	Construction	$ 111,000,000	$0
Norfolk, Virginia	Site & Design	$ 9,593,000	$0
Las Cruces, New Mexico	Site & Design	$ 1,900,000	$0
Rockford, Illinois	Site & Design	$ 2,837,000	$0
Cedar Rapids, Iowa	Site & Design	$ 13,474,000	$0
Nashville, Tennessee	Site & Design	$ 13,659,000	$0
Erie, Pennsylvania	Construction	$ 27,881,000	$0
Savannah, Georgia	Construction	$ 46,500,000	$0
	Total	$ 286,566,000	$0

Repair and Alteration Projects Included in the President's FY 2001 Budget Request

Location	Original Estimate	OMB Action
Phoenix, Arizona	$ 26,307,000	$ 26,962,000
New York City, New York	$ 5,037,000	$ 5,037,000
Cincinnati, Ohio	$ 18,684,000	$ 18,434,000
Pittsburgh, Pennsylvania	$ 54,144,000	$ 54,144,000
Little Rock, Arkansas	$ 21,199,000	$ 21,199,000
Total	$ 125,371,000	$ 125,776,000

R&A Projects Not Included in the President's FY 2001 Budget Request for which the Judiciary Seeks Funding

Location	Original Estimate	OMB Action
Las Vegas, Nevada	$ 23,981,000	$0

○

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106TH CONGRESS
2d Session

SENATE

REPORT
106–379

FEDERAL COURTS BUDGET PROTECTION ACT

AUGUST 25, 2000.—Ordered to be printed

Filed, under authority of the order of the Senate of July 26, 2000

Mr. THOMPSON, from the Committee on Governmental Affairs submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1564]

The Committee on Governmental Affairs, to which was referred the bill (S. 1564) to protect the budget of the Federal courts, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. PURPOSE

The purpose of S. 1564 is to allow the judiciary to communicate directly to Congress its needs for appropriations without mediation from the executive branch, thereby preserving its independence as a separate branch of government.

II. SUMMARY OF S. 1564

The legislation would make two changes in the process through which the budget for the judicial branch is submitted to Congress.

First, it would provide that the judiciary budget request be submitted directly to Congress. It would also be submitted, without change, in the unified budget as submitted by the President. The Act emphasizes that the President may not in his budget request impose or recommend any alteration, negative allowance, rescission, or other change in the judiciary's request, directly or indirectly. However, the President would not be precluded from commenting on the judiciary's request outside of the formal budget document.

Second, the legislation requires that the judiciary budget request submitted to Congress include a request for funding for courthouse construction, acquisition, and repairs and alterations. S. 1564 would direct that such funds be appropriated directly to the judiciary for deposit into GSA's Federal Buildings Fund. Under current law, requests for courthouse construction and related funding are contained in the President's budget request and are subject to review and modification by the executive branch prior to the budget's submission to Congress.

The Act would retain existing procedures for GSA to develop prospectuses which assess facility requirements, specifications and costs of actual construction or alteration work, and the housing needs of executive branch agencies located in courthouses. GSA would provide these prospectuses to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House which would continue their current role in authorizing this work. GSA would continue to provide similar information for future project to the Director of the Administrative Office of the United States Courts.

This bill would affect solely the manner in which the judiciary's budget request is submitted to Congress; it does not otherwise affect Congress' role in the budget process.

III. Background and Need for Legislation

The Budget and Accounting Act of 1921 (the Budget Act or the Act), as amended, calls for the President to submit annually to Congress the budget for the entire Government, containing among other things "estimated expenditures and proposed appropriations the President decides are necessary to support the Government," 31 U.S.C. § 1105(a)(5). Budget requests of executive branch agencies are subjected to an extensive pre-submission screening, as each agency is required to submit its requests for appropriations to the Office of Management and Budget (OMB), which in turn advises the President on which requests he should "change" under 31 U.S.C. § 1108(b)(1).

A different course is provided for requests from the judicial and legislative branches. These two branches are excluded from the definition of "agency" which encompasses the category of appropriations requests the President may change, 31 U.S.C. § 1101(1). Section 201 of the Act specifically provides that the budget requests for the legislative and judicial branches shall be transmitted by the President to Congress "without change," 31 U.S.C. § 1105(b).

This process was intended to protect the judiciary's budget request from changes made by the executive branch. Yet four times since 1990, the President's budget submission has proposed multi-hundred million dollar "negative allowances." In order to keep its budget within the limits mandated by the spending cap legislation, the President included a "negative allowance" at the end of his budget request, equal to the amount that the entire budget exceeded the budget caps. The negative allowance, while not explicitly applied to the judiciary's budget, is by default attributable to it. Because OMB already has trimmed executive branch agencies' budget requests to comply with the spending caps, the negative allowance has been attributed as the amount by which OMB believes the judiciary's budget request should be cut.

S. 1564 is intended to stop the use of negative allowances. It provides that the judiciary's request be submitted directly to Congress and expressly prohibits the executive branch from imposing any negative allowance against that request in the formal budget document.

In addition to the operational resources included in the judiciary's budget request and appropriations, the judiciary must conduct its business in adequate courthouse facilities. Like most other government entities, the judiciary relies on GSA, an executive branch agency, to construct and repair its buildings. Pursuant to existing law, the funds for such projects are requested by GSA as part of the executive branch's budget submission. Because GSA is an executive agency, its budget requests have been subject to screening and change by OMB. For that reason, the need has arisen to protect the judiciary's ability to request directly from Congress the amount that it believes appropriate to fund courthouse construction.

For the last several years, the judiciary has had to respond to major increases in its workload and to the need for an overhaul of the nation's aging inventory of federal courthouses. Therefore, GSA and the judiciary have engaged in an extensive construction and alteration program. While many projects have been successfully completed, both the judiciary and GSA agree that more work remains to be done. However, for the last four fiscal years OMB has eliminated or substantially reduced GSA's courthouse construction requests from the budget, "zeroing out" the entire request in two of these years as part of its prioritization of the budget requests from all executive branch agencies. Although Congress restored this request in fiscal year 1999, the Administration reduced the judiciary's courthouse funding request in its fiscal year 2001 budget request from $755 million to $488 million.

Both Congress and the judiciary would be much better served by having the judiciary's construction request submitted directly and unchanged from the outset.

IV. Legislative History of S. 1564

On August 5, 1999, Senator Cochran, along with Senators Collins, Roth, and Stevens, introduced S. 1564. Senators Hatch and Leahy were added as cosponsors on September 14, 1999. The bill requires the judiciary's budget request to be submitted directly to Congress and to include requests for funds for courthouse construction, acquisition, and repairs and alterations.

On June 14, 2000, the Committee held a business meeting at which S. 1564 was considered. Senator Cochran offered an amendment in the nature of a substitute, which was approved by voice vote.

With no other amendments being offered, Chairman Thompson moved adoption of S. 1564, as amended. The bill was ordered to be favorably reported by voice vote. Present for the vote were Senators Stevens, Collins, Voinovich, Cochran, Lieberman, Akaka, Torricelli, Cleland, Edwards and Thompson. (Senator Voinovich expressed opposition by voice vote.)

V. SECTION–BY–SECTION ANALYSIS

Section 1 states the title of the legislation, the "Federal Courts Budget Protection Act".

Section 2 amends Section 605 of title 28, United States Code, to revise the way the judiciary's budget requests are submitted to Congress and to expand what is included in those requests.

Section 2(a) requires the Director of the Administrative Office of the United States Courts to submit directly to Congress before January 25 of each year, cost estimates for the annual operating budget of the judicial branch, as approved by the Judicial Conference or appropriate courts, as well as for federal courthouse construction, acquisitions, repairs and alterations. The Director's budget request for courthouse projects will be based on prospectuses and cost estimates prepared by GSA. To ensure that the judiciary can prepare the courthouse projects budget request in a timely manner, the Administrator of General Services is directed to prepare and submit to the Director prospectuses, including cost estimates, and preliminary planning, design and cost estimates for courthouse projects. These prospectuses shall also be provided to the Senate Committee on Environment and Public Works, the House Committee on Transportation and Infrastructure, and the Senate and House Committees on Appropriations. Funds are authorized to be appropriated to the judicial branch for deposit into the Federal Buildings Fund for courthouse projects. These funds may be obligated only if the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives have approved a prospectus, if such is required by law. (This is a repeat of standard language included each year in the Treasury, Postal Service and General Government appropriations bill.) The Director is also required to submit the same cost estimates under subsection (a) to the President for inclusion in the budget of the United States. The President must include these estimates without change in the national budget submitted pursuant to the first sentence of section 1105(a) of title 31, United States Code, and is prohibited from using a negative allowance, rescission or any other direct or indirect form of reduction to such estimates. Nothing in this legislation precludes the President, however, from making comments about the judiciary's funding request in a medium outside of the formal budget submission process. To assist the President in preparing the unified Federal budget, the Director is required to transmit preliminary estimates prepared under subsection (a) to the President before October 16 each year and final estimates before December 24 each year. The final estimates transmitted to the President must be identical to those submitted to Congress under subsection (a). The Director is required to have periodic examinations made of the judicial survivors annuity fund by an outside actuary and to transmit those findings and recommendations to the Judicial Conference. (This is an existing requirement in Section 605.)

Section 2(b) amends section 1105(b) of title 31, United States Code to make conforming changes regarding inclusion of the judiciary's budget request in the budget submitted by the President.

Section 2(c) clarifies that, with the exception of the new process for providing prospectuses and cost information to the Director and

to Congress under subsection (a), the role of the Administrator of General Services with regard to courthouse construction, acquisitions, repairs and alterations, including housing plans of executive branch elements which should be included in these buildings, shall remain the same as it is now.

VI. Regulatory Impact of Legislation

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the regulatory impact which would be incurred in carrying out this bill."

The enactment of this legislation will not have a significant regulatory impact. S. 1564 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would affect the budgets of state, local or tribal governments.

VII. Congressional Budget Office Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 20, 2000.

Hon. Fred Thompson,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1564, the Federal Courts Budget Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. the CBO staff contact is Lanette J. Keith.

Sincerely,

Steven Lieberman
(For Dan L. Crippen, Director.)

Enclosure.

S. 1564—Federal Courts Budget Protection Act

CBO estimates that enacting S. 1564 would have no impact on the federal budget. Because enactment of S. 1564 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, tribal governments.

S. 1564 would require that the Administration submit the budget request of the judicial branch to the Congress without charge. The bill also would require that the funding request for court construction and maintenance be included in the budget request of the judicial branch instead of the General Services Administration. Because enactment of S. 1564 would change the procedure for submitting the budget and would not authorize additional amounts, CBO estimates that this legislation would have no impact on the federal budget.

The CBO staff contact is Lanette J. Keith. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VIII. Additional Views

I write to express my opposition to S. 1564, the Federal Courts Budget Protection Act, sponsored by my good friend from Mississippi, Senator Cochran and co-sponsored by four members of this Committee, as well as the Chairman and Ranking Member of the Senate Judiciary Committee. I regret having to take this position, but as Chairman of the Senate Committee on the Budget I feel it is my responsibility to make clear that this legislation is both an unnecessary and unwarranted amendment to the federal budget process.

Let me begin by explaining how the request for construction of new federal courthouses is produced. First, the Administrative Office of the United State Courts (AO) compiles a five-year plan which prioritizes the Judiciary's request for new courthouses. Second, based on AO's prioritization, the General Service Administration (GSA) uses the ranking in preparing its annual budget request to the Office of Management and Budget (OMB) and to Congress for the authorization and funding of new courthouse construction.

Although the Judiciary has the responsibility to identify and propose courthouse construction projects, the GSA, as the primary federal real property agency, must formally request the courthouse funding as part of its annual budget request to Congress. Acquiring real property and constructing federal buildings is GSA's mission. GSA bases its funding request for new courthouse projects on two plans, which are updated annually by the AO, the Long-Range Facility Plan (LRP) and a Five-Year Rolling Plan.

As executive agencies and departments such as GSA formulate their budget request, they maintain continuous contact with OMB examiners. Once these agencies complete their budget request, OMB, in consultation with the President and his aides, has the oversight duty of reviewing them all for consistency with presidential policy and to ensure they all fit within a framework of a fiscally responsible budget which meets the needs of the American people.

I understand the concerns of the proponents of S. 1564. I also believe that Congress should have full and complete information when making funding decisions, especially for courthouse construction. I would submit that it already does. The President's budget presents the Judiciary budget in full. In fact, page 6 of the Appendix to the President's 2001 budget Request, states the following:

> In accordance with the law or established practice, the presentations for the Legislative Branch, the Judiciary * * * have been included, without review, in the amounts submitted by the agencies.

Moreover, nothing prevents the Judiciary from directly submitting its own budget request to Members and staff for consideration.

As a matter of fact, this is regularly done. For the Committee's review, I have included in the record a copy of the AO's budget request which they provided my staff earlier this year. This given, it remains the President's constitutional prerogative to request appropriations (and Congress's to fund all, none or part of such a request) for any or all of the courthouses requested by the Judiciary.

The proponents of S. 1564 believe that it will reinforce the "balance of powers" within our constitutional form of government by ensuring that the Judiciary's Budget is not used as a "political football." I disagree.

In my view, the Judiciary's budget is appropriately presented in the President's budget and any prioritizing surrounding the funding of courthouse construction is properly handled by the GSA in the normal appropriations process. If "politics" has played a role, I suggest to my colleagues that it is the result of the usual "give and take" that goes on between members of Congress in exercising their most revered constitutional prerogative: the "power of the purse." Building courthouses is a fiscal matter, not a separation of powers issue.

I believe that S. 1564 will simply leapfrog the proper budgetary and management role that OMB provides to the President. If S. 1564 were to become law, OMB would no longer be able to analyze the details of each request made for courthouse construction—thus removing a crucial layer of much needed oversight.

As members of this Committee may recall, past reports issued by the General Accounting Office (GAO) and news accounts have highlighted the excesses of the federal courthouse construction program. Based partly on these accounts of excessive costs, inadequate management, inefficient oversight and inconsistent execution across the country, Members of Congress requested that the GSA help find ways to make the federal government's real estate program more cost effective. In 1994, the GSA responded by identifying $1.2 billion (including $227 million from courthouse construction) in savings for the federal government in its Time-Out and Review Report of nearly 200 major new construction, modernization and lease projects. As a result, the AO complies a five-year plan which prioritizes the Judiciary's request for new courthouse and assists in determining project urgency. Since then the AO, GSA, Congress, as well as the increased oversight role of OMB, have all played a positive role in effectively managing the courthouse construction program.

Proponents of S. 1564 have also argued that the President's use of "negative allowances" has been unfairly (and presumably unconstitutionally") applied against the Judiciary's budget request. I believe that this view arises from a misunderstanding of the various components of the President's budget. The fact is, "negative allowances" are applied to the "bottom line"—the President's budget in its totality. They represent unspecified reductions in spending and are often referred to, in budget jargon, as a "plug"—a way to make the number add up. They are not applied to any specific program or federal agency within the President's budget—this includes the Judicial and Legislative branch. So to argue that the existence of a "negative allowance" within the President's nearly $2 trillion annual budget submission is somehow a misrepresentation of, or a re-

duction to, the Judiciary's $3.96 billion budget belies a serious misunderstanding of the federal budget process.

I also understand the frustration of those who believe that recently courthouse construction has not received adequate levels of funding. And while it is true that no funds were requested for courthouse construction by the President for the past three years and Congress appropriated funds in only one of those years, the passage of S. 1564 is not the answer. I would like to remind my colleagues that the President's 2001 Budget does request $488 million for courthouse construction and the Senate version of the 2001 Budget Resolution assumed $700 million.

I support responsible funding of courthouse construction and as a member of the Senate's Committee on Appropriations, I welcome the opportunity to work with the members of the federal Judiciary to ensure that they have appropriate facilities in which to perform their crucial role in our federal system. Now that federal budget deficits have turned into surpluses, I believe the time is right to revisit the level of courthouse funding.

The following table (which does not include funds requested or provided for repairs and alterations and any possible rescissions of courthouse construction funds) shows the amounts for new courthouse construction funded through GSA's Federal Buildings Fund for the past fifteen years. It highlights the cyclical nature of budgeting for courthouse construction. In some years funding may be minimal, while in other years a sizable amount of money may be appropriated.

Fiscal year	Amount requested in President's budget ($ in thousands)	Total appropriated by Congress ($ in thousands)
2001	488,000	N/A
2000	0	0
1999	0	462,290
1998	0	0
1997	622,744	583,940
1996	0	335,973
1995	0	519,932
1994	566,336	760,517
1993	132,189	222,082
1992	13,572	317,235
1991	231,644	545,816
1990	24,027	13,727
1989	72,660	89,418
1988	850	5,036
1987	1,057	1,057
1986	0	182,173

Source: Appendix, Budget of the United States Government, Fiscal Years 1986–2001 (as compiled by the Congressional Budget Office).

This bill is not the answer to the "problem" of insufficient funding for courthouse construction—the answer lies within the appropriations process. It will strip OMB of its proper oversight role and it will handicap the President as he develops his yearly budget request. As Chairman of the Committee on the Budget, I cannot support S. 1564; nonetheless, as a member of the Committee on Appropriations I have and will continue to work to support appropriate levels of funding.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

Chapter 41—ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

* * * * * * *

SEC. 605. BUDGET ESTIMATES.

[The Director, under the supervision of the Judicial Conference of the United States, shall submit to the Office of Management and Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the courts and the Administrative Office and the operation of the judicial survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The Director shall cause periodic examinations of the judicial survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the Director to the Judicial Conference.

[Such estimates shall be approved, before presentation to the Office of Management and Budget, by the Judicial Conference of the United States, except that the estimate with respect to the Court of International Trade shall be approved by such court and the estimate with respect to the United States Court of Appeals for the Federal Circuit shall be approved by such court.]

(a) The Director, under the supervision of the Judicial Conference of the United States, shall submit to Congress before January 25 of each year annual estimates of the following:

(1)(A) The expenditures and appropriations necessary for the maintenance and operation of the courts and the Administrative Office and the operation of the judicial survivors annuity fund and any supplemental and deficiency estimates as may be required for such purposes according to law.

(B) The estimates required by this paragraph shall be approved, before presentation to Congress, by the Judicial Conference of the United States, except that the estimate with respect to the Court of International Trade shall be approved by that court and the estimate with respect to the United States

Court of Appeals for the Federal Circuit shall be approved by that court.

(2)(A) The expenditures and appropriations necessary for real property construction activities, including construction and acquisitions and repairs and alterations, related to United States courthouses and other space occupied by entities of the judicial branch.

(B) Estimated expenditures and appropriations under this paragraph shall be based on prospectuses and other information provided by the Administrator of General Services.

(C) For the purpose of preparing estimated expenditures and appropriations under this paragraph, the Administrator of General Services shall, at such times as are required by Congress or the judicial branch to ensure timely development and consideration of courthouse needs and budget requests, prepare and submit directly—

(i) prospectuses, including cost estimates, for future judicial branch construction, acquisition, and repair and alteration projects to the Director, the Committee on Environment and Public Works of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committees on Appropriations of the Senate and House of Representatives; and

(ii) preliminary planning, design and cost estimates of future judicial branch construction, acquisition, and repair and alteration projects to the Director.

(D) In accordance with estimates prepared under this paragraph, funds may be appropriated to the judicial branch for deposit into the Federal Buildings Fund for the construction, acquisition, and repair and alteration of Federal courthouses. Funds deposited into the Federal Buildings Fund under this subparagraph shall not be available for expenses in connection with any construction, acquisition, and repair and alteration project for which a prospectus, if required by section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606), has not been approved by the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, except that necessary funds may be expended for each project for required expenses in connection with the development of a proposed prospectus.

(b)(1) The estimates submitted to Congress under subsection (a) shall also be submitted to the President for inclusion in the budget of the United States. In each budget of the United States Government submitted by the President under the first sentence of section 1105(a) of title 31, the President shall make no change or alterations whatsoever, and shall not impose or otherwise recommend, directly or indirectly, implementation of a negative allowance, rescission, or any other form of reduction or change to such estimates.

(2) For the purpose of preparing a unified Federal budget by the President, the Director shall transmit to the President—

(A) preliminary estimated expenditures and proposed appropriations for the judicial branch before October 16 of each year; and

(B) final estimated expenditures and proposed appropriations for the judicial branch before December 24 of each year, and such final estimates shall be identical to the estimates to be submitted to Congress under subsection (a).

(C) The Director shall cause periodic examinations of the judicial survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the Director to the Judicial Conference.

* * * * * * *

TITLE 31—MONEY AND FINANCE

CHAPTER 11—THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION

* * * * * * *

SEC. 1105. BUDGET CONTENTS AND SUBMISSION TO CONGRESS.

(b) Estimated expenditures and proposed appropriations for the legislative branch and the judicial branch to be included in each budget under subsection (a)(5) of this section shall be submitted to the President before October 16 of each year and included in the budget by the President without change. *Estimated expenditures and proposed appropriations for the judicial branch described under section 605 of title 28 shall be included in the budget and submitted to the President in accordance with that section.*

The Judiciary's Fiscal Year 2001 Budget Request

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OVERVIEW

Constitutional Framework

The responsibilities of the judiciary are set forth in Article III of the Constitution which states "The Judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

In additional to establishing courts, Congress retains the sole power to create Article III judgeships. Article III judges, including Supreme Court justices and appellate and district court judges, are appointed for life and receive a salary which may not be reduced while during their tenure in office.

The Judiciary Today

The Congress has established a sophisticated system of courts that, collectively, make up our federal court system. Today, this includes 13 appellate courts, 94 districts (each including a district court, bankruptcy court and probation/pretrial office), a federal claims court, a court of international trade, and other federal courts to handle the work of the judiciary. Geographically, the federal court system extends to all fifty states, Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands.

There are 852 active Article III judgeships, 486 senior Article III judges, 447 magistrate judges, 16 federal claims judgeships, and 326 bankruptcy judgeships. Combined, there are more than 2,000 judges presiding over the work of the judiciary.

The judiciary is staffed by over 30,000 dedicated civil servants who work in all areas of the federal court system. They are employed as deputy clerks, court security officers, criminal defense attorneys, interpreters, probation officers, court reporters, circuit executives, librarians, staff attorneys, and law clerks.

The Judicial Conference of the United States is the judiciary's central policy-making body. It is comprised of 27 judges and chaired by the Chief Justice of the United States.

The federal court system is a three-tiered hierarchy as follows:

Tier I
Supreme Court

Tier II
12 geographic-based appeals courts
U.S. Court of Appeals for the Federal Circuit

Tier III
94 district courts
U.S. Court of International Trade
U.S. Court of Federal Claims

other judiciary organizations include:

Administrative Office of the U.S. Courts
Federal Judicial Center
U.S. Sentencing Commission

The following chart compares workload factors for fiscal year 1997 through fiscal year 2000 (projected), to court staffing for fiscal year 1998 through the fiscal year 2001 request.

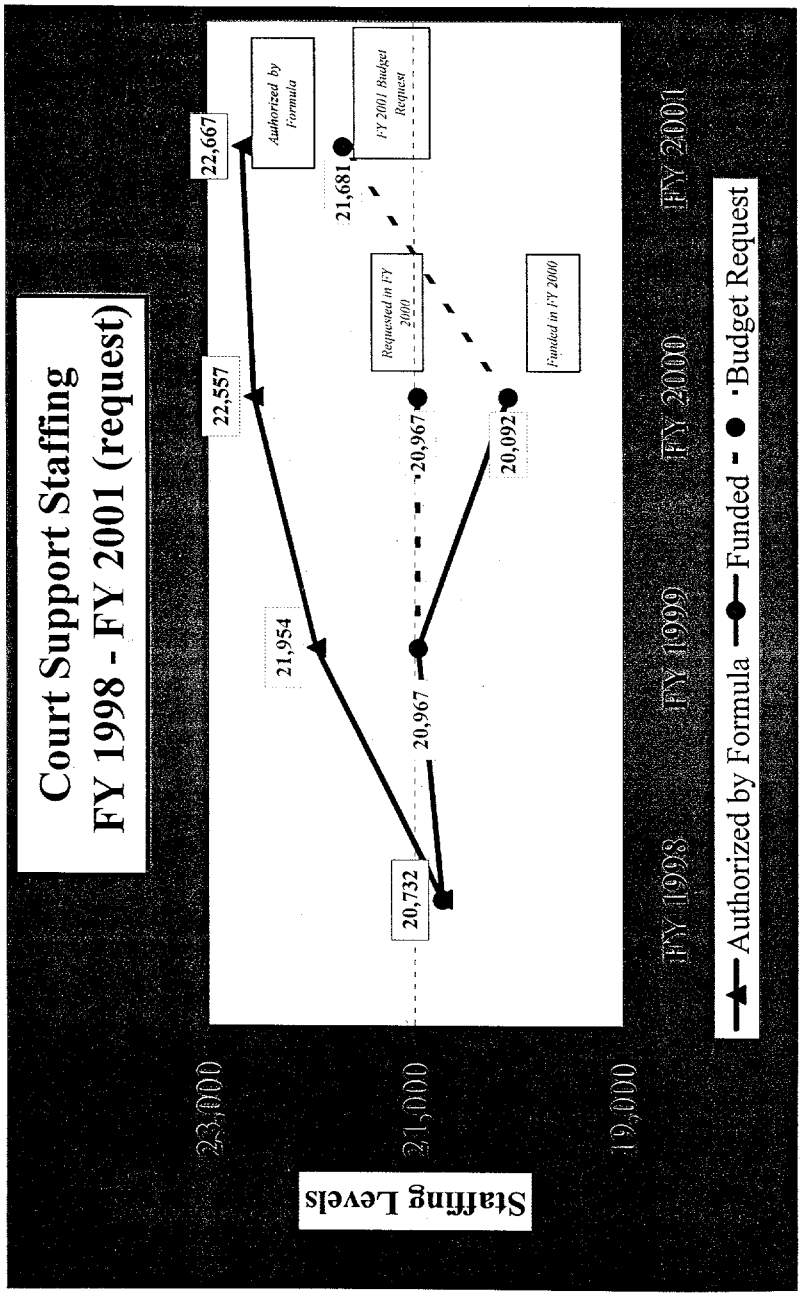
Comparison of Judiciary Workload Factors and Court Support Staffing

WORKLOAD FACTOR	FY 1997 Actual	FY 1998 Actual	FY 1999 Actual	FY 2000 Projected[1]	Change FY 1997 - FY 2000 projected
Criminal Filings	50,363	57,691	59,923	64,600	**14,237**
Yr-to-Yr Change:		+15%	+4%	+8%	**+28%**
Criminal Defendants Filed	70,201	79,008	80,822	86,600	**16,399**
Yr-to-Yr Change:		+13%	+2%	+7%	**+23%**
Bankruptcy Filings	1,367,364	1,436,964	1,354,376	1,378,000	**10,636**
Yr-to-Yr Change:		+5%	-6%	+2%	**+1%**
Appellate Filings	52,319	53,805	54,693	53,900	**1,581**
Yr-to-Yr Change:		+3%	+2%	-1%	**+3%**
Civil Filings	272,027	256,787	260,271	260,500	**-11,527**
Yr-to-Yr Change:		-6%	+1%	-	**-4%**
Criminal Justice Act Representations[2]	90,032	101,133	104,928	108,800	**18,768**
Yr-to-Yr Change:		+12%	+4%	+4%	**+21%**
Probation: Persons Under Supervision	91,434	93,737	97,190	102,600	**11,166**
Yr-to-Yr Change:		+3%	+4%	+6%	**+12%**
Pretrial Services: Reports to the Courts	69,283	78,603	80,154	85,900	**16,617**
Yr-to-Yr Change:		+13%	+2%	+7%	**+24%**
COURT STAFFING	FY 1998 Actual	FY 1999 Actual	FY 2000 Fin. Plan	FY 2001 Request	Change FY 1998 - FY 2001 Request
Funded Work Units[3]	**20,732**	**20,967**	**20,092**	**21,681**	**949**
Yr-to-Yr Change:		**+1%**	**-4%**	**+8%**	**+5%**

[1]FY 2000 workload factors were calculated in June 1999 based on filings and caseload data through March 1999. Workload factors will be updated in Spring 2000.

[2]Projected CJA representations for FY 2000 exclude panel attorney capital representations. Actual representations for FY 1995 through FY 1999 include panel attorney capital representations.

[3]Court staffing requirements are based on the previous year's actual workload. For example, court staffing requirements in the FY 2001 request are based on the FY 2000 workload projections that were calculated in June 1999. This row compares funded work units for FY 1998 through the FY 2001 request to the previous year's workload factors.


Court Support Staffing
FY 1998 - FY 2001 (request)
Staffing Levels
23,000
21,000
19,000
FY 1998
FY 1999
FY 2000
FY 2001
22,667
22,557
21,954
20,732
20,967
20,967
20,092
21,681
Authorized by Formula
FY 2001 Budget Request
Requested in FY 2000
Funded in FY 2000
Authorized by Formula
Funded
Budget Request

The Judiciary
Summary of Budgetary Requirements

($000) Account	FY 2000 Appropriation *	FY 2001 Requested Appropriation	% Approp. Change FY 2001 over FY 2000	% Obligation Change FY 2001 over FY 2000
Supreme Court				
Salaries and Expenses	35,528	37,745	6.2%	4.0%
Buildings and Grounds	8,002	7,530	-6.3%	-21.4%
Court of Appeals for the Federal Circuit	16,845	19,533	13.8%	16.4%
Court of International Trade	11,971	12,506	4.3%	3.4%
Courts of Appeals, District Courts and Other Judicial Services				
Salaries and Expenses				
Direct Appropriation	2,967,651	3,498,694		
Crime Trust Fund	156,539	-		
Vaccine Injury Trust Fund	2,515	2,602		
Sub-Total, Salaries and Expenses	3,126,705	3,501,296	12.0%	9.0%
Defender Services				
Direct Appropriation	358,848	440,351		
Crime Trust Fund	26,247	-		
Sub-Total, Defender Services	385,095	440,351	14.3%	9.1%
Fees of Jurors and Commissioners	60,918	60,821	-0.2%	-3.5%
Court Security	193,028	215,353	11.6%	7.2%
Sub-Total, CADCOJS	3,765,746	4,217,821	12.0%	8.7%
Administrative Office Of the U.S. Courts	55,000	61,215	11.3%	6.9%
Federal Judicial Center	18,000	19,337	7.4%	7.6%
Payment to Judiciary Retirement Funds	39,700	35,700	-10.1%	-10.1%
U.S. Sentencing Commission	8,500	10,600	24.7%	12.0%
Total	**3,959,292**	**4,421,987**	**11.7%**	**8.5%**
Section 301 Rescission	(13,961)			

* Includes Section 304 Judges' COLA transfer.

4.0 1

Summary of the Judiciary's Fiscal Year 2001 Budget Request

The judiciary's request totals $4.6 billion in obligations, an 8.5% or $363 million increase over FY 2000's level of $4.3 billion. Almost all of this increase is required to maintain the staffing and space needs funded in fiscal year 2000, as well as to bring staffing levels back up to the FY 1999 level of service. A summary follows:

Base Adjustments to Continue Current Operations ($258 million or 6.0%)

- Higher space-related costs, mostly for full year rent on new court facilities delivered in FY 2000 and rent for new space GSA will deliver in FY 2001 ($64 million).
- Pay and benefit cost adjustments for judicial officers and supporting personnel, to include the annualized cost of the FY 2000 pay adjustment and other salary changes, FY 2001 pay and benefit increases, annualized cost of new employees hired in FY 2000, and a net reduction in contributions to the judiciary retirement trust funds ($183 million).
- Net increase in costs associated with increasing Defender Services representations and projected changes in the overall case mix ($10 million).
- Increase in contract rates and other inflationary increases ($14 million).
- Court automation-related increases ($12 million)
- Nonrecurring costs (-$25 million)

Major Program Changes to Address Workload Demands ($105 million or 2.5%)

- 1,255 FTE required to return staffing levels in probation and pretrial services offices as well as district, bankruptcy and appellate courts to the numbers needed to provide FY 1999 levels of service ($83 million).
- 9 additional magistrate judges and associated staff to provide better service in districts with heavy caseloads or significant travel requirements ($4 million).
- 72 additional court security officer positions and court security equipment to provide adequate protection for members of the judiciary and the public in new Federal courthouses and at existing facilities with known security problems ($8 million).

Obligations ($ in millions)

	FY 2000	Adjustments to Base	Program Changes	2001 Request	% Increase
Courts' S&E	3,406	217	90	3,712	9.0%
Defender Services	407	36	1	444	9.1%
Fees of Jurors	63	-2	0	61	-3.2%
Court Security	201	6	8	216	7.5%
Subtotal	4,077	257	99	4,433	8.7%
Other Accounts	206	1	6	213	3.4%
Total Judiciary	4,283	258	105	4,646	8.5%

Sources of Funds ($ in millions)

	FY 2000	2001 Request	% Increase
Appropriations	3,959	4,421	11.7%
Recission	(14)		
Fee Collections	160	164	2.5%
Information Technology Funds Carry Over & EPA Revenue	61	25	-59.0%
Carry Over & Reimbursements	155	36	-76.8%
Funds available to carry over to FY 2001	(38)		
Subtotal	4,283	4,646	8.5%
Anticipated savings expected to carry over to FY 2001	(21)		
Total	4,262	4,646	9.0%

U.S. Supreme Court
Salaries and Expense ($000)

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increases	% Increase	Appropriation/ Obligations
36,281	1,356	3.7%	108	0.3%	1,464	4.0%	37,745

Adjustments to base:
- $2.1 million requested for standard pay and non-pay adjustments to base.
- $411,000 requested to annualize the cost of new police officer positions.
- -$1.1 million for non-recurring costs.

Resources for Program Increases
- $108,000 requested to fund two additional FTE (computer specialist, mail services clerk and research librarian).

U.S. Supreme Court
Care of Buildings and Grounds ($000)

FY 2000	FY 2001						
Appropriation (less .38%)	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Appropriation
7,972	(2,413)	-30.3%	1,971	24.7%	(442)	-5.5%	7,530

Adjustments to base:
- $189,000 requested for pay and non-pay inflationary increases.
- -$2.6 million in non-recurring costs

Program Increase and Capital Budget
- $2.0 million requested for building improvements and utilities systems upgrades.

U.S. Court of Appeals for the Federal Circuit ($000)
Obligations

FY 2000	FY 2001						
Obligations:	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations (Appropriation)
16,788	1,089	6.5%	1,656	9.9%	2,745	16.4%	19,533

Adjustments to base:
- $1.1 million requested for standard adjustments to base.

Program Increases
- $156,000 requested for 4 additional positions (3 FTE) in the clerk's office: secretary, automation, calendar deputy clerk and a records manager.
- $600,000 requested for 5 technical assistants (TA) (4 FTE) - Currently the court has 7 TAs. The request will provide each judge with a TA who would have a law degree and a science or engineering degree and would provide legal and technical assistance to the judges of the court.
- $900,000 for courtroom renovations.

U.S. Court of International Trade ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
12,431	425	3.4%	0	0.0%	425	3.4%	12,856

Financing

FY 2000 Appropriation (includes Judge's COLA)	11,971
FY 2000 Obligations	12,431
Increases	425
FY 2001 Obligations	12,856
Fees, Unobligated Balances and Reimbursements	(350)
FY 2001 Requested Appropriation	12,506
Appropriation Change	535

Adjustments to Base

- $425,000 requested for standard adjustments to base.

Resources Available to Offset Direct Appropriation Requirement

- $350,000 is available in the Judiciary Information Technology Fund to fund information technology projects in fiscal year 2001.

Courts of Appeals, District Courts, and Other Judicial Services
Salaries and Expenses ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
3,405,839	216,644	6.4%	89,891	2.6%	306,535	9.0%	3,712,374

Financing

FY 2000 S&E Approp. (includes Judge's COLA)	2,967,651
Crime Trust Fund	156,539
Vaccine Injury Trust Fund	2,515
FY 2000 Appropriations	3,126,705
FY 2000 Obligations	3,405,839
Increases	306,535
FY 2001 Obligations	3,712,374
Fees and Unobligated Balances	(211,078)
FY 2001 Requested Appropriation	3,501,296
Vaccine Injury Fund Request	(2,602)
S&E Direct Appropriation Request	3,498,694
Total Appropriation Change	374,591

FY 2001 Offsets	
FY 2000 Fee Carryover	(29,583)
Utilization of EPA Collections	(4,834)
Appeals Comm. Balances	(443)
No-Year Info. Tech. Funds	(20,000)
FY 2000 Fee Collections	(156,218)
Total, Fees & Unobl. Balances	(211,078)

Adjustments to Base:

Judicial Officers $22.4 million

- $12.8 million in pay and benefit adjustments for judicial officers including: annualizing the January 2000 pay increase of 3.4 percent, a January 2001 pay increase of 3.7 percent and benefit increases.
- $4.0 million to provide for an additional 9 senior judge FTE and 29 support staff FTE.
- $7.0 million to fund an increase in the Article III Judges filled rate by 12 FTE.
- -$1.4 million reduction for one-time expenses associated with new senior judges and magistrate judges appointed in fiscal year 2000.

Pay & Benefits for Supporting Personnel $119.0 million

- $119.0 million in pay and benefit adjustments for supporting personnel to: annualize the January 2000 pay increase (4.8 percent), provide a January 2001 pay increase (3.7 percent), fund salary progression (2 percent), a reduction for one less compensable day, annualize the new staff (187 FTE) provided in the FY 2000 Financial Plan for courts with extraordinary workload, and provide benefit increases.

GSA Rental Payments $63.2 million

- $16.2 million is for inflation on GSA space rental costs (2.1%).
- $37.9 million to provide the full annual cost of 1.8 million square feet of space expected to be delivered in fiscal year 2000.
- $9.1 million for the partial year cost of 0.5 million square feet of new space expected to be delivered in fiscal year 2001.

Inflationary Increase $10.6 million

- $10.6 million for standard inflationary increase for O&M costs and inflation for lawbooks and computer assisted legal research.

Information Technology $13.1 million

- $12.1 million for automation O&M costs.
- $1.5 million to continue to develop new systems and applications such as a replacement accounting systems, a new personnel system, an electronic case filing system, and courtroom technologies.
- $229,000 inflationary increase for the Court Automation Support program.
- -$786,000 for the Voice Telecommunications program resulting form an anticipated decline in Federal Telephone System rates.

Other Adjustments to Base -$11.7 million

- The base is reduced by $11.7 million of non-recurring costs in the space and facilities program and consulting services.

Program Increases ($89.9 million)

- $3.8 million to provide 9 new magistrate judges and related support staff.

- $82.7 million to return court staffing levels to the fiscal year 1999 level of service, adjusted for workload changes. This request provides for 695 probation and pretrial services FTE, 74 appellate and circuit FTE, 186 district court FTE, and 300 bankruptcy court FTE.

  In fiscal years 1999 and 2000, the courts did not receive additional funds to manage the courts' growing workload. The fiscal year 2001 request includes funding to restore court staffing not to the level required to process the judiciary's workload according to our work measurement studies, but only to level of service provided in fiscal year 1999 as measured by the level of the work measurement formulas provided in fiscal year 1999.

  One of the primary reasons this request is necessary is the explosion of workload on the Southwest Border including the districts of Arizona, California Southern, New Mexico, Texas Western and Texas Southern. These increases over the past few years are attributed to increases in law enforcement resources at the border. Since 1994, the number of border patrol agents has increased by 99 percent; INS agents, 93 percent; and DEA agents 155 percent. However, authorized court staffing has remained basically flat since fiscal year 1998.

  If this requested staffing increase is not funded, it will result in a lower level of supervision of federal offenders and defendants by probation and pretrial services officers, a decline in clerks' offices ability to provide the public with information, delay court decisions in civil and bankruptcy cases, and increased attorney costs.

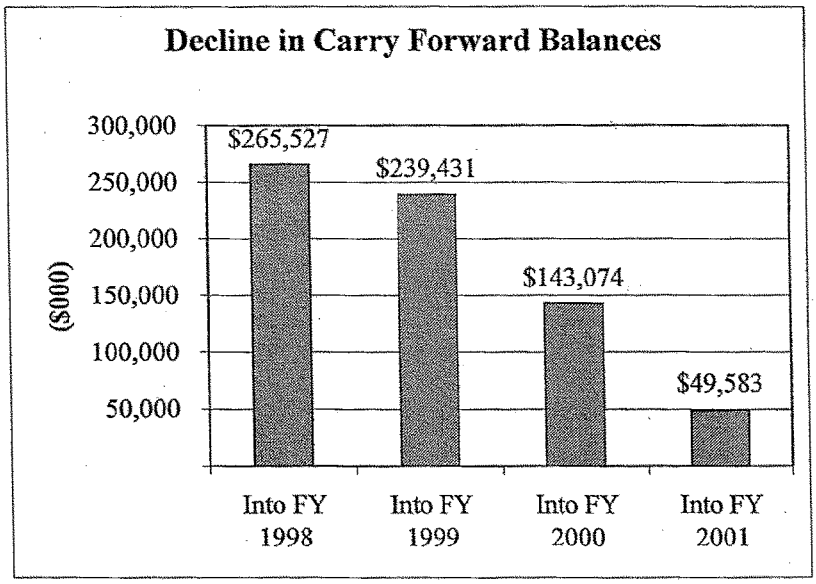
- $3.4 million to provide additional space alterations to install for courtroom technologies.

Estimated Resources Available to Offset Appropriation Requirements - $211.1 million

- $29.6 million in anticipated fee carry over from fiscal year 2000.
- $156.2 million in new fee collections for fiscal year 2001.
- $20.0 million in anticipated Judiciary Information Technology Fund carry over.
- $4.9 million of Electronic Public Access fee revenue.
- $443,000 in unencumbered no-year balances associated with the Commission on Structural Alternatives for Federal Courts of Appeals. The Commission has completed its work and a general provision has been included allowing the remaining available budget authority to fund court operating costs.

Declining Levels of Carry Forward in the Salaries and Expenses Account

Type ($000)	Into FY 1998	Into FY 1999	Into FY 2000	Into FY 2001
Fee Balances	186,876	178,598	78,746	29,583
Information Technology Balances	66,924	43,005	48,643	20,000
No-Year Alteration and Furniture Balances	11,727	17,828	15,685	-
Total, Available Balances	**$ 265,527**	**$ 239,431**	**$ 143,074**	**$ 49,583**



The Southwest Border

For the past three years, Congress has authorized major increases in the number of law enforcement agents on the southwest border with Mexico. The number of actual border patrol officers on the southwest border increased by a total of 1,445 from FY 1997 through FY 1999. Authorized staffing for border patrol officers is expected to increase by 900 additional positions in FY 2000. As a result, the five southwest border court districts (Arizona, California Southern, New Mexico, Texas Western and Texas Southern) have experienced a phenomenal increase in workload. The intensified enforcement of border-related crimes has resulted in caseload increases for the five district courts on the southwest border to the extent that these five districts now handle 27 percent of all federal criminal filings.

Since 1995, criminal caseload in these five border districts, mostly drug and immigration cases, has increased dramatically, as shown in table 5.6.

Table 5.6 Criminal Filings in the Southwest Border

District	FY 1995	FY 1999	Change	Percent
Arizona	1,113	3,274	2,161	194%
Calif. Southern	2,282	3,813	1,531	67%
New Mexico	929	1,405	476	51%
Texas Western	1,506	4,301	2,795	186%
Texas Southern	1,350	3,387	2,037	151%

Meanwhile, the increase in funded court support staff for the district courts and probation/pretrial services offices in these five districts has lagged behind the growth in criminal caseload, as shown in table 5.7.

Table 5.7 Funded Court Support Staff for District Courts & Probation/Pretrial Services Offices Along the Southwest Border

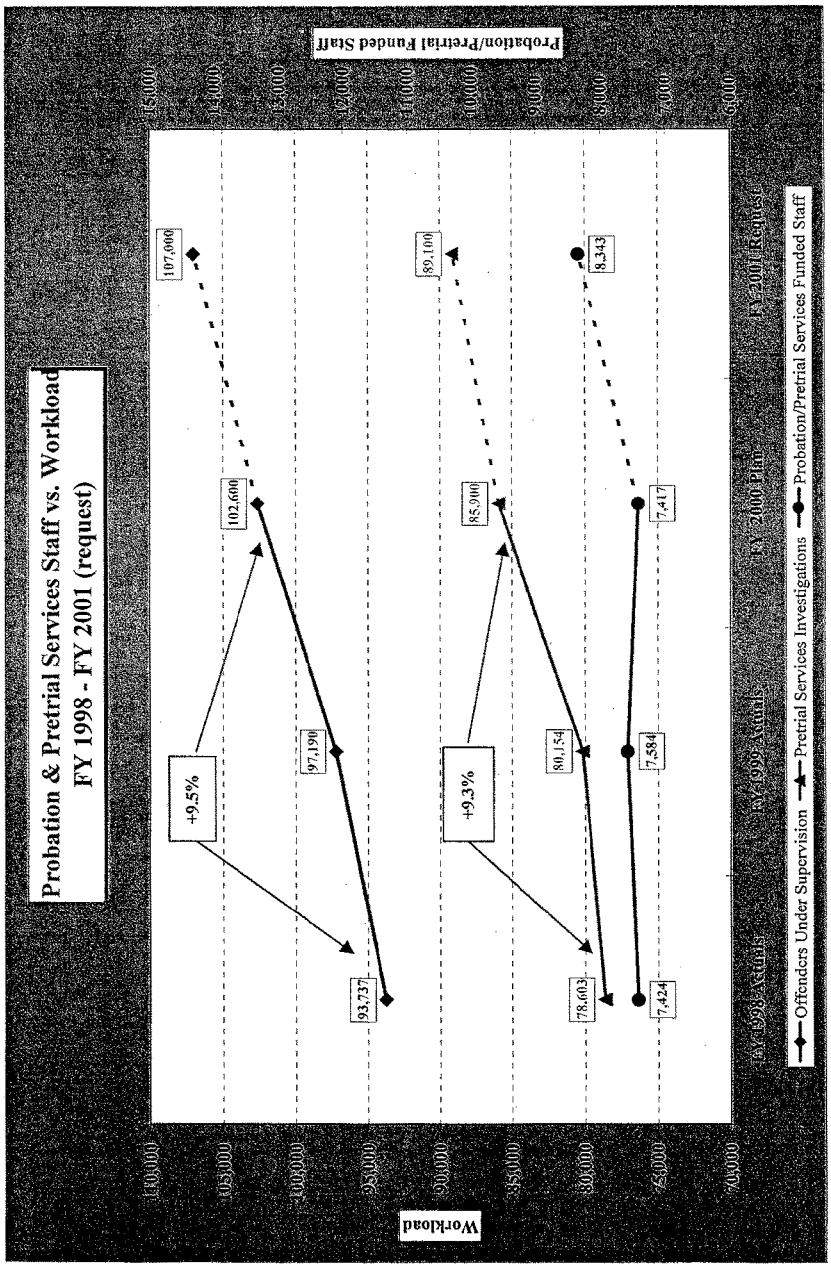
	FY 1996	FY 2000	Change	Percent
Funded Court Support Staff	1,285	1,669	383	30%

Note: Funding for court support staff in a particular fiscal year is based on caseload in the previous year.

Currently, temporary staff and employees from other courts are being used as a short-term, stopgap solution for dealing with the huge caseloads in the southwest border courts.

A "judicial emergency" has been declared in the Fifth Circuit Court of Appeals, by Chief Judge Carolyn Dineen King. Judge King has led the way in planning a Southwest Border Conference to discuss techniques for coping with the ever-increasing number of trials, defendants, and home confinement cases. A panel format will be used to discuss topics including arraignments and sentencing; case management; use of magistrate judges; and support staff and resources. The conference idea has been very well received as evidenced by the more than 130 judges and unit executives who plan to attend. The conference, to be held in Albuquerque, New Mexico, in February 2000, may also be attended by Attorney General Janet Reno and other key officials whose functions support and interact with trial judges along the southwest border.

Of the nine additional judgeships authorized by Congress in the judiciary's FY 2000 appropriation, three are for the district of Arizona, indicating Congressional recognition of the increasing caseload on the southwest border.


Probation & Pretrial Services Staff vs. Workload
FY 1998 - FY 2001 (request)
Workload
Probation/Pretrial Funded Staff
+9.5%
+9.3%
93,737
97,190
102,600
107,000
78,603
80,154
85,900
89,100
7,424
7,584
7,417
8,343
FY 1998 Actuals
FY 1999 Actuals
FY 2000 Plan
FY 2001 Request
Offenders Under Supervision
Pretrial Services Investigations
Probation/Pretrial Services Funded Staff

Defender Services ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
406,982	36,486	9.0%	600	0.1%	37,086	9.1%	444,068

Financing

FY 2000 Defender Appropriation	358,848
Crime Trust Fund	26,247
FY 2000 Appropriations	385,095
FY 2000 Obligations	406,982
Increases	37,086
FY 2001 Obligations	444,068
Unobligated Balances	(3,717)
FY 2001 Requested Appropriation	440,351
Defender Appropriation Change	55,256

Adjustments to Base

- $14.7 million for standard pay and benefit adjustments. – federal public defenders
- $11.3 million to increase the non-capital hourly rate for panel attorneys in all districts to $75 beginning April 1, 2001.
- $1.0 million for general pricing adjustment and general administrative expenses.
- $436,000 for increased space rental costs. – GSA rent
- $9.7 million net increase associated with a workload increase of 3,700 representations. This increase is partially offset by a projected reduction in the cost-per-representation due to a change in overall case mix that will result in more immigration cases that tend to be less expensive.
- -$600,000 decrease for non-recurring expenses.

Program Increases

- $600,000 for start-up costs to establish two new Federal defender organizations.

Resources Available to Offset Direct Appropriation Requirement

- $3.7 million is projected carry forward from fiscal year 2000.

Excerpt from Chief Justice William H. Rehnquist's 1999 Year-End Report on the Federal Judiciary issued January 1, 2000.

Panel Attorney Compensation

Some progress has been made on another issue I raised last year, but more work remains: in 1999, the Judiciary embarked on a major initiative to obtain funding to increase the rates of pay for private "panel" attorneys accepting appointments under the Criminal Justice Act (CJA). By statute, the Judiciary bears the responsibility for ensuring that defendants who cannot afford counsel in federal criminal cases receive legal representation. In 1986, Congress amended the CJA to authorize the Judicial Conference to set maximum hourly rates of up to $75 and to implement cost-of-living adjustments. While the Judicial Conference has determined that the $75 rate is needed in every judicial district, funding has not been available for its nationwide implementation, and in most judicial districts panel attorneys have been paid only $65 for hours in court and $45 for out-of-court time.

Inadequate compensation for panel attorneys is seriously hampering the ability of courts to recruit and retain qualified panel attorneys to provide effective representation. The maximum CJA hourly rates have been eroded by inflation and are substantially below prevailing rates in the legal profession. Accordingly, the Judiciary requested funding in fiscal year 2000 to make the $75 rate applicable in every district. Congress approved a $5 raise, to $70 in court, $50 out of court.

While providing some relief, compensation rates still do not meet many attorneys' non-reimbursable overhead costs. Adequate pay for appointed counsel is important to ensure that a defendant's constitutional right to counsel is fulfilled. Thus, there is widespread support among the components of the federal criminal justice system for the $75 rate, including judges, the Department of Justice, private bar associations, former federal prosecutors, and federal defenders.

Since 1984, most judicial districts have received only two $5 increases (including the one in fiscal year 2000). At its September 1999 session, the Judicial Conference decided to renew its request for the $75 rate in fiscal year 2001 in the event that Congress did not provide funding for that rate in fiscal year 2000. Because of the urgency of this need, once again, I respectfully ask Congress to make adequate compensation for panel attorneys a high priority, and to fund the Defender Services appropriation at a level sufficient to pay the $75 rate.

Defender Services
Financing

Sources of Funds ($000)	FY 2000	FY 2001	% Change FY 2000 to FY 2001
Direct Appropriation	358,848	440,351	
Crime Trust Fund	26,247	-	
Sub-Total, Appropriations	**385,095**	**440,351**	**14.3%**
Available No-Year Balances	35,604	3,717	-89.6%
Section 301 Rescission	(6,243)	-	-100.0%
Transfer to S&E	(3,757)	-	-100.0%
Carry Forward to Next Fiscal Year	(3,717)	-	-100.0%
Estimated Obligations	**406,982**	**444,068**	**9.1%**

Fees of Jurors ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
63,000	(2,179)	-3.5%		0.0%	(2,179)	-3.5%	60,821

Financing

FY 2000 Enacted Appropriation	60,918
FY 2000 Obligations	63,000
Increases	(2,179)
FY 2001 Obligations	60,821
Unobligated Balances	0
FY 2001 Requested Appropriation	60,821
Appropriation Change	(97)

Adjustments to Base

- $510,000 is requested as a general pricing increase.
- -$2.7 million reduction resulting from a decrease in juror days.

Court Security ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
200,917	5,971	3.0%	8,465	4.2%	14,436	7.2%	215,353

Financing

FY 2000 Appropriation	193,028
FY 2000 Obligations	200,917
Increases	14,436
FY 2001 Obligations	215,353
Unobligated Balances	0
FY 2001 Requested Appropriation	215,353
Appropriation Change	22,325

Adjustments to Base ($6.0 million)

- $0.3 million in pay and benefit increases for AO reimbursable and U.S. Marshals Service personnel.
- $2.8 million for annualization of 120 CSOs partially funded in fiscal year 2000.
- $6.5 million in increased hourly wage rates payable to CSOs as determined by the Department of Labor.
- $0.7 million in standard inflationary increases.
- -$4.3 million reduction for non-recurring fiscal year 2000 equipment expenditures.

Program Increases ($8.5 million)

- $2.3 million for 72 additional CSO positions to provide a security presence in existing, new and renovated facilities housing a full-time judicial officer.
- $3.9 million is requested to begin Phase 1 of a four-year transition to provide narrowband capable digital radios as mandated by section 104 of the National Telecommunications and Information Administration Organization Act.
- $2.3 million to upgrade security systems and equipment at probation and pretrial services offices including access control systems and duress alarm systems.

Administrative Office of the U. S. Courts ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
98,166	5,409	5.5%	1,375	1.4%	6,784	6.9%	104,950

Financing

FY 2000 Enacted Appropriation	55,000
FY 2000 Obligations	98,166
Increases	6,784
FY 2001 Obligations	104,950
Fees and Reimbursements	(43,735)
FY 2001 Requested Appropriation	61,215
Appropriation Change	6,215

Adjustments to Base

- $5.4 million for standard inflationary increases.

Program Increases

- $360,000 to partially restore staffing to level provided in fiscal year 1999 (4 FTE). The additional staff will be devoted to the highest priorities to support court operations and improvement initiatives.
- $1.0 million to restore equipment and services levels to the level funded in fiscal year 1999.

Resources Available to Offset Direct Appropriation Requirement - $43.7 million

- $8.3 million in fiscal year 2001 fee revenue.
- $1.5 million in prior year fee carry forward.
- $301,000 in reimbursements for Independent Counsel support.
- $33.6 million in AO reimbursable programs for 278 FTEs funded by the S&E, Defenders, and Court Security appropriations.

Federal Judicial Center ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
18,496	834	4.5%	563	3.0%	1,397	7.6%	19,893

Financing

FY 2000 Enacted Appropriation	18,000
FY 2000 Obligations	18,496
Increases	1,397
FY 2001 Obligations	19,893
Fees, Unobligated Balances and Reimbursements	(556)
FY 2001 Requested Appropriation	19,337
Appropriation Change	1,337

Adjustments to Base ($834,000)

- $834,000 in standard pay and non-pay inflationary increases.

Resources for Workload Increases and Improvements in Services ($563,000)

- $563,000 to support and enhance the use of satellite/video broadcasting and distance learning technologies (8 FTE).

Resources Available to Offset Direct Appropriation Requirement - $556,000

- $556,000 in reimbursements from the FJC Foundation and federal agencies.

Payment to the Judiciary Trust Fund ($000)

Obligations

FY 2000	FY 2001						
Obligations: Appropriation	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations: Appropriation
39,700	(4,000)	-10.1%	0	0.0%	(4,000)	-10.1%	35,700

Adjustments to Base

- -$3.8 million decrease in payment to the Judicial Officers' Retirement Fund.
- $100,000 increase in payments to the Judicial Survivors' Annuities Fund.
- -$300,000 reduction in payment to the Court of Federal Claims Judges' Retirement Fund.

United States Sentencing Commission ($000)

Obligations

FY 2000	FY 2001						
Obligations	Adj. to Base	% Increase	Program Increase	% Increase	Total Increase	% Increase	Obligations
9,553	1,147	12.0%	0	0.0%	1,147	12.0%	10,700

Financing

FY 2000 Enacted Appropriation	8,500
FY 2000 Obligations	9,553
Increases	1,147
FY 2001 Obligations	10,700
Unobligated Balances	(100)
FY 2001 Requested Appropriation	10,600
Appropriation Change	2,100

Adjustments to Base ($1.1 million)

- $645,000 for standard pay and non-pay inflationary increases.
- $1.5 million to fund restoration of 20 FTE still within the Commission's ceiling of 108. During fiscal year 1999, the Commission was without any voting members. The Commission's fiscal year 2000 appropriation was reduced as a result of the vacant commissioners. In fiscal year 2000, all seven Commissioners have been nominated and confirmed. As a result, the fiscal year 2001 budget requests funding to restore the Commissions staffing levels back up to the level required to support a fully functioning agency with a full complement of Commissioners.
- -$985,000 for a reduction for non-recurring costs.

Resources Available to Offset Direct Appropriation Requirement - $100,000

- $100,000 is available in the Judiciary Information Technology Fund to fund automation projects in fiscal year 2001.

The Judiciary's FY 2001 Courthouse Construction Request

Courthouse Projects Included in the President's FY 2001 Budget Request

Location	Phase	Original Estimate	OMB Action
Los Angeles, California	Site & Design	$ 36,203,000	$ 31,523,000
Seattle, Washington	Construction	$ 179,365,000	$ 177,930,000
Richmond, Virginia	Site & Design	$ 19,581,000	$ 19,476,000
Gulfport, Mississippi	Construction	$ 42,715,000	$ 42,715,000
Washington, DC	Construction	$ 109,498,000	$ 104,050,000
Miami, Florida	Construction	$ 121,948,000	$ 110,950,000
Little Rock, Arkansas	Add'l Design	$ 5,428,000	$ 1,820,000
	Total	$ 514,738,000	$ 488,464,000

Courthouse Projects not Included in the President's FY 2001 Request for which the Judiciary Seeks Funding

Location	Phase	Original Estimate	OMB Action
Buffalo, New York	Site & Design	$ 3,599,000	$0
Springfield, Massachusetts	Add. Design & Construction	$ 41,378,000	$0
El Paso, Texas	Site & Design	$ 7,208,000	$0
Mobile, Alabama	Site & Design	$ 7,537,000	$0
Fresno, California	Construction	$ 111,000,000	$0
Norfolk, Virginia	Site & Design	$ 9,593,000	$0
Las Cruces, New Mexico	Site & Design	$ 1,900,000	$0
Rockford, Illinois	Site & Design	$ 2,837,000	$0
Cedar Rapids, Iowa	Site & Design	$ 13,474,000	$0
Nashville, Tennessee	Site & Design	$ 13,659,000	$0
Erie, Pennsylvania	Construction	$ 27,881,000	$0
Savannah, Georgia	Construction	$ 46,500,000	$0
	Total	$ 286,566,000	$0

Repair and Alteration Projects Included in the President's FY 2001 Budget Request

Location	Original Estimate	OMB Action
Phoenix, Arizona	$ 26,307,000	$ 26,962,000
New York City, New York	$ 5,037,000	$ 5,037,000
Cincinnati, Ohio	$ 18,684,000	$ 18,434,000
Pittsburgh, Pennsylvania	$ 54,144,000	$ 54,144,000
Little Rock, Arkansas	$ 21,199,000	$ 21,199,000
Total	$ 125,371,000	$ 125,776,000

R&A Projects Not Included in the President's FY 2001 Budget Request for which the Judiciary Seeks Funding

Location	Original Estimate	OMB Action
Las Vegas, Nevada	$ 23,981,000	$0

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