BANKRUPTCY JUDGESHIP NEEDS

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

AND THE

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT
AND THE COURTS

OF THE

SENATE COMMITTEE ON THE JUDICIARY

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TUESDAY, NOVEMBER 2, 1999

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW, COMMITTEE ON THE JUDICIARY, JOINTLY WITH U.S. SENATE, SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS, COMMITTEE ON THE JUDICIARY, WASHINGTON, DC.

The subcommittees met, pursuant to call, at 2 p.m., in room 2141, Rayburn House Office Building, Hon. Gekas (chairman of the Subcommittee on Commercial and Administrative Law) presiding.

Present for the House of Representatives Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary: Representatives George W. Gekas, Steve Chabot, Jerrold Nadler, Melvin L. Watt, and William D. Delahunt.

Also present: Representative Asa Hutchinson.

Staff present for the House of Representatives Subcommittee on Commercial and Administrative Law: Raymond V. Smietanka, Subcommittee Chief Counsel; Susan Jensen-Conklin, Counsel; Sarah Zaffina, Staff Assistant; Daniel Freeman, Full Committee Counsel and Parliamentarian, and David Lachmann, Minority Professional Staff Member.

Present for the Senate Subcommittee on Administrative Oversight and the Courts of the Committee on the Judiciary: Senators Charles E. Grassley and Joseph R. Biden, Jr.

OPENING STATEMENT OF CHAIRMAN GEKAS

The CHAIRMAN. The hour of 2 o'clock having arrived, the committee will come to order.

Pursuant to the House rules, we cannot proceed until we have two members of the committee present and accounted for. But in striking the gavel at 2 o'clock, we have kept faith with opening our hearings and our markup sessions, all the meetings on time. Then we have had to dispatch the committee by declaring a recess until the second member should appear. We note the presence of Asa Hutchinson of Arkansas, he is not a member of our subcommittee, however.

We note the entry and seating of Senator Grassley, the cochair of this joint markup, and the chairman of the relevant committee in the Senate of the United States.

We will dispense with some housekeeping, even though it is out of protocol for the moment by simply stating that all the statements that have been submitted to us by various individuals, Mem-

bers of the House and the Senate will be entered into the record and made a part of the record.

We will repeat this statement when the hearing formally begins, but until such time as the session actually begins, I may sing a song or recite some poetry unless Senator Grassley wishes to do the same.

We have several members who are here and ready to testify. I think I sound like Lowell Thomas describing the scene and waiting for something to happen. One housekeeping chore that we could proceed to accomplish without the necessity of a full record would be to recognize the gentleman from Arkansas, Mr. Hutchinson, for the real purpose for which he has attended this joint hearing.

Representative Hutchinson.

Representative HUTCHINSON. I want to thank the Chair, and I appreciate you letting a foreigner participate for a little while in this hearing. I am here as a member of the Judiciary Committee, but not a member of this particular subcommittee, to welcome a great Arkansan, Mary Davies Scott, who will be testifying on the third panel today. And I just wanted to personally extend my greetings to her and thank the committee for inviting her and her testimony.

Judge Scott was appointed the United States Bankruptcy Judge for the Eastern and Western District of Arkansas in 1987. In 1997, she was appointed as a member of the Bankruptcy Appellate Panel for the 8th Circuit.

She is a conferee on the National Bankruptcy Conference, a member of the American Law Institute, a fellow in the American College of Bankruptcy, and a member and past governor of the National Conference of Bankruptcy Judges. She is currently president of the conference and has served in a variety of offices. Judge Scott is an adjunct professor at our law schools, both in Fayetteville and in Little Rock. And she is also a member of the board of editors for Collier on bankruptcy. She is a faculty member of the American Law Institute for the American Bar Association programs covering banking and commercial lending law, and she also serves as a co-chair in that capacity.

In addition, she is a member of the advisory committee to the program subcommittee of the ALI, ABA, and serves on the bankruptcy education committee of the Federal Judicial Center.

Mr. Chairman, as a former practitioner in Arkansas, I just want to say that she does an outstanding job for our courts in the Federal system and as a bankruptcy judge. And we have a good system in Arkansas, and we certainly welcome her and look forward to her testimony.

Thank you, Mr. Chairman.

The CHAIRMAN. We thank you.

To expedite the formal proceedings, which have not yet begun, we will entertain now the opening statement of Senator Grassley.

OPENING STATEMENT OF CHAIRMAN GRASSLEY

Senator GRASSLEY. At the outset, Congressman Gekas, of course, you should have a thank you for convening this hearing on the newest request for bankruptcy judgeships from the judicial conference. We have an Iowan testifying today on behalf of the Judi-

cial Conference. Judge Mike Melloy is a district judge from Cedar Rapids, IA; has been a friend of mine for many years. And I look forward to hearing from Judge Melloy, and he had previous background in the bankruptcy courts as well.

I start this process, Mr. Chairman, with an open mind, but also with the idea that the Federal judiciary has a tough burden to meet in terms of justifying this judgeship request. In the past, the Judicial Conference has not cooperated with requests seeking information on the process the courts use for deciding to recommend new judgeships. So I hope today, at this hearing, that will change and we will let the sun shine in on the process for requesting new judgeships.

As I understand it, when a district requests new bankruptcy judgeships, the Judicial Conference sends out a team to assess the management of the requesting district. The team discusses court management issues with various judges in that district to assess whether a particular district is wisely managed.

This team then makes recommendations for techniques for improving management in these districts. I think it is important for Congress to have access to the contents of these interviews. It is simply unacceptable for the courts to block the relevant committees of Congress from getting information which will help in determining whether a judgeship is necessary. And if the Federal judiciary is seeking new judgeships which will require the expenditure of tax dollars, Congress and the American people have the right to know whether districts requesting new judgeships are mismanaged in some way.

In my view, it is high time that we open up this process then to public scrutiny. When the Judiciary Committee passed my bankruptcy bill earlier this year, the committee report was quite clear that we in the Senate will be taking a hard look at future judgeship requests.

Now, there is another troubling aspect of this request for new judgeships and that is that it is not offset from a budgetary point of view. Under the 1990 Budget Act, the creation of a new bankruptcy judgeship is scored as mandatory spending by the Congressional Budget Office. Now, in the Senate, this means that legislation creating new judgeships is subject to a budget point of order unless there are offsets. I think it is only proper that the Judicial Conference suggest offsets when they forward a judgeship request to Congress.

One of our witnesses, Mr. Hugh Ray, raises important points about the use of traveling judges to dispose of temporary spikes in the bankruptcy filings in some particular district. It seems to me that traveling judges could really help districts that suddenly find themselves under water, and perhaps this is something Congress can do to facilitate the use of traveling judges.

Finally, the formula that is used to decide whether new judges are necessary really is quite old and quite outdated. The formula, over 10 years old, means that many of the advantages in computer and other technology may or may not be accounted for in the formula. And I hope that we can get into that topic today as well.

So Congressman Gekas, we are all being asked to do a lot; perhaps we can. And I think that congressional oversight responsibil-

ities are very important. And we should be very hesitant to grant requests for judgeships until we have all the information we need and until the request is paid for.

Finally, you, Mr. Chairman, and I have introduced bankruptcy legislation which will make bankruptcy a much less appealing option. This in turn should reduce the number of bankruptcies filed. I think it is responsible to look at whether or not we need new bankruptcy judgeships in the context of the impact of our legislation.

You convened an excellent panel of witnesses, and I look forward to hearing their statements.

The CHAIRMAN. We thank you, Senator Grassley.

Having noted the presence now of a hearing quorum with the attendance of the gentleman from New York, Mr. Nadler, the ranking minority member, and the gentleman from Massachusetts, Mr. Delahunt, the recess is declared defunct. And we will enter into the formality of the hearing.

Without objection, the opening statement of Senator Grassley will be inserted in the record following the fall of the gavel.

This committee is now in session for the purposes of an important hearing.

[The prepared statement of Mr. Gekas follows:]

PREPARED STATEMENT OF HON. GEORGE W. GEKAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA, AND CHAIRMAN, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

On behalf of the Subcommittee, we extend our most heartfelt welcome to our Senate colleagues and especially Senator Chuck Grassley, who is to be commended for his untiring leadership on the issue of bankruptcy reform in the other body. We also welcome those Members who have agreed to participate on our panel today and the other distinguished witnesses.

More than two years ago, our Subcommittee held a comprehensive hearing on H.R. 1596, the "Bankruptcy Judgeship Act of 1997," a bill that I introduced in May of 1997. H.R. 1596 would have authorized seven permanent and 11 temporary bankruptcy judgeships in 14 judicial districts and extended an existing temporary judgeship in another district. That bill, which was cosponsored by my colleague from New York, Mr. Nadler, was passed by the House and sent to the Senate for its consideration.

Rather than taking up H.R. 1596, however, the Senate Judiciary Committee included a modified version of the bill in its bankruptcy reform legislation last year. This version, which was also included in the Conference Report on H.R. 3150, the Bankruptcy Reform Act of 1998, a bill that I introduced last year.

Since we last considered the need for additional judgeships, there have been significant developments with regard to bankruptcy. First, bankruptcy case filings in calendar year 1998 topped 1.4 million in number, the highest level ever in our nation's history. Recently, however, the rate of filings has diminished somewhat. Second, we continue to be on the very precipice of bicameral bankruptcy reform. As we know, the House passed H.R. 833, the Bankruptcy Reform Act of 1999, last May with an overwhelming bipartisan vote of 313 to 108. With regard to the other body, we receive—on nearly a daily basis—reports that the Senate will take up S. 625, its version of comprehensive bankruptcy reform. The continuing and wide-ranging support for bankruptcy reform is undeniable.

Accordingly, today's oversight hearing provides an excellent opportunity for us to have an update from the Judicial Conference concerning its assessment of bankruptcy judgeships, against the backdrop of these developments.

The CHAIRMAN. We will introduce each member of the legislative panel, our colleagues who are interested in this subject matter. We will introduce them in the order that we have compiled their resumes so that no one should take offense as to seniority or any other factor, other than that is the way the Chair has them. And

each member would be free to leave following his presentation to the committee. We will not engage in cross-examination, unless a member requests that that be accomplished. And we will proceed with the hearing after we hear the opening statement of the gentleman from New York, Mr. Nadler.

Representative NADLER. Thank you, Mr. Chairman.

I want to commend you first for scheduling this hearing. And I want to welcome our colleagues from the other body as well, and also to welcome our colleagues who will be providing testimony today. I hope to be here for the entire hearing; although, I would point out that this committee has a number of bills pending on the floor today, and I may have to absent myself briefly if the hearing is not concluded when some of those bills are called up on the floor.

To any witnesses whose testimony I might miss as a result, my apologies; you may be assured we will be reviewing all the testimony submitted.

It has been my pleasure to work with Chairman Gekas on this legislation since I first became the ranking Democratic member of the subcommittee. It has been a bipartisan and cooperative effort, even during times when we have strongly disagreed on other matters of bankruptcy policy. The plain fact is, however, we have not created a single new judgeship on the bankruptcy bench since 1992.

That may not be a problem in some parts of the country, but in places where there are still a significant number of Chapter 11s, and particularly in jurisdictions where mega-Chapter 11s are filed, very complicated cases with broad national impacts, it is, in my opinion, unconscionable that gridlock has held up legislation which is clearly necessary and long overdue.

I don't know how much longer we are going to be derelict in our duty to pass such legislation, but the failure to provide for adequate judicial resources in the bankruptcy bench imposes real and increasing costs on creditors and debtors and on the people with whom they do business.

In addition, if many of the proposed changes to the Bankruptcy Code that are pending in the bill now before the Senate that we have passed were to become law, it is inevitable, there is much testimony before this committee, including from the bankruptcy judges themselves as stated, it is inevitable that the provisions of that bill will cause much additional business and much additional work for the bankruptcy judges who will become even more busy and the resource backlog will become more severe.

Those members who are proponents of the pending legislation as, of course, I am not, should look at the demands it will place on the bench, the additional demands it will place on the bench and commit themselves to ensuring the demands they propose to impose will have the adequate resource that—provide adequate resources to meet those additional demands that the legislation will impose on the bankruptcy bench.

So with that, I look forward to hearing the testimony. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. We thank the gentleman.

The record will indicate that the gentleman from Ohio, Mr. Chabot has joined us.

We will begin with the introduction of the members who are present for the purpose of presenting testimony.

Congressman Jack Kingston is in his fourth term representing Georgia's First Congressional District. Since being elected to Congress in 1992, Jack has been widely recognized for his commitment to cut taxes, balance the budget, and reduce government involvement in our lives. He has been named a taxpayers hero by Citizens Against Government Waste and received the Watchdog of the Treasury Golden Bulldog Award. In addition, he was awarded the U.S. Chamber of Commerce Spirit of Enterprise Award and was named a Friend of the Farmer by the Georgia Farm Bureau.

In May 1997, Jack became the first Member of Congress to receive the National Rural Water Association's Green Key Award for his commitment to protecting public health, quality of life, and the environment.

Before coming to Washington, Jack served for 8 years as a State representative in the Georgia General Assembly.

Let the record indicate that Senator Biden has joined the panel.

Jack Kingston is joined at the witness table by the Honorable Mike Castle, the Congressman——

Senator BIDEN. Who represents Delaware.

The CHAIRMAN. I think we concur.

Senator BIDEN. That is a fact.

The CHAIRMAN. The former two-term Governor of the State of Delaware. Over the course of his four terms in Congress, Mike has focused his efforts on crime control, handgun control, fiscal responsibility, and welfare reform.

Mike currently chairs the House Education Subcommittee on Early Childhood, Youth, and Families where he pursues his commitment to improving educational opportunities for our Nation's youth. In 1997, Mike received the Congressional Distinguished Service Award from the National Committee for Education Funding for his leadership on education issues.

Mike serves on the House Banking Committee and was the chairman of the Subcommittee on Domestic International Monitoring Policy in the 104th and 105th Congresses. He is also a member of the Permanent Select Committee on Intelligence. In addition, Mike serves in a variety of task forces and caucuses.

Steny Hoyer joins the panel, the Member from the Fifth Congressional District of Maryland; Congressman Hoyer has served in the House of Representatives since 1981. Steny is a member of the House Appropriations Committee where he serves as the ranking member of the Treasury, Postal Service, and General Government Subcommittee and also serves in the Labor, Health and Human Services, and Education Subcommittee and the Legislative Appropriation Subcommittee.

On the foreign policy front, Steny is the ranking member of the Commission on Security and Cooperation in Europe. Steny was first elected to the Maryland State Senate in 1966 at the age of 27 and served until 1978.

Earlier this year, he was awarded the Jack Niles Medal of Honor by the Public Employees Roundtable for his commitment to public service.

With our colleagues is Ed Bryant. Long before coming to Congress, Ed established a distinguished career in public service. He was an officer of the United States Army in the Military Intelligence Branch and served in the Judge Advocate's General Corps as a captain. Ed also taught constitutional law to the United States Military Academy in West Point, New York.

In 1991, President Bush appointed Ed to serve as United States Attorney for the Western District of Tennessee. He was one of the first U.S. Attorneys to establish an investigative task force on abuse and fraud regarding various government funded health care programs.

Since coming to Congress in 1994, he has been a staunch advocate for Federal tort reform, Federal anticrime and law enforcement measures, the protection of property rights and welfare reform.

Ed is a former member of the House Judiciary Committee. He serves currently on the Commerce Committee and the House Task Force on Firearms.

Representative Coble may be appearing at a little later period in this hearing.

We note the presence now, the record should indicate that the gentleman from North Carolina, Mr. Watt, is present.

Senator Biden, wish to make an opening statement?

Senator BIDEN. Just to comment, Mr. Chairman, based on those introductions, you clearly are the more gentle body. We never say anything that nice about our colleagues from the bench. But I am delighted to be here in such distinguished company with the exception of Representative Hoyer.

Representative HOYER. Your statement is understandable.

The CHAIRMAN. We thank you, Senator Biden.

Let us proceed with the testimony. As is the custom, the written statements will become automatically a part of the record. We also ask that each of you try to synthesize the written statements into 5 minutes, more or less, for the purposes of proceeding with an expeditious hearing.

Representative Kingston.

STATEMENT OF HON. JACK KINGSTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Representative KINGSTON. Thank you, Chairman Gekas and Mr. Nadler and Chairman Grassley and Senator Biden. It is a great honor to be here. In the approval of the House bill of 18 new bankruptcy judges, at the time that that was done, there were six others that were requested. And I wanted to speak about the six others. And I will make five points on it because one of them affects the district that I represent, the First District of Georgia.

Based on the most recent statistics, the incumbent judges of the Southern District of Georgia are handling a weighted caseload which ranks them as ninth busiest district in the country. Their caseload exceeds the threshold established for approval of new judgeships by a margin of 25 percent, and it exceeds the national median caseload by approximately 50 percent.

Even after approval of this additional judgeship, the three full-time judges in the Southern District of Georgia would still be car-

rying a caseload in excess of 1500 weighted hours, the threshold level which would justify establishment of yet another, a fourth judge. The last time judicial resources were increased in the district was in 1993, when an additional judgeship was created to be shared between the Middle and Southern Districts of Georgia. Even after this additional one-half judgeship in both districts, the caseload has continued to grow and has exceeded the 1500 threshold for several years.

The survey team dispatched by the Judicial Conference to review the district's requests for the additional judgeship concluded that caseloads are being managed in a highly efficient manner in the district, and that there was no case management changes or suggestions that might be made in order to assist the courts in dispatching its business in a more expeditious manner.

And the last point I want to make, Mr. Chairman, and members of the committee, is that the judges of the Southern District are very active, holding court in 6 divisional locations and cover a 43 county area encompassing a huge portion of the State of Georgia. Because of the shared nature of the current judgeship between the Southern and Middle Districts of Georgia, creation of another full-time judgeship in the Southern District will have the effect of converting the one-half judgeship in the Middle District of Georgia to a full-time position there.

That district is very similar in its geographic size, population, and caseload. The judges in the Middle District of Georgia, according to the latest statistics available, are the eighth busiest in the country and need this help as urgently as the Southern District does.

And, Mr. Chairman, I will submit the rest of this in writing. I also have a letter that is signed by 18 Members of the Congress on a bipartisan basis urging the committee to consider the six additional judgeships.

[The prepared statement of Representative Kingston follows:]

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

It is an honor to appear here today before your subcommittee, Chairman Gekas and Ranking Member Nadler. As one who has followed the bankruptcy judge issue closely for some time now, I am grateful that you chose to hold these hearings into a matter which I believe is very important to the judiciary not only in my home state of Georgia, but throughout the U.S.

As you are aware, the House has previously approved 18 new bankruptcy judgeships in various districts. At the time the House acted, an official request had been forwarded to the Congress from the Judicial Conference of the United States asking for approval of six additional judgeships, one of which would be located in my district. These six additional judgeships were not the subject of any hearings in the House at the time the House passed H.R. 833 and thus I welcome the opportunity to lay out a case for the approval of this additional judgeship in Georgia at this time.

(1) Based on the most recent statistics available to me, the incumbent judges of the Southern District of Georgia are handling a weighted caseload which ranks them as the ninth busiest district in the country. Their caseload exceeds the threshold established for approval of new judgeships by a margin of 25%. And it exceeds the national median caseload by approximately 50%.

(2) Even after approval of this additional judgeship, the three full-time judges in the Southern District of Georgia would still be carrying a caseload in excess of 1,500 weighted hours, the threshold level which would justify establishment of yet another, or a fourth judgeship, in the district.

(3) The last time judicial resources were increased in the district was in 1993 when additional judgeship was created to be shared between the Middle and Southern Districts of Georgia. Even after this additional one-half judgeship, in both districts, caseload has continued to grow and has exceeded the 1,500 threshold for several years.

(4) The survey team dispatched by the Judicial Conference to review the district's request for the additional judgeship concluded, without any equivocation, that caseloads are being managed in a highly efficient manner in the district, that there were no case management changes or suggestions that might be made in order to assist the court in dispatching its business more expeditiously and the recommendation for the additional full-time judgeship was approved by the Judicial Conference in March this year.

(5) The judges of the Southern District are very active, holding court in six divisional locations and cover a 43 county area encompassing a huge portion of the State of Georgia. Because of the shared nature of the current judgeship between the Southern and Middle Districts of Georgia, creation of another full-time judgeship in the Southern District of Georgia will have the effect of converting the one-half judgeship in the Middle District of Georgia to a full-time position there. That district is very similar in its geographic size, population, and caseload. The judges in the Middle District of Georgia, according to the latest statistics available to me, are the eighth busiest in the country and need this help as urgently as the Southern District does.

In conclusion, approval of this judgeship for the Southern District of Georgia will alleviate the shortage of judicial resources in two districts of the state, both of which are operating at levels far beyond the threshold for creation of the new judgeship and I urge the committee to favorably act on this request in an expedited a manner as possible.

Mr. Chairman, the facts seem clear to me, and my colleagues from other states can recite similar statistics as I have. It is time for this Congress to approve more bankruptcy judges in order to help alleviate what have become almost unbearable caseloads, which bog down the system and is a disservice to our citizens. I thank you for your leadership and for your assistance on this important question. And I once again commend your efforts in organizing these hearings today.

The CHAIRMAN. Without objection, that letter will be made a part of the record. We thank the gentleman.

The CHAIRMAN. We turn to Mike.

Representative KINGSTON. Thank you.

[The letter follows:]

Congress of the United States
Washington, DC 20515

Statement in Support of Judicial Conference Recommendation for Additional Bankruptcy Judgeships

Submitted to the Joint Hearing of the House Judiciary Subcommittee on Commercial and Administrative Law and the Senate Judiciary Subcommittee on Administrative Oversight and the Courts

November 2, 1999

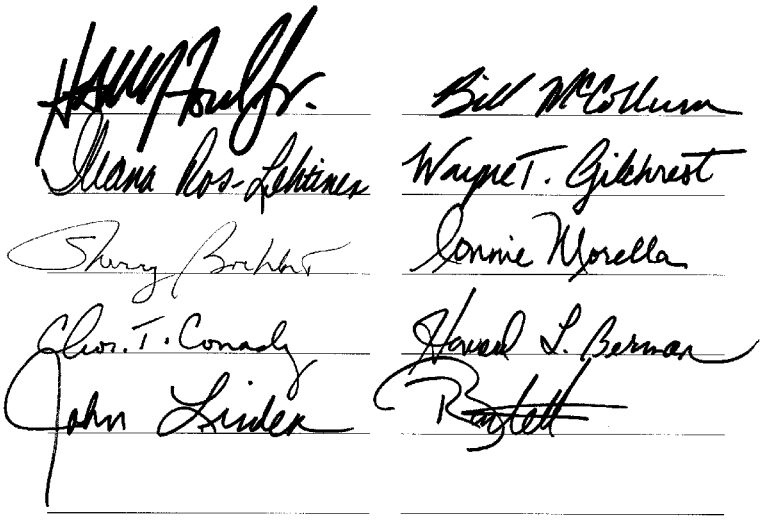
We thank Chairman Gekas and Chairman Grassley for conducting today's hearing on the Judicial Conference's recommendation for 24 additional bankruptcy judgeships and the conversion or extension of several temporary judgeships.

Despite an enormous increase in bankruptcy filings in recent years, Congress has not authorized any new bankruptcy judgeship positions since 1992. The Judicial Conference's recommendation would allocate additional resources to the districts where the case load levels are most burdensome. It will also ensure that certain districts won't lose resources when the next judicial vacancy occurs because of the expiration of the authorization for temporary judgeships in these districts.

Many of the positions have been recommended for several years, and we are grateful they are authorized in H.R. 833 and S. 625. However, the bankruptcy reform legislation does not incorporate six additional judgeships which are equally justified.

We respectfully encourage you to secure passage of these judgeships this year. If bankruptcy reform passes this year for the President's signature, we ask it incorporate the entire Judicial Conference recommendation. Alternatively, if the reform legislation does not pass, we respectfully request your consideration of a separate measure approving these judgeships.

We again commend Chairmen Gekas and Grassley for holding today's joint hearing, which will establish a legislative record to enable the full Congress to act on the judgeships this year.



STATEMENT OF HON. MICHAEL N. CASTLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF DELAWARE

Representative CASTLE. Thank you, Chairman Gekas, I appreciate your overly generous introduction. And Chairman, Senator Grassley, and my friends, Mr. Chabot and Mr. Nadler and Mr. Watt and Mr. Delahunt, and, particularly, Senator Biden, who I know has a bigger name tag. I hope he has a disproportionate weighted vote in any matters that comes before any Judiciary Committees in the House and Senate on this issue.

I do appreciate the opportunity very much to testify, and I realize how difficult it is to bring a joint committee together. So I appreciate the fact that both of the Senators were able to get over here. But we do need an additional bankruptcy judge in the State of Delaware.

Attached to my testimony, which you have before you, I believe, you will see a chart which I have here. And this is an eye strain from there, so I don't expect you to see it; and I will talk about it a little bit more, but it shows that Delaware is the jurisdiction with the greatest need for a bankruptcy judge.

And it summarizes the most recent data on the weighted filings for the judgeship for the 19 bankruptcy districts requesting judgeships. Now, something I learned about this is the weighted business means when you have bigger cases, you may be given extra, I guess, count in terms of the weighting in which they do. In that criteria, Delaware comes out the highest. Fourteen of these bankruptcy districts are scheduled to receive between one and four of the 18 judgeships authorized in the Bankruptcy Reform Bill passed by the House Judiciary now pending before the Senate.

The District of Delaware is not among these four districts, but it is one of seven districts seeking either a half or full-time judgeship for a total of six additional judgeships in our Nation's bankruptcy court system. I support the 14 bankruptcy districts scheduled to receive up to four of the 18 pending judgeships because their weighted filings per judgeship demonstrate the need for an expansion. As a matter of fact, I support the legislation that I believe both of you mentioned that would reduce some of the need for bankruptcy in general, too.

Among those 14 districts who are getting judges, the weighted filings per judgeship range from 1427 to 2733. The case is equally compelling for the seven districts seeking up to one of six additional judgeships. For these seven districts, which are represented by all of us here, the weighted filings per judgeship over a 12-month period range from 1722 in the Eastern District of North Carolina to 3108 in the District of Delaware. Far above the 1500 filing standards that Judicial Conference uses as a threshold for considering adding a judgeship and even farther above the 1337 filing average for the nation.

As a sole representative of Delaware, I would like to draw a special attention to the needs of the District of Delaware. With 3,108 weighted filings for judgeship, more than any other bankruptcy district, the numbers speak for themselves and really do not need my assistance nor, for that matter, Senator Biden's assistance.

What the numbers do not describe is the tremendous strain Delaware's two bankruptcy judges Judge Walsh and Judge Walwrath

are under. They are spending 8 hours a day on the bench and many more off the bench researching law preparing for their cases.

Most of you have been trial lawyers at one time or another. You know if you are in court for 8 hours, you are putting a lot of time in to get ready for the other work you have to do. Their staffs' morale and their own morale are at all time lows in a struggle to maintain the excellent reputations for services come to characterize the practice of law in Delaware.

Finally, I would like to explain to the joint committee while the District of Delaware was not included among the 14 districts receiving judges in the House-passed bill—when the House passed H.R. 833, it included bankruptcy judgeships based on the 1997 recommendations from the Judicial Conference. The Judicial Conference did not recommend a new permanent bankruptcy judgeship for the District of Delaware because they believed the upward filing trends in Delaware could change drastically due to anticipated changes in interest rates and national economy and tax laws.

Furthermore, the District of Delaware ordered an order dated January 23, 1997 which revoked the automatic reference of Chapter 11 cases to the bankruptcy judge, the chief district judge indicated that he and two other district judges would share, and this is unique by the way, the Chapter 11 caseload to assist the bankruptcy judges.

However the 1998–99 judgeship survey revealed that the filing trends have increased not decreased. In fact, today the District of Delaware is the busiest district in the country. That is why I respectfully request that the Senate Judiciary Committee approve S. 625 with the six additional judgeships and that the House Judiciary Committee agree to the change on the matter that reaches conference.

And again, I appreciate very much the opportunity of speaking here today.

The CHAIRMAN. We thank the gentleman.

[The prepared statement of Representative Castle follows:]

PREPARED STATEMENT OF HON. MICHAEL N. CASTLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF DELAWARE

Chairman Gekas, Chairman Grassley, and distinguished Members of the House and Senate Judiciary Committees, I appreciate this opportunity to testify before the Joint Committee on the overwhelming need for an additional bankruptcy judge in the District of Delaware.

Attached to this testimony you will see a chart summarizing the most recent data on the weighted filings per judgeship for the nineteen Bankruptcy Districts requesting judgeships. Fourteen of these Bankruptcy Districts are scheduled to receive between one and four of the eighteen judgeships authorized in the Bankruptcy Reform bill passed by the House this year and pending before the Senate. The District of Delaware is not among these fourteen districts, but it is one of seven districts seeking either a half or full time judgeship for a total of six additional judgeships in our nation's bankruptcy court system.

I support the fourteen bankruptcy districts scheduled to receive up to four of the eighteen pending judgeship because their weighted filings per judgeship demonstrate the need for an expansion. Among those fourteen districts, the weighted filings per judgeship range from 1,427 to 2,733. The case is equally compelling for the seven districts seeking up to one of six additional judgeships. For these seven districts, the weighted filings per judgeship over a twelve month period range from 1,722 in the Eastern District of North Carolina to 3,108 in the District of Delaware—far above the 1,500 filings standard the Judicial Conference uses as a threshold for considering adding a judgeship and even farther above the 1,337 filing average for the nation.

As the sole Representative of Delaware, I would like to draw special attention to the needs of the District of Delaware. With 3,108 weighted filings per judgeship, more than any other Bankruptcy District, the numbers speak for themselves and do not need my assistance. What the numbers do not describe is the tremendous strain Delaware's two Bankruptcy Judges, Judge Walsh and Judge Walrath, are under. They are spending eight hours a day on the bench and many more off the bench researching the law and preparing for their cases. Their staff's moral and their own moral are at all time lows as they struggle to maintain the excellent reputation for service that has come to characterize the practice of law in Delaware.

Finally, I would like to explain to the Joint Committee why the District of Delaware was not included among the fourteen districts receiving judges in the House-passed bill. When the House passed H.R. 833, it included bankruptcy judgeships based on the *1997* recommendations from the Judicial Conference. The Judicial Conference did not recommend a new permanent bankruptcy judgeship for the District of Delaware because they believed the upward filing trends in Delaware could change drastically due to anticipated changes in interest rates, the national economy, and tax laws. Furthermore, the District Court of Delaware entered an order dated January 23, 1997, which revoked the automatic reference of chapter 11 cases to the bankruptcy court. The chief district judge indicated that he and two other district judges would share the chapter 11 caseload to assist the bankruptcy judges. However, the *1998–1999* judgeship survey revealed that the filing trends had increased not decreased. In fact, today, the District of Delaware is the busiest district in the country.

That is why I respectfully request that the Senate Judiciary Committee approve S. 625 with the six additional judgeships and that the House Judiciary Committee agree to the change when the matter reaches conference.

Districts with Pending or New Judgeship Requests

Weighted Filings per Judgeship at Alternative Authorized Strengths
Data for 12-Months Ending 6/30/99

District	Current Authorized Judgeships	Pending Requested Judgeships	Additional Requested Judgeships	Wtd Filings per Judgeship
District of Puerto Rico	3	-	1	1,788
Northern District of New York	2	1	-	1,967
Eastern District of New York	6	1	-	1,427
Southern District of New York	9	1	-	1,510
District of Delaware	2	-	1	3,108
District of New Jersey	8	1	-	1,942
Eastern District of Pennsylvania	5	1	-	1,570
Middle District of Pennsylvania	2	1	-	1,681
District of Maryland	4	2	1	2,733
Eastern District of North Carolina	2	-	1	1,722
Eastern District of Virginia	5	1	-	1,695
Southern District of Mississippi	2	1	-	2,000
Eastern District of Michigan	4	1	-	1,964
Western District of Tennessee	4	1	-	2,380
Eastern District of California	6	1	-	1,641
Central District of California	21	4	-	1,617
Southern District of Florida	5	1	1	1,859
Middle District of Georgia	2.5	-	0.5	1,907
Southern District of Georgia	2.5	-	0.5	1,880

Addendum: Districts with existing temporary judgeships

	Current Authorized Judgeships	Action Requested	Wtd Filings per Judgeship
District of Puerto Rico	3	Convert	1,788
Northern District of Alabama	6	Convert	1,200
District of South Carolina	3	Extend	1,320
Western District of Texas	5	Extend	1,250
Eastern District of Tennessee	4	Extend	1,174
Southern District of Illinois	2	Extend	1,244
District of Delaware	2	Extend	3,108
District of New Hampshire	2	No Action Requested	628
Middle District of North Carolina	3	No Action Requested	956
District of Colorado	6	No Action Requested	762

The CHAIRMAN. We turn to Steny.

STATEMENT OF HON. STENY H. HOYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Representative HOYER. Mr. Chairman, Senator Grassley, and Mr. Nadler, Senator Biden, thank you very much for allowing me to appear.

I suppose that I am number two behind Delaware. Maryland is the—at 2733, I think, the second busiest jurisdiction in the country. Last year, despite a booming economy and low unemployment, more than 1.43 million people filed for bankruptcy, as I think all of you know. I supported H.R. 833, only because it takes a major step forward in making people more responsible for their debt, because section 128 authorizes the creation of new judgeships for judicial districts in desperate need. I think desperate is the operative word there, in need of additional judges to meet the onslaught of increased filings.

Although I am grateful, of course, that my home State of Maryland will be receiving, under the legislation pending, two additional bankruptcyships for a total of six, Maryland's bankruptcy judges have the highest, it says the highest, but it is the second highest workload and are among the hardest working in the Nation.

Even with the two additional judges added, Maryland will be substantially above the weighted average necessary to qualify for an additional judge. And if we got a third judge, it would still be above the 1500 weighted criteria. From July 1, 1997 to June 30, 1998, the District of Maryland had a total of 34,463 case filings or 8,616 per judge. That is almost 200 percent—that is almost 200 percent above the national average and ranked Maryland first out of the Nation's 90 judicial districts in total volume.

The 1999 recommendation made by the Judicial Conference of the United States called for a total of 24 additional bankruptcy judges, including three for the District of Maryland. Both the House and the Senate bills contain only 18 judgeships, six short of the Judicial Conference's recommendations.

Mr. Chairman, very frankly, while I speak for Maryland and ask for an additional judgeship, based upon my review of the figures, I think all six are critically needed. Clearly, Delaware needs it, my friend from Georgia—Tennessee, excuse me, and my friend from Georgia, Mr. Kingston, have spoken and I'm sure Mr. Coble will as well. With six bankruptcy judges, Maryland will still be far above the national average in regard to weighted filings per judgeship as I said. The seventh judgeship would significantly decrease that number and bring the caseload levels closer to, but not below or at the national average.

While I focused on Maryland, as I said, the judicial districts of Delaware, southern Florida, southern Georgia, eastern North Carolina and Puerto Rico would also be seriously impacted without the additional judgeships.

While I am hopeful that the Senate leadership can reach an agreement this week and move forward with the bankruptcy reform bill, I cannot stress how important it is that we pass legislation this year authorizing the creation of all 24 positions with or without the underlying reform bill.

Mr. Chairman, again, I know you are very knowledgeable in these areas and share our concern, collective concern, that we handle the filings with efficiency and effectiveness. And I appreciate very much this opportunity to appear before you.

The CHAIRMAN. I thank the gentleman.

[The prepared statement of Representative Hoyer follows:]

PREPARED STATEMENT OF HON. STENY H. HOYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman, thank you for the opportunity to testify on the importance of authorizing additional bankruptcy judgeship positions to meet the ever increasing number of Americans filing for debt relief.

Personal bankruptcy in this country has become a national epidemic—with a 400% increase since 1980. Last year, despite a booming economy and low unemployment, more than 1.43 million people filed for bankruptcy.

I support H.R. 833 not only because it takes a major step forward in making people more responsible for their debt, but because section 128 authorizes the creation of new judgeships for judicial districts in desperate need of additional judges to meet the onslaught of increased filings.

Although I am grateful that my home state of Maryland will be receiving two additional bankruptcy judgeships for a total of six, Maryland's bankruptcy judges have the highest workload and are among the hardest working in the Nation. From July 1, 1997 to June 30, 1998, the District of Maryland had a total of 34,463 case filings or 8,616 per judge. That is almost 200% above the national average and ranked Maryland first out of the Nation's ninety judicial districts.

The 1999 recommendation made by the Judicial Conference of the United States called for a total of twenty-four additional bankruptcy judgeships including three for the District of Maryland. Both the House and the Senate bills contain only eighteen judgeships, six short of the judicial conference's recommendation. With six bankruptcy judges, Maryland will still be far above the national average in regards to weighted filings per judgeship. a seventh judgeship would significantly decrease that number and bring the caseload levels closer to the national average.

While I have focused on Maryland, the judicial districts of Delaware, southern Florida, southern Georgia, eastern North Carolina, and Puerto Rico would also be seriously impacted without the additional six judgeships.

While I am hopeful that the Senate leadership can reach an agreement this week and move forward with the bankruptcy reform bill, I cannot stress how important it is that we pass legislation this year authorizing the creation of all 24 positions with or without the underlying reform bill.

The CHAIRMAN. We turn to our colleague, Ed Bryant.

STATEMENT OF HON. ED BRYANT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Representative BRYANT. Thank you, Mr. Chairman. I thank all of you for being here today for this joint session. I also appreciate very much the opportunity to be here with my colleagues from the House to testify to you today about this very important matter. I won't take the entire 5 minutes, but I think it is important for me to reiterate Tennessee's strong need for an additional bankruptcy judge.

As a former member of this Judiciary Committee, I am well aware of the House Judiciary support for fulfilling bankruptcy judges. I am equally aware that Congress hasn't authorized the additional judgeships since 1992. As you know, both H.R. 833 and S. 625 provide an additional bankruptcy judge for the Western District of Tennessee, along with the provision extending the temporary judgeship in the Eastern District of Tennessee.

This position has been endorsed by the Judicial Conference. In the Western District of Tennessee, the caseload burden on the four bankruptcy judges is among the highest in the nation. I think Mr.

Castle's chart shows we are number 3 behind Delaware and Maryland. We have asked our judges in western Tennessee and across this Nation, for that matter, to work too hard for too long. Even if Congress provides the requested judgeships for this district and the other districts requested, the average caseload is still probably too high.

I know in the Western District, it will be still among the highest in the Nation, even with the additional judge. And, in fact, the most current case weight numbers based on the filings through June of this year are at 2,380 cases per judge in the Western District. If an additional judgeship is provided, that will go down to 1904 per judge. I would also point out that 1,500 is the level at which the Judicial Conference uses to show evidence of a potential need for additional judgeships.

As a strong proponent of bankruptcy reform, I hope we will be able to send a meaningful reform bill to the President before the end of this first session. But should this not be possible, I join my colleagues in asking you to split the judgeships as a separate piece of legislation so that we can authorize these positions this year.

Again, I thank you for holding this hearing. I appreciate the opportunity to highlight Tennessee's situation and would again encourage you to consider moving separate legislation this year authorizing these additional judgeships. And I yield back my time.

The CHAIRMAN. We thank you.

[The prepared statement of Representative Bryant follows:]

PREPARED STATEMENT OF HON. ED BRYANT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Thank you Chairman Gekas, and Chairman Grassley I appreciate the opportunity to join with Representatives Kingston and Castle in appearing before you today. I can assure you that I will not use the entire 5 minutes, but I did think it important to reiterate Tennessee's strong need for an additional bankruptcy judgeship.

As a former member of the Judiciary Committee, I am well aware of the House Judiciary Committee's support for filling bankruptcy judgeships. I'm equally aware that Congress hasn't authorized any additional judgeships since 1992. As you know, both H.R. 833, and S. 625 provided for an additional bankruptcy judgeship for the Western District of Tennessee along with a provision extending the temporary judgeship in the Eastern District. This position has been endorsed by the Judicial Conference.

In the Western District, the case load burden on the four bankruptcy judges is among the highest in the nation. We've asked these judges to work too hard, for too long. Even if Congress provides the requested judgeship for this district, the average case load for these judges would still be among the highest in the nation. In fact, the most current case weight numbers, based on filings through June of this year, is at 2,380 cases per judge in the Western District. If an additional judgeship is provided, that would go down to 1,904 per judge. I would also point out that 1,500 is the level at which the Judicial Conference uses to show evidence of potential need for an additional judgeship.

As a strong proponent of bankruptcy reform, I hope we will be able to send a meaningful reform bill to the President before the end of the first session. But should that not be possible, I join my colleagues in asking you to split of the judgeships as separate legislation so that we can authorize these positions this year.

Again, thank you for holding this hearing. I appreciate the opportunity to highlight Tennessee's situation and would again encourage you to consider moving separate legislation this year authorizing these additional judgeships.

And I thank the chair.

The CHAIRMAN. And we thank Mike and our other colleagues. And we dismiss them with our gratitude.

We will now impanel the second set of witnesses which is a solo appearance. And we will ask Senator Grassley to make the formal introduction.

Senator GRASSLEY. As I said in my opening statement, I have known our next witness very well for a long period of time and feel that he does a very outstanding job as judge. He appears today on behalf of the Judicial Conference of the United States where he serves as Chair of the Committee on Administration of the Bankruptcy System.

Judge Melloy began his judicial career in 1986 as a bankruptcy judge for the Northern District of Iowa. He was thereafter appointed chief judge of the United States District Court in 1992. Before coming to the bench, Judge Melloy was in private practice for more than 10 years. He attended Loras College in Dubuque, Iowa, graduated magna cum laude in 1970. He then served 2 years in the United States Army. Following the completion of his military service, Judge Melloy attended the University of Iowa College of Law where he graduated in 1974 with high distinction.

Judge Melloy.

STATEMENT OF MICHAEL J. MELLOY, U.S. DISTRICT CHIEF JUDGE, NORTHERN DISTRICT OF IOWA AND CHAIR, COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM, JUDICIAL CONFERENCE OF THE UNITED STATES

Mr. MELLOY. Thank you, Chairman Grassley, Chairman Gekas. I want to thank you for allowing me to appear in support of the conference recommendation for 24 additional bankruptcy judgeships. In addition to my comments today, I have prepared a written statement which has been provided to you.

I would first like to thank both the committees for your past support for the 18 judgeships that were requested by the Judicial Conference last year. As you know, those 18 judgeships were included in both the House and Senate versions of the bankruptcy reform legislation that passed in last year's sessions of Congress.

We come before you today requesting an additional six judgeships. We believe all 24 positions, the 18 approved last year and the six new positions, are critically needed.

The need for additional bankruptcy judgeships is more critical than ever. Since Congress last approved an increase in judgeships in 1992, filings have increased by 43 percent. Many of the affected districts have been recommended for additional judgeships since 1993. Those districts have used a number of case management techniques to try to manage the heavy caseload. These do include the use of visiting and recall judges.

Bankruptcy judges across the country have and continue to provide many hours and days of service as visiting judges in districts with heavy caseloads. However, visiting and recall judges can only provide temporary relief in overburdened districts. They do not provide a long-term solution. Their availability is often unpredictable. There is a lack of consistency in handling cases, particularly larger Chapter 11 cases, when the judge is only in the district for a few days. There is significant support and judicial time involvement in preparing for a visit—sitting by a visiting judge.

The bankruptcy committee biannually conducts a national survey. In assessing the needs for additional judgeships, the committee uses a number of criteria. These include factors such as a minimum workload of over 1500 hours, judicial management, and historic trends. The written materials which have been provided to you contain a detailed analysis of each proposed judgeship and show how the criteria was applied to each position.

The Judicial Conference has given careful consideration to each request and only recommends those that are most desperately needed at this time. We have also recommended that 11 of the positions be made temporary. The 13 positions we are recommending as permanent are those in districts with particularly high caseloads and a long history of high filings. These are districts which would have a very busy caseload and heavy filing statistics even if they did experience a dip in filings.

We have seen an unprecedented increase in bankruptcy filings over the past several years. As you know, nearly 1.5 million bankruptcy cases were filed last year. Although the numbers are down slightly this year, we expect filings to stay high and easily exceed 1 million for the foreseeable future.

We anticipate the proposed bankruptcy legislation will also have a significant impact on judicial workload in these and all the other districts. We believe that the additional judgeships are desperately needed and are needed now.

I would just like to close by urging you to act expeditiously on this request. All the districts we recommend for additional judgeships have been overburdened for many years and are in need of prompt relief.

Thank you very much. And I would be happy to answer any questions you might have.

[The prepared statement of Mr. Melloy follows:]

PREPARED STATEMENT OF MICHAEL J. MELLOY, U.S. DISTRICT CHIEF JUDGE, NORTHERN DISTRICT OF IOWA AND CHAIR, COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM, JUDICIAL CONFERENCE OF THE UNITED STATES

My name is Michael Melloy, and I am the Chief Judge of the United States District Court for the Northern District of Iowa. I am also Chairman of the Judicial Conference Committee on the Administration of the Bankruptcy System (the Bankruptcy Committee), and in that capacity I appear before you today.

Thank you for the opportunity to appear today in support of the Judicial Conference's 1999 recommendation for the authorization of 24 additional bankruptcy judgeships, in lieu of its previous request in 1997 for 18 additional positions. Pending legislation provides for 18 temporary bankruptcy judgeships only.

The need for 24 additional judgeships is more critical than ever to ensure that the bankruptcy courts have sufficient judicial resources to effectively and efficiently adjudicate the rights and responsibilities of parties in bankruptcy cases and proceedings. Additional bankruptcy judgeships have not been authorized by Congress since 1992 when 35 new judgeships were approved. Since that time, case filings have increased nationally by 43 percent. In response to this increase, the Judicial Conference—as part of its process of reviewing bankruptcy judgeship needs every two years—made recommendations to Congress for additional bankruptcy judgeships in 1993, 1995, 1997, and (most recently) this year.

While the focus of my testimony today is on the need for the six additional judgeships in addition to the 18, the need for the 18 previously requested additional judgeships is as great as ever. The judiciary is concerned that pending legislation in the House and Senate provides that all 18 positions be temporary. The Conference believes that the addition of 13 permanent and 11 temporary bankruptcy judgeships and the conversion of three existing temporary judgeships to permanent

judgeships are justified by the extremely heavy case-weighted filings per judgeship in the districts involved.

Today I ask for your assistance in completing the process of securing authorization for the 24 additional bankruptcy judgeships needed by the bankruptcy system. For your convenience, I have provided a chart as Attachment A listing, on a district-by-district basis, the 24 bankruptcy judgeships recommended by the Judicial Conference.

JUSTIFICATION FOR THE SIX ADDITIONAL BANKRUPTCY JUDGESHIPS

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

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

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

As a result of the most recent judgeship survey conducted in the fall of 1998, the Bankruptcy Committee received requests for seven additional bankruptcy judgeships in addition to the 18 judgeships previously requested. At its January 1999 meeting, the Committee evaluated the requests based on the criteria provided in the 1991 Conference policy statement and recommended that the Conference ask Congress to authorize the following six additional judgeships (in addition to the 18 already requested):

- *for the District of Puerto Rico:* add one temporary judgeship and convert the existing temporary judgeship to a permanent position;
- *for the District of Delaware:* add one permanent judgeship and convert the existing temporary judgeship to a permanent position;
- *for the District of Maryland:* add one permanent judgeship (in addition to the two judgeships approved by the Conference in 1997);
- *for the Eastern District of North Carolina:* add one temporary judgeship;
- *for the Middle District of Georgia:* convert the judgeship shared with the Southern District of Georgia to a full-time judgeship in the Middle District of Georgia;
- *for the Southern District of Georgia:* following conversion of the shared judgeship with the Middle District of Georgia to a full-time position in the Middle District of Georgia, add one permanent judgeship in the Southern District of Georgia; and
- *for the Southern District of Florida:* add one temporary judgeship (in addition to the additional position approved by the Conference in 1997);

At its March 1999 session, the Judicial Conference approved the Bankruptcy Committee's recommendation for 24 additional bankruptcy judgeships, which includes the 18 previously approved and the six I just mentioned.

In September 1997, the Judicial Conference set forth its position regarding the ten temporary bankruptcy judgeships authorized by the Bankruptcy Judgeship Act of 1992. Other than the temporary bankruptcy judgeship for the district of Delaware, which, in March 1999, the Judicial Conference recommended converting to a permanent bankruptcy judgeship, the Judicial Conference's position is unchanged. The Conference recommends that the temporary bankruptcy judgeships in the district of Puerto Rico and the northern district of Alabama be converted to permanent judgeships. Further, the Conference recommends that the temporary bankruptcy

judgeships in the district of South Carolina and the eastern district of Tennessee each be extended for an additional five year period.

The need for these additional judgeships is critical. In making its recommendations to the Judicial Conference, the Bankruptcy Committee noted that, in addition to other justifying factors, the weighted filings per judge in each of the districts requesting additional bankruptcy judgeship positions were above the 1,500 annual weighted case-related filings per judgeship set forth in the 1991 policy statement approved by the Conference.

The Committee also noted that each of the requesting districts had experienced a sustained period of heavy per judgeship weighted case filings, straining the abilities of its judges to effectively administer its caseload. The Judicial Conference is economically conservative in that it only recommends an additional bankruptcy judgeship for a district after the per judge weighted case filings in the district show a pattern of elevated judicial workload. This pattern of a sustained heavy judicial workload over a period of time has been clearly demonstrated with regard to the six additional requested judgeships:

- *In the District of Puerto Rico*, per judgeship weighted case filings since 1995 have increased sixty percent, reaching 1,843 in 1998 and 1,788 in 1999;
- *In the District of Delaware*, weighted case filings per judgeship exceeded 3,000 for the past two years, more than twice the level set by the Judicial Conference as the point at which an additional judgeship will be considered;
- *In the District of Maryland*, the weighted case filings per judgeship have been above the 1,500 level every year since 1992, hitting record levels of 2,410, 3,020, and 2,733 in the past three years;
- *In the Eastern District of North Carolina*, the weighted case filings per judgeship have been above the 1,500 level for three consecutive years, and are presently at 1,722;
- *In the Southern District of Florida*, weighted case filings per judgeship have been above the 1,500 level for the past 8 years, and are presently at 1,859;
- Finally, *in the Southern District of Georgia*, weighted case filings per judgeship have been in excess of 1,500 for four consecutive years, and are presently at 1,880.

Similar patterns exist in the districts for which the Conference previously requested 18 additional positions.

The districts I have just mentioned could have requested the six additional judgeship positions at the time of the last survey in 1996. In the interests of judicial economy, however, most did not, relying instead upon judicial management techniques to administer their heavy caseloads. The burden for those districts has now reached a critical point at which judicial management techniques are no longer effective and additional judgeships are necessary.

CONCLUSION

We share a common interest in ensuring that the bankruptcy court system has the judicial resources it needs to manage near-record caseloads justly, speedily, and economically. An unprecedented number of cases are pending in our bankruptcy courts. Many of the 19 districts for which additional bankruptcy judgeships are sought have had overwhelming filings dating back years, in some cases to 1993, shortly after Congress last authorized additional positions. Although the judiciary has developed creative and innovative techniques to fully utilize its existing judicial resources and manage increasing caseloads—including the use of temporary bankruptcy judges, recalled bankruptcy judges, inter- and intracircuit assignments, and advanced case management techniques—the bankruptcy courts can no longer operate as effectively as the American public deserves because of the heavy weighted per judge caseloads. Our judicial resources are strained, and the cost to society of an overburdened bankruptcy system is enormous.

I therefore urge you to provide for 24 additional bankruptcy judgeships, with the status of each designated as permanent or temporary as requested most recently by the Judicial Conference. Doing so will allow the bankruptcy system to move forward with sufficient judicial resources to meet the challenges it will face in the new millenium.

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

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

ATTACHMENT A
RECOMMENDED ADDITIONAL BANKRUPTCY JUDGESHIPS

District	Recommendation
Puerto Rico	1 temporary and convert the existing temporary position to permanent*
New York (N)	1 temporary
New York (E)	1 temporary
New York (S)	1 temporary
Delaware	1 permanent and convert the existing temporary position to permanent
New Jersey	1 permanent
Pennsylvania (E)	1 temporary
Pennsylvania (M)	1 temporary
Maryland	3 permanent
North Carolina (E)	1 temporary
Virginia (E)	1 permanent
Mississippi (S)	1 temporary**
Michigan (E)	1 permanent
Tennessee (W)	1 permanent
California (E)	1 temporary
California (C)	3 permanent, 1 temporary
Georgia (M)	Convert the judgeship shared with Georgia (S) to a full-time position for Georgia (M)
Georgia (S)	1 permanent, and convert the judgeship shared with Georgia (M) to a full-time position for Georgia (M)
Florida (S)	1 permanent, 1 temporary
TOTALS:	24 and convert the existing temporary judgeships in Puerto Rico, Alabama (N) and Delaware to permanent

* At its September 1997 meeting, the Judicial Conference approved transmission of proposed legislation to make permanent the existing temporary judgeship in Puerto Rico. JCUS–SEP 97, pp. 53–54.

** This position would help in Mississippi (N).

ATTACHMENT B
ASSESSING THE NEED FOR BANKRUPTCY JUDGESHIPS

In the late 1980's, encouraged by urging from Congress, the Bankruptcy Committee requested that the Federal Judicial Center conduct a detailed, quantitative study of the bankruptcy judges' workloads and recommend a comprehensive case measurement system. Based on time records of the activities of 97% of all bankruptcy judges recorded over a 10-week time frame, staggered throughout a one-year period, the Federal Judicial Center designed a work measurement system consisting of a case weight for each of the 17 specific case types within the jurisdiction of the bankruptcy courts.

These case weights categorized bankruptcy cases filed under chapters 7, 11, 12, and 13 of the Bankruptcy Code; and adversary proceedings, *i.e.*, a lawsuit within a case usually initiated by filing a complaint. The cases or proceedings are generally grouped by type and by the amount of assets or scheduled debts. For example, chapter 13 cases are categorized into subgroups according to the amount of liabilities—one subgroup applies to cases in which the scheduled liabilities are less than $50,000 and another to those with scheduled liabilities of $50,000 or more. While the chapter 13 case weights are based on scheduled liabilities, case weights for chapter 11 cases and both the business and non-business chapter 7 cases are based on assets.

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

ascertain the minimum number of bankruptcy judges needed in each district and throughout the country to administer the bankruptcy cases presently pending.

At its January 1991 session, the Judicial Conference carefully reviewed the Federal Judicial Center's Time Study and adopted the proposed case weighting system. The Judicial Conference acknowledged the Center's determination that 1,280 hours was the "average" amount of time spent by bankruptcy judges on "case related" matters, noting that this figure *excludes* the nearly 700 hours per year that the average judge spends handling general office-chambers matters, addressing personal issues, traveling to divisional locations, attending meetings and seminars, conducting general research, etc. The Judicial Conference determined, however, that a district should have an even higher weighted judicial caseload than recommended by the Center, a minimum of 1500 annual "case related" hours per bankruptcy judge, before that district's request for an additional bankruptcy judge should be considered.

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

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

(1) the nature and mix of the court's caseload;

(2) historical caseload data and filing trends;

(3) geographic, economic, and demographic factors;

(4) the effectiveness of the court's case management efforts;

(5) the availability of alternative resources for handling the court's caseload; and

(6) any other relevant factors.

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

The Judicial Conference denies many initial requests received from the judicial councils. Some of these denials are based on information obtained during on-site surveys. An "on-site survey" generally consists of a review at the requesting district by a survey team composed of a judge from the Bankruptcy Committee and one or more members of the Bankruptcy Judges Division from the Administrative Office of the U.S. Courts. The survey team reviews the court's policies and practices, focusing particularly on the court's calendaring procedures and docket sheets. Interviews are held with key court personnel, members of the local bar, the U.S. Trustee's office, panel trustees, and judges of the bankruptcy, district, and circuit courts. Before completing the on-site survey, the judge member of the survey team often meets with the judges of the bankruptcy court and furnishes a candid evaluation of that court's practices. Suggestions for improvements and ways to achieve greater efficiencies and productivity are discussed. This form of "peer review" has proven to be extremely helpful both to the courts and the Bankruptcy Committee in determining whether additional judges or better case management is the solution to the court's heavy workload.

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

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

DICIAL MANAGEMENT TOOLS

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

- *Temporary positions:* The Judicial Conference recommends temporary judgeship positions in those instances where the need for an additional bankruptcy judgeship is demonstrated through the on-site survey process, but it is not clear that the need will exist permanently in the district. Ten of the 35 judgeship positions created by Congress in 1992 were temporary positions (where the first vacancy resulting from the death, resignation, or removal of a sitting judge occurring after 1997 cannot be filled). Of the 18 judgeship positions requested by the Judicial Conference on April 7, 1997, 11 were recommended as temporary rather than permanent positions. Moreover, three of the additional six judgeships requested by the Judicial Conference on March 24, 1999, are temporary rather than permanent positions.
- *Recall:* The judiciary also meets its judicial resource needs through the recall by any circuit of retired bankruptcy judges to serve in a district on either a full-time or part-time basis. Currently, approximately 27 recalled bankruptcy judges are serving nationwide. The number of bankruptcy judges available for recall increases almost every year.
- *Shared Positions:* The judiciary turns to shared bankruptcy judgeship positions when possible to meet the resource needs of more than one district, thus avoiding the cost of an additional judgeship.
- *Cross Designation:* The judiciary also has the authority to designate a bankruptcy judge to serve in more than one district pursuant to 28 U.S.C. § 152(d) which permits designation of a bankruptcy judge to serve in any district adjacent to or near the district for which the judge was appointed.
- *Intercircuit and Intracircuit Assignments:* The judiciary uses intercircuit and intracircuit assignment of bankruptcy judges to furnish short-term solutions to the disparate judicial resource needs of districts within circuits and between circuits.
- *Additional Law Clerks:* The judiciary has developed several programs through which the bankruptcy judges in the busiest districts may be able to receive additional law clerk help through emergency funds provided by the circuit councils, funds for supplemental law clerks provided by the Judicial Conference, and by allowing a bankruptcy judge to hire an additional law clerk in lieu of a secretary.
- *Judicial Education:* Recognizing that the number of bankruptcy judgeships authorized has not kept pace with the dramatic increase in case filings, the judiciary relies on continuing judicial education to help the incumbent judges do more with less. Ongoing improvements in case management—through publications such as *Case Manual for United States Bankruptcy Judges* and specialized management seminars—including those covering mega-cases and ADR processes—allow the bankruptcy judges to handle more cases than before. To enhance the management process further, the Administrative Office provides each court with an annual "case processing measures report" that reflects how that court is managing its caseload. Moreover, the caseloads are constantly analyzed and monitored through the case weight tables developed by the Federal Judicial Center.
- *Other Ongoing Initiatives:* The Ninth Circuit has a pilot project designed to balance disparate bankruptcy caseloads more evenly within that circuit by transferring pretrial work in adversary proceedings to districts with lighter caseloads.
- *Technology:* The judiciary continues to explore other innovative and novel ways to alleviate overly burdensome caseloads through technical advancements, where judges can help other districts through "virtual courtrooms," video-conferencing, and the use of educational programs broadcast over the FJTN, a closed circuit television network for the judiciary.

The CHAIRMAN. Judge Melloy, I just have one question to try to straighten out my thinking. The chart that was referred to by Representative Castle, have you seen that, is that a submission by the Judicial Conference at one point which was reflected in his statement, or is it one on which—for which you can vouch in one way or another?

Mr. MELLOY. Well, without going over the numbers, but it looks like a chart that was submitted. And those numbers are in the materials, if not in that exact form, in a chart form very similar to that.

The CHAIRMAN. Would you do me one favor, review it when you can, I don't mean now or next week, but by next week.

Mr. MELLOY. Yes.

The CHAIRMAN. And let me know whether the Judicial Conference has updated those figures at all or whether they stand as they are indicated there?

Mr. MELLOY. If my eyesight is correct, it says the 12-month period ending June 30, 1999, those are the most current numbers we have.

The CHAIRMAN. They are?

Mr. MELLOY. Yes.

The CHAIRMAN. All right. All right. Then we will allow that to stand as it is. I have no further questions.

Does Senator Grassley have any questions?

Senator GRASSLEY. Yes, I do. Judge Melloy, in my opening statement, I mentioned that I had been seeking information gathered by the courts during their process for assessing the need for new judgeships.

First, as a very general matter, don't you believe that Congress is entitled to this type of information in order to determine whether new judgeships requested by the courts are really necessary?

Mr. MELLOY. Well, I believe that the Congress is entitled to the report that we ultimately generate that results in the recommendation for new judgeship. But—I understand the tenor of your question, Senator, to be whether or not you are entitled to the underlying source material and the notes and that type of thing.

And I guess in direct response to that concern, my position would be that the interviews of other judges about their fellow judges on their court are undertaken in strict confidence, the judges are asked some very frank—members, the members of the Bar are asked some very frank opinions about how the judges perform; and, quite frankly, I think the entire process would be compromised if we could not give some assurance of confidentiality.

In addition, a lot of the interviews are not reduced to any kind of report form, they may even be the most sketchy of notes, sometimes maybe no notes at all because they are just sort of generalized interviews of how do you think this judge is performing, what do you think he or she might do differently?

And I think without those assurances of confidentiality, we wouldn't be able to get the type of frank and meaningful information that is very useful to us in making these recommendations.

Senator GRASSLEY. Well, we could make sure that that confidentiality is maintained.

What about synopses of the interviews?

Mr. MELLOY. Well, first of all, I am not even sure there are synopses of the interviews because generally what happens is when the person goes out and does the site survey, they talk to different people. And then they prepare a report, and that is really the only written documentation that results from the interview.

But again, I think for the same reasons as previously stated, even if we had synopses, if we can't guarantee confidentiality, I think we would have a great difficulty in getting frank opinions.

I just don't see practitioners who are being asked to critically critique a judge being honest with us if they know that it is going to be made available outside the committee that is looking at the information.

Senator GRASSLEY. You see—I think you look at our interests as something that is very personal toward somebody doing their job or not. We are talking about general administration, efficiencies that are being taken or can be taken. I think that it would be important for the seeking of information and some determination that personal information be kept in confidence so that it is not going to come out. But on the other hand if you gather all of this information, you come to Congress asking us to appoint judges that cost at least, article III, judges a million dollars a piece, it is laying out quite a bit of money just based on faith.

And it seems to me that that is something, you know, the citizens of Iowa that we would have a difficult time in justifying to them that you just appropriate money on faith.

Let me go on to another question. A witness on the next panel has suggested in his written testimony that the bankruptcy reform bills pending in Congress would reduce the need for new judges if they were enacted.

Do you agree with this statement?

Mr. MELLOY. Certainly not in the short run, Senator. I think for several years. First of all, in the very short term, we would probably see a huge spike in filings before the new legislation became effective. But even over the longer term, historically what happens when you bring into play new legislation is that there is a tremendous amount of litigation as that new legislation is tested.

The current bankruptcy bill is a very mature law. As you know, back when I started in 1986 in Iowa, we had a huge number of farm bankruptcies; and I think what has happened over the years is that as those lenders and debtors become more accustomed to what is going to happen in bankruptcy, we saw all kind of out-of-court workouts. We see cases that never come to bankruptcy court because everybody knows what is going to happen, and they can do it outside of the arena of the bankruptcy system, and they do out-of-court workouts.

And I think any time we have a new legislation like this, there is going to be a tremendous learning curve. There is going to be a lot of litigation generated, and plus if the legislation has its intended effect of forcing a lot of people who are currently filing Chapter 7s to file Chapter 13s, that will increase the workload substantially. There is significantly more work involved from a judicial standpoint in handling a Chapter 13 case than in——

Senator GRASSLEY. You don't see the legislation having any impact long term of people who would otherwise file for bankruptcy foregoing bankruptcy?

Mr. MELLOY. I think that is very possible. I don't mean to say that it isn't, Senator, and I think that is a very possible—that is very possible and in the very long term, that we will see an ultimate decrease. But I think certainly over the next several years,

it is not going to impact the workload of the judges in a positive sense.

The litigation that is going to be generated will be substantial. And like I say, I think the Chapter 13s are going to result in a lot more work for most of the judges.

Senator GRASSLEY. I will ask one more question and then submit two for answer in writing—is that possible to have questions answered in writing?

The CHAIRMAN. Without objection, we will do it.

Senator GRASSLEY. Judge Melloy, could you discuss how the formula for assessing judgeship needs accounts for the possibility of using visiting judges to help courts get their docket under control? Some of the testimony from the next panel suggests that more could be done in terms of using visiting judges to control dockets.

Mr. MELLOY. The formula itself does not factor in the use of visiting judges. And so it is not a factor in the formula itself. It is a factor, however, that is—when we talk about the formula being the 1500 hours, it is a factor that we consider in assessing the overall needs of a particular district. As I said in my prepared remarks, however, use of visiting judges I think is only a temporary solution. The problem with visiting judges is that they are not necessarily dependable, their availability is very unpredictable.

One of the things that I think has been talked about a lot is of the benefit of consistency in rulings. There is nothing more inconsistent than having different judges rotating in through your district on a periodic basis. And in general, it helps in the short run, but I think in terms of addressing a long-term solution, if we had a district, Senator, that we saw a spike—as a matter of fact this is what happened with Delaware, we thought that Delaware was a temporary aberration that these numbers were going to go up and come back down. We would certainly advocate using visiting and recall judges if we thought it was just a spike situation and that the numbers are likely to come back down again. But once we come to the belief that that is a sustained filing situation, which we have now with Delaware, that is when we believe it is appropriate to recommend a new judgeship as opposed to using visiting judges, but certainly they have a place and particularly in those cases where we think the numbers are an aberration over a short period of time.

Senator GRASSLEY. Yes. In closing, my staff has communicated to the administrative office that I would be requesting updated information on noncaseload-related travel, so I would like to make that request officially in regard to the 18 districts.

The CHAIRMAN. Without objection, that will be considered as a direct request to the witness, and we would prompt a response.

Mr. MELLOY. Okay.

The CHAIRMAN. We thank the gentleman. And we now turn to the gentleman from New York; he is recognized for a period of 5 minutes.

Representative NADLER. Thank you, Mr. Chairman.

Judge Melloy, as I stated in my opening comment, we have had testimony before this committee earlier this year and last year that the pending legislation would, in fact, increase the necessity—increase for new judges would increase the judicial workload. You

just testified, I think you said, in two respects, one that because existing laws is a mature law, lots of things are settled out of court, because everybody knows what the new law is—but what the existing laws, I should say, but without a substantial change in the law, a major rewrite which is what the legislation is, you would have a lot of litigation as to what it means as to what a lot of—what the real meaning of a lot of the terms in the law, et cetera; and that would increase legislation—that would increase litigation substantially for a number of years until that flattened out.

But you also said a lot of people would be now transferred from Chapter 7 to 13, which is one of the goals of the legislation, and there is more of a workload on the Judiciary in Chapter 13 cases than in a Chapter 7 sense, that would be a permanent increase in the workload of the Judiciary.

Have I understood you correctly that?

Mr. MELLOY. That would be correct, Congressman.

Representative NADLER. Let me ask a follow-up question. And thank you. How much more work is there for a judge on average, and I know it may be silly, to the extent you can say, on average in a Chapter 13 case than in a Chapter 7 case?

Mr. MELLOY. Well, in a Chapter 7 case and in a typical Chapter 7 case, there may be very little judicial involvement at all, whereas in a Chapter 13 case, at a minimum, you are probably going to have a confirmation hearing where the debtor comes in and the trustee. There may be litigation over exemptions and the other factor about a Chapter 13, unlike a Chapter 7 is that a Chapter 7, particularly if it is a no-asset Chapter 7 gets filed, there is minimal judicial involvement unless there is some, like dischargability litigation or something of that nature, and the case is closed within 60, 90 days.

A Chapter 13 case is going to go on for 5 years under most Chapter 13 plans. And so there is the ongoing potential for additional litigation if the debtor doesn't make their planned payments, they fall behind, maybe a creditor comes in during the pendency of the Chapter 13 and commences stay litigation. So there is the potential for a significant additional workload in a Chapter 13.

Representative NADLER. Now, are there any other ways that this bill might increase workload, other than the definitional question and the switch from Chapter 7 to Chapter 13 that you already discussed? For example, what comes to mind immediately is that Chapter 13 workouts are now 3 to 5 years; under the new bill they will be presumptively 5 years, which obviously increases the supervisory role of the judges. Are there any other provisions that you would think, for example, the small business provisions or any other provisions of this bill would have an impact to increase or decrease the workload?

Mr. MELLOY. Well, to be honest with you, Congressman Nadler, I am not an expert on the new bill. And so I don't purport to know all the provisions that might result in the additional workload. So I guess I am just not prepared to answer that question with any specificity.

Representative NADLER. Okay. But you would say then just to summarize what you have been saying that if we do pass this bill, it would be prudent to expect a substantial increase in the work-

load, and you would disagree with anyone who said it is probably going to result in a substantial decrease?

Mr. MELLOY. Certainly in the short run. And by short run, I mean 3 to 5 years until this initial period of litigation over the provisions work themselves out.

Representative NADLER. Thank you very much. I yield back.

The CHAIRMAN. The gentleman yields back the balance of his time.

We will now recognize Senator Biden.

Senator BIDEN. Thank you very much, Mr. Chairman. I want to thank you and Senator Grassley for having this hearing.

Judge Melloy, since I was the author of the ninth, along with the Senator from Alabama, of the bankruptcy court to begin with. I would like to remind people of the historical fact, you district judge courts; and you weren't a judge in 1980, if I am not mistaken.

Mr. MELLOY. No, I was not.

Senator BIDEN. And in 1980, the Judicial Conference opposed, initially, the establishment of bankruptcy court judges because you didn't like the idea that they would have any jurisdiction. And you all were very upset that there would be judges that could be called judges that aren't article III judges and would be in the same Federal courthouse.

And so the only reason I bother to mention that, Mr. Chairman, is the Judicial Conference didn't like the notion of bankruptcy court judges, they are like masters, they like them much better because they were under their control more directly. And so if a Judicial Conference comes along recommending more judges, it is not because they like these guys and women.

And I mean that sincerely, I know I am not supposed to say things that bluntly, but I was chairman of the Judiciary Committee for years and ranking member for years. And I would argue in making that argument that the fact that you were recommending these judges so strongly is evidence we probably need more than you are recommending.

With regard to Senator Grassley's question, I would think you should be—go back, if I might respectfully suggest, and consider Senator Grassley's request, he and I disagree on the need for more judges. But he is right about one thing, the Judicial Conference is a congressionally authorized entity, you all can't do it without our approval. We can pass a law tomorrow eliminating the Judicial Conference and any recommendation you made about anything has absolutely no impact whatsoever if we did that.

So you have no constitutional argument against supplying to Mr. Grassley, Senator Grassley what he is seeking. You have a very strong practical argument, a very practical point to make about how straightforward an answer you will get to questions if you can't assure confidentiality. It may be if I can suggest to Senator Grassley, it might be appropriate that he as the chairman of the subcommittee maybe meet with the Judicial Conference and see if he can work out a reasonable way in which to share this data you could guarantee its security.

But you are right, they have no, zero, no constitutional authority to deny you the work product. You could introduce a bill tomorrow, I don't want to encourage you, but to eliminate the Judicial Con-

ference, it might give you an idea, which I don't like doing. But I hope you can work that out, because Senator Grassley is the best lawyer, nonlawyer I know. He brags about not being a lawyer, but the problem is he knows too much about the law.

And the most dangerous person in America is a nonlawyer who knows as much as lawyers know. Because he gets the benefit of bragging he is not a lawyer, and he has the knowledge base that lawyers have. But he is dead wrong, with all due respect, on the need for these additional judges. So I am not going to ask any questions, except suggest to you that you let the Chief know about this, because until you all on the bench begin to speak out more loudly about what is not being done with judicial nominees across the board, you all are going to get the kind of treatment you all have been getting.

I thank you for your hard work. I am not going to make a special case for Delaware. If I make the special case for Delaware, which is overwhelming on its facts, someone along here will say I know how to fix your problem, and it won't be new judges. So I am not going to make the case. But I thank you very much for the workmanlike product.

A closing comment, Mr. Chairman. For years, when I chaired the committee and the other body one of the things that I found without fail was how incredibly detailed and how incredibly thorough and thoughtful any analysis from the Judicial Conference was on most any matter. And when I was chairman of the committee during Republican Presidents, I am the guy that pushed through 89 new Federal district court judges.

And I hope we can sort of look at that and begin to view the judicial needs and the workload in the context of need, not in the context of other considerations that don't relate to need. But again, my friend from Iowa and I are working very hard to pass a bankruptcy bill. I do think it is mildly premature to suggest whether it is going to impact or diminish the caseload, my guess is it will increase the caseload not diminish it.

But I thank you for your work product. And I find it compelling across the board. I think we need all 24 of these judges myself. I thank you, Mr. Chairman.

The CHAIRMAN. I thank the Senator.

We turn to the gentleman from North Carolina, Mr. Watt, for a period of 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. And I probably won't have time to ask the judge questions, but I thought it would be a good time now since my good friend and colleague, Howard Coble from North Carolina, hasn't been able to come and may not be able to come before we get through to try to make the case for North Carolina that he would have made. And I want to say at the outset that I don't profess that I can do it nearly as good as Howard Coble so I hope you will deliver that word to him.

The CHAIRMAN. We will do that.

Mr. WATT. I do think that there are two compelling things that need to be said. One is that the current way filings per judge in North Carolina is 1,722. And we are one of the additional—Eastern North Carolina which is not where I am from or where Howard Coble is from, for that matter, is one of the recommended districts

to get an additional judgeship, but beyond the current state of affairs insofar as the weighted filings per judge, I would like to ask unanimous consent to submit for the record a letter from the entire North Carolina delegation that talks about the impact that we anticipate Hurricane Floyd having on bankruptcy filings in North Carolina.

Our concern is that homeowners, farmers, and small business owners, many of them will have no alternative to bankruptcy filings as a result of the predicament they are finding themselves in as a result of the extensive and devastating flooding that has taken place in Eastern North Carolina.

So beyond the retrospective caseload and weighted averages, all of which were calculated well before the floods took place in North Carolina, this Eastern District of North Carolina is the same place that the flooding took place, and we don't see any way that we can escape a significant spike in bankruptcy filings in Eastern North Carolina.

And so I would hope that Eastern North Carolina and the Eastern District of North Carolina will be included in whatever additional judgeships get approved. And I would ask unanimous consent to insert the delegation's letter in the record.

The CHAIRMAN. Without objection, the letter and other documents submitted by the gentleman from North Carolina will be made a part of the record.

[The letter from North Carolina Representatives follows:]

Congress of the United States

Washington, DC 20515

November 1, 1999

Hon. George W. Gekas, Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
2410 Rayburn House Office Building
Washington, D.C. 20515

Dear George:

As the subcommittee considers creating additional bankruptcy judgeships at its hearing this week, we would like to bring attention to the immediate needs of eastern North Carolina.

At its meeting this March, the Judicial Conference recognized that eastern North Carolina was in need of an additional bankruptcy judgeship and recommended a new bankruptcy judgeship for the district. Unfortunately, North Carolina was not assigned any of the new judicial positions when bankruptcy reform legislation passed the House in May of this year.

As you know, eastern North Carolina recently was devastated by Hurricane Floyd. This disaster caused damage to more than 30,000 homes in the region, 15,000 of which were flooded to the point of being uninhabitable. One of the most tragic results of the flood will be homeowners, farmers, and small business owners who face no alternative to bankruptcy proceedings.

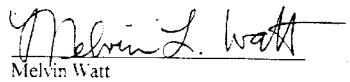
The bankruptcy bar in North Carolina is deeply concerned about the impact of this calamity on bankruptcy filings and expects that eastern North Carolina will encounter an unprecedented number of filings in the very near future. This consideration, in conjunction with eastern North Carolina's prior need for a bankruptcy judgeship, makes it crucial that the subcommittee place eastern North Carolina at the top of the list of areas slated to receive any additional judgeships you may approve.

Thank you for giving serious consideration to this request.

Sincerely,

David Price
Member of Congress

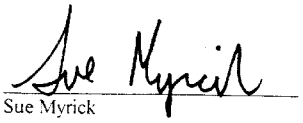
Bob Etheridge
Member of Congress



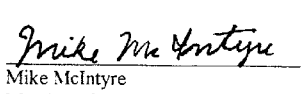
Melvin Watt
Member of Congress

Howard Coble
Member of Congress

Walter Jones, Jr.
Member of Congress



Sue Myrick
Member of Congress



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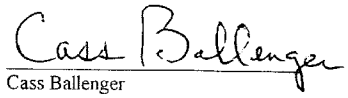
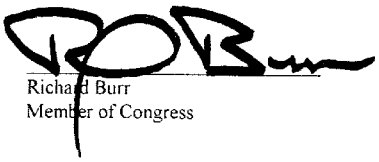
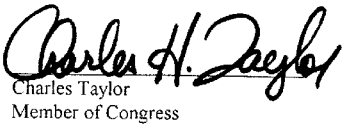
Member of Congress



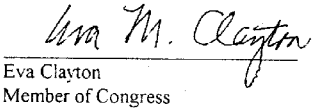
Cass Ballenger
Member of Congress



Richard Burr
Member of Congress



Charles Taylor
Member of Congress



Eva Clayton
Member of Congress

Robin Hayes
Member of Congress

CC: Judge Thomas A. Small, Raleigh, N.C.

Mr. WATT. Having made that case and probably not nearly as eloquently or in as downhome a fashion as probably our colleague, Howard Coble, would have made it, I will ask one question of Judge Melloy.

I have noticed from one of the second panelists, I think, Mr. Ray, who is taking the position that allowing direct appeals to circuit courts from bankruptcy determinations should be done before we do any new judgeships. And I was just wondering what your reaction to that is and how that might have an impact on the need for additional judgeships?

Mr. MELLOY. Well, it is the Judicial Conference position that the current system should remain in effect with one modification, and that being that for cases of high importance, where there is clearly unsettled law, that the district judge or the bankruptcy appellate panel could certify a case directly to the Court of Appeals for decision and bypass that intermediate step of appeal. With all due respect, I am not sure it is going to have even that big of an effect, even if there was direct appeal.

As I said to someone earlier today when we were talking about this issue, those of us at the district court bench who practice or who work in the area of civil litigation, see tons of cases coming out of the Court of Appeals in the area of employment litigation; and if you think that is a settled area of the law, someone is very sadly mistaken. The more cases tend to make it more confusing. So I don't think it is going to have a significant effect one way or the other on the workload of bankruptcy judges.

Mr. WATT. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. We thank the gentleman.

We are ready to bring to the table the next panel. We thank you for appearing.

The next panel and last panel is composed of the Honorable Mary Davies Scott who appears today on behalf of the National Conference of Bankruptcy Judges where she serves as president. In 1987, she was appointed to the bankruptcy bench and, thereafter, was appointed to the Bankruptcy Appellate Panel for the Eighth Circuit Court of Appeals in 1997.

Judge Scott is a member of the National Bankruptcy Conference, the American Law Institute, the American College of Bankruptcy, and the Bankruptcy Judges Committee of the National Conference of Federal Trial Judges. She is also faculty member of the American Law Institute of the American Bar Association.

In addition to her judicial responsibilities, Judge Scott is an adjunct professor of law at the University of Arkansas.

She is joined at the panel table by Hugh Ray, a partner in the law firm of Andrews & Kurth in Houston, Texas. He has practiced bankruptcy law for more than 30 years and has actively participated in some of the Nation's largest Chapter 11 cases.

Mr. Ray is a former chair of the Business Bankruptcy Committee of the Business Law Section of the American Bar Association. Currently, he cochairs the ABA's Joint Ad Hoc Committee on Bankruptcy Court Structure and Insolvency Process. Mr. Ray is a member of the American College of Bankruptcy and the American Bankruptcy Institute. He obtained his law degree from Vanderbilt University in 1967.

Ford Elsaesser appears today on behalf of the American Bankruptcy Institute where he serves as President and oversees the Institute's Executive Committee. He is also a member of the American College of Bankruptcy.

Mr. Elsaesser is a partner with the Sandpoint, Idaho, law firm of Elsaesser, Jarzabek, Anderson, Marks & Elliott, where he practices commercial and banking litigation, bankruptcy, and real estate transactions.

In addition to his law practice, Mr. Elsaesser serves as a trustee in Chapter 7, 11, and 12 cases. He also is a frequent lecturer on bankruptcy and commercial law.

Mr. Elsaesser obtained his undergraduate degree from Goddard College and his law degree from the University of Idaho School of Law.

As we have indicated to the previous panels, the written statements that have been prepared by the witnesses will be made a part of the record automatically. We will ask that each review of those statements be limited as far as possible to 5 minutes. We will begin in the order of introduction with Judge Scott.

STATEMENT OF MARY DAVIES SCOTT, U.S. BANKRUPTCY JUDGE, EASTERN AND WESTERN DISTRICTS OF ARKANSAS, PRESIDENT OF THE NATIONAL CONFERENCE OF BANKRUPTCY JUDGES

Ms. SCOTT. Thank you, Chairman Gekas, Representative Watt, and other members of the joint committee. My name, as you have indicated, is Mary Scott. I am one of three bankruptcy judges sitting in the Eastern and Western Districts of Arkansas. I am also a bankruptcy appellate panel judge for the Eighth Circuit Court of Appeals. This year, I have the great honor to serve as the President of the National Conference of Bankruptcy Judges. In that regard, I have been asked to appear here and make some comments about the pending judgeship bills before this committee.

The Conference of Bankruptcy Judges was founded in 1926; and since that time, it has been a resource for Congress in the drafting of bankruptcy legislation. Mr. Chairman, 319 of the filled positions are members of the Conference of Bankruptcy Judges, which is virtually all of the judges in the country. We have been asked to testify here on the need for these additional judgeships.

In 1994, the Judicial Conference of the United States recommended to the Congress that it authorize additional bankruptcy judgeships. We have been very fortunate in the past to have the support of both of these committees in recommending approval of these requests to Congress. As recently as the 105th Congress, both the Senate and the House of Representatives approved the 18 judgeships recommended by the Judicial Conference in 1994. We are very grateful for this support and ask that these judgeships, in fact, be approved immediately.

In addition, this past year, the Judicial Conference recommended to Congress that it authorize an additional six judgeships. Because there has been a decline in case filings for the first time in 6 years and only the third decline in case filings since 1980, a legitimate inquiry by these subcommittees and others has been raised as to the continuing need for these judgeships.

Let me initially address the question of the continuing need for the judgeships that have been requested since 1994, the initial 18. In that year, the judgeships were requested based upon 800,000 case filings. Since 1996, case filings have exceeded 1 million cases per year to a record filing of 1.4 million cases in 1998. Even with the decline in filings this year, no one is predicting that the filings will drop below the 1994 levels. It is also worth mentioning that even though the total number of filed cases may be declining, that decline is not shared uniformly around the country. Virtually all of the districts requesting new judgeships are still experiencing the caseloads that convinced the Judicial Conference of the United States to approve them in the first place. In addition, many of these districts are experiencing an increase in filings.

Looking at a year-to-year comparison gives a misleading picture. We urge you to look at the longer term picture. I can assure you that the judiciary has utilized and continues to employ all resource available to meet its needs before coming to Congress with these requests. The Eighth Circuit where I sit gives careful consideration to workload in deciding whether to fill judgeships of retiring judges. There is currently one judgeship not filled, and there are no plans to fill it. Other circuits have done the same. In addition, judges with lower caseloads are volunteering to help in districts with overload problems. But these are temporary assignments, and they do not provide a permanent solution. It is important to note that the recommendation for the 24 judgeships is being made only after a long-term pattern.

I want to mention one thing about the six additional judgeships, and Representative Watt, I don't agree. I thought you were very eloquent, but I do want to mention the Eastern District of North Carolina. No one can have missed seeing the media coverage of the recent storms that devastated the State. All 44 counties in the Eastern District of North Carolina have been declared a disaster area. The damage from the flooding is of monumental proportions. Homes, businesses, and lives have been lost. To be sure, the citizens have lost much, but their situation may be even more dire. The media has just recently pointed out that most of these victims are not insured. In fact, the bankruptcy court will be their best possible solution to, in fact, get the fresh start that Congress has so long recognized as part of what the bankruptcy code is all about.

I thank you. My written statement, of course, is longer, and I know that that is part of the record.

[The prepared statement of Judge Scott follows:]

PREPARED STATEMENT OF MARY DAVIES SCOTT, U.S. BANKRUPTCY JUDGE, EASTERN AND WESTERN DISTRICTS OF ARKANSAS, PRESIDENT OF THE NATIONAL CONFERENCE OF BANKRUPTCY JUDGES

The National Conference of Bankruptcy Judges was founded in 1926. Since its founding the Conference has been a resource for Congress in the drafting of bankruptcy legislation. Of the 326 bankruptcy judgeships currently authorized in the United States, 319 are filled positions and virtually all of these judges are members of the Conference. Additional bankruptcy judges were last authorized by the Congress in August of 1992.

The National Conference of Bankruptcy Judges has been asked to testify at this joint hearing on the need for additional judgeships. In 1994, the Judicial Conference of the United States recommended to the Congress that it authorize additional bankruptcy judgeships. In addition, this past year the Judicial Conference recommended to the Congress that it authorize an additional six judgeships. Because

there has been a decline in case filings for the first time in six years and only the third decline in case filings since 1980 (See Attached Chart), a legitimate inquiry by the Judiciary Committees and others has been raised as to the need for these judgeships.

Let me initially address the question of the continuing need for the judgeships that have been requested since 1994. In that year, the judgeships were requested based upon over 800,000 case filings. Since 1996, case filings have exceeded one million per year to a record filing of 1,442,549 cases in 1998. Even with the decline in filings this year, it is unlikely that we will see case filings drop below the 1994 level. It is also worth mentioning that even though the total number of filed cases may be declining, that decline is not shared uniformly around the country. Those districts requesting new judgeships are still experiencing the case loads that convinced the Judicial Conference of the United States to approve the creation of them in the first place. In addition, many districts are experiencing an increase in filings.

The Eighth Circuit, where I sit, gives careful consideration to work load in deciding whether to fill judgeships of retiring judges. There is currently one judgeship not filled and there is no plan to fill it. Other circuits have done the same. Judgeships are not being filled unless there is a need. Judges who have lower caseloads are volunteering to help in districts with overload problems. These temporary assignments are just that—temporary—and only provide momentary relief to those districts. Any argument that this temporary fix, which has been utilized historically to provide assistance to overburdened districts, could be the permanent solution is not realistic. Yes, bankruptcy judges are doing a good job, but they are being required to adjudicate disputes in an ever increasing caseload without a commensurate increase in judicial resources.

In 1984, the year Congress reestablished the Bankruptcy Court following the decision of the United States Supreme Court in the Marathon case, there were 232 bankruptcy judges who processed a total caseload of 348,521 cases. In 1986, Congress, responding to a dramatic increase in agricultural bankruptcies in the farm states and significant increases in other parts of the country, created 52 new judgeships. I was one of the 52 judges. The number of cases filed that year totaled 530,438.

Between 1986 and 1992, Congress, on two occasions, increased the number of sitting bankruptcy judges to 326. During those same years the case filings steadily climbed to 971,517. In the record breaking 1998 year when 1,442,549 cases were filed, there were still only 326 (actually 319 filled positions) authorized judgeships. (See Attached Chart.) I realize that simple division does not produce the number of cases per sitting judge because all caseloads are not divided equally. I would also point out that these figures, based on all filings, don't necessarily reflect whether they are business or consumer cases. In fact the actual statistics reveal that there were many more Chapter 11 cases in the earlier numbers. However, in 1994, Congress significantly increased the debt limits for Chapter 13 eligibility which has allowed many individuals with small businesses to utilize that chapter. These cases dropped out of the Chapter 11 statistics, but they are still there and take considerably more time getting to confirmation than non-businesses consumer cases. Hence, judges are busier than ever with complicated business related issues that used to just arise in Chapter 11 cases.

How can we do this? There are at least two reasons why the dramatic increase in workload has not so far overwhelmed the system. Judges have been able to handle this tremendous increase without asking for several hundred new judges because automation has allowed us to streamline our case processing techniques which, in turn, has increased our efficiency. The Federal Judiciary wisely decided, about the same time I became a judge, that the bankruptcy courts ought to be the initial focus of its massive effort to automate the federal courts. In addition, we and our staffs are working harder and longer hours. Thus, resources are stretched thin. The Judiciary budget requests are not being fully met. The decline in overall case filings does not really help those districts needing those judgeships.

The statistics overwhelmingly demonstrate that all 18 judgeships approved by the Judicial Conference in 1994 are still desperately needed, and they need to be authorized now. The Bankruptcy Courts need to be ready with sufficient resources. History has amply demonstrated that waiting until the crisis is out of hand does not serve the taxpayers. Yes, the economy is good and unemployment extremely low. But I would caution against relying on these broad generalities in the same way I caution against reading too much into the recent decline in bankruptcy case filings. Overall figures or statements regarding a general trend are often misleading and do not give a true picture of particular areas where the generalities simply do not match the local conditions.

While the authorization of these additional judgeships has been languishing since 1994, the Judicial Conference of the United States revisited those requests, reiterated the necessity for their authorization and identified the need for six additional positions meeting the strict criteria for creation of a new judgeship. We strongly encourage the Judiciary Committees to consider these requests together with the 18 judgeships I've already discussed. These judgeship requests are based on case filings and case weighted numbers per sitting judge that remain valid even though there is a decline in case filings at the national level. Again, I ask you to consider my comments and concern that overall generalities do not reflect the reality in a particular district. These judgeships are needed now.

Let me mention one particular district in the additional six judgeships. It is the Eastern District of North Carolina. No one can have missed seeing the media coverage of the recent storms that have devastated that state. All 44 counties in the Eastern District of North Carolina have been declared a disaster area as a result of Hurricanes Floyd and Irene. One-half of the cotton crop has been destroyed. The damage from the flooding is of monumental proportions. Homes, businesses and lives have been lost. These citizens have lost much but their situation may be even more dire. The media has recently focused on the fact that an extremely high percentage of these victims of nature find themselves uninsured. There is little doubt that these families of farmers, sole proprietors, and mom and pop businesses will have little recourse. They will desperately need the relief that the Bankruptcy Code offers them. These are the honest but unfortunate debtors seeking a "fresh start." For over a century and a half Congress has recognized that this relief could be required and would be essential in order to provide for a uniform and orderly system of debt relief and restructuring.

The Bankruptcy Court has become the commercial court of the United States. Even those pointing to the decline in case filings are not willing to predict that we will ever see filings of less than 1,000,000 cases per year. If a downturn in the economy or a recession occurs, these numbers could dramatically increase with no warning. The much appreciated assistance you have given to the Judiciary many times in the past is desperately needed again. In asking for your assistance, I assure you that this request for new bankruptcy judge positions is made only after the judiciary has taken earnest and sincere steps to maximize all other programs and resources to meet the districts' judgeship needs first.

One last item bears mention. All bankruptcy judges are keenly aware that Congress is now considering significant bankruptcy reform. The National Conference of Bankruptcy Judges has attempted at every opportunity to comment upon the impact this legislation will have on the administration of the system and the workload of the judges and their staffs. No matter what will be the long term impact of this legislation, bankruptcy judges know that, upon passage, litigation will multiply. Creative lawyering will abound. No matter how clear the statute Congress passes, no matter that Congress intends to close loopholes and curb abuse of the bankruptcy process, history tells us that lawyers litigate new issues. New laws inevitably create new issues. Last year's President of the National Conference of Bankruptcy Judges, Randall Newsome, testified twice before the House Subcommittee. In March of 1999, he pointed out some 54 potential areas of litigation in the new legislation. Since then other new issues have arisen. Anytime new amendments to the Bankruptcy Code are passed, imaginative lawyering and litigation is inevitable. Thus, Judges will be busier than ever.

Chairman Grassley and Chairman Gekas, I wish to thank you and the members of the two Subcommittees for the opportunity to present these comments at this joint hearing. The National Conference of Bankruptcy Judges stands ready to be of assistance in providing any additional information you seek. We need these judgeships. Your assistance is vital.

U.S. BANKRUPTCY COURTS—FILINGS FOR THE YEARS ENDING DECEMBER 31,1980–1998

12 Months Ended 12/31	Total Bankruptcy Filings	Business Filings	Nonbusiness Filings	Chapter 7 Filings	Chapter 11 Filings	Chapter 12 Filings	Chapter 13 Filings
1980	331,265	43,671	287,594	247,083	6,753	-	77,420
1981	363,946	48,086	315,860	260,744	10,042	-	93,156
1982	380,252	69,242	311,010	257,674	18,821	-	103,748
1983	348,881	62,412	286,469	234,551	20,284	-	94,038
1984	348,521	64,214	284,307	234,861	20,325	-	93,315

U.S. BANKRUPTCY COURTS—FILINGS FOR THE YEARS ENDING DECEMBER 31,1980–1998—Continued

12 Months Ended 12/31	Total Bankruptcy Filings	Business Filings	Nonbusiness Filings	Chapter 7 Filings	Chapter 11 Filings	Chapter 12 Filings	Chapter 13 Filings
1985	412,510	71,277	341,233	281,053	23,376	-	108,069
1986	530,438	81,235	449,203	374,786	24,773	607	130,257
1987	577,999	82,446	495,553	409,595	20,078	6,125	142,161
1988	613,465	63,853	549,612	437,769	17,684	2,037	155,945
1989	679,461	63,235	616,226	476,470	18,281	1,445	183,214
1990	782,960	64,853	718,107	543,334	20,783	1,346	217,468
1991	943,987	71,549	872,437	656,460	23,989	1,496	262,006
1992	971,517	70,643	900,874	681,663	22,634	1,608	265,577
1993	875,202	62,304	812,897	602,980	19,174	1,244	251,773
1994	832,829	52,374	780,455	567,240	14,773	900	249,877
1995	926,601	51,959	874,642	626,150	12,904	926	286,588
1996	1,178,555	53,549	1,125,006	810,400	11,911	1,083	355,123
1997	1,404,145	54,027	1,350,118	989,372	10,765	949	403,025
1998	1,442,549	44,367	1,398,182	1,035,696	8,386	807	397,619

AUTHORIZED BANKRUPTCY JUDGESHIPS

Year	Full time	Part time	Total	Public Law
1959	110	67	177	
1960	112	67	179	
1961	130	65	195	
1962	136	60	196	
1963	140	59	199	
1964	160	51	211	
1965	160	51	211	
1966	167	50	217	
1967	170	46	216	
1968	175	45	220	
1969	178	41	219	
1970	180	38	218	
1971	184	37	221	
1972	184	37	221	
1973	185	36	221	
1974	185	36	221	
1975	190	34	224	
1976	210	25	235	
1977	214	24	238	
1978	215	24	239	
1979	217	23	240	
1980	219	21	240	
1981	221	21	242	
1982	229	12	241	
1983	230	11	241	
7/84	232	0	232	Pub. L.No. 98–353
10/86	284	0	284	Pub. L.No. 99–554
11/88	291	0	291	Pub. L.No. 100–587
8/92	326	0	326	Pub. L.No. 102–361

The CHAIRMAN. We thank the gentlewoman, and we turn to Mr. Ray.

STATEMENT OF HUGH M. RAY, ESQUIRE, ANDREWS & KURTH, HOUSTON, TX

Mr. RAY. Thank you, Mr. Chairman. I appreciate the opportunity to be here.

One of the suggestions that I made with my written materials was that we move judges around. Certainly, Representative Watt's situation is a prime example of how and why this should take place. This committee has available to it not just top-down data as to the number of cases which, in fact, are leveling off in 7 and 13 and declining in Chapter 11, but it doesn't just have this information available to it.

It has bottom-up information such as if a bankruptcy judge is sitting on the bench only 7½ hours a month in a multi-judge district, doesn't it seem logical that maybe that district doesn't need all the bankruptcy judges that it has and maybe those judges could be moved to North Carolina to sit and hear cases in dire straits as opposed to taking the rest of the month off.

The court reporters are required to keep records of how much they sit when the judge is on the bench, the court reporter for a particular judge. I haven't seen any statistics nationwide on how many hours per month bankruptcy judges actually sit in certain districts. Certainly, there are some bankruptcy judges like those in Delaware, thanks to the Delaware venue provision, who sit more than 7½ hours a day. But there are some bankruptcy judges that I know of that I have been told by court reporters and others who sit less than 7½ hours a month.

There are plenty of soft spots in the bankruptcy system. When the first Continental Airlines case was filed in Houston, it was handled by a judge from Mississippi who came over to hear the case. The second Continental Airlines case was forum-shopped to Delaware where Judge Balick heard the case. I get most of my income these days from Delaware. So it is a situation where we have a venue provision that encourages that to become our national bankruptcy court.

But what about these other courts where they no longer have the caseload anymore? Do they need additional judges? Certainly the Chapter 7s and 13s have leveled off, the 11s are down; and in connection with the direct appeals, it is difficult to argue with the proposition that our society demands stability from its legal system.

The bankruptcy system is unstable. And it is unstable for the following reason: You can find a lower bankruptcy court opinion for just about any proposition you want on bankruptcy law. Judge Melloy said that we had a mature code, it is 20 years old. He said the code is now mature legislation. We have fewer cases because of mature legislation.

I would submit that while it helps me for me to be able to say we don't need new judges because we have a mature, stable piece of legislation, the truth is that there are many unanswered, fundamental, seminal issues in bankruptcy law; and they are unanswered because we have a multiple of judges coming up with different decisions.

And the appeal process in bankruptcy is ludicrous. It is ludicrous because cases go to the district court and sit there until they be-

come moot or dismissed and the circuit courts never get a chance to hear it. That is not necessarily true in the Third Circuit where Delaware is because it has so many big cases that they have been able to get a number of good precedents there.

So, a client comes in and asks me, well, here are my facts, what is the court going to do? And I have to answer hey, it is not what you say, it is who you say it to. So if we file in Delaware, I know this is going to be the answer. If you file it in L.A., we've got 22 judges, the answer could be anything.

One last question. The predictions that we have heard on the need for bankruptcy judges are based on well, the new statute is going to increase it or the coming downturn in the economy is going to increase it. You know what? They are saying that these committees should appoint bankruptcy judges on the come. They are not Alan Greenspan, they don't know where the economy is going. I think we are supposed to appoint judges when there is a clear need shown. I am not an economist; I am a lawyer. I haven't seen any economists say anything to the contrary. So until we have a clear need, I don't think that we should have new judges.

The CHAIRMAN. We thank the gentleman.

[The prepared statement of Mr. Ray follows:]

PREPARED STATEMENT OF HUGH M. RAY, ESQUIRE, ANDREWS & KURTH, HOUSTON, TX

My name is Hugh Ray, I am a partner in the law firm of Andrews & Kurth where I head the bankruptcy section. I am a former chair of the Business Bankruptcy Committee of the Business Law Section of the American Bar Association and the current co-chair of its Joint Ad Hoc Committee on Bankruptcy Court Structure and Insolvency Process. I am a member of the American College of Bankruptcy, the American Bankruptcy Institute and former chair of the Bankruptcy Committee of the State Bar of Texas. The opinions expressed herein are my opinions and not necessarily the opinions of any of these organizations and those organizations may in fact have different opinions from my opinion.

During the past 30 years that I have practiced bankruptcy law in various districts throughout the country, I have seen upswings and downswings in bankruptcy caseloads, often dramatically. In the Southern District of Texas in the late 1980s, a six year depression in the oil and gas industry led to a huge bankruptcy caseload increase. In particular, chapter 11 cases increased dramatically. After most of the caseload increase had abated, the number of bankruptcy judges for the Southern District of Texas was substantially increased. However, prior to the creation of new judgeships, judges from other districts in other states unaffected by the energy industry meltdown were brought in to assist in handling the increased bankruptcy caseloads.

Before new bankruptcy judgeships are authorized for the districts that have a current increase in insolvency caseloads, it would seem logical to assist these districts (which are experiencing primarily an increase in chapter 7 cases and chapter 13 cases) by bringing in visiting judges. In some districts, the caseload increases may not be permanent and may not be sustained. Often the causes of increased bankruptcy caseloads are cyclical or attributable to a downturn in a particular industry. While chapter 13 cases and chapter 7 cases have increased, the most time consuming cases, those under chapter 11, have not generally increased. In addition, the bankruptcy reform legislation currently pending before Congress (Senate Bill 625) will impact caseloads substantially if it is passed. Many consumer bankruptcy specialists believe the legislation, if passed, may cause recidivist debtors to find bankruptcy substantially less attractive. Whether one opposes or supports the reform legislation now being considered, it would seem only sensible to determine whether or not that legislation is to pass before creating new judgeships to deal with caseloads that may change radically if it does pass.

An important substantive proposal currently being considered by Congress is the proposal to permit direct appeals from the Bankruptcy Courts to the Circuit Courts. This proposal should be enacted prior to any new bankruptcy judgeships being created. There is currently largely an absence of *stare decisis* in bankruptcy sub-

stantive law. At present, a party can find bankruptcy case authority for virtually any proposition in the vast number of varying decisions of bankruptcy judges on seminal substantive questions of bankruptcy law. No other area of substantive law approaches it in this regard. For this reason, many major bankruptcy-related organizations support the direct appeal proposal. As these committees have heard in prior testimony, under the current appellate structure, appeals of the decisions of bankruptcy judges are usually futile at this time for structural reasons. Appeals often languish in the district courts until they become moot.

The workload of bankruptcy judges would drop dramatically if clear precedents existed on fundamental bankruptcy principles. The district courts deal with no other area with such substantive uncertainties. In districts where multiple bankruptcy judges sit, clients contemplating bankruptcy are often dismayed to learn from their counsel that the answers to seminal legal issues in their cases will depend on which judge they draw. Corporate debtors often opt to file their chapter 11 cases in Delaware where fewer substantive differences of opinions among judges usually lead to more predictable results.

Society demands predictability and stability from its legal system. Currently, the bankruptcy system is unpredictable because of the appellate structure which has led to a lack of clear decisional authority interpreting a statute that has been in effect for 20 years. Creating more bankruptcy judgeships against this backdrop simply compounds the problem. The real way to solve the workload issue for bankruptcy judges is to lessen that load by giving the judges a structure that will facilitate more higher court precedents for recurring questions.

The CHAIRMAN. Mr. Elsaesser.

STATEMENT OF FORD ELSAESSER, ESQUIRE, ELSAESSER, JARZABECK, ANDERSON, MARKS & ELLIOT

Mr. ELSAESSER. Thank you, Mr. Chairman, Congressman Watt, and members of the committee and staff. The American Bankruptcy Institute is pleased to serve, we believe, as really the clearinghouse and most reliable source of all bankruptcy information, including the progress on the current legislation and including some of the background on this legislation. The general membership of the ABI really holds probably the majority of people who practice before the bankruptcy courts; and so we are, in reality, perhaps the most regular customers and the best evaluators of how the bankruptcy court systems actually work on a general basis.

I want to speak today from my own personal experience as someone who has engaged in litigation and consumer agriculture and bankruptcy, business bankruptcies in several different bankruptcy courts. I would make the observation, having done so and having practiced before both overcrowded courts and courts that are not overcrowded, that overcrowded dockets do, in fact, sometimes create real prejudice to parties before the bankruptcy court and particularly creditors but often all parties in the bankruptcy process.

The use of traveling judges and technology, I think, is something that needs to be addressed today before the committee. I come to you from the Ninth Circuit, which has been a leader in using visiting judges. Frankly, when it is 25 below zero in Butte or Juneau, it is not too hard to get visiting judges to travel to San Diego or Phoenix to help out with their caseloads in those areas in the wintertime.

In addition, I have witnessed the innovative use of video and telephone conference hearings, with the help of the administrative office, to clear the backlogs, particularly in the Southern, Eastern, and Central district of California, where essentially they utilize Northwest judges who are, frankly, not that busy right now, using teleconferencing and video conferencing to have hearings before the

courts in the Central and Southern Districts of California to clear up large backlogs of adversary cases. I think up to a certain point that does work, and it has helped considerably clearing backlogs of cases. But I think these are not, ultimately, means to an end that will cure the problem of those specific districts that are overcrowded. I think that technology has its limits too.

I have had occasion to witness both telephone and video conference hearings where, frankly, the parties that are before the court are not particularly respectful of the court, and in many cases, that is because these are debtors who have never actually been in a real courtroom. That is something that is not really able to be substituted by using a telephone or a video conference.

So while I think that that technology is of a great help in reducing backlogs, I don't think it tells the whole story. Likewise, I think visiting judges, particularly in the Ninth Circuit where you can have a fair amount of judges moving from north to south where the heavy caseloads are, I don't think actually addresses the problem that there are certain areas of California that do seem to genuinely show the need, as stated by the Judicial Conference.

At the same time, as we said in our written testimony, we strongly support the increased use of technology as some of the areas that I don't think any of the witnesses disagree on, and the increased use of traveling and visiting judges. But the basic concept of having a judge with a caseload in the 1,000 to 2,000 case range is really, we think, more the optimum condition.

The third item I would like to address is the reform bill. As a Chapter 7 trustee that handles 1,200 cases a year, I agree with the chairman and I agree with Senator Grassley that if the reform bill passes this year in some form similar to both the House and the Senate bill, there will be a reduction in consumer case filings. It will not impact business or farm cases, but it will, I think, reduce—my own personal opinion in that it will reduce cases. At the same time, though, I think that the committee would have to admit you are creating a policing system for the existing consumer cases that will require substantially more work by judges in the consumer area, by trustees in the consumer area, and the U.S. trustees in the consumer area; and I think that argues that on balance, that this bill is a well thought-out bill. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Elsaesser.

[The prepared statement of Mr. Elsaesser follows:]

PREPARED STATEMENT OF FORD ELSAESSER, ESQUIRE, ELSAESSER, JARZABECK, ANDERSON, MARKS & ELLIOT

Chairman Grassley, Chairman Gekas and members of the joint subcommittees, I am Ford Elsaesser, the President of the American Bankruptcy Institute (ABI). I am a senior partner with the Sandpoint, Idaho firm of Elsaesser, Jarzabek, Anderson, Marks & Elliott where my practice is primarily in the areas of commercial and bankruptcy litigation, corporations, partnerships and rural electric cooperatives. I am also the bankruptcy panel trustee for chapters 7, 11 and 12 in the District of Idaho and the Eastern District of Washington, handling 1,100 cases per year. As a speaker at numerous regional and national educational programs around the country, my perspective on bankruptcy is national in scope.

As you know, the ABI is the nation's largest multi-disciplinary organization devoted to research and education on issues related to bankruptcy and insolvency. Founded in 1982, ABI is non-profit and non-partisan. Our more than 6,800 members span the entire spectrum of bankruptcy professionals: attorneys for both creditors

and debtors in individual and commercial cases, judges, accountants, lenders, trustees, credit managers, turnaround professionals, academics and others.

Importantly, the ABI is not a lobbying organization and we do not advocate positions before Congress, although we regularly appear before these subcommittees and other committees of Congress. We have historically supported legislation that affects the administration of justice in the bankruptcy system, such as regarding the salaries of bankruptcy judges, or to provide for judicial retirement benefits, and to increase the number of judges where needed and appropriate. We appeared most recently in support of more judgeships in June, 1997 and December, 1995.

We are pleased to appear again today to provide our views on the Judicial Conference's request for 24 additional bankruptcy judgeships, including 18 now contained in the bankruptcy reform bills (H.R. 833 and S. 625) and six additional positions (District of Puerto Rico, District of Delaware, District of Maryland, Eastern District North Carolina, Southern District of Florida, and Middle District of Georgia, to be shared with the Southern District of Georgia) recommended by the Conference in March 1999.

The ABI applauds the work of the Judicial Conference of the United States for its continued careful assessment of the workload burdens of the bankruptcy courts, and for its prudent recommendations for additional judgeships. Congress last authorized new bankruptcy judgeships in 1992. The Judicial Conference sent recommendations for additional judgeships to Congress in 1993, 1995, 1997 and earlier this year. Each time, the Conference has reassessed its prior recommendations to ensure that the need continues to be demonstrated.

The formal process of the Bankruptcy Committee of the Conference is elaborate, taking into account not only a weighted caseload formula developed by the Federal Judicial Center (generally requiring more than 1,500 weighted filing per judge) but also on-site surveys and other factors not captured by a mere numerical formula. While the focus has been on the formula as an objective measurement, the results from the use of the formula are never dispositive. Some districts that exceed the 1,500 weighted case filings are not recommended for more judges because those courts believe they can handle the additional workload.[1]

Filing Trends in Perspective

As these subcommittees are too well aware, the pending judgeship request comes in the wake of an explosion in bankruptcy filings during much of the 1990's, with total new cases peaking in 1998 at over 1.4 million. Your subcommittees have heard much testimony over the last few years about the apparent paradox of record bankruptcies during "the best economy in a generation," in the words of President Clinton. During the '90s, consumers have dominated the national economy, accounting for two-thirds of our gross domestic product. High rates of employment, household wealth and consumer confidence have coexisted with record levels of household debt as a share of after-tax income. For the first time, the rate of personal savings is negative. Bankruptcy filings have grown in virtual lock-step with an increase in family debt burden, from both home mortgages and installment debt.

Most recently, as consumers' non-mortgage debt burden has stabilized (in the wake of sustained low interest rates and intense competition in the consumer credit markets), we have seen a leveling off and even a decline in personal bankruptcies. The U.S. per capita personal bankruptcy rate dropped by 17.5 percent from the fourth quarter of 1998 to the second quarter of 1999.[2] Certain economic factors suggest that this decline will continue in the near term.[3]

Using a year-end of June 30, filings for the 12-month period ending in 1999 were 1,391,964. In comparison, 1,429,451 new cases were filed for the 12-month period ending in 1998. Although filings have declined this year, the number of new petitions filed represent a 62.2 percent increase over the same period ending in 1995.

Workload Impact

As these subcommittees know, the focus cannot be entirely on total case filings as not all cases result in the same workload for a judge. The vast majority of cases

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[1] For example, the 1993 request for more judgeships did not include requests from 10 districts with more than 1,500 weighted case filings per authorized judgeship. In the 1995 request, there were 4 such districts and in the 1997 request, there were 5 such districts.

[2] Visa's Bankruptcy Notification Service compiles weekly reports of the number of personal bankruptcy filings. They report filings to be down 8.3 percent this year. The Chicago Mercantile Exchange also compiles filing statistics in connection with its Quarterly Bankruptcy Index. The most recent CME index is off by 9.59 percent this year from a year ago.

[3] The fraction of consumer credit accounts that have been 30 days past due is falling and the fraction of accounts that have been 30 days or more past due is stable. Standard & Poor's DRI, September, 1999.

are consumer filings. Since 1993, consumer (non-business) cases have accounted for an increasing percentage of total bankruptcies, peaking at 97 percent this year. These cases typically require less time of a bankruptcy judge. Unless there is an adversary proceeding brought by a creditor, or a motion to convert the case brought by the trustee, most of these cases now involve very little work by the judge.

However, the pending requests should be considered in light of the significant changes to the consumer bankruptcy laws proposed by H.R. 833 and S. 625. Consumer bankruptcy cases which now involve relatively little or no judge time will likely account for a greater workload if either of these bills become law. Attached to my statement is an excerpt from a comprehensive, new analysis completed last week by Hon. Eugene R. Wedoff, a bankruptcy judge in Chicago and the Co-chair of the ABI Consumer Bankruptcy Committee. Judge Wedoff's analysis identifies several discrete areas of ambiguity in the application of the means test found in H.R. 833, where parties and the trustee will be forced to litigate new issues. Beyond the means test, there exist an array of other changes to current law that will require satellite litigation before the bankruptcy judge. These areas include reaffirmations, broadened exceptions to discharge, credit counseling requirements, and more.

As a Chapter 7 trustee, I can state that under the proposed changes, there would be a substantial increase in consumer bankruptcy litigation, even if there is a corresponding decline in filings due to the "disincentives" to file found in both H.R. 833 and S. 625. Ironically then, consumer bankruptcy cases that heretofore rarely reached a bankruptcy judge, will now occupy more judicial time.

Neither will the reform legislation's proposals in the business bankruptcy area lessen the workload faced by bankruptcy judges. It is clear that business cases often involve numerous parties, creditors and collateral litigation over complex issues. These cases have a workload impact far beyond their numbers. The pending bills make few changes designed to lessen this workload. In part due to the healthy national economy, business cases have declined. In the year ending June 30, 1998, there were 39,934 new business cases, down from 50,202 a year earlier. Chapter 11 filings in particular have dropped sharply in recent years, from 13,221 in 1995, to 12,859 in 1996, to 11,159 in 1996, to 9,613 in 1998 and 8,684 last year.

There is concern, however, that a rise in Chapter 11 filings could occur just around the corner. Federal bank regulators have issued repeated warnings in recent months about credit quality and concern over underwriting standards for commercial loans. Bond defaults are rising. Sectors including health care (nursing homes and hospitals) and retail are seeing growth in the number of financially-troubled entities. Health care bankruptcies, in particular, are very judicial time intensive.

Requests for Resources Should be Scrutinized

While it is important to meet the legitimate resource needs of the courts, we agree with Chairman Grassley that the judiciary bears the burden of demonstrating the need for new judgeships. We applaud Chairman Grassley's healthy skepticism toward an ever-growing federal bench, especially a the appellate level. It is also important to realize that the Third Branch of government, including the bankruptcy courts, is not immune from oversight into its use of current resources. No request for more resources should be approved by Congress without an assessment that the current judges are being used in the most efficient manner. We note, however, that the Bankruptcy Committee has consistently recommended fewer permanent and more temporary judgeships than requested by the Circuit Councils.

Limiting judgeship requests to the number necessary is important because each bankruptcy judgeship costs about $721,000 to establish and about $575,000 per year to maintain, according to the General Accounting Office. At the same time, it is important that there are sufficient judgeships to enable the bankruptcy system to operate fairly and efficiently. We believe the Judicial Conference, through its Bankruptcy Committee, has struck the appropriate balance in the pending requests.

Cost Saving Mechanisms Should be Pursued

One cost-conscious innovation we support is the use of temporary judgeships. Eleven of the 24 new positions would be designated as temporary. This provides Congress with a periodic opportunity to assess the continued need for these positions. Converting temporary judgeships to permanent positions should occur only when the long-term need is clear.

There are a number of other cost-saving innovations that should be further promoted, including more and better case management techniques, greater use of automation in the bankruptcy courts, expansion of the use of visiting judges both intra-circuit and inter-circuit, more use of recalled and retired judges, temporary law clerks and other ways to match the existing resources with current need. These devices are especially important in managing complex business cases. We encourage

the Judicial Conference and the Administrative Office of the Courts to continue to work to find ways to better equalize the workload of judges.

We thank the Subcommittees for inviting ABI to participate in today's hearing and we look forward to assisting you and your staff in any way you find helpful. I would be pleased to answer any questions you might have.

[NOTE: Additional material submitted for the record by Mr. Elsaesser: *An Analysis of the Consumer Bankruptcy Provisions of H.R. 833, Bankruptcy Reform Act of 1999, As passed by the House of Representatives*, written by Hon. Eugene R. Wedoff, United States Bankruptcy Court, Northern District of Illinois, Chicago, Illinois—prepared for the American Bankruptcy Institute, Web posted and Copyright October 29, 1999, American Bankruptcy Institute, is on file with the House Judiciary Committee's Subcommittee on Commercial and Administrative Law.]

The CHAIRMAN. Does the gentleman from North Carolina seek recognition?

Mr. WATT. Thank you, Mr. Chairman. Just briefly, to thank Judge Scott for her plug for North Carolina.

Ms. SCOTT. Representative Watt, I got calls from my colleagues in North Carolina who wanted to be sure this committee knew the facts of what was going on, and I was pleased to see you be here today.

Mr. WATT. It is a serious problem, and I hope—I wish that Representative Coble could have made it, but apparently he is not going to make it. So we did the best we could in his absence.

Just to Mr. Ray to say that I have actually been an advocate of direct appeals from bankruptcy court to circuit courts, although not for this particular reason; this gives me a new argument to make. But it has always seemed to me that bankruptcy judges and district court judges who sit essentially in the same courthouse, it is very difficult for a district court judge who goes to lunch with and sees regularly his counterpart on the bankruptcy bench to then be in a position to overrule some decision that they have made, and I just have never seen one ever do that. It just seems to me that it makes better sense to have some more independent body to which an appeal can be taken.

Mr. RAY. Thank you.

Mr. WATT. I appreciate your perspective.

I will yield back. I don't have any other questions or comments.

The CHAIRMAN. We thank the gentleman.

The Chair only has one question generally to ask for any and all of the three witnesses. That is, would it be prudent on the part of the Congress to accept the numbers that add up to the 24 new judgeships, but create them on a temporary basis, pending the flow of whatever might come of the bankruptcy reform bill, if it should pass, and to take into account the floods in Eastern North Carolina and any downturn in the economy, God forbid, and then be able to calculate at some future time whether they should be made permanent and even more judges be appointed, et cetera?

This thought came to me only while we were listening to this testimony, and it is worth analyzing. Does anyone wish to respond to that? Mr. Ray.

Mr. RAY. Yes, sir, Mr. Chairman. That is the most I take away from today's hearings, is that we have the floods in North Carolina that, hopefully they won't happen every year. But every time there

is a tornado or hurricane or something like that, we do have an uptake in personal bankruptcies; but they last 3 or 4 or 5 years.

I think, if I were running the show, I would do the following thing: First of all, I would find out the judges that are sitting 7½ hours a month and ask them, most people don't want to take a paycheck and sit there bored. I have had judges ask me from the bench, Mr. Ray, why don't you file that next big case here, because I don't have anything to do. That is on the record.

I think if you would ask some judges to move, you might then know better where the mop is going to flop with this new bill, and this new bill I think is going—we think maybe it is not going to increase the caseloads. We think it is going to decline them. I think it is going to decline. People are going to stop using bankruptcy—bankruptcy is supposed to be a safety net, and people are using it as a trampoline. That is going to stop once we get the new legislation passed.

But the most that I would take away from today's hearing is temporary judges. I don't see that anybody has made a case for 14 years.

Ms. SCOTT. Mr. Chairman, point of fact is, though, 14 years is the term of office for a bankruptcy judge, and creating only temporary judgeships does force the Judicial Conference to keep coming back to Congress in order to either make them permanent or get them extended. That takes a lot of resources on the part of the judiciary to perform that function, which again takes time.

Again, a temporary judgeship is just that. We have proven the need for them historically. In some cases it has just simply been a Band-Aid approach, and we need the permanency of these judgeships.

Again, I go back to the figures that the Judicial Conference used, the case-weighted numbers. These are all based on figures before 1994, having to do with the 18 judgeships. I don't think we are going to see the cases drop below those figures any time in the near future.

I know that my colleague, Mr. Ray, has already admitted that he is a Chapter 11 lawyer, practicing, I guess, a lot in Delaware these days. In my case, the vast majority of the cases are consumer cases. I spend the vast majority of my time, and I assure you I am on the bench longer than 7½ hours in a given month, covering almost 9,000 cases.

If the current Chapter 7 cases, which number about, according to last year's figures if I remember correctly, some 993,000, suddenly become Chapter 13 cases, which numbered about 359,000, I can assure you that we will be spending considerably more time dealing with the issues that are going to come before us. My colleague, Judge Randall Newsome, from the Northern District of California who preceded me as the president, spoke before your subcommittee last March 9, 1999. His written statement is in your records from that hearing. During that hearing, he outlined 54 litigation points that could cause more litigation in the bankruptcy court. Since that time, the proposed legislation has been changed or there are changes anticipated that will come up, so there are yet more issues that we haven't dealt with.

But I know this: Lawyers are creative individuals; and, if there is a new piece of legislation, they will have to litigate to find out what the judge is going to say, what the judge is going to do. These cases do not go up on appeal. It doesn't matter whether it is a direct appeal or to the district court, the dollars simply are not there. So that I think the direct appeal argument for the vast majority of these cases doesn't stand on its own.

Mr. ELSAESSER. Mr. Chairman, just briefly, as stated in our written testimony, we do support the concept of temporary judgeships; and we do think that is a potential solution to this issue. But since Mr. Ray raised in his question, I wanted to just expand just very briefly on what the new bill will do to those of us who are in the mix, in the consumer business, that is—in my role as a Chapter 7 trustee, I am not—I believe that if the bill that is before the House and the Senate is to work as intended, there has to be more work for the judges in the courtroom because I think what you have created in the bill is a system of stricter, much stricter scrutiny of Chapter 7 debtors. And if that scrutiny is going to work, the judges have to back up what is in the bill.

I speak throughout the country to consumer bankruptcy lawyers on both sides. I spoke at the Visa conference just a month and a half ago of obviously attorneys representing the creditors of the credit card industry and the consumer bankruptcy lawyers, and I believe that they are in agreement on one issue and that is that there will be a substantial increase in consumer bankruptcy litigation across the board if the bill passes. I am not saying that is necessarily a bad thing, but it is probably going to happen.

Thank you, Mr. Chairman.

The CHAIRMAN. The time of the Chair has expired. All time has expired. We dismiss the panelists with our gratitude, and we will see what happens.

The subcommittee stands adjourned.

[Whereupon, at 3:30 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF HON. PAUL D. COVERDELL, A U.S. SENATOR FROM THE STATE OF GEORGIA

Congressman Gekas, Senator Grassley, I thank each of you today for agreeing to hold this joint hearing on an issue that is important to many states. Increased bankruptcy filings, as you know, are placing a severe strain on our federal courts and on the judges who preside over these cases. The House and Senate Bankruptcy Reform bills seek to address this issue by authorizing eighteen new bankruptcy judges. While Congress recognizes the need for these judges, it has not yet taken the steps it deems necessary to approve another needed group of bankruptcy judges identified by the U.S. Judicial Conference in March of this year. This hearing is an important step in that direction.

As you know, Georgia is one of the states that the Judicial Conference has indicated needs another bankruptcy judge. The Middle and Southern Districts in Georgia have, respectively, the eighth and ninth highest weighted caseloads in the country. The most recent data from the Administrative Office of the U.S. Courts indicates that the weighted bankruptcy filings per authorized judgeships is 1,907 for the Middle District and 1,880 for the Southern District. Even with approval of a new judge for the Southern District, the three full-time judges in those Districts would still carry a caseload that exceeds the threshold of 1,500 weighted hours that justifies the creation of another judgeship.

The review undertaken by the Judicial Conference of the workload in these districts also found that caseloads are being managed in a highly efficient manner. The Judicial Conference had no suggestions to assist the court in expediting its caseload. A new judgeship is the only solution to this caseload problem.

I understand the Judicial Conference used the same criteria to justify the six new judgeships in their March 1999 recommendation that they used to justify the 18 judgeships in the Bankruptcy Reform bills. Understanding the need for a new bankruptcy judge in my state, I support the Judicial Conference's recommendation and have introduced legislation that would authorize the six additional judges. I believe this, along with today's hearing, will shed important light on caseloads and the need for new judges. Again, I thank the distinguished chairs for holding this important hearing and I hope it will help move this issue forward.

PREPARED STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

I would like to thank Chairman Grassley and Chairman Gekas for conducting this hearing today to review the need for additional bankruptcy judgeships.

I will focus my comments on the caseload crisis affecting the Central and Eastern Districts of California. The judges in these districts are so overwhelmed that the Judicial Conference has proposed three permanent and one temporary bankruptcy judgeships for the Central District, and one temporary judgeship for the Eastern District.

Rising bankruptcy filings are not a new problem. Since 1980, Bankruptcy filings have risen over 400 percent. Congress last tried to address the increased burdens on bankruptcy courts in 1992 by enacting the Bankruptcy Judgeship Act, which created 25 permanent and 10 temporary bankruptcy judgeships.

Continued growth in bankruptcy filings have rendered the 1992 act obsolete. While no new judges have been authorized since 1992, bankruptcy filings have risen

by 43 percent from 971,000 to 1,391,000. Four hundred thousand cases have been added to the docket.

A disproportionate share of this caseload growth has impacted the Central and Eastern Districts of California. Judges in the Central District, for example, presided over 113,000 case filings in fiscal year 1999, which is approximately 8 percent of all bankruptcies filed nationwide. The Central District has the largest number of Chapter 7 filings, the most Chapter 13 filings, and the second largest number of Ch. 11 filings of any district in the United States.

The Judicial Conference uses a case-weighing system to analyze the workload of a bankruptcy court. This statistic measures not only the number of cases a judge handles, but also the complexity of the cases. The national average of case-weighted hours per judge is 1,397 hours. If a district has an annual caseload average of 1,500 hours per judge, the Judicial Conference will generally recommended that it receive another judgeship. In 1998, the Central District had a case-weighted average of 1,766 hours per judge and the Eastern District's average was 1,731 hours per judge.

The Eastern and Central Districts of California are also well above the national average in filings per judgeship. In calendar year 1998, the national average of filings per judgeship was 4,425. The Central District of California, meanwhile, had 5,761 filings per judgeship and the Eastern District of California had 6,558 filings per judgeship.

Because of this overwhelming court docket, parties litigating in the Central and Eastern District of California receive substantially fewer judicial resources than in many other parts of the country. Judges have less time to hear cases, courtroom calendars are longer, and the costs of litigation are higher.

Bankruptcy lawyers from the region report that any trials lasting longer than a day must be spaced over weeks, even months, because of the unavailability of clear court days. Moreover, practitioners are having to warn clients that the courts lack the time to read all of the pleadings, analyze financial documents or ferret out misleading assertions.

The Senate is presently grappling with legislation to reform and update the bankruptcy code. I recognize that comprehensive bankruptcy reform may take some time to iron out, but we need to adopt more judgeships now. There is precedence for putting certain bankruptcy issues on the fast track. Recently, Congress enacted a needed extension to the Ch. 12 farm bankruptcy provisions of the bankruptcy code. I urge my colleagues to give bankruptcy judgeships the same high priority.

When considering this issue, we also must recognize that it typically takes 18 months to install a judge after a new position is authorized. Thus, Congress has no time to waste.

I pledge to work with colleagues in both the House and the Senate to move this issue forward.

PREPARED STATEMENT OF HON. PAUL S. SARBANES, A U.S. SENATOR FROM THE STATE OF MARYLAND

Chairman Grassley, Chairman Gekas, I appreciate having the opportunity to submit this statement on the need for additional Federal bankruptcy judges in the District of Maryland.

As the members of these House and Senate Subcommittees know all too well, bankruptcy filings across the country have skyrocketed in recent years. In Maryland alone, the total number of filings rose from 9,201 in 1990, to 34,463 in 1998—an increase of approximately 275 percent.

This year, as in years past, your Subcommittees have been hard at work to determine the causes of this dramatic expansion and what, if anything, can be done to stem the tide of bankruptcy filings. While Members of Congress may have reasonable differences of opinion in what should be done to reform the Bankruptcy Code, one thing we should all agree on is the need to administer that Code fairly and in a way that provides certainty to individuals and the business community.

At the heart of dispensing such justice are our bankruptcy judges. Unfortunately, in too many cases these bankruptcy judges are overburdened and unable to perform their duties expeditiously. With the changes that may occur in the Bankruptcy Code, this situation could worsen. Simply put, we must ensure that bankruptcy judges are not spread too thin to deal with our current laws and we must increase our judicial resources as necessary to ensure that we have the ability to deal with any changes in the Bankruptcy Code.

This year, the United States Judicial Conference has recommended the creation of 24 additional bankruptcy judgeships across the country. A look at the conditions currently facing Maryland's bankruptcy judges is a powerful example of the critical

need for the new judgeships recommended by the Judicial Conference. Perhaps no state has been impacted as severely by the rise in bankruptcy filings as the State of Maryland. The last time Maryland received a new bankruptcy judgeship was in November of 1993. Since that time, the number of bankruptcy filings in Maryland has more than doubled. In fact, by any measure, the need for additional bankruptcy judgeships in Maryland is critical.

In 1991, the U.S. Judicial Conference adopted a "case-weighing" system for bankruptcy judges under which different types of cases are assigned different degrees of difficulty and overall weighted case-hour goals are established for the judges. Under this system, the average United States bankruptcy judge currently has a weighted case-hour load of 1,337 hours per year. The Judicial Conference generally does not consider a request for new bankruptcy judgeships by a federal district unless the average case-hour total for the district's judges exceeds 1,500.

Given these yardsticks, the burdens facing the District of Maryland's bankruptcy judges are truly astounding. As of June 30, 1999, the average case-hour load of Maryland's four bankruptcy judges is 2,733 hours a year. If Maryland received the two additional bankruptcy judges currently provided—although only on a "temporary" basis—by S. 625 *tomorrow*, the case-hours per judge in the District would still be 1,822, 136 percent of the national average and well in excess of the 1,500-hour mark used to rate a District's need for new judges.

In fact, if Maryland were to receive the three additional bankruptcy judgeships recommended by the Judicial Conference, Maryland's weighted case-hours per judge would still be 1,562 hours a year. Therefore, even with the addition of the three judgeships recommended by the Judicial Conference, Maryland bankruptcy judges will still have a case-hour total far in excess of the national average of 1,337 hours a year and in excess of the 1,500-hour mark used to rate a district's need for new judges.

Aside from the case-weighing statistics, consider the number of bankruptcy cases filed in Maryland. For the year ending June 30, 1998, the District had a total of 34,463 cases filed, or 8,616 cases filed per authorized judgeship. This places Maryland as first in the Nation among the 90 judicial districts in the total number of filings per authorized judgeship—at 196 percent of the national average.

Clearly, this situation cries out for remedial action. Recognizing as much, the Judicial Conference recommended to the 104th Congress that Maryland receive an additional bankruptcy judgeship. Then, in March of 1997, the Judicial Conference approved the addition of two bankruptcy judgeships for the District of Maryland. Unfortunately, neither of these proposals were enacted into law and, as a result, the problem worsened considerably. Now, in its most recent recommendation, the Judicial Conference has determined that Maryland is in need of three additional bankruptcy judgeships.

Maryland's four sitting bankruptcy judges continue to show a dedication that is especially remarkable given the extraordinary burdens placed on them. But despite their admirable commitment, additional judgeships are essential to the fair administration of the Bankruptcy Code for all of the business and individuals that come before the Maryland District—whether as creditors or debtors. Furthermore, efficient operation of our bankruptcy courts is vital to Maryland's economy. Bankruptcy laws are crated to foster orderly, constructive relationships between debtors and creditors as they deal with economic difficulties. This in turn results in businesses being reorganized, jobs (provided by creditors and debtors) preserved, and debts managed fairly. Overworked bankruptcy courts have a destabilizing effort on this system and the economy suffers as a result.

Howard Rubenstein, President of the Bankruptcy Bar Association for the District of Maryland, points out that the "Bankruptcy Code can only work effectively when there is an opportunity for bankruptcy judges to promptly hear and resolve disputes that will enable bankruptcy cases to be administered and disposed of swiftly." The weighted case load burden on Maryland's District puts a severe strain on the ability of the Court to perform its duties in a manner that is consistent with the goals of the Bankruptcy Code.

As your Subcommittees look into the problems facing our bankruptcy system, I urge you to recognize that additional bankruptcy judgeships are a critical component of the Congressional response to these problems.

PREPARED STATEMENT OF HON. JOHN TANNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

I would like to thank everyone involved in today's hearing on the Judicial Conference's recommendation for additional bankruptcy judgeships and on the extension of several temporary judgeships.

As we all know, many states, including Tennessee, are being overwhelmed by the explosion in the number of bankruptcy filings in recent years. I am pleased that H.R. 833 includes an additional judgeship for the western district of Tennessee and also extends the temporary judgeship for the eastern district of Tennessee. West Tennessee ranks third in the nation in the number of weighted filings per authorized judgeship and the situation is not improving. I know how desperately an additional bankruptcy judgeship is needed in Memphis, Tennessee which is above the national average in bankruptcy cases filed. I agree that we must address the root problem of the causes of bankruptcy filings, but in the meantime we can not fight this problem when case load levels are rising and the number of judgeships is remaining static.

I have heard from judges in my district that are frustrated with the situation as it stands and I would urge Members to approve these judgeships this year in order to address the deluge of bankruptcy cases that our courts are facing.

I commend Chairman Gekas and Grassley for holding today's hearing and am hopeful that we can move forward in meeting the Judicial Conference's recommendation this year.

Congress of the United States
Washington, DC 20515

October 21, 1999

The Honorable George Gekas
Chairman
Subcommittee On Commercial and Administrative Law
House Committee On the Judiciary
2138 Rayburn HOB
Washington, DC 20515

Dear Congressman Gekas:

It is our understanding that next Tuesday, October 26, your subcommittee will hold a hearing on the need for additional bankruptcy judgeships. We are informed that this hearing will focus specifically on the March 1999 Judicial Conference recommendation that Congress create six additional bankruptcy judgeships beyond the 18 provided for in the Senate and House bankruptcy reform bills.

As you know, one of these judgeships would benefit Georgia. It is our concern that if Congress does not act now then we will have lost an important opportunity. The last time Congress authorized new bankruptcy judgeships was seven years ago. Considering the heavy workloads in all the affected districts we do not think our courts can once again wait that long. We view the House hearing as an opportunity to move forward with Congressional approval of these judgeships and we understand that in this interest you are receptive to holding the hearing jointly with the Senate. We believe such as step would be a strong move in the right direction.

We appreciate your leadership on this important matter. If we can be of assistance to this effort in any way please let us know.

Sincerely,

Paul D. Coverdell
United States Senator

Jack Kingston
Member of Congress

Saxby Chambliss
Member of Congress

United States Senate

WASHINGTON, DC 20510

Statement in Support of Judicial Conference Recommendation for Additional Bankruptcy Judgeships

Submitted to the Joint Hearing of the House Judiciary Subcommittee on Commercial and Administrative Law and the Senate Judiciary Subcommittee on Administrative Oversight and the Courts

November 2, 1999

We thank Chairman Gekas and Chairman Grassley for conducting today's hearing on the Judicial Conference's recommendation for 24 additional bankruptcy judgeships and the conversion or extension of several temporary judgeships.

Despite an enormous increase in bankruptcy filings in recent years, Congress has not authorized any new bankruptcy judgeship positions since 1992. The Judicial Conference's recommendation would allocate additional resources to the districts where the case load levels are most burdensome. It will also ensure that certain districts won't lose resources when the next judicial vacancy occurs because of the expiration of the authorization for temporary judgeships in these districts.

Many of the positions have been recommended for several years, and we are grateful they are authorized in H.R. 833 and S. 625. However, the bankruptcy reform legislation does not incorporate six additional judgeships which are equally justified.

We respectfully encourage you to secure passage of these judgeships this year. If bankruptcy reform passes this year for the President's signature, we ask it incorporate the entire Judicial Conference recommendation. Alternatively, if the reform legislation does not pass, we respectfully request your consideration of a separate measure approving these judgeships.

We again commend Chairmen Gekas and Grassley for holding today's joint hearing, which will establish a legislative record to enable the full Congress to act on the judgeships this year.