

Harvard Law School
Briefing Papers on Federal Budget Policy

Briefing Paper No. 65

**Funding for the Federal Judiciary:
Evolution into Quasi-Independence**

August 8, 2017
(Updated on November 15, 2019)

Prepared Under the Supervision of Professor Howell E. Jackson

Tracy Cui

TABLE OF CONTENTS

I. INTRODUCTION.....	3
II. PRE-1939: EXECUTIVE BRANCH IN CONTROL OF JUDICIARY BUDGET	4
II(A). BUDGET AND ACCOUNTING ACT OF 1921.....	5
II(B). JUDICIAL CONFERENCE OF THE UNITED STATES.....	6
II(C). CASE STUDY: SUPREME COURT BUILDING	7
III. 1939: THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS..	9
III(A). ESTABLISHMENT OF THE ADMINISTRATIVE OFFICE.....	9
III(B). JUDICIARY BUDGET PREPARATION AND PRESENTATION UNDER THE AO	10
III(C). STATISTICS COMPILATION UNDER THE AO.....	12
IV. POST-1939: INTERFERENCE FROM THE EXECUTIVE BRANCH.....	12
IV(A). DIRECT INTERFERENCE FROM THE OMB IN 1989, 1992, AND 1993.....	13
IV(B). OTHER INTERFERENCE FROM THE EXECUTIVE BRANCH IN THE 1990s.....	14
IV(C). PROPOSED LEGISLATION AGAINST OMB INTERFERENCE	15
V. POST-1939: INTERFERENCE FROM THE LEGISLATIVE BRANCH	15
V(A). EARLY CONSERVATIVE APPROACH IN BUDGET PREPARATION BY THE AO	15
V(B). AO'S DEVELOPING ROLE IN BUDGET FORMATION AND PRESENTATION	16
VI. SEQUESTRATION: INTERFERENCE FROM BOTH BRANCHES.....	19
VI(A). UNITED STATES BUDGET SEQUESTRATION IN 2013.....	20
VI(B). AFTERMATH OF THE UNITED STATES BUDGET SEQUESTRATION IN 2013.....	22
VI(C). RECENT SEQUESTRATION CUTS	23
VII. NON-COURT ENTITIES COVERED UNDER JUDICIARY BUDGET.....	23
VII(A). THE DEFENDER SERVICES	24
VII(B). OTHER NON-COURT ENTITIES UNDER THE JUDICIARY'S BUDGET	25
VIII. MOST RECENT JUDICIARY BUDGET FOR FISCAL YEAR 2017	25
BIBLIOGRAPHY	27
APPENDIX 1: JUDICIAL BRANCH TOTAL OUTLAY AND AS A PERCENTAGE OF FEDERAL GOVERNMENT TOTAL OUTLAY, FYS 1962-2016.....	31
APPENDIX 2: JUDICIAL BRANCH DISCRETIONARY OUTLAY AND AS A PERCENTAGE OF FEDERAL GOVERNMENT DISCRETIONARY OUTLAY, FYS 1962-2016	32
APPENDIX 3: JUDICIAL BRANCH TOTAL OUTLAY VS. JUDICIAL BRANCH BUDGET AUTHORITY, FYS 1962-2016	33
APPENDIX 4: JUDICIAL, DEFENDER SERVICES, AND OTHER NON-JUDICIAL OUTLAYS, FYS 1962-2016	34
APPENDIX 5: OMB JUDICIARY BUDGET TRANSMITTAL, FY 2017 (SELECTED) .	35
APPENDIX 6: AO CONGRESSIONAL BUDGET SUMMARY, FY 2017 (SELECTED). 	37

I. INTRODUCTION

The Judiciary Act of 1789 established a system of federal courts throughout the nation,¹ but the statute created no central agency to provide for the courts' collective administrative and budgetary needs.² For 150 years, various executive agencies took control of the administration and budgetary needs of the ever-growing system of federal courts. In 1939, such control was transferred from the Executive Branch to the Administrative Office of the United States Courts, which was set up within the Federal Judiciary in order to be independent of the Executive Branch. However, even with the Administrative Office, appropriation for the Federal Judiciary never attained full autonomy from the Executive or the Legislative Branch. Most recently, the 2013 sequestration significantly cut the Federal Government's budget,³ impacting appropriation for the Judiciary. Meanwhile, appropriation for the Federal Judiciary increased from \$98,800 in 1792⁴ to \$7.58 billion in 2017,⁵ covering not only federal court judges and employees but also non-court entities such as the Defender Services.⁶ This paper traces the historical development of control over the Federal Judiciary's budget and administration. In particular, this paper focuses on clashes over the Judiciary's budget between the Executive Branch and the Federal Judiciary,

¹ See U.S. CONST. art. III, §1 (vesting judicial power in "one supreme court, and such inferior Courts as the Congress may from time to time ordain and establish"). The First United States Congress carried out this provision in the Constitution via the Judiciary Act of 1789 by establishing the structure of the federal court system, which largely remains intact today. The Act was signed into law by President George Washington on September 24, 1789. 28 U.S.C. §1350 (1948).

² FED. JUD. CTR., HIST. OF THE FED. JUD.: ADMIN. OFF.S AND AGENCIES, http://www.fjc.gov/history/home.nsf/page/admin_01_06.html (last visited Mar. 12, 2017).

³ "Federal Government" in this paper refers to all three Branches of Government.

⁴ DANIEL S. HOLT, FED. JUD. CTR., FED. JUD. APPROPRIATIONS, 1792 –2010 1 (2012), available at [http://www.fjc.gov/public/pdf.nsf/lookup/Appropriations.pdf/\\$file/Appropriations.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/Appropriations.pdf/$file/Appropriations.pdf).

⁵ \$7.58 is the amount of appropriations requested by the Judiciary in 2017. Admin. Off. Of the U.S. Cts., The Judiciary FY 2017 Cong. Budget Summary 5 (2016). ADMIN. OFF. OF THE U.S. CTS., THE JUDICIARY FY 2017 CONG. BUDGET SUMMARY 5 (2016)

http://www.uscourts.gov/sites/default/files/fy_2017_federal_judiciary_congressional_budget_summary_0.pdf; see also *infra* App. 3; see generally App. 1 and 2.

⁶ *Id.*; see also *infra* App. 4.

and clashes between the Legislative Branch and the Federal Judiciary.

II. PRE-1939: EXECUTIVE BRANCH IN CONTROL OF JUDICIARY BUDGET

For about 150 years, the administration of the Federal Judiciary shifted among various Executive Branch entities.⁷ From 1789 (creation of the Federal Government) until 1849, Congress assigned the financial administration of the federal courts, including disbursing appropriated money, to the Department of the Treasury.⁸ From 1849 to 1870, financial management of the federal courts shifted from the Treasury Department to the Department of the Interior (DOI), since changes within the Government vested domestic matters in the DOI, with which the Treasury Department was merged.⁹

From 1870 until 1939, the Department of Justice (DOJ) inherited the role of administration of federal courts from the DOI.¹⁰ The Attorney General, as head of the DOJ, assumed the supervisory powers previously exercised by the Secretary of the DOI “over the accounts of the district attorneys, marshals, clerks, and other officers of the courts of the United States.”¹¹ The DOJ’s purview included supervising the federal courts’ financial accounts and preparing budget requests, as well as compiling statistics on the business of the federal courts.¹² For example, in a congressional appropriation hearing for the 1931 DOJ Appropriation Bill, then-Attorney General William D. Mitchell testified regarding a \$1 million increase in total

⁷ FED. JUD. CTR., *supra* note 2.

⁸ *Id.*

⁹ *Id.*; see also DEP’T OF THE INTERIOR, HIST. OF THE INTERIOR, <https://www.doi.gov/whoweare/history/> (last visited Mar. 12, 2017) (discussing that in 1789, Congress created three Executive Departments: Foreign Affairs (later renamed State), Treasury, and War, among which departments domestic matters were distributed by Congress, and that, in 1849, the 30th Congress vested domestic matters in the DOI to handle domestic matters, with which the Treasury Department was merged).

¹⁰ PETER GRAHAM FISH, POL. OF FED. JUD. ADMIN. 91 (2015); see also DEP’T OF THE INTERIOR, *supra* note 9 (discussing that this transfer of power was done according to the act establishing the DOJ in 1870).

¹¹ DEP’T OF THE INTERIOR, *supra* note 9.

¹² *Id.*

appropriation for the DOJ and the United States courts to spend on court clerks, additional judges, and court organizations.¹³ Mitchell noted that the clerks' offices were "clogged," that there was a delay in "expediting the business of the court, due to the fact that the clerks were undermanned in many districts[.]"¹⁴ The Appropriations Committee recognized the benefit of "speedy administration of justice," and approved the appropriation.¹⁵

II(A). Budget and Accounting Act of 1921

A piece of budget legislation during this period helped shape the process of appropriation for the Federal Government even to this day. The Budget and Accounting Act of 1921 (the "Act") prescribes that the "President shall transmit to Congress...the Budget, which shall set forth in summary and in detail...the estimates for such year[.] The estimates for such year for the...Supreme Court of the United States shall be transmitted to the President on or before October 15th of each year, and shall be included by him in the Budget *without revision*[.]"¹⁶ Section 207 of the Act also created the Bureau of the Budget (Bureau) under the Treasury Department.¹⁷ Renamed the Office of Management and Budget (OMB) during the Nixon administration in 1970,¹⁸ the Bureau prepares the Budget and any supplemental or deficiency estimates as prescribed by the President.¹⁹ The Bureau has the "authority to assemble, correlate, revise, reduce, or increase the estimates of the several departments or establishments."²⁰ Section 215 of the Act then requires the head of each department and establishment to revise

¹³ *Dep't of Just. Appropriation B. for 1931: Hearing Before the Subcomm. of H. Comm. on Appropriations*, 71st Cong. 4 (1930) [hereinafter *1931 Hearings*] (statement of Hon. William D. Mitchell).

¹⁴ *Id.*

¹⁵ *Id.* at 17.

¹⁶ Budget and Acct. Act of June 10, 1921, ch. 18, §201(a) (repealed 1950).

¹⁷ *Id.* §207.

¹⁸ Exec. Order No. 11541, 1970 WL 123115, §1 (Pres. 1970).

¹⁹ Budget and Acct. Act of June 10, 1921, ch. 18, §207 (repealed 1950).

²⁰ *Id.*

departmental estimates and submit them to the Bureau.²¹ However, as the Act clarifies in Section 2, “department or establishment” does not include the Legislative Branch or the Supreme Court.²² Some interpreted the requirement for the Bureau to transmit the Judiciary’s budget request to Congress without change as recognition by Congress that the Judiciary is not part of the Executive Branch.²³ Under this Act, the DOJ prepared budget requests for the Federal Judiciary and submitted them to the Bureau for the President to transmit to Congress for appropriation “without revision.”²⁴ As this paper discusses in Part III, the “without revision” provision from the Act has historically been violated by the Bureau and later by its successor the OMB.²⁵ Attorney General Mitchell’s testimony in 1931 also made reference to submitting budget estimates to the Bureau.²⁶

II(B). Judicial Conference of the United States

In 1922, when the DOJ supervised the administration of the federal courts, the Judicial Conference of the United States was established.²⁷ Initially named the Conference of Senior Circuit Judges, the Judicial Conference (name change in 1948) was presided over by the Chief Justice of the Supreme Court and included senior judges (now known as chief judges) of each circuit court of appeals who reported on the judicial business of the federal courts and made policy recommendations to Congress to improve administration of the Federal Judiciary.²⁸ Until the Administrative Office was established in 1939, the Judicial Conference largely served as an

²¹ *Id.* §215.

²² *Id.* §2.

²³ Richard S. Arnold, *Money, or the Relations of the Jud. Branch with the Other Two Branches, Legis. and Exec.*, 40 ST. LOUIS U.L.J. 19, 23 (1996).

²⁴ Budget and Acct. Act of June 10, 1921, ch. 18, §201(a) (repealed 1950).

²⁵ See *infra* Parts IV(A) and IV(B).

²⁶ 1931 *Hearings*, *supra* note 13, at 1 (statement of Hon. William D. Mitchell, Att’y Gen.).

²⁷ FED. JUD. CTR., ADMIN. OFF.S AND AGENCIES: JUD. CONF. OF THE U.S., http://www.fjc.gov/history/home.nsf/page/admin_01_01.html (last visited Mar. 12, 2017).

²⁸ *Id.*

advisory body to the DOJ, but nevertheless functioned as an important means of communicating the needs of the Judiciary to Congress and members of the Executive Branch involved in the administration of the courts.²⁹ Today, the Judicial Conference serves as the governing board of the Federal Judiciary in administrative matters, and oversees the Administrative Office.³⁰

II(C). Case Study: Supreme Court Building

In its earliest days, the Supreme Court operated with a lack of adequate space and facilities.³¹ A “building for the Judiciary” was among the recommendations of a Committee of the House of Representatives in 1796.³² However, no such building was built for about 135 years, during which time the Court was housed in a temporary space in the Capitol.³³ Finally, in the late 1920s, Chief Justice William Howard Taft took the lead and persuaded Congress to authorize the construction of a permanent home for the Supreme Court³⁴ and to provide the Supreme Court with the facilities comparable to those of the Legislative and Executive Branches.³⁵ The process of budget transmittal for the Supreme Court Building construction illustrates the appropriations process, which closely resembles today’s process.

Through the Public Buildings Act of 1926, Congress authorized the purchase of a site for the Supreme Court Building opposite the Capitol, eventually appropriating \$1.5 million for the site purchase.³⁶ On May 16, 1928, Chief Justice Taft testified in front of the Committee on Public Buildings and Grounds about constructing the Supreme Court Building, in a very

²⁹ *Id.*

³⁰ *Id.*

³¹ Harold H. Burton, *Judging is also Admin.*, 21 TEMP. L. Q. 77, 86 (1947-48).

³² *Id.*

³³ *Id.*

³⁴ U.S. SUP. CT., THE SUP. CT BLDG., <https://www.supremecourt.gov/about/courtbuilding.aspx> (last visited Mar. 12, 2017).

³⁵ Burton, *supra* note 31, at 87.

³⁶ *Id.* at 87, note 28.

amicable hearing.³⁷ The original bill allowed the Bureau of the Budget and the Committee on Appropriations to put a limit on cost in an appropriation and prescribed that appropriations would be disbursed by the DOI.³⁸ This shows that various executive entities, such as the DOI and the DOJ, had overlapping responsibilities regarding funding for the Judiciary at the time. Chief Justice Taft answered questions about approximate cost for the Building, going into detail about his expectation for a “very sizable” “white marble” building.³⁹ In addition, Chief Justice Taft made it very clear in his testimony that the DOJ was not wanted in the Supreme Court Building, and that the Supreme Court, as a separate branch of the Federal Government, had “a right to an independent existence” from the DOJ.⁴⁰ The Committee responded positively to Chief Justice Taft’s opinions with no apparent pushback, but only posed clarification questions about what the building cost would entail.⁴¹

Starting in January 1927, regarding the site purchase and construction, a series of presidential communications were transmitted to the Congressional Appropriations Committee detailing budget requests from the Director of the Bureau of the Budget, who in turn was transmitting statements from the architect of the Capitol.⁴² The presidential communications usually included wording such as “transmitting without revision from below.”⁴³ Construction began in 1932,⁴⁴ and was completed in time for the October term of 1935.⁴⁵ The Supreme Court

³⁷ *Pub. Bldg.s and Grounds: Hearing on H.R. 13665 Before the Comm. On Pub. Bldg.s and Grounds H.R.*, 70th Cong. 1 (1928) (statement of Chief Justice Taft).

³⁸ *Id.* at 5–6.

³⁹ *Id.* at 6.

⁴⁰ *Id.* at 7.

⁴¹ *Id.* at 1–19.

⁴² PRESIDENT OF THE U.S., UNITED STATES SUPREME COURT SITE, H.R. Doc. No. 655, at 1–2 (1927); PRESIDENT OF THE U.S., UNITED STATES SUPREME COURT BUILDING, H.R. Doc. No. 471, at 1–2 (1928); PRESIDENT OF THE U.S., SUPPLEMENTAL ESTIMATE OR APPROPRIATION, SUPREME COURT BUILDING, H.R. Doc. No. 249, at 1–2 (1930).

⁴³ *Id.*

⁴⁴ U.S. SUP. CT., *supra* note 34.

⁴⁵ Burton, *supra* note 31, at 87.

Building was completed within congressional appropriation, and \$94,000 was even returned to the Treasury (nearly 10% less than the sum appropriated).⁴⁶ Today, the Supreme Court Building not only has increased the Court’s efficiency while housing the Judicial Conference and the Administrative Office, but its majesty has also inspired members of the Court and the public.⁴⁷

III. 1939: THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Upon the Judiciary’s request, Congress established the Administrative Office of the United States Courts (AO) by the Act of August 7, 1939.⁴⁸ For the first time, Congress established a judicial administrative agency operating under the direction of federal judges, rather than officers of the Executive Branch.⁴⁹ The AO functions under the supervision and direction of the Judicial Conference, with a director appointed by the Chief Justice with the concurrence of the Judicial Conference.⁵⁰ The AO is housed in the Supreme Court Building.⁵¹

III(A). Establishment of the Administrative Office

The AO was a natural extension of the Judicial Conference, as its members became convinced of the desirability of a coordinated federal judiciary resulting from the Conference.⁵² In fact, some judges had experienced the DOJ’s “depression-inspired economies” and proposed establishing the AO to “relieve the courts of Executive control over its finances.”⁵³ One judge on the D.C. Court of Appeals, Judge Harold M. Stephens, had even written that he “had been

⁴⁶ U.S. SUP. CT., *supra* note 34.

⁴⁷ Burton, *supra* note 31, at 88.

⁴⁸ *Id.* at 89–90 (citing 28 U.S.C. §§444–50 (1940)).

⁴⁹ FED. JUD. CTR., *supra* note 2.

⁵⁰ *Id.*; *see also* Fish, *supra* note 10, at 134–35 (discussing that federal judges were deliberate about the AO in protecting the traditional autonomy of individual courts and judges, instead of administrators, who reign over the judiciary’s administrative institution).

⁵¹ Burton, *supra* note 31, at 88. [Editor’s Note: In 1992, the AO’s office was moved to the Thurgood Marshall Judicial Administration Building.]

⁵² *Id.* at 89; *see generally*, Fish, *supra* note 10, at 125–30 (discussing the history behind proposing the establishment of the AO).

⁵³ Fish, *supra* note 10, at 130.

strongly impressed by the power of the Bureau of the Budget to slash the financial estimates of the courts.”⁵⁴ By proposing the AO, the Conference hoped that the federal courts would “have the power to present to Congress without interference or elimination of items by the Executive Branch the estimates which they regard as necessary to their fiscal and administrative efficiency.”⁵⁵ This proposal was successfully made into law with the passage of the Act of 1939, which prohibited the Budget Bureau from revising the Judiciary’s estimates, while permitting the Bureau to make negative recommendations.⁵⁶

For the first time, a judicial agency independent from the Executive Branch took over the responsibility of federal courts administration.⁵⁷ The AO was responsible for the preparation and submission of the annual budget estimates, supplemental and deficiency estimates, and the disbursement of monies appropriated—all responsibilities previously held by the DOJ.⁵⁸ The transfer of such various “housekeeping” duties long performed by the DOJ to the AO did not stir great controversy, except for the control on probation officers, which will be discussed below.⁵⁹

III(B). Judiciary Budget Preparation and Presentation under the AO

In 1939, less than a year after the AO was established, its first Director, Henry P. Chandler (Director from 1939 to 1956)⁶⁰ testified on the topic of probation officers in 1940 at a Federal Judiciary appropriation hearing for fiscal year 1941.⁶¹ Chandler testified that, per new legislation at the time, the AO should take over from the DOJ supervising the payment of

⁵⁴ *Id.* (citing Harold M. Stephens to William H. King, March 14, 1938, Stephens Papers, Box 208).

⁵⁵ *Id.* at 131 (quoting D. Lawrence Groner to House Conferees on S. 188, July 22, 1939, Groner Papers, Box 4).

⁵⁶ *Id.* (citing 53 Stat. 1224, §305).

⁵⁷ FED. JUD. CTR., *supra* note 2.

⁵⁸ *Id.*

⁵⁹ Fish, *supra* note 10, at 131–34.

⁶⁰ FED. JUD. CTR., ADMIN. OFF.S AND AGENCIES: DIR.S OF THE ADMIN. OFF. OF THE U.S. CTS., http://www.fjc.gov/history/home.nsf/page/admin_01_03_01.html (last visited Mar. 14, 2017).

⁶¹ *Dep’t of St., Com., and Just. Appropriation B. for 1941: Hearing on H.R. 8319 Before the Subcomm. of the Comm. on Appropriations U.S. S., 76th Cong. 142–45 (1940) [hereinafter 1941 Hearing]* (statement of Henry P. Chandler, Dir. of the Admin. Off. Of the U.S. Cts.).

salaries and expenses of probation officers.⁶² Chandler pointed out that “[t]he bill creating the Administrative Office provides that in the Administrative Office shall be vested charge of all matters relating to the clerical and administrative personnel of the courts, with certain exceptions. The probation officers are clearly administrative personnel.”⁶³ Together with Chandler was Chief Justice Groner from the D.C. Court of Appeals,⁶⁴ who was a major force behind establishing the AO.⁶⁵ Chief Justice Groner explained relevant legislative history to support the outcome that the AO now supervised the payment of probation officers.⁶⁶ In addition, Chief Justice Groner used the opportunity to clarify the authority of Director of the AO:

All administrative powers and duties now conferred or imposed by law upon the Department of Justice or the Attorney General, respecting clerks, deputy clerks of courts and clerical assistants, law officers, secretaries, and stenographers to the judges, and librarians in charge of libraries of the courts, and such other employees of the courts . . . are hereby vested in the administrative office.⁶⁷

In the following year, AO’s Director, Chandler, testified regarding appropriation for the Federal Judiciary for fiscal year 1942.⁶⁸ His testimony this time focused on developing a fixed schedule for salary appropriation for judges, clerks, and secretaries.⁶⁹ Justice Groner testified that Chandler had been working on setting up schedules by which the salaries of law clerks and the salaries of secretaries would be established on a somewhat fixed amount basis, with increases after two or three years.⁷⁰ The Judicial Conference was also involved in developing this fixed

⁶² *Id.*

⁶³ *Id.* at 144.

⁶⁴ *Id.* at 145.

⁶⁵ Fish, *supra* note 10, at 129–31.

⁶⁶ 1941 Hearing, *supra* note 60, at 145 (statement of Hon. D. Lawrence Groner, Chief Justice D.C. Cir.).

⁶⁷ *Id.* (citing a report to both Houses a provision in a relevant bill).

⁶⁸ *Dept’s of St., Com., and Just., and the Fed. Judiciary Appropriation B. for 1942: Hearings on H.R. 4276 Before the Subcomm. of the Comm. on Appropriations U.S. S., 77th Cong. 238–41 (1941).*

⁶⁹ *Id.*

⁷⁰ *Id.* at 238.

salary schedule.⁷¹ This hearing was substantially different from the one in 1931, when it was the Attorney General of the DOJ who testified regarding appropriation for the salaries of judges and clerks.⁷² Over the years, the AO has consistently testified in front of Congressional Appropriation Committees regarding budget requests by the Federal Judiciary. However, the AO and the Federal Judiciary have not always received their requested budget without interference.⁷³

III(C). Statistics Compilation under the AO

In addition to taking over budget estimates and requests for the Judiciary from the DOJ, the AO also took over the responsibility of procuring and compiling statistics related to court business.⁷⁴ More specifically, the AO collects data on the caseload of federal courts, the federal probation and pretrial services system, representations under the Criminal Justice Act, individual bankruptcy and consumer protection, and more.⁷⁵ The Director of the AO submits to Congress and the Judicial Conference an annual report of the activities of the AO and the state of the business of the courts, as required by statute.⁷⁶

IV. POST-1939: INTERFERENCE FROM THE EXECUTIVE BRANCH

Despite provisions such as the Act of 1939, which specifies that the Budget Bureau could not revise the Federal Judiciary's budget estimates,⁷⁷ the appropriations process has been interfered with by the Executive Branch via the Budget Bureau (later the OMB). The Budget Bureau could exert influence without revising the budget estimates by noting discrepancies

⁷¹ *Id.* at 239.

⁷² *See supra* Part II.

⁷³ *See infra* Parts IV and V.

⁷⁴ FED. JUD. CTR., *supra* note 2.

⁷⁵ *See* U.S. CTS., ANALYSIS & REPORTS, <http://www.uscourts.gov/statistics-reports/analysis-reports> (last visited Mar. 14, 2017).

⁷⁶ *See, e.g.* U.S. CTS., ANNUAL REPORT 2016, <http://www.uscourts.gov/statistics-reports/annual-report-2016> (last visited Mar. 14, 2017). Previous annual reports by the AO's Directors can be found at <http://www.uscourts.gov/statistics-reports/analysis-reports/directors-annual-report>.

⁷⁷ Fish, *supra* note 10, at 131 (citing 53 Stat. 1224, §305).

between the Judiciary's estimates and the requirements of the President's program in its transmittal letters to the appropriations committees.⁷⁸ The Budget Bureau could also suggest specific reductions.⁷⁹

One important figure from the Judicial Branch who contributed to the transmittal process was Judge Richard Arnold. Judge Arnold, Chief Judge of the United States Court of Appeals for the Eighth Circuit, was appointed by Chief Justice William Rehnquist as Chairman of the Budget Committee of the Judicial Conference.⁸⁰ As Chairman, Judge Arnold submitted to Congress each year funding requests for the entire Judicial Branch (except for the Supreme Court, which handled its own budget).⁸¹ Even though Judge Arnold was very well known as a great American jurist, he himself believed that his most important contributions might have been in administrative work for the Federal Judiciary.⁸² In a speech by Judge Arnold on the relationship among Branches of the Federal Government, he recounted several incidents where the OMB tried unsuccessfully to interfere with the Judiciary's budget.⁸³

IV(A). Direct Interference from the OMB in 1989, 1992, and 1993

According to Judge Arnold, in 1989, OMB's outgoing Director in the Reagan administration, James Miller, reduced the Federal Judiciary's budget request for the following fiscal year by \$200 million.⁸⁴ The Judicial Conference, including Judge Arnold, only learned about the reduction in the printed budget transmitted by the OMB.⁸⁵ After a series of

⁷⁸ *Id.* at 211 (citing Harold M. Stephens to Judges of the Circuit Court of Appeals for the District of Columbia, memorandum, April 8, 1953, Stephens Papers, Box 89; Louis Ludlow, U.S., Congress, House, Comm. on Appropriations, Hearings, on Second Deficiency Appropriation Bill for 1946, 79th Cong., 2d Sess., 1946, p. 140).

⁷⁹ *Id.*

⁸⁰ POLLY J. PRICE, JUDGE RICHARD S. ARNOLD: A LEGACY OF JUSTICE ON THE FEDERAL BENCH, 380 (2009).

⁸¹ *Id.*

⁸² *Id.*

⁸³ Arnold, *supra* note 23 at 19–35.

⁸⁴ *Id.* at 23.

⁸⁵ *Id.*

communications, the Conference got to see the new Director of the OMB, Richard Darman, who quickly responded by saying that the reduction was wrong and then reversing the decision.⁸⁶

In 1992, after the Judiciary submitted their budget request of \$2 billion to the OMB per custom, a document called the Blueprint for America was issued.⁸⁷ This document included in its appendix a budget cut for the Judiciary of between roughly \$400 million and \$500 million.⁸⁸ Judge Arnold saw it as a clear violation of relevant statutes, and as Chairman of the Budget Committee, he successfully communicated with the President to correct it.⁸⁹

Another incident happened in 1993, when Leon Panetta, Director of the OMB, wrote to Congress without notifying the Judiciary.⁹⁰ This time, Panetta suggested that \$285 million of the budget request be spent on building prisons, without changing the budget.⁹¹ Judge Arnold again engaged the President and resolved the matter in the Judiciary's favor.⁹²

IV(B). Other Interference from the Executive Branch in the 1990s

In the late 1990s, the Judiciary had been caught in the middle of other political activities, which interfered with the Judiciary's budget request. For fiscal year 1996, the Judiciary's funding was temporarily held up in an Appropriation Bill (HR 2076) involving Executive Branch allocations, titled the "Commerce, Justice, State, and Judiciary Appropriations Bill."⁹³ The Judicial Branch was treated as one more federal agency in this bill.⁹⁴

Then, in 1999, the Judiciary's budget was caught in the middle of a fight between Congress and the Clinton administration on the issue of using a sampling system to conduct the

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Arnold, *supra* note 23 at 19–35.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ S. REP. NO. 104-82, at 85, 88 (1995).

⁹⁴ *Id.*

2000 census.⁹⁵ The Judiciary was involved because its budget was included in the appropriations act that covers the Census Bureau. After the OMB cut the Judiciary's budget by \$150 million, then-AO Director Ralph Mechum took quite a strong stance against the OMB, calling "the OMB's move a devious device" and saying that he had considered filing suit against the OMB.⁹⁶ About three weeks later, Chief Justice Rehnquist also urged Congress not to make the Judiciary's budget a hostage due to this issue.⁹⁷

IV(C). Proposed Legislation against OMB Interference

Given interference incidents by the OMB, the Federal Courts Budget Protection Act was introduced in Congress.⁹⁸ This proposed Act permitted the judiciary to submit its budget directly to Congress, bypassing the OMB.⁹⁹ However, the Act was discharged in 2000 and was never passed.¹⁰⁰ Therefore, the process still requires the AO to prepare budget requests under the direction of the Judiciary Committee and submit them to the OMB, which is then required to transmit them to Congress without revision.

V. POST-1939: INTERFERENCE FROM THE LEGISLATIVE BRANCH

In addition to interference from the Executive Branch, Congress is also capable of shaping appropriations to the Federal Judiciary, albeit in sometimes less conspicuous ways.

V(A). Early Conservative Approach in Budget Preparation by the AO

Although the Judicial Conference has the power to review and amend the proposed

⁹⁵ Joan Biskupic, *Rehnquist Asks Cong. to Clear Judiciary Funding: Battle over Census Raised Fear of Appropriations Delay*, WASH. POST, Mar. 31, 1999.

⁹⁶ Carrie Johnson, *Jud. Budget Firefight*, LEGAL TIMES, Mar. 8, 1999.

⁹⁷ Joan Biskupic, *supra* note 95.

⁹⁸ S. REP. NO. 106-379, at 1 (2000).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

budget, it was largely a product of the AO—and especially its Director.¹⁰¹ Thus, the Director of the AO and his or her staff have decisive influence over the budget’s formulation and presentation to Congress.¹⁰² The first AO Director, Henry Chandler, took a conservative approach in formulating the budget. As he explained, his estimates were not merely “honest,” but also most likely to “win the respect and good will of the Congress and to promote the interests of the courts in the long run.”¹⁰³ In addition, the “honest” and conservative Chandler budget was subject to further reduction by the Judicial Conference and its committees so that “favorable congressional actions might be anticipated.”¹⁰⁴ Such a conservative approach from the Judiciary in anticipation of congressional action took the budget “down almost to the bone.”¹⁰⁵

V(B). AO’s Developing Role in Budget Formation and Presentation

The Judiciary’s budget, comprising less than 1% of the total federal budget,¹⁰⁶ was first heavily cut internally by the Judiciary¹⁰⁷ and then presented to the House Appropriations Committee.¹⁰⁸ Because none of the members on the Appropriations Committee sat on the Judiciary Committee, no member knew about the Judiciary’s budget and thus at times proposed to cut the budget even further.¹⁰⁹ Under the administration of the second Director of the AO,

¹⁰¹ Fish, *supra* note 10, at 210 (citing Henry P. Chandler to Chief Judges of the U.S. App. Cts. and Dist. Cts., Mar. 5, 1952, mimeograph (Admin. Off. of the U.S. Cts., Washington, D.C.), and Chandler, “Some Major Advances,” pp. 417–18).

¹⁰² *Id.* at 210.

¹⁰³ *Id.* at 210–11 (quoting Henry P. Chandler to Chief Justice and Members of the Jud. Conf., “Ways and Means of Conforming Expenditures with the Appropriations for Salaries of Supporting Personnel and Travel and Miscellaneous Expenses in 1955,” September 13, 1954, mimeograph (Admin. Off. of the U.S. Cts., Washington, D.C.), p. 15).

¹⁰⁴ *Id.* at 211 (citing Bolitha Laws to John Rooney, June 19, 1952, Stephens Papers, Box 24).

¹⁰⁵ *Id.* at 211 (quoting John Biggs, Jr., U.S., Cong., House, Subcomm. of Comm. on Appropriations, Hearings, on Third Supplemental Appropriation Bill for 1952, 82d Cong., 2d Sess., 1952, p. 32).

¹⁰⁶ Fish, *supra* note 10, at 211 (citing Jud. Conf. Rep., 1953, p. 9).

¹⁰⁷ *See supra* Part V(A).

¹⁰⁸ Fish, *supra* note 10, at 211.

¹⁰⁹ *Id.* at 212.

Warren Olney III (Director from 1958 to 1967),¹¹⁰ the AO assisted the Judiciary in asserting more independence while being cautious not to expand the power of the AO itself.¹¹¹ Olney accomplished this in two ways: First, Director Olney resolved an old problem of obtaining advance notice of DOJ policies when he informed then-Deputy Attorney General, Lawrence Walsh, of the Judicial Conference's need to receive copies of and supporting statements for the DOJ's legislative materials related to the Judiciary.¹¹² As a result, by 1962, the automatic referral of bills drafted in the DOJ to the Judiciary had become usual practice.¹¹³ Second, although the AO continued to perform detailed work on the annual budget for the Judiciary, it played a lesser role in its presentation.¹¹⁴ Instead of the un-prestigious AO, the newly-created Budget Committee of the Judicial Conference became a major actor in the hearing.¹¹⁵ The Budget Committee would carefully analyze and cut down the budget before presenting it to the Judicial Conference, where the budget received full discussion and careful consideration before submission to the Executive Branch for transmittal.¹¹⁶ During this time, the hearings had transformed from "desperate salvage operations" in Director Chandler's time into "exercises in appropriations gamesmanship."¹¹⁷

This trend of development in budget review is confirmed by Judge Arnold,¹¹⁸ who served as Chairman of the Budget Committee on the Judicial Conference from 1987 to 1996.¹¹⁹ During

¹¹⁰ FED. JUD. CTR., *supra* note 59.

¹¹¹ Fish, *supra* note 10, at 222–27.

¹¹² *Id.* at 222.

¹¹³ *Id.* (citing Jud. Conf. Rep. (1962), at 2).

¹¹⁴ *Id.* at 223.

¹¹⁵ *Id.*

¹¹⁶ Fish, *supra* note 10, at 223–24.

¹¹⁷ *Id.* at 224 (citing John Rooney, U.S., Cong., House, Subcomm. of Comm. on Appropriations, Hearings, on Dept's of State, Justice, and Com. the Judiciary, and Related Agencies, Appropriations for 1965: The Judiciary, 88th Cong., 2d Sess., 1964, p. 53).

¹¹⁸ Arnold, *supra* note 23, at 25–26.

¹¹⁹ U.S. CTS. LIBR., HON. RICHARD SHEPPARD ARNOLD: "A LIGHT IN THE L." 1936-2004, <http://www.lb8.uscourts.gov/pubsandservices/histsociety/arnold-richard-memorial-display-handout-updated.pdf>

this period, since the Federal Judiciary lacked a “particular constituency,” it was not top priority in congressional appropriations.¹²⁰ For Judge Arnold, the stages before presenting the budget to Congress around late 1990s included the following: First, engage the Judiciary Committee to write the Budget Committee about “views” and “estimates,” as well as to state that the Judiciary should be “fully funded”; then the Budget Committees produce a concurrent budget resolution; next, the Appropriations Committee makes general allocations to each subcommittee, according to discretionary (most federal courts) and mandatory (salaries of Article III of the Constitution) spending.¹²¹ Funding for federal courts is discretionary under the Budget Act (i.e. the courts’ allotment cannot exceed a certain dollar amount when taken together with all other discretionary spending).¹²² For the purpose of allocating discretionary funds, federal courts and law enforcement both fall under function 750 of the Budget Act.¹²³ Around 1990, the Appropriations Committee had about \$140 billion in discretionary spending to divide among the DOJ, Department of Commerce, Department of State, the Federal Judiciary (which asked for about \$3 billion), and a few smaller agencies.¹²⁴ It is only after the allocation among these different entities has been completed that the Budget Committee of the Judicial Conference would go to the Appropriations Committee and present testimony.¹²⁵ Judge Arnold noted that the two Houses took different approaches to the Judiciary’s funding in the 1990s: the Chairman of the House Subcommittee almost always granted the exact request from the Judiciary. Then from the House, Judge Arnold had to go to the Senate, which almost always cut the Judiciary’s request.¹²⁶ Judge

¹²⁰ Arnold, *supra* note 23, at 25.

¹²¹ *Id.*

¹²² *Id.* at 25–26.

¹²³ *Id.* at 25.

¹²⁴ *Id.* at 26.

¹²⁵ Arnold, *supra* note 23, at 26.

¹²⁶ *Id.*

Arnold also noted that dynamics were subject to change based on House partisan composition.¹²⁷

VI. SEQUESTRATION: INTERFERENCE FROM BOTH BRANCHES

Most recently, the Judiciary's budget has been impacted by yet another form of interference carried out by both the Legislative and the Executive Branches. This form of interference is called sequestration. Sequestration refers to automatic spending cuts due to funding withdrawal for certain government programs, including the Judicial Branch.¹²⁸ The sequestration process involves both the Congressional Budget Office (CBO) and the OMB. The CBO provides estimates on statutory caps for discretionary funding and assesses and recommends whether a sequestration is necessary.¹²⁹ Ultimately, the OMB decides whether a sequestration is necessary, and if so, how the proportional cuts are to be made.¹³⁰ In 1985, the first sequestration measure was introduced under the Balanced Budget and Emergency Deficit Control Act of 1985—also known as Gramm-Rudman-Hollings Act (GRH)—which served as a binding constraint on the federal budget.¹³¹ Over time, Congress has passed a series of other sequestration acts in order to curtail the budget deficit: the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Gramm-Rudman-Hollings II), the Budget Enforcement Act of 1990 (BEA), the Budget Enforcement Act of 1997 (BEA II), and the

¹²⁷ *Id.*

¹²⁸ CONG. BUDGET OFF., SEQUESTRATION, <https://www.cbo.gov/topics/budget/sequestration> (last visited Mar. 17, 2017).

¹²⁹ *Id.*

¹³⁰ *Id.*; see also Ellen Bradford & Matthew Scogin, *PAYGO Rules and Sequestration Procedures* (Mar. 31, 2008) (Briefing Paper on Federal Budget Policy) (prepared by Harvard Law School Students Under the Supervision of Prof. Howell Jackson) (discussing pay-as-you-go (PAYGO) impact on mandatory spending and enforcement through sequestration mechanisms).

¹³¹ Justin Dews & Dan McConnell, *Sequestration and the 2011 Budget Control Act 1* (May 12, 2014) (Briefing Paper on Federal Budget Policy) (prepared by Harvard Law School Students Under the Supervision of Prof. Howell Jackson) (discussing the history and scope of the 2011 Budget Control Act).

Statutory PAYGO Act of 2010 (Statutory PAYGO).¹³² Despite these measures, the budget deficit continued to grow.¹³³

VI(A). United States Budget Sequestration in 2013

In 2013, the Judiciary's budget suffered a major sequestration cut as a result of a series of legislative decisions. The Budget Control Act of 2011 (BCA) amended the Balanced Budget and Emergency Deficit Control Act of 1985 (Deficit Control Act) and reinstated caps on discretionary budget authority.¹³⁴ Subsequently, the American Taxpayer Relief Act of 2012 lowered the spending caps established by the BCA for 2013 and 2014.¹³⁵ Contrary to the CBO's assessment that no sequestration related to the caps would be required for fiscal year 2013,¹³⁶ the OMB issued a sequestration order canceling \$85 billion in budgetary resources across the Federal Government for that year.¹³⁷ The OMB explained its sequestration decision, as authorized under the BCA, as a result of Congress' failure to act under the Deficit Control Act to reduce the deficit.¹³⁸ Under OMB's sequestration cut for fiscal year 2013, all nondefense discretionary spending by the Federal Government, including the Judicial Branch, was cut by 5%.¹³⁹ This cut resulted in nearly \$350 million below the discretionary funding level for the Judiciary in fiscal year 2012.¹⁴⁰ This 5% cut applied broadly to nondefense discretionary

¹³² *Id.*

¹³³ *Id.*

¹³⁴ CONG. BUDGET OFF., FINAL SEQUESTRATION REP. FOR FISCAL YEAR 2013 1 n.1 (2013), available at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/sequestration/sequestration_f inal_april2013.pdf.

¹³⁵ *Id.*

¹³⁶ *Id.* at 3.

¹³⁷ OFF. OF MGMT. AND BUDGET, OMB REP. TO THE CONG. ON THE JOINT COMM. SEQUESTRATION FOR FISCAL YEAR 2013 4 (2013), available at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/fy13ombjsequestrationreport.pdf.

¹³⁸ *Id.* at 1.

¹³⁹ *Id.*, App. at 4.

¹⁴⁰ JUD. CONF., LETTER TO DIR. OF OFF. OF MGMT. AND BUDGET (2013).

spending by the Supreme Court, Federal Circuit Courts, Courts of Appeals, District Courts, Defender Services, the AO, and other entities within the Federal Judiciary.¹⁴¹

In response to OMB's sequestration order in March 2013, the Judicial Conference in May requested \$72.9 million in emergency supplemental appropriations to address critical needs resulting from the sequestration.¹⁴² The request letter was co-authored by the Chair of the Budget Committee of the Judicial Conference and Secretary of the Judicial Conference.¹⁴³ The letter explained that requested emergency appropriations would be used on Defender Services and salaries and expenses for federal courts.¹⁴⁴ Such a request for emergency funding was legally possible because the Deficit Control Act allowed supplemental appropriations categorized as emergency funding to exceed spending caps.¹⁴⁵ The request was addressed to the Director of the OMB, and it asked the Director to transmit to Congress promptly and without change under 31 U.S.C. §1107,¹⁴⁶ a statute that requires the President to transmit promptly to Congress without change proposed supplemental appropriations submitted by the Legislative and Judicial Branches.¹⁴⁷ Having received no supplemental appropriations, the Judicial Branch later in the same year communicated to Congress about the damage of the sequestration cut and implemented emergency measures to reduce hourly rates for public defenders.¹⁴⁸ In September, the Judiciary appealed unsuccessfully to President Obama to acquire funding for fiscal year 2014

¹⁴¹ OFF. OF MGMT. AND BUDGET, *supra* note 137, App. at 4.

¹⁴² JUD. CONF., *supra* note 140.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ 31 U.S.C. §1107 (2011).

¹⁴⁸ U.S. CTS., FISCAL YEAR 2013: BUDGET SEQUESTRATION AND THE JUDICIARY – ANNUAL REP. 2013, <http://www.uscourts.gov/statistics-reports/fiscal-year-2013-budget-sequestration-and-judiciary-annual-report-2013> (last visited Mar. 17, 2017).

in order to perform essential constitutional functions.¹⁴⁹

VI(B). Aftermath of the United States Budget Sequestration in 2013

A Continuing Resolution (CR) that would extend funding through December 15, 2013 was considered, but it failed to pass the House.¹⁵⁰ As a result, most federal entities immediately implemented shutdown plans.¹⁵¹ The Judiciary continued operations using fees and no-year appropriations, which are appropriations available for an indefinite period of time without fiscal year limitation and which are only available until used up.¹⁵² Initially, the Judicial Branch was only projected to run for 10 business days (October 1 – 15). Subsequently, by severely restricting spending, the federal courts were able to remain open through October 18. In the meantime, the federal courts experienced severe work disruptions: U.S. Attorneys were directed to curtail or postpone civil litigation, bankruptcy and Social Security cases experienced delays, criminal calendars were condensed, and building maintenance costs were cut.¹⁵³ During this time, the AO provided extensive guidance to courts about operations once fees were exhausted.¹⁵⁴

Finally, on October 16, 2013, as the Judiciary prepared to implement its shutdown plans, Congress passed and the President signed a Continuing Resolution funding government operations through January 15, 2014.¹⁵⁵ Although the CR provided a hard-freeze funding level for most Judiciary accounts, it allowed two funding increases for the Defender Services and

¹⁴⁹ *Id.*

¹⁵⁰ U.S. CTS., FISCAL YEAR 2014: NO BUDGET AND A GOV'T SHUTDOWN – ANNUAL REP. 2013, <http://www.uscourts.gov/statistics-reports/fiscal-year-2014-no-budget-and-government-shutdown-annual-report-2013> (last visited Mar. 17, 2017).

¹⁵¹ *Id.*

¹⁵² *Id.*; see also U.S. H.R., STATEMENT OF DISBURSEMENTS: GLOSSARY OF TERMS, <https://disbursements.house.gov/glossary.shtml> (last visited Mar. 18, 2017) (explaining no-year appropriation).

¹⁵³ U.S. CTS., *supra* note 148.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

Salaries and Expenses accounts.¹⁵⁶ These two increases were regarded as a remarkable achievement given that there were very few funding increases in the CR.¹⁵⁷ On January 14, 2014, the President signed into law the Consolidated Appropriations Act, which appropriated \$6.5 billion in discretionary funds for the Judiciary. This is 5.1% above the \$6.2 billion appropriated to the Judiciary in FY 2013 after sequestration¹⁵⁸ (recall that the 2013 sequestration percentage was about 5% for the Judiciary).¹⁵⁹

VI(C). Recent Sequestration Cuts

In subsequent years, the Judicial Branch has continued to be impacted by the OMB's sequestration orders. In fiscal years 2014, 2015, and 2016, the Courts of Appeals, District Courts, and other Judicial Services received around a 7% cut (around \$20 million) due to the OMB's sequestration orders, as did other non-exempt nondefense programs.¹⁶⁰

VII. NON-COURT ENTITIES COVERED UNDER JUDICIARY BUDGET

In addition to salaries and maintenance for federal courts, the Federal Judiciary's budget also includes a few non-court entities.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ U.S. CTS., *supra* note 148.

¹⁵⁹ OFF. OF MGMT. AND BUDGET, *supra* note 137, App. at 4.

¹⁶⁰ OFF. OF MGMT. AND BUDGET, OMB SEQUESTRATION PREVIEW REP. TO THE PRESIDENT AND CONG. FOR FISCAL YEAR 2014 AND OMB REP. TO THE CONG. ON THE JOINT COMM. REDUCTIONS FOR FISCAL YEAR 2014, Corrected Version, Appendix 18 (2013), available at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/fy14_preview_and_joint_committee_reductions_reports_05202013.pdf (noting that the sequester percentage for other non-exempt nondefense mandatory programs is 7.2%); OFF. OF MGMT. AND BUDGET, OMB REP. TO THE CONG. ON THE JOINT COMM. REDUCTIONS FOR FISCAL YEAR 2015, Appendix 1 (2014), available at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/sequestration_order_report_march2014.pdf (noting that the sequester percentage for other non-exempt nondefense mandatory programs is 7.3%); OFF. OF MGMT. AND BUDGET, OMB REP. TO THE CONG. ON THE JOINT COMM. REDUCTIONS FOR FISCAL YEAR 2016, Appendix 1 (2015), available at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/sequestration/2016_jc_sequestration_report_speaker.pdf (noting that the sequester percentage for other non-exempt nondefense mandatory programs is 6.8%).

VII(A). The Defender Services

One important non-court entity covered by the Judiciary's budget is the Defender Services.¹⁶¹ The Federal Judiciary oversees and administers both Federal Public Defenders (employees of the Federal Government) and the appointed counsel program (counsel appointed from the private bar) in criminal matters in federal court.¹⁶² The Sixth Amendment guarantees that "[i]n all criminal prosecutions the accused shall enjoy the right...to have the assistance of counsel for his defense."¹⁶³ The Criminal Justice Act provides that *courts* shall appoint counsel from federal public and community defender organizations or from a panel of private attorneys established by the court.¹⁶⁴ The Federal Judiciary is responsible for payment of defenders, with \$300 million a year allocated in 1996 for this purpose.¹⁶⁵ For fiscal year 2017, the requested budget for Defender Services has been increased to \$1,056,326 (about 14% of the Judiciary's total budget request).¹⁶⁶ Given that a significant portion of the Judiciary's budget is spent on Defender Services, Appropriation Committees have asked about the cost of death penalty cases and why appeals took so long.¹⁶⁷ Death penalty cases are indeed very expensive, totaling \$40 million of the Federal Budget for death penalty representation even back in 1996.¹⁶⁸ Such high costs are partially because of very limited restriction on payment for representation in death penalty cases, except the restriction that lawyer fees be reasonable.¹⁶⁹

¹⁶¹ ADMIN. OFF. OF THE U.S. CTS., *supra* note 5, at 3; *see also infra* App. 4.

¹⁶² *Id.*; *see also* Arnold, *supra* note 23, at 27.

¹⁶³ ADMIN. OFF. OF THE U.S. CTS., *supra* note 5, at 3.

¹⁶⁴ *Id.*

¹⁶⁵ Arnold, *supra* note 23, at 27.

¹⁶⁶ ADMIN. OFF. OF THE U.S. CTS., *supra* note 5, at 8.

¹⁶⁷ Arnold, *supra* note 23, at 27.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* (discussing that some districts in California had a presumptive fee of \$150 an hour).

VII(B). Other Non-Court Entities under the Judiciary’s Budget

Other non-court entities covered under the Judiciary’s budget include probation, pretrial services, juror fees, court security, Federal Judicial Center, judiciary trust funds, United States Sentencing Commission, and the AO.¹⁷⁰

VIII. MOST RECENT JUDICIARY BUDGET FOR FISCAL YEAR 2017

Currently, the Judiciary’s budget request process starts with budget estimates and preparations by the AO and the Judicial Conference. Then, the AO submits the Judiciary’s budget request to the OMB. Next, the OMB transmits the budget request to Congress for appropriation hearings, and eventually Congress issues appropriations. For FY 2016, the President’s budget request for the Judiciary was \$7.53 billion,¹⁷¹ of which \$7.34 billion was enacted by Congress.¹⁷²

For FY 2017, Congress did not provide full-year appropriations at the start of the fiscal year, since it completed work on only one of the 12 appropriations bills prior to October 1, 2016 (start of FY 2017).¹⁷³ In order to allow the new administration time to establish its budget priorities and to allow the Senate to focus on confirmation hearings for new presidential appointees, the Federal Government, including the Judiciary, currently operates under a Continuing Resolution (“CR”) extended until April 28, 2017.¹⁷⁴ This CR called for the Federal Government to operate in FY 2017 at FY 2016 levels minus a 0.2% across-the-board cut.¹⁷⁵

¹⁷⁰ ADMIN. OFF. OF THE U.S. CTS., *supra* note 5, at 1–4.

¹⁷¹ MATTHEW E. GLASSMAN, CONG. RESEARCH SERV., JUDICIARY APPROPRIATIONS FY2016 6 (2015), available at <https://fas.org/sgp/crs/misc/R44078.pdf>.

¹⁷² MATTHEW E. GLASSMAN, CONG. RESEARCH SERV., JUDICIARY APPROPRIATIONS FY2017 7 (2016), available at <https://fas.org/sgp/crs/misc/R44526.pdf>.

¹⁷³ ADMIN. OFF. OF THE U.S. CTS., FUNDING/BUDGET – ANNUAL REPORT 2016: FY 2017 FUNDING FOR THE JUDICIARY, available at <http://www.uscourts.gov/statistics-reports/fundingbudget-annual-report-2016>.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

Without full-year appropriations, the Judicial Conference Executive Committee put in place an interim FY 2017 financial plan for accounts covering salaries and expenses, Defender Services, court security, and juror fees.¹⁷⁶ Nevertheless, the total Judiciary appropriation request for FY 2017 is \$7.58 billion (of which \$7 billion is requested for the discretionary budget).¹⁷⁷ The President's request for the Judiciary totaled \$7.58 billion.¹⁷⁸ The final enacted amount by Congress is not yet available, but currently the House-passed appropriation amount totals \$7.55 billion, and the Senate Appropriations Committee reports show \$7.58 billion.¹⁷⁹

In terms of potential sequestration, the most recent communication from the OMB was addressed to President Obama on January 10, 2017.¹⁸⁰ The OMB states that non-defense programs (including the Judiciary) currently exceed the spending cap of \$518.5 billion for 2017 by \$1.4 billion.¹⁸¹ If the current levels are left unchanged, then OMB will order a sequestration in its final sequestration report for 2017 to eliminate this breach of spending cap with an estimated uniform percentage reduction to non-exempt nondefense programs at 0.3%.¹⁸² As in recent years,¹⁸³ the Judicial Branch will most likely be partially affected by this estimated sequestration rate of 0.3%.

¹⁷⁶ *Id.*

¹⁷⁷ ADMIN. OFF. OF THE U.S. CTS., *supra* note 5, at 5 and i; *see also infra* App. 6.

¹⁷⁸ *See infra* App. 5; *see also* GLASSMAN, *supra* note 171, at 7.

¹⁷⁹ GLASSMAN, *supra* note 172, at 7.

¹⁸⁰ OFF. OF MGMT. AND BUDGET, LETTER TO THE PRESIDENT AND THE CONG. REGARDING THE DELAY OF THE FINAL SEQUESTRATION REP. FOR FISCAL YEAR 2017 (2013), available at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/sequestration/2017_final_sequestration_report_delay_potus.pdf.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *See supra* Part VI(C).

Bibliography

BUDGET REPORTS:

ADMIN. OFF. OF THE U.S. CTS., THE JUDICIARY FY 2017 CONG. BUDGET SUMMARY (2016), available at http://www.uscourts.gov/sites/default/files/fy_2017_federal_judiciary_congressional_budget_summary_0.pdf.

CONG. BUDGET OFF., FINAL SEQUESTRATION REP. FOR FISCAL YEAR 2013 (2013), available at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/sequestration/sequestration_final_april2013.pdf.

OFF. OF MGMT. AND BUDGET, BUDGET OF THE U.S. GOV'T, FISCAL YEAR 2017 (2016), available at <https://obamawhitehouse.archives.gov/sites/default/files/omb/budget/fy2017/assets/appendix.pdf>.

OFF. OF MGMT. AND BUDGET, OMB REP. TO THE CONG. ON THE JOINT COMM. SEQUESTRATION FOR FISCAL YEAR 2013 (2013), available at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/fy13ombjcsequestrationreport.pdf.

OFF. OF MGMT. AND BUDGET, OMB SEQUESTRATION PREVIEW REP. TO THE PRESIDENT AND CONG. FOR FISCAL YEAR 2014 AND OMB REP. TO THE CONG. ON THE JOINT COMM. REDUCTIONS FOR FISCAL YEAR 2014, CORRECTED VERSION (2013), available at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/fy14_preview_and_joint_committee_reductions_reports_05202013.pdf.

OFF. OF MGMT. AND BUDGET, OMB REP. TO THE CONG. ON THE JOINT COMM. REDUCTIONS FOR FISCAL YEAR 2015 (2014), available at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/sequestration_order_report_march2014.pdf.

OFF. OF MGMT. AND BUDGET, OMB REP. TO THE CONG. ON THE JOINT COMM. REDUCTIONS FOR FISCAL YEAR 2016 (2015), available at https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/sequestration/2016_jc_sequestration_report_speaker.pdf.

U.S. CTS., FISCAL YEAR 2013: BUDGET SEQUESTRATION AND THE JUDICIARY – ANNUAL REP. 2013, available at <http://www.uscourts.gov/statistics-reports/fiscal-year-2013-budget-sequestration-and-judiciary-annual-report-2013> (last visited Mar. 17, 2017).

U.S. CTS., FISCAL YEAR 2014: NO BUDGET AND A GOV'T SHUTDOWN – ANNUAL REP. 2013, available at <http://www.uscourts.gov/statistics-reports/fiscal-year-2014-no-budget-and-government-shutdown-annual-report-2013> (last visited Mar. 17, 2017).

CONGRESSIONAL TESTIMONY:

Dep't of Just. Appropriation B. for 1931: Hearing Before the Subcomm. of H. Comm. on Appropriations, 71th Cong. (1930), available at <http://congressional.proquest.com/congressional/docview/t29.d30.hrg-1929-hap-0012?accountid=11311> (last visited Mar. 18, 2017).

Dep'ts of St., Com., and Just. Appropriation B. for 1941: Hearing on H.R. 8319 Before the Subcomm. of the Comm. on Appropriations U.S. S., 76th Cong. (1940), available at <http://congressional.proquest.com/congressional/docview/t29.d30.hrg-1940-sap-0007?accountid=11311> (last visited Mar. 18, 2017).

Dept's of St., Com., and Just., and the Fed. Judiciary Appropriation B. for 1942: Hearings on H.R. 4276 Before the Subcomm. of the Comm. on Appropriations U.S. S., 77th Cong. (1941), available at <http://congressional.proquest.com/congressional/docview/t29.d30.hrg-1941-sap-0004?accountid=11311> (last visited Mar. 18, 2017).

Pub. Bldg.s and Grounds: Hearing on H.R. 13665 Before the Comm. On Pub. Bldg.s and Grounds H.R., 70th Cong. (1928), available at <http://congressional.proquest.com/congressional/docview/t29.d30.hrg-1928-pbg-0007?accountid=11311> (last visited Mar. 18, 2017).

OTHER SOURCES:

ADMIN. OFF. OF THE U.S. CTS, FUNDING/BUDGET – ANNUAL REPORT 2016: FY 2017 FUNDING FOR THE JUDICIARY, available at <http://www.uscourts.gov/statistics-reports/fundingbudget-annual-report-2016>.

Carrie Johnson, *Jud. Budget Firefight*s, LEGAL TIMES, Mar. 8, 1999.

CONG. BUDGET OFF., SEQUESTRATION, <https://www.cbo.gov/topics/budget/sequestration> (last visited Mar. 17, 2017).

DANIEL S. HOLT, FED. JUD. CTR., FED. JUD. APPROPRIATIONS, 1792 –2010 (2012), available at [http://www.fjc.gov/public/pdf.nsf/lookup/Appropriations.pdf/\\$file/Appropriations.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/Appropriations.pdf/$file/Appropriations.pdf).

DEP'T OF THE INTERIOR, HIST. OF THE INTERIOR, <https://www.doi.gov/whoweare/history/> (last visited Mar. 12, 2017).

Ellen Bradford & Matthew Scogin, PAYGO Rules and Sequestration Procedures (Mar. 31, 2008) (Briefing Paper on Federal Budget Policy) (prepared by Harvard Law School Students Under the Supervision of Prof. Howell Jackson).

EXEC. ORDER NO. 11541, 1970 WL 123115, §1 (Pres. 1970).

FED. JUD. CTR., ADMIN. OFF.S AND AGENCIES: DIR.S OF THE ADMIN. OFF. OF THE U.S. CTS., http://www.fjc.gov/history/home.nsf/page/admin_01_03_01.html (last visited Mar. 14, 2017).

FED. JUD. CTR., ADMIN. OFF.S AND AGENCIES: JUD. CONF. OF THE U.S., http://www.fjc.gov/history/home.nsf/page/admin_01_01.html (last visited Mar. 12, 2017).

FED. JUD. CTR., HIST. OF THE FED. JUD.: ADMIN. OFF.S AND AGENCIES, http://www.fjc.gov/history/home.nsf/page/admin_01_06.html (last visited Mar. 12, 2017).

Harold H. Burton, *Judging is also Admin.*, 21 TEMP. L. Q. 77 (1947-48).

Joan Biskupic, *Rehnquist Asks Cong. to Clear Judiciary Funding: Battle over Census Raised Fear of Appropriations Delay*, WASH. POST, Mar. 31, 1999.

JUD. CONF., LETTER TO DIR. OF OFF. OF MGMT. AND BUDGET (2013).

Justin Dews & Dan McConnell, *Sequestration and the 2011 Budget Control Act* (May 12, 2014) (Briefing Paper on Federal Budget Policy) (prepared by Harvard Law School Students Under the Supervision of Prof. Howell Jackson).

MATTHEW E. GLASSMAN, CONG. RESEARCH SERV., JUDICIARY APPROPRIATIONS FY2016 (2015), available at <https://fas.org/sgp/crs/misc/R44078.pdf>.

MATTHEW E. GLASSMAN, CONG. RESEARCH SERV., JUDICIARY APPROPRIATIONS FY2017 (2016), available at <https://fas.org/sgp/crs/misc/R44526.pdf>.

OFF. OF MGMT. AND BUDGET, LETTER TO THE PRESIDENT AND THE CONG. REGARDING THE DELAY OF THE FINAL SEQUESTRATION REP. FOR FISCAL YEAR 2017 (2013), available at https://obama.whitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/sequestration/2017_final_sequestration_report_delay_potus.pdf.

PETER GRAHAM FISH, POL. OF FED. JUD. ADMIN. (2015).

POLLY J. PRICE, JUDGE RICHARD S. ARNOLD: A LEGACY OF JUSTICE ON THE FEDERAL BENCH (2009).

PRESIDENT OF THE U.S., UNITED STATES SUPREME COURT BUILDING, H.R. Doc. No. 471(1928).

PRESIDENT OF THE U.S., UNITED STATES SUPREME COURT SITE, H.R. Doc. No. 655 (1927).

PRESIDENT OF THE U.S., SUPPLEMENTAL ESTIMATE OR APPROPRIATION, SUPREME COURT BUILDING, H.R. Doc. No. 249 (1930).

Richard S. Arnold, *Money, or the Relations of the Jud. Branch with the Other Two Branches, Legis. and Exec.*, 40 ST. LOUIS U.L.J. 19 (1996).

S. REP. NO. 104-82 (1995).

S. REP. NO. 106-379 (2000).

U.S. CTS., ANALYSIS & REPORTS, <http://www.uscourts.gov/statistics-reports/analysis-reports> (last visited Mar. 14, 2017).

U.S. CTS., ANNUAL REPORT 2016, <http://www.uscourts.gov/statistics-reports/annual-report-2016> (last visited Mar. 14, 2017).

U.S. CTS. LIBR., HON. RICHARD SHEPPARD ARNOLD: “A LIGHT IN THE L.” 1936-2004, available at <http://www.lb8.uscourts.gov/pubsandservices/histsociety/arnold,richard-memorial-display-handout-updated.pdf>.

U.S. H.R., STATEMENT OF DISBURSEMENTS: GLOSSARY OF TERMS, <https://disbursements.house.gov/glossary.shtml> (last visited Mar. 18, 2017).

U.S. SUP. CT., THE SUP. CT BLDG., <https://www.supremecourt.gov/about/courtbuilding.aspx> (last visited Mar. 12, 2017).

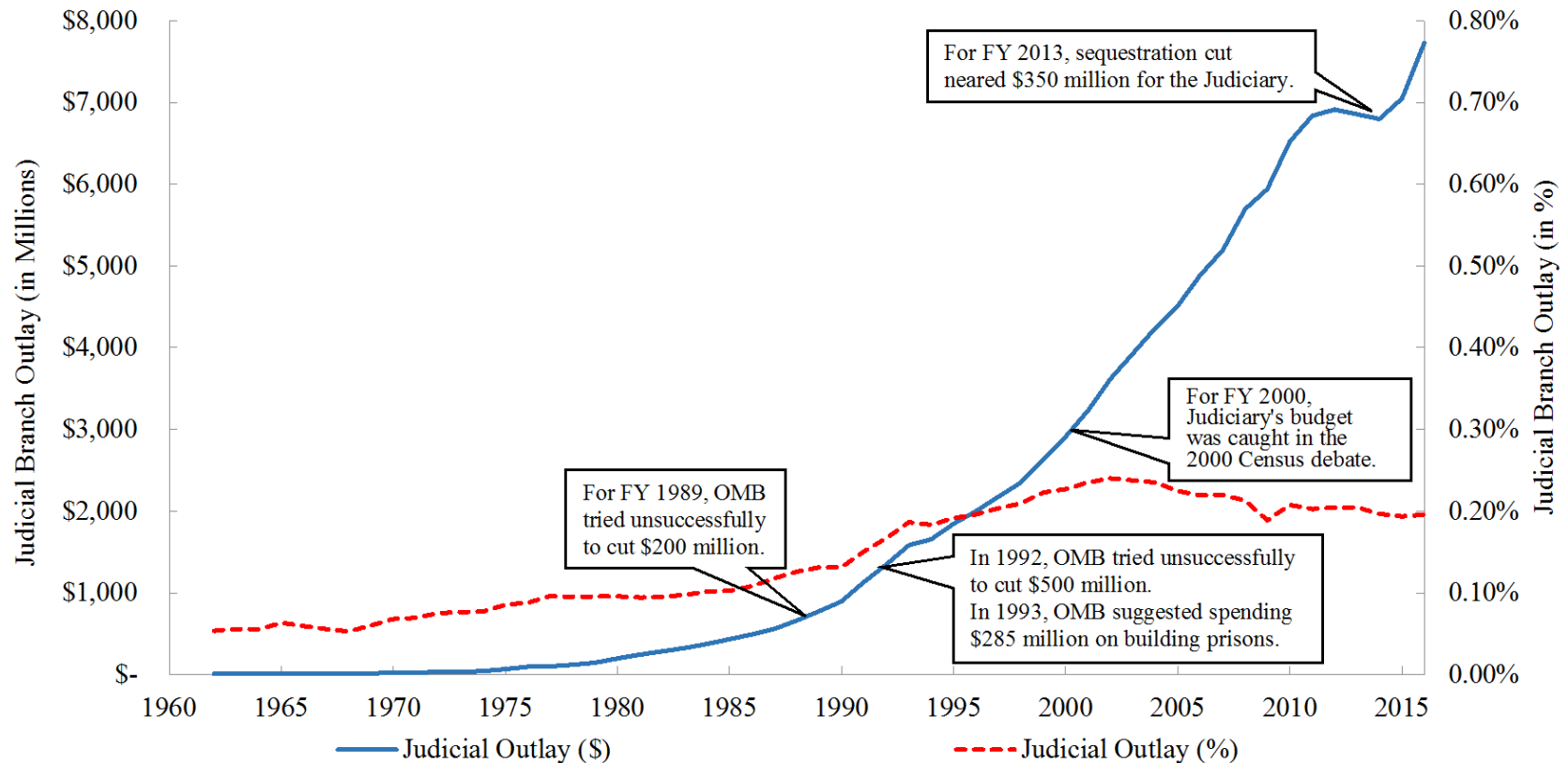
STATUTES:

28 U.S.C. §1350 (1948).

31 U.S.C. §1107 (2011).

BUDGET AND ACCT. ACT OF JUNE 10, 1921, Pub. L. No. 67-13, 42 Stat. 20 (1921) (repealed in 1950).

APPENDIX 1: JUDICIAL BRANCH TOTAL OUTLAY AND AS A PERCENTAGE OF FEDERAL GOVERNMENT TOTAL OUTLAY, FYs 1962-2016



Notes:

[1] Judicial Outlay (\$) is adjusted for inflation, and represents constant dollar values with 2016 as base year. Judicial Outlay (\$) for year X is calculated as Actual Judicial Outlay Amount (\$) in Year X * CPI (Year X) / CPI (Year 2016). Calculations use All Urban Consumers CPI data.

[2] Judicial Outlay (%) is calculated as Judicial Outlay (\$) / Federal Government Outlay (\$). Outlay values incorporate CPI adjustment.

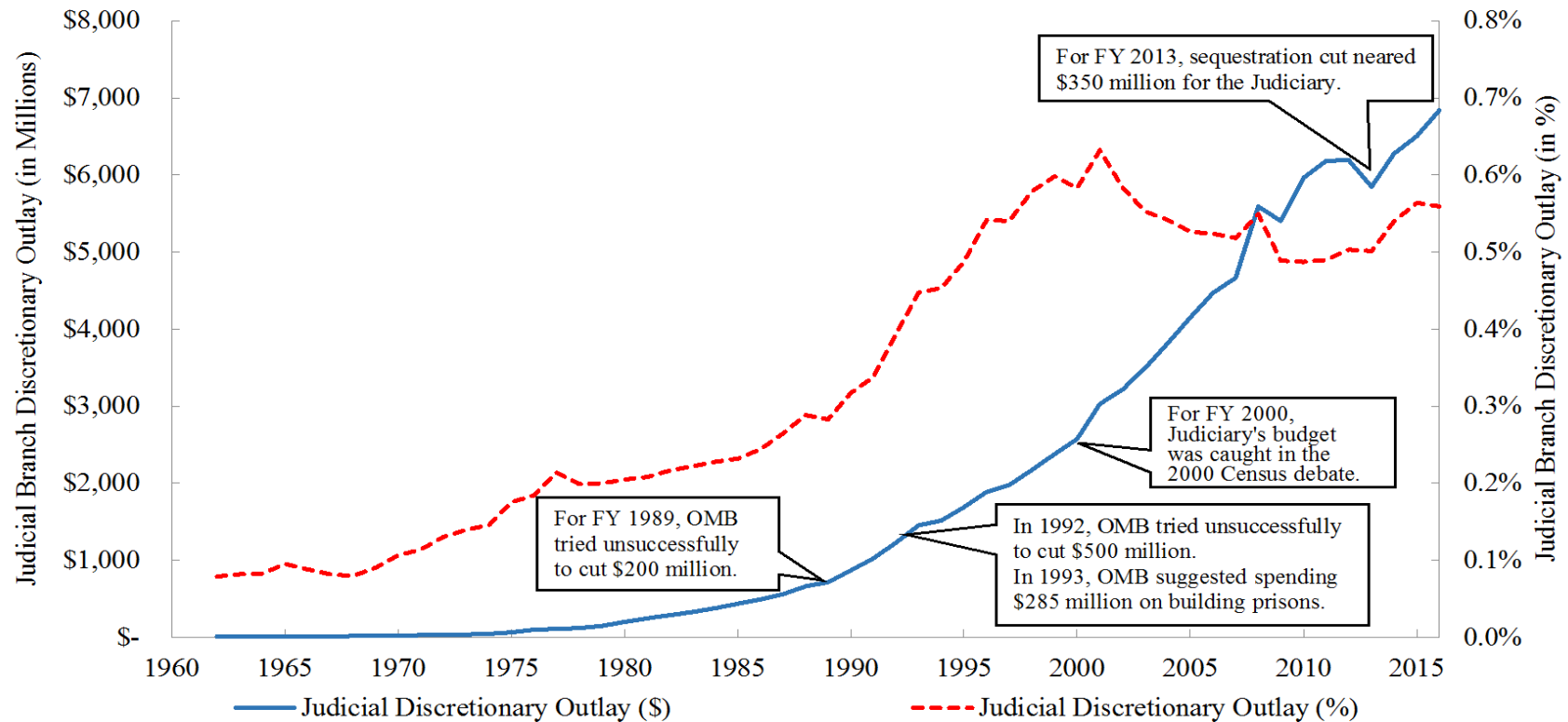
[3] Values for fiscal years 1962-2015 are actual values. Values for fiscal year 2016 are estimated values. Fiscal year 1976 is adjusted for Transition Quarter.

Sources:

[1] U.S. Government Publishing Office, outlay data for fiscal year 2017 are available at <https://www.gpo.gov/fdsys/pkg/BUDGET-2017-DB/content-detail.html>. Also Public Budget Database, User's Guide, Budget of the United States Government, Fiscal Year 2017.

[2] Bureau of Labor Statistics, CPI data available at <https://www.bls.gov/cpi/data.htm>.

APPENDIX 2: JUDICIAL BRANCH DISCRETIONARY OUTLAY AND AS A PERCENTAGE OF FEDERAL GOVERNMENT DISCRETIONARY OUTLAY, FYs 1962-2016



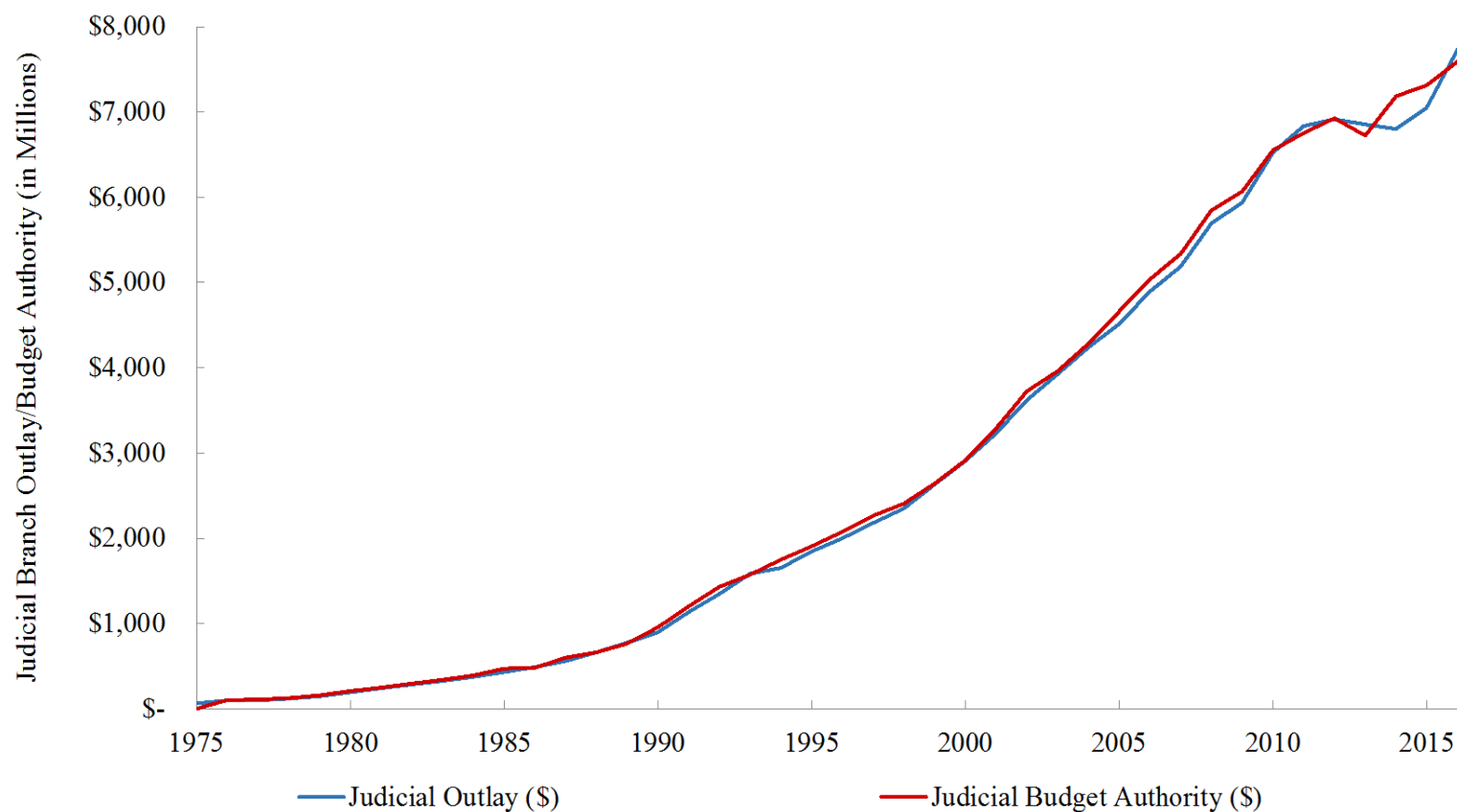
Notes:

- [1] Judicial Discretionary Outlay (\$) is adjusted for inflation, and represents constant dollar values with 2016 as base year.
- [2] Judicial Discretionary Outlay (%) is calculated as Judicial Discretionary Outlay (\$) / Federal Government Discretionary Outlay (\$).
- [3] Values for fiscal years 1962-2015 are actual values. Values for fiscal year 2016 are estimated values. Fiscal year 1976 is adjusted for Transition Quarter.

Sources:

- [1] U.S. Government Publishing Office, outlay data for fiscal year 2017 are available at <https://www.gpo.gov/fdsys/pkg/BUDGET-2017-DB/content-detail.html>. Also Public Budget Database, User's Guide, Budget of the United States Government, Fiscal Year 2017.
- [2] Bureau of Labor Statistics, CPI data available at <https://www.bls.gov/cpi/data.htm>.

APPENDIX 3: JUDICIAL BRANCH TOTAL OUTLAY VS. JUDICIAL BRANCH BUDGET AUTHORITY, FYs 1962-2016



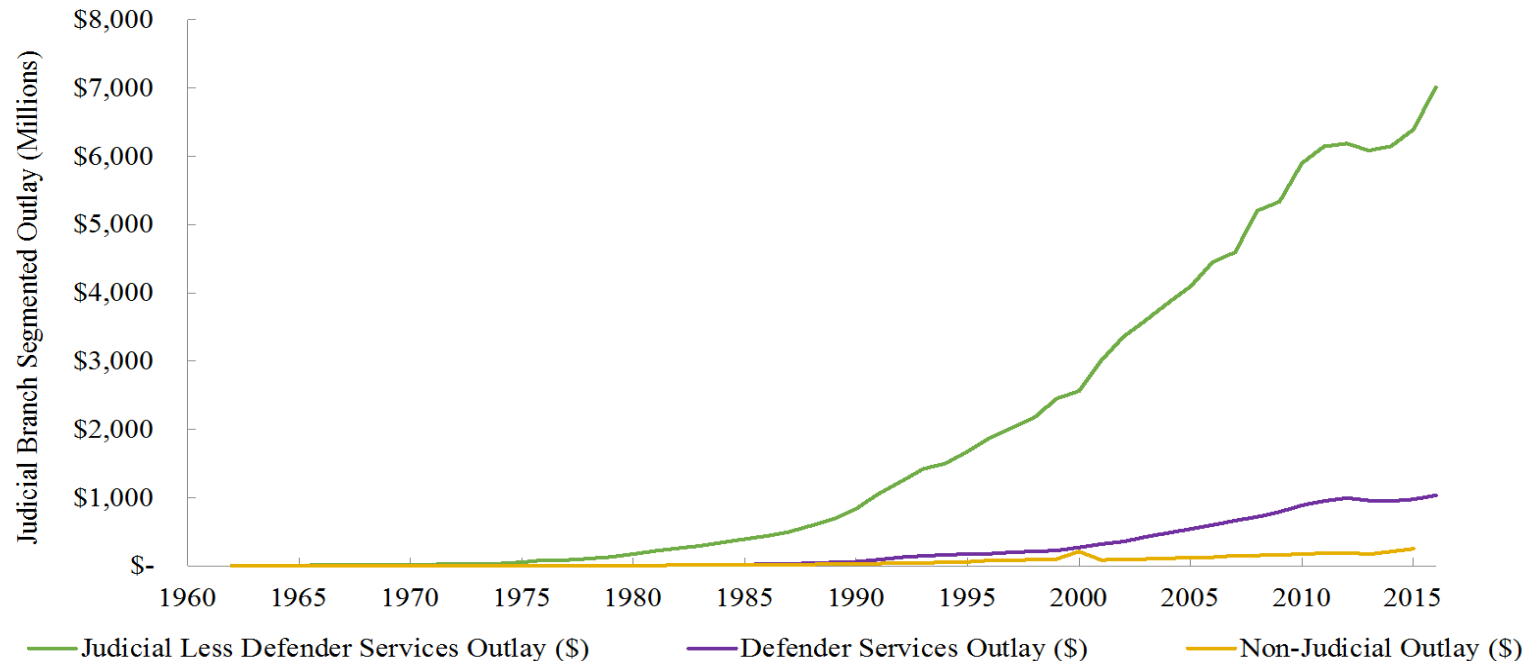
Notes:

- [1] Judicial Outlay (\$) and Judicial Budget Authority (\$) are adjusted for inflation, and represent constant dollar values with 2016 as base year.
- [2] For Judicial Budget Authority, no data are available prior to 1976 from the U.S. Government Publishing Office.
- [3] Values for fiscal years 1962-2015 are actual values. Values for fiscal year 2016 are estimated values. Fiscal year 1976 is adjusted for Transition Quarter.

Sources:

- [1] U.S. Government Publishing Office, outlay data for fiscal year 2017 are available at <https://www.gpo.gov/fdsys/pkg/BUDGET-2017-DB/content-detail.html>.
- [2] Bureau of Labor Statistics, CPI data available at <https://www.bls.gov/cpi/data.htm>.

APPENDIX 4: JUDICIAL, DEFENDER SERVICES, AND OTHER NON-JUDICIAL OUTLAYS, FYs 1962-2016



Notes:

[1] Judicial Outlay Component (\$) includes outlays for the Supreme Court, Court of Appeals for the Federal Circuit, Court of Customs and Patent Appeals, United States Court of International Trade, Court of Claims, Courts of Appeals, District Courts, and other Judicial Services.

[2] Non-Judicial Outlay Component (\$) includes outlays for Administrative Office of the United States Courts, Federal Judicial Center, Judiciary Bicentennial Expenses, Judicial Retirement Funds, National Commission on Judicial Discipline and Removal, United States Sentencing Commission, Violent Crime Reduction Programs, and Judiciary activities.

[3] Values for funds with Bureau Code 00 under the Judicial Branch are excluded. Such values are negative, and are used to offset gross outlays.

[4] Values are adjusted for inflation, and represent constant dollar values with 2016 as base year. Judicial and Non-Judicial Outlay Components (\$) for year X is calculated as relevant Actual Outlay Amount (\$) in Year X * CPI (Year X)/CPI (Year 2016). Calculations use All Urban Consumers CPI data.

[5] Values for fiscal years 1962-2015 are actual values. Values for fiscal year 2016 are estimated values. Fiscal year 1976 is adjusted for Transition Quarter.

Sources:

[1] U.S. Government Publishing Office, outlay data for fiscal year 2017 are available at <https://www.gpo.gov/fdsys/pkg/BUDGET-2017-DB/content-detail.html>. Also Public Budget Database, User's Guide, Budget of the United States Government, Fiscal Year 2017.

[2] Bureau of Labor Statistics, CPI data available at <https://www.bls.gov/cpi/data.htm>.

APPENDIX 5: OMB JUDICIARY BUDGET TRANSMITTAL, FY 2017 (SELECTED)

JUDICIAL BRANCH

SUPREME COURT OF THE UNITED STATES

Federal Funds

SALARIES AND EXPENSES

For expenses necessary for the operation of the Supreme Court, as required by law, excluding care of the building and grounds including hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344; not to exceed \$10,000 for official reception and representation expenses; and for miscellaneous expenses, to be expended as the Chief Justice may approve, ~~[\$75,838,000]~~ \$76,668,000, of which ~~[\$2,000,000]~~ \$1,500,000 shall remain available until expended.

In addition, there are appropriated such sums as may be necessary under current law for the salaries of the chief justice and associate justices of the court. (*Judiciary Appropriations Act, 2016.*)

Program and Financing (in millions of dollars)

Identification code 010-0100-0-1-752	2015 actual	2016 est.	2017 est.
Obligations by program activity:			
0001 Salaries and Expenses (Direct)	75	79	80
Budgetary resources:			
Budget authority:			
Appropriations, discretionary:			
1100 Appropriation	73	76	77
Appropriations, mandatory:			
1200 Appropriation			
1900 Budget authority (total)	2	3	3
1930 Total budgetary resources available	75	79	80
1930 Total budgetary resources available	75	79	80
Change in obligated balance:			
Unpaid obligations:			
3010 Obligations incurred, unexpired accounts	75	79	80
3020 Outlays (gross)	-75	-79	-80
Budget authority and outlays, net:			
Discretionary:			
4000 Budget authority, gross	73	76	77
Outlays, gross:			
4010 Outlays from new discretionary authority	73	76	77
Mandatory:			
4090 Budget authority, gross	2	3	3
Outlays, gross:			
4100 Outlays from new mandatory authority	2	3	3
4180 Budget authority, net (total)	75	79	80
4190 Outlays, net (total)	75	79	80

The Supreme Court of the United States is the highest court of our country and stands at the apex of the judicial branch of our constitutional form of government. The U.S. Supreme Court is the only constitutionally indispensable court in the Federal court system of the United States. The jurisdiction of the Supreme Court is spelled out in the Constitution and allotted by the Congress. The funds herein requested are required to enable the U.S. Supreme Court to carry out its constitutional and congressionally allotted responsibilities.

Object Classification (in millions of dollars)

Identification code 010-0100-0-1-752	2015 actual	2016 est.	2017 est.
Direct obligations:			
Personnel compensation:			
11.1 Full-time permanent	40	43	43
11.3 Other than full-time permanent	2	3	3
11.9 Total personnel compensation	42	46	46
12.1 Civilian personnel benefits	14	16	16
21.0 Travel and transportation of persons	1	1	1
23.3 Communications, utilities, and miscellaneous charges	1	1	1
25.2 Other services from non-Federal sources	10	9	9
26.0 Supplies and materials	2	2	3
31.0 Equipment	5	4	4
99.9 Total new obligations	75	79	80

Employment Summary

Identification code 010-0100-0-1-752	2015 actual	2016 est.	2017 est.
1001 Direct civilian full-time equivalent employment	497	497	497

CARE OF THE BUILDING AND GROUNDS

For such expenditures as may be necessary to enable the Architect of the Capitol to carry out the duties imposed upon the Architect by 40 U.S.C. 6111 and 6112, ~~[\$9,964,000]~~ \$14,868,000, to remain available until expended. (*Judiciary Appropriations Act, 2016.*)

Program and Financing (in millions of dollars)

Identification code 010-0100-0-1-752	2015 actual	2016 est.	2017 est.
Obligations by program activity:			
0001 Care of the Building and Grounds (Direct)	14	13	14
Budgetary resources:			
Unobligated balance:			
1000 Unobligated balance brought forward, Oct 1	7	5	2
Budget authority:			
Appropriations, discretionary:			
1100 Appropriation	12	10	15
1930 Total budgetary resources available	19	15	17
1941 Memorandum (non-add) entries:			
Unexpired unobligated balance, end of year	5	2	3
Change in obligated balance:			
Unpaid obligations:			
3000 Unpaid obligations, brought forward, Oct 1		5	7
3010 Obligations incurred, unexpired accounts	14	13	14
3020 Outlays (gross)	-9	-11	-17
3050 Unpaid obligations, end of year	5	7	4
Memorandum (non-add) entries:			
3100 Obligated balance, start of year		5	7
3200 Obligated balance, end of year	5	7	4
Budget authority and outlays, net:			
Discretionary:			
4000 Budget authority, gross	12	10	15
Outlays, gross:			
4010 Outlays from new discretionary authority	9	8	11
4011 Outlays from discretionary balances		3	6
4020 Outlays, gross (total)	9	11	17
4180 Budget authority, net (total)	12	10	15
4190 Outlays, net (total)	5	11	17

Object Classification (in millions of dollars)

Identification code 010-0100-0-1-752	2015 actual	2016 est.	2017 est.
Direct obligations:			
11.1 Personnel compensation: Full-time permanent	3	3	4
12.1 Civilian personnel benefits	1	1	1
23.3 Communications, utilities, and miscellaneous charges	2	2	2
25.1 Advisory and assistance services	2	2	2
25.4 Operation and maintenance of facilities	4	3	3
26.0 Supplies and materials	1	1	1
32.0 Land and structures	1	1	1
99.9 Total new obligations	14	13	14

Employment Summary

Identification code 010-0100-0-1-752	2015 actual	2016 est.	2017 est.
1001 Direct civilian full-time equivalent employment	41	50	50

APPENDIX 5: OMB JUDICIARY BUDGET TRANSMITTAL, FY 2017 (SELECTED), CONTINUED

46

United States Court of Appeals for the Federal Circuit
Federal Funds

THE BUDGET FOR FISCAL YEAR 2017

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Federal Funds

SALARIES AND EXPENSES

For salaries of officers and employees, and for necessary expenses of the court as authorized by law, **\$30,872,000** **\$30,108,000**.

In addition, there are appropriated such sums as may be necessary under current law for the salaries of the chief judge and judges of the court. (*Judiciary Appropriations Act, 2016.*)

Program and Financing (in millions of dollars)

Identification code 010-0510-0-1-752	2015 actual	2016 est.	2017 est.
Obligations by program activity:			
0001 Salaries and Expenses (Direct)	31	34	33
Budgetary resources:			
Budget authority			
Appropriations, discretionary:			
1100 Appropriation	30	31	30
1120 Appropriations transferred to other accounts (010-0920)	-1		
1160 Appropriation, discretionary (total)	29	31	30
Appropriations, mandatory:			
1200 Appropriation	3	3	3
1900 Budget authority (total)	32	34	33
1930 Total budgetary resources available	32	34	33
Memorandum (non-add) entries:			
1940 Unobligated balance expiring	-1		
Change in obligated balance:			
Unpaid obligations:			
3000 Unpaid obligations, brought forward, Oct 1	6	5	6
3010 Obligations incurred, unexpired accounts	31	34	33
3020 Outlays (gross)	-30	-33	-33
3041 Recoveries of prior year unpaid obligations, expired	-2		
3050 Unpaid obligations, end of year	5	6	6
Memorandum (non-add) entries:			
3100 Obligated balance, start of year	6	5	6
3200 Obligated balance, end of year	5	6	6
Budget authority and outlays, net:			
Discretionary:			
4000 Budget authority, gross	29	31	30
Outlays, gross:			
4010 Outlays from new discretionary authority	25	25	24
4011 Outlays from discretionary balances	2	5	6
4020 Outlays, gross (total)	27	30	30
Mandatory:			
4090 Budget authority, gross	3	3	3
Outlays, gross:			
4100 Outlays from new mandatory authority	3	3	3
4180 Budget authority, net (total)	32	34	33
4190 Outlays, net (total)	30	33	33

The United States Court of Appeals for the Federal Circuit, located in Washington, D. C., has exclusive nationwide jurisdiction over a large number of diverse subject areas, such as appeals in all patent cases, all government contract cases, all international trade cases, all government contract cases, all government personnel cases, all cases involving monetary claims against the United States under the Tucker Acts, veterans cases, and many others. Additional subject areas have been added to this court's jurisdiction almost yearly. To keep abreast of its varied and growing jurisdiction, the court is requesting necessary increases in its funding as detailed below.

The following is a more complete listing of the Federal Circuit's exclusive jurisdiction. It hears appeals from: (A) final decisions of all Federal district courts in cases arising under 28 U.S.C. § 1338(a), relating to patent laws generally, 35 U.S.C. §§ 145-146, relating to review of decisions of the Patent and Trademark Office, Board of Patent Appeals and Interferences, 28 U.S.C. § 1346(a)(2), relating to Little Tucker Act claims against the United States, and section 211 of the Economic Stabilization Act of 1970, section 5 of the Emergency Petroleum Allocation Act of 1973, section

506(c) of the Natural Gas Policy Act of 1978, and section 223 of the Energy Policy and Conservation Act relating to all statutes formerly under the jurisdiction of the Temporary Emergency Court of Appeals; (B) final decisions of the United States Court of International Trade, 28 U.S.C. § 2645(c); (C) final decisions of the United States Court of Appeals for Veterans Claims, 38 U.S.C. § 7292; (D) final decisions of the United States Court of Federal Claims, 28 U.S.C. § 2522 and 42 U.S.C. §§ 300aa-12(f); (E) final decisions of the High Court of the Trust Territory of the Pacific Islands, 48 U.S.C. § 1681 note (1988) (Compact of Free Association: Federated States of Micronesia, Republic of Marshall Islands, Title II, Title One, Article VII, § 174(c)); (F) final determinations of the United States International Trade Commission relating to unfair practices in import trade made under 19 U.S.C. § 1337; (G) findings of the Secretary of Commerce under U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States relating to importation of educational or scientific instruments and apparatus; (H) final orders or decisions of the Merit Systems Protection Board and certain arbitrators, 5 U.S.C. § 7703; (I) final decisions of the General Accounting Office Personnel Appeals Board, 31 U.S.C. § 755; (J) final decisions of all agency Boards of Contract Appeals, 41 U.S.C. § 607(g); (K) final decisions of the Patent and Trademark Office tribunals on patent applications and interferences, trademark applications and interferences, cancellations, concurrent use proceedings, and oppositions, 35 U.S.C. § 142, 15 U.S.C. § 1071, 37 CFR §§ 1.304, 2.145; (L) appeals under section 71 of the Plant Variety Protection Act of 1970, 7 U.S.C. § 2461; (M) certain actions of the Secretary of Veterans Affairs, 38 U.S.C. § 502; (N) certain final orders of the Equal Employment Opportunity Commission relating to certain Presidential appointees, 2 U.S.C. § 1219(a)(3) and 28 U.S.C. § 2344; (O) final decisions of the Office of Personnel Management under 5 U.S.C. § 8902a(g)(2); (P) certain actions of the Board of Directors of the Office of Compliance of the U.S. Congress under 2 U.S.C. § 1407(a) and (Q) final decisions of certain agencies pursuant to 28 U.S.C. § 1296.

The Federal Circuit also has exclusive jurisdiction pursuant to 28 U.S.C. § 1292(c) of: (1) appealable interlocutory orders or decrees in cases where the court would otherwise have jurisdiction over an appeal; and (2) appeals from judgments in civil actions for patent infringement otherwise appealable to the court and final except for accounting. Under the provisions of 28 U.S.C. § 1292(d), the court has: (1) exclusive jurisdiction of appeals from interlocutory orders granting or denying in whole or in part, a motion to transfer an action to the Court of Federal Claims; and (2) may, in its discretion, permit an appeal from an interlocutory order of a judge who certifies that there is a controlling question of law and a substantial ground for difference of opinion thereon, and that an immediate appeal may materially advance the ultimate termination of the litigation. Pursuant to 28 U.S.C. § 7292(b)(1), the court has exclusive jurisdiction of certain interlocutory orders of the Court of Appeals for Veterans Claims.

Legislation having an impact on the Federal Circuit is contained in P.L. 105-339 (S1021) October 31, 1998, Veterans Employment Opportunities Act of 1998, which provides a remedy through the Merit Systems Protection Board for those seeking review of the application of veterans preference rules to applicants for Federal employment.

Object Classification (in millions of dollars)

Identification code 010-0510-0-1-752	2015 actual	2016 est.	2017 est.
Direct obligations:			
11.1 Personnel compensation: Full-time permanent	15	17	17
12.1 Civilian personnel benefits	3	4	4
23.1 Rental payments to GSA	7	6	6
25.2 Other services from non-Federal sources	5	6	5
31.0 Equipment	1	1	1
99.9 Total new obligations	31	34	33

APPENDIX 6: AO CONGRESSIONAL BUDGET SUMMARY, FY 2017 (SELECTED)

THE JUDICIARY

Judiciary Appropriation Funding (\$000)									
Appropriation Account	FY 2015 Enacted			FY 2016 Enacted			FY 2017 Request		
	Mandatory ¹	Discretionary	Total	Mandatory ¹	Discretionary	Total	Mandatory	Discretionary	Total
Supreme Court									
Salaries and Expenses	2,527	74,967	77,494	2,562	75,838	78,400	2,611	76,668	79,279
Building and Grounds	-	11,640	11,640	-	9,964	9,964	-	14,868	14,868
Total, U.S. Supreme Court	2,527	86,607	89,134	2,562	85,802	88,364	2,611	91,536	94,147
Court of Appeals for the Federal Circuit	2,663	30,212	32,875	2,922	30,872	33,794	2,965	30,108	33,073
Court of International Trade	1,176	17,807	18,983	2,005	18,160	20,165	2,044	18,462	20,506
Courts of Appeals, District Courts, and Other Judicial Services:									
Salaries and Expenses	396,725	4,846,818	5,243,543	402,733	4,918,969	5,321,702	415,254	5,045,785	5,461,039
Vaccine Injury Trust Fund	-	5,423	5,423	-	6,050	6,050	-	6,260	6,260
Total, Salaries and Expenses	396,725	4,852,241	5,248,966	402,733	4,925,019	5,327,752	415,254	5,052,045	5,467,299
Defender Services	-	1,016,499	1,016,499	-	1,004,949	1,004,949	-	1,056,326	1,056,326
Fees of Jurors & Commissioners	-	52,191	52,191	-	44,199	44,199	-	43,723	43,723
Court Security	-	513,975	513,975	-	538,196	538,196	-	565,388	565,388
Subtotal, CADCOJS	396,725	6,434,906	6,831,631	402,733	6,512,363	6,915,096	415,254	6,717,482	7,132,736
Administrative Office of the U.S. Courts	-	84,399	84,399	-	85,665	85,665	-	87,748	87,748
Federal Judicial Center	-	26,959	26,959	-	27,719	27,719	-	28,335	28,335
Judicial Retirement Funds	143,600	-	143,600	155,400	-	155,400	168,300	-	168,300
United States Sentencing Commission	-	16,894	16,894	-	17,570	17,570	-	18,150	18,150
Total Direct	546,691	6,692,361	7,239,052	565,622	6,772,101	7,337,723	591,174	6,985,561	7,576,735
Vaccine Injury Trust Fund	-	5,423	5,423	-	6,050	6,050	-	6,260	6,260
Total, Judiciary	546,691	6,697,784	7,244,475	565,622	6,778,151	7,343,773	591,174	6,991,821	7,582,995

¹ FY 2015 mandatory levels reflect actuals, with the exception of Supreme Court which reflects the FY 2015 financial plan level. FY 2016 mandatory levels represent FY 2016 financial plan levels.