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## 'An Erosion of Trust': Describing a Widespread Crisis, Federal Judges Push Congress to Expand Their Courts

"I fear that in many ways litigants see that the courtroom doors are closing rather than opening," one trial judge said.

By Jacqueline Thomsen | February 24, 2021



***U.S. District Judge Kimberly Mueller of the Eastern District of California. Photo: Jason Doiy / The Recorder.***

Federal judges and law professors on Wednesday called on Congress to expand lower courts, describing systemic case delays and fears that the public will abandon litigation as judges face staggering dockets.

The federal judiciary has repeatedly pushed for new judgeships, but none have been created since a handful were established in 2002 and no comprehensive legislation on the topic has been passed since 1990. Senators last year seemed ready to add federal judgeships ahead of the presidential election, but when the pandemic relief package that would have housed that bill failed to materialize, so did the new seats.

Wednesday's hearing, before the House Judiciary's subcommittee on the courts, featured testimony from three sitting district court judges: U.S. District Chief Judge Kimberly J. Mueller of the Eastern District of California, U.S. District Judge Diane Humetewa of the District of Arizona and U.S. District Senior Judge Larry Burns of the Southern District of California, who previously served as that court's chief judge.

Each judge described the crises their own districts face without more judgeships; Mueller said her court has been in a judicial emergency for more than 20 years, describing the effort to catch up with dockets as a Sisyphean task. Mueller said that when she asked her permanent law clerk about how best to address her caseload, he recommended an unfeasible volume of work and suggested she lobby those who could expand the court.

Burns said the Southern District's average time to handle a civil case is more than three years, significantly higher than the national average of two years. "Long delays in adjudicating cases can lead litigants to conclude that the expense and the passage of time makes it impractical to continue the litigation and leaves them the only option of foregoing their day in court. These outcomes lead to an erosion of trust in the judiciary and in the judicial process itself," he said.

Humetewa described how the Arizona trial courts often handle tribal cases, which raise specific legal issues that can require more resources. She also said that as the court decides more cases without hearing oral arguments, "I fear that in many ways litigants see that the courtroom doors are closing rather than opening."

"It really does damage to what our courtrooms are meant to be, public forums for airing these grievances and the ability to be able to orally argue your case," Humetewa said.

Marin Levy, a law professor with Duke University, said the backlog has forced some judges to increasingly rely on staff attorneys to screen cases for oral argument, and that busy circuit courts are increasingly issuing unpublished rulings that do not set precedent without those jurisdictions.

"Truncated review has its effects and its costs," Levy said. "It can leave parties feeling like they did not have their day in court. Moreover, judges and scholars alike have raised accuracy concerns in addition to these process based ones."

Brian Fitzpatrick, a professor with Vanderbilt Law School, focused his testimony on the U.S. Court of Appeals for the Ninth Circuit. He told lawmakers that were they to add new judgeships—including some to that appeals court—they should consider reorganizing the court, including splitting up the circuit.

Rep. Darrell Issa, the top Republican on the subcommittee, also suggested that possibility. He pointed to the breakup of the U.S. Court of Appeals for the Fifth Circuit in 1981, which resulted in the creation of the U.S. Court of Appeals for the Eleventh Circuit.

Rep. Hank Johnson, the chair of the subcommittee, said he wouldn't rule out a reorganization of the circuit, a proposal that several Republicans on the panel seemed to back during the hearing.

Also on Wednesday, new groups signed onto an existing effort to expand the lower courts beyond the recommended number of new seats requested by the Judicial Conference, the administrative arm of the federal judiciary. The new groups include the American Constitution Society, Center for American Progress, the Leadership Conference on Civil and Human Rights, the National Women's Law Center and People For the American Way.

In a letter ([https://drive.google.com/file/d/1ekJQy4GP2wmAUEHxEkEWSNvcGx\\_xUkIQ/view?link\\_id=2&can\\_id=d84ef8ca6dd1d471a72dafdbd7554ce2&source=email-46-organizations-endorse-call-for-lower-court-expansion-that-goes-beyond-judicial-conference-recommendations&email\\_referrer=email\\_1086976&email\\_subject=46-organizations-endorse-call-for-lower-](https://drive.google.com/file/d/1ekJQy4GP2wmAUEHxEkEWSNvcGx_xUkIQ/view?link_id=2&can_id=d84ef8ca6dd1d471a72dafdbd7554ce2&source=email-46-organizations-endorse-call-for-lower-court-expansion-that-goes-beyond-judicial-conference-recommendations&email_referrer=email_1086976&email_subject=46-organizations-endorse-call-for-lower-)

court-expansion-that-goes-beyond-judicial-conference-recommendations) sent to Johnson and Issa on Wednesday, the 46 groups describe the understaffed judiciary as “a crisis decades in the making,” and called the judiciary’s current request “insufficient to meet today’s crisis in our courts.”

“Our courts cannot provide the efficient administration of justice in this country without a sufficient number of judges to adequately serve the American people. We cannot accept a status quo that undermines justice, equality, and confidence in our judicial system,” the letter reads.

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