

FINANCIAL SERVICES AND GENERAL  
GOVERNMENT APPROPRIATIONS FOR 2011

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HEARINGS  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED ELEVENTH CONGRESS  
SECOND SESSION

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SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
APPROPRIATIONS

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NOTE: Under Committee Rules, Mr. Obey, as Chairman of the Full Committee, and Mr. Lewis, as Ranking  
Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

LEE PRICE, BOB BONNER, ANGELA OHM, and ARIANA SARAR  
*Subcommittee Staff*

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**PART 6—FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2011**

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**FINANCIAL SERVICES AND GENERAL GOVERNMENT  
APPROPRIATIONS FOR 2011**

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THURSDAY, MARCH 18, 2010.

**FY 2011 BUDGET HEARING FOR THE JUDICIARY**

**WITNESSES**

**HON. JULIA S. GIBBONS, CHAIR, COMMITTEE ON THE BUDGET OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES**  
**JAMES C. DUFF, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S.  
COURTS**

**CHAIRMAN SERRANO'S OPENING REMARKS**

Mr. SERRANO. Subcommittee will come to order. Before we start I would like to take a moment to remember the attack that occurred outside the Lloyd D. George U.S. Courthouse and Federal Building in Las Vegas this past January, which took the life of one court security officer and wounded a deputy U.S. Marshal. I know that I speak on behalf of this whole Congress, and Mrs. Emerson will have her own comments. Our hearts go out to the deputy, the court security officer, and their families.

Court security is addressed in your budget's submission, and this subcommittee will work closely with you to do all that we can to protect employees and members of the public in and around Federal facilities. And as we said to the IRS Commissioner and to Secretary Geithner, there is no difference of any kind, no difference of opinion of any kind by any member of our society that justifies any action against any Federal employee or any other human being for that matter. So please rest assured that we will do what we have to do to be protective, and at the same time we offer to you our condolences to the families and coworkers.

Today we will hear testimony on the fiscal year 2011 budget request of the Federal judiciary. The judiciary as an independent branch of government submits its funding request to Congress rather than having the Office of Management and Budget vet it first. An independent Federal judiciary plays an important role in our constitutional system. Like other government institutions, the judiciary needs sufficient resources to properly function and perform its constitutional duties. Unlike other institutions, the workload of the judiciary is to some extent determined by the direct actions of certain parts of the executive branch, such as the Departments of Justice and Homeland Security, by the numbers and types of cases they prosecute.

Also, as I am sure will be addressed in this hearing at some point, the judiciary's caseload has also been affected by the down-

turn in the economy, which is reflected in the increase of bankruptcy filings. This subcommittee has made it a priority to try to ensure sufficient funding for the proper functioning of the courts and their related functions included in the judicial budget, such as probation, and pretrial services, and public defenders.

For fiscal year 2011 the judiciary is requesting \$6.9 billion in discretionary funding, an increase of \$453 million above fiscal year 2010. I look forward to the discussion of this request today.

Joining us to testify in support of the budget request is Judge Julia Gibbons of the U.S. Court of Appeals for the 6th Circuit. Since 2004 Judge Gibbons has also served as Chair of the Budget Committee of the Judicial Conference. Judge Gibbons has testified before this subcommittee for the last few years, and we are pleased to have you here again.

Also appearing before the subcommittee today is James Duff, the Director of the Administrative Office of the U.S. Courts. Mr. Duff was appointed to this position in 2006 by Chief Justice John Roberts. In the late 1990s he served for 4 years as Administrative Assistant and Chief of Staff for Chief Justice William Rehnquist.

We welcome you both today, and we very much look forward to hearing from you about the resources that are needed by the Federal judiciary. We certainly do like to see you. Our conversations are always lively, and you are probably the envy of so many not having to vet your budget with that other place. But that is not your comment, that is my comment.

And now my colleague, Mrs. Emerson.

#### MRS. EMERSON'S OPENING REMARKS

Mrs. EMERSON. Thank you, Mr. Chairman. Judge Gibbons, Director Duff, thank you so much for appearing before us today. Let me also add my sincere condolences to those of Mr. Serrano for the loss of Court Security Officer Stanley Cooper in Las Vegas. His death is a real tragedy and it really does remind us of how important the security that these officers provide is to the operations of our Nation's courts. His family and all of the Las Vegas court's employees remain in our thoughts and our prayers.

An independent judiciary that holds the trust and respect of all of our citizens and can resolve criminal, civil and bankruptcy disputes in a fair and expeditious manner is a fundamental tenet of our Nation. In addition, the judiciary's probation and pretrial service officers perform a critical public safety mission by supervising more than 200,000 offenders and defendants living in our community.

We will try to ensure that you all have the resources needed to accomplish your important mission, especially since your criminal bankruptcy and probation workload is growing. However, your budget request proposes an overall increase of \$469 million, or 6.8 percent, above the fiscal year 2010 level. And I know, as you all are aware, our Federal deficit is approaching \$1.6 trillion and we are going to have some difficult spending decisions to make. Let me assure you I am going to work very, very hard with Chairman Serrano to make sure that you all have at the Federal judiciary the resources to fulfill your constitutional duties.

Thank you all for being here. I greatly appreciate the very, very important work you do. Thanks, Mr. Chair.

Mr. SERRANO. Thank you. You know the drill, each one of you is asked to do 5 minutes and no more than that so that we can then use 5 hours to just put you over the coals. Thank you and please proceed.

#### JUDGE GIBBONS' OPENING REMARKS

Judge GIBBONS. Chairman Serrano, Representative Emerson, I am Julia Gibbons, a judge on the 6th Circuit Court of Appeals and Chair of the Judicial Conference Committee on the Budget. With me today is Jim Duff, Director of the Administrative Office of the U.S. Courts.

First, let me say how much all of us in the judiciary appreciate your words about the death of Court Security Officer Stanley Cooper and the wounding of Deputy Marshal Joe Gardner. That tragedy serves as a poignant reminder to us of the fact that those who strive to protect us may indeed give their lives or their health for our protection. And of course these workers are there not only to protect judges and the people who work in the courts, but also all the citizens who have some occasion to come before the United States courts. And so I think it is a very sobering reminder to all of us of the serious nature of security concerns and the work that these individuals do on our behalf.

Let me begin by thanking you and your colleagues for making the judiciary a funding priority in the fiscal year 2010 appropriations cycle. Because of the funding provided by Congress, along with our aggressive cost containment initiatives, the courts are in sound financial shape for 2010. The funding you have provided will allow us to finance continuing operations of the courts and to meet our growing workload needs.

We are also grateful for several legislative provisions in the omnibus bill, most notably an increase to \$125 per hour in the hourly rate for private panel attorneys who represent indigent defendants in non-capital cases and the extension of three temporary district judgeships that were about to expire.

All of us in the Third Branch, Mr. Chairman, remain concerned about the economic problems facing the country and understand the need to rein in Federal spending in the face of historic budget deficits. In fact, this concern prompted the Judicial Conference's decision to transmit a fiscal year 2011 request that reflects the lowest percentage increase sought by the judiciary in more than 20 years. We are not only judges and staff supporting the Third Branch; we are also citizens and taxpayers and we recognize fully the need for fiscal austerity in a period of mounting Federal debt.

We are very much aware that the President's 2011 budget proposes freezing overall discretionary non-security spending for the next 3 years. We note, however, that within that overall freeze the President has requested increases for several executive branch agencies' programs that directly impact the judiciary's workload.

Our request for a 6.8 percent increase may appear high in a tight budget environment, but I assure the subcommittee that we are only seeking the resources we believe are needed to carry out the work of the courts. In the salaries and expenses account our re-

requested staff increases are based only on projected caseload growth, and our workload is increasing nearly across the board. And if Congress approves the President's request for the Department of Justice and the Department of Homeland Security, our criminal and probation workload will continue to grow.

Our bankruptcy workload continues to grow as well. In 2008, bankruptcy filings grew 29 percent followed by a 35 percent increase in 2009. We expect to see another 20 percent increase in filings in 2010 to nearly 1.6 million. Most of these are filings by individuals, but there are a growing number of Chapter 11 business filings, some of which are large, complex cases such as Lehman Brothers, General Motors, and Chrysler.

Many economists expect the unemployment rate to remain high for several years, and if that prediction materializes, we will continue to see workload growth in the bankruptcy courts that will necessitate funding for additional court staff.

For the details of the 2011 request, we request \$7.3 billion, an increase of \$469 million over the 2010 enacted appropriations level. Of the request before you, \$385 million, or 82 percent of the increase, is for standard pay and non-pay inflationary adjustments and for adjustments to base reflecting increases in our space, information technology, defender services, and court security programs. The remaining \$84 million is for new court support staff positions largely in the bankruptcy clerks' offices, program improvements in our information technology program and an enhancement in our defender services program to increase the hourly rate for private panel attorneys representing indigent defendants in criminal cases to the statutorily authorized rate of \$141 per hour. We are very appreciative of the \$125 rate you provided for panel attorneys this year, and especially appreciative of the \$139 that this subcommittee recommended for 2010, but we believe that the increase to \$141 per hour is warranted to ensure qualified representation for these defendants.

Our budget reflects our continued efforts to contain cost. We are now more than 5 years into an intensive effort to reduce cost throughout the judiciary, and our cost containment program is producing results. To date we have achieved the most significant cost savings in our space and facilities program, and GSA has been very cooperative with us in the cost containment efforts in this area.

There is a much more detailed statement about cost containment in my written testimony. Containing cost is a top priority for us.

I would ask that my entire statement be placed in the record along with the statements of the Administrative Office, the Federal Judicial Center, the Sentencing Commission, the Court of Appeals for the Federal Circuit, and the Court of International Trade. And of course I am available to answer fully your questions.

[The statement of Judge Gibbons follows:]

**STATEMENT OF  
HONORABLE JULIA S. GIBBONS, CHAIR  
COMMITTEE ON THE BUDGET OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
BEFORE THE SUBCOMMITTEE ON  
FINANCIAL SERVICES AND GENERAL GOVERNMENT  
OF THE  
COMMITTEE ON APPROPRIATIONS OF THE  
UNITED STATES HOUSE OF REPRESENTATIVES**

March 18, 2010

**INTRODUCTION**

Chairman Serrano, Representative Emerson, and members of the Committee I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals. Our court sits in Cincinnati, Ohio, and my resident chambers are in Memphis, Tennessee. As the Chair of the Judicial Conference Committee on the Budget, I come before you to testify on the Judiciary's appropriations requirements for fiscal year 2011. In doing so, I will apprise you of some of the challenges facing the federal courts. This is my sixth appearance before an appropriations subcommittee on behalf of the federal Judiciary and my fourth appearance before the Financial Services and General Government panel. Appearing with me today is James C. Duff, the Director of the Administrative Office of the United States Courts.

In addition to a discussion of our fiscal year 2011 request, my testimony will cover several policy issues that impact the federal courts. I will also update you on the Judiciary's efforts to contain costs as well as several innovative initiatives we believe will improve the operations of the federal courts.

**STATEMENTS FOR THE RECORD**

Mr. Chairman, in addition to my statement and Director Duff's, I ask that the entire statements of the Federal Judicial Center, the U.S. Sentencing Commission, the Court of Appeals for the Federal Circuit, and the Court of International Trade be included in the hearing record.

**FISCAL YEAR 2010 FUNDING**

Mr. Chairman and Representative Emerson, I begin today by thanking you and your colleagues for making the Judiciary a funding priority in the fiscal year 2010 appropriations cycle. The funding you provided, combined with greater-than-anticipated fee carryover balances and reduced requirements due to our cost-containment initiatives, will allow us to finance continuing operations in the courts and address our most pressing workload needs. We are fully cognizant of the difficult funding choices you faced during conference on the omnibus bill and appreciate your willingness to support the needs of the Judiciary. We look forward to working closely with you and your staff in the future.

We also are grateful for several provisions included in the omnibus bill that will improve federal court operations. Of note are the increase in the non-capital hourly rate paid to private panel attorneys who represent eligible defendants under the Criminal Justice Act, which I will discuss in more detail later in my testimony; continuing the provision that grants the Judiciary the same authority as the Executive Branch to contract directly for space alteration projects not exceeding \$100,000; and extending the temporary district judgeships in Kansas, the Northern District of Ohio, and Hawaii so that they do not expire when the next vacancy occurs.

I also would like to express our appreciation for the \$10 million in fiscal year 2009 emergency funding you provided the Judiciary to respond to workload associated with immigration and other law enforcement initiatives being implemented by the Department of Justice and the Department of Homeland Security. That funding has allowed us to hire critical staff to meet our most urgent workload needs, especially along the Southwest border.

#### **A CONSTRAINED FEDERAL BUDGET ENVIRONMENT GOING FORWARD**

Mr. Chairman, all of us in the Third Branch remain concerned about the economic problems facing the country and understand the need to rein in federal spending in the face of historic budget deficits. In fact, this concern prompted the decision by the Judicial Conference to transmit a fiscal year 2011 request that reflects the lowest percentage increase sought by the Judiciary in more than 20 years. We are not only judges and staff supporting the Third Branch, we are also citizens and taxpayers and we recognize fully the need for fiscal austerity in a period of mounting federal debt. As a step in addressing the budget deficit, the President's 2011 Budget proposes freezing for the next three years overall discretionary non-security spending. I would note, however, that the President has requested increases for some Executive Branch agencies and programs, many of which would directly impact the Judiciary's workload.

To be frank, we are concerned about the impact of constrained federal spending on the Judiciary's appropriations for fiscal year 2011. Our request for a 6.8 percent increase may appear high in a tight budget environment but I assure the Committee that we are only seeking the resources needed to carry out the work of the courts. Our workload is increasing, nearly across the board, and if Congress approves the President's requests for the Department of Justice and the Department of Homeland Security, and if bankruptcy filings remain high, our workload will continue to grow.

We believe we have a strong case to justify full funding of our budget request and although that may be very difficult for Congress to do, at a minimum, we require sufficient resources to handle our growing workload. As I have mentioned in previous testimony before this Committee -- a point that bears repeating again today -- we do not determine our own workload in the federal courts: instead we must handle the cases that are brought to us. When a U.S. attorney decides to prosecute a case, the district court must hear it. And when the Department of Justice hires more assistant U.S. attorneys, that means more workload for the courts. When an appeal is filed, an appellate court must rule on it. When an individual or company files bankruptcy proceedings, the bankruptcy courts must work with debtors and creditors to resolve the case. When a criminal sentence requires a period of supervised release

for an individual, it is our probation officers who enforce those terms of release and ensure public safety.

As I mentioned, the President's 2011 Budget includes funding increases for the Department of Justice and the Department of Homeland Security that will have a direct impact on the workload of the federal courts. The President's Budget increases spending on border and immigration enforcement efforts, particularly along the Southwest border, as well as spending for prosecuting financial fraud and drug offenses. This influx of crime fighting resources will result in more criminal cases in our district courts, more work for our probation and pretrial services officers, and increased caseload in our defender services program, which provides assigned counsel to eligible defendants. We could also see additional cases in our courts of appeals as the Department of Justice adds immigration judges and staff to clear the backlog of cases in the immigration courts. The decisions of the Department of Justice's Board of Immigration Appeals may be appealed in federal court and 26 percent of these cases ended up on our appellate court dockets in 2009.

A growing area of our workload that is not driven by the priorities of the Administration or Congress, but by the economy at large, is the sharp increase in bankruptcy filings in recent years. In 2008, there was a 29 percent increase in bankruptcy filings, followed by a 35 percent increase in 2009. We expect to see another 20 percent increase in bankruptcy filings in 2010, to nearly 1.6 million filings. The bulk of these filings are Chapter 7 and Chapter 13 filings by individuals, but there are also a growing number of Chapter 11 business filings, some of which are very complex and time intensive to resolve, such as Lehman Brothers, General Motors, Chrysler, and several major airlines. Many economists expect the unemployment rate to remain high for several years and if that prediction materializes, we will continue to see workload growth in our bankruptcy courts which will necessitate funding to hire additional court staff.

In order to handle a growing workload and sustain a fair and expeditious delivery of justice, the federal courts must have the resources they need to do their work. We do not have programs that we can cut in response to a budget shortfall. Over 80 percent of our costs are salaries and space rent. This includes salaries for judges and chambers staff and rent payments to the General Services Administration that are fixed, must-pay costs in the short-term, although over the longer term we are able to slow the growth in rent costs through cost-containment initiatives. When faced with a budget shortfall, we have little flexibility other than reducing staffing levels in our clerks' and probation offices. This was the case in 2004 when on-board court staffing levels were reduced by 1,350 people due to a funding shortfall -- a loss equal to a full 6 percent of the courts' workforce. This is not a position in which we wish to find ourselves again. Staff reductions in clerks' offices will affect the operating hours of the courts; delay case docketing and processing; limit the availability of assistance for jurors, litigants and the public; and impact the effective operation of technology. Our probation staff are responsible for supervising felons released from prison. Any reduction in their ranks will have a direct impact on public safety.

I will close on this topic by reiterating the importance of the Judiciary's receiving the resources needed to address its workload needs. This Committee, through annual and

supplemental appropriations, has enabled the Judiciary to keep pace with the workload growth stemming from new immigration and law enforcement initiatives and from increased bankruptcy filings resulting from the weak economy. I ask the Committee to continue this commitment to the federal courts by providing funding sufficient to allow us to perform our statutory duties.

#### **HIGH-THREAT TRIALS IN THE FEDERAL COURTS**

I would like to turn briefly to an issue that has been widely discussed in recent months: the issue of whether suspected terrorists should be prosecuted in federal court or by military tribunal. As a neutral party in our system of justice, the Judiciary, of course, has remained silent in this debate. The decision on the appropriate venue to prosecute suspected terrorists will be determined by the Administration and Congress, as is appropriate. My only comment on this topic is that high-threat trials in the federal courts present certain security and logistical challenges that must be addressed, such as those experienced with the *Moussaoui* case at the federal courthouse in Alexandria, Virginia, and the *Reid* (shoe bomber) case at the federal courthouse in Boston, Massachusetts. A case currently in federal court that has been widely publicized is the case of Umar Farouk Abdulmutallab, who has been charged with attempting to detonate an explosive device on a flight from Amsterdam to Detroit on December 25, 2009. He was indicted in federal district court in Detroit and is being held awaiting trial. As with any high-threat trial in federal court, the Judiciary works closely with local and federal officials as appropriate to provide a safe and secure venue for the proceedings.

The Judiciary's fiscal year 2011 budget request includes \$22 million for security, juror expenses, and court appointed defense counsel costs associated with high-threat trials. We will work closely with the Committee to refine this estimate once we have a better understanding of the number and location of high-threat trials that will take place in federal court.

#### **EFFORTS TO REDUCE OFFENDER RECIDIVISM**

One topic I would like to highlight in my testimony today is an initiative underway in our probation program that we believe will have a real impact on reducing recidivism rates among offenders under supervision and will also allow us to focus resources on programs that have proven results. Let me first say that the recidivism rate in the federal probation system is relatively low – about 15 percent of offenders are arrested for committing a new crime during their first year of supervision. This is in contrast to a 2002 study of recidivism rates in 15 states that found a recidivism rate of 44 percent in the first year. We believe that the federal probation system's individualized approach, tailored to the circumstances of each offender, along with adequate resources at the disposal of probation officers, are the reasons for the better results in the federal system. We are continually exploring ways to further reduce an already relatively low recidivism rate.

The goal of our probation program since it was established 85 years ago has been and continues to be providing offenders sentenced by a judge to a period of supervision by a probation officer with the tools they need to become productive, law-abiding citizens. Until recently, however, there has not been a body of research or data that identified proven methods

for reducing offender recidivism. Past approaches have focused on frequency of probation officer/offender contacts and compliance with conditions of supervision imposed by the judge. While compliance with conditions remains a major component of supervision, working with the offender to change his behavior will provide the best long-term value to the community. The expanding availability of data from law enforcement, correctional and other community agencies, as well as our own case management data, provides researchers with opportunities to determine better the effect probation officers have on offender behavior. The approach of determining what practices work best, based on quality research, is known as "evidence-based practices" (EBP). We recognize the need to evaluate our practices and support those that have been proven to produce specific, intended results consistently. EBP is an outcome-based approach that focuses on specific supervision and treatment strategies versus the more traditional contact-driven supervision approach.

As part of our EBP initiative, we have developed an automated system to gather and interpret criminal records from all 50 states to track recidivism for all persons currently and formerly under the supervision of a probation officer. We have also developed an assessment tool based on an analysis of more than 100,000 offender case files to help officers decide exactly how to approach each person. The tool will allow officers to identify which of the four leading factors that contribute to recidivism should be addressed first. The leading factors are: antisocial thinking patterns and values; a dysfunctional social network; lack of productive employment or education; and substance abuse.

We believe that the Judiciary's evidence-based approach to offender reentry and our strong focus on achieving positive outcomes will reduce the high costs associated with recidivism. It costs the Bureau of Prisons \$71 per day to incarcerate an offender in a federal prison, including offenders whose supervision had been revoked and have been returned to prison after failing to make it in the community. It costs the Judiciary an average of \$10 per day for a probation officer to supervise an offender in the community. If that offender succeeds, the costs of further incarceration are avoided and the offender can become a productive member of society. This may not be possible in every case, but we believe there are ways to improve the chances that many more offenders will remain law-abiding, and we are proactively seeking to identify and implement them.

#### **COST-CONTAINMENT SUCCESS**

As I have done in previous testimony, I will update the Committee on various initiatives underway to contain costs. As you may recall, this effort was started over five years ago to control, and in many cases limit, the cost growth in Judiciary programs both large and small. In 2004, the federal Judiciary looked into the future and saw that its requirements would increase at a pace that would exceed projected funding levels within a few years. Without action, layoffs of court staff seemed inevitable as many of our must-pay costs, such as space rent, were growing at a rate that was unsustainable over the long-term given the pressures on the federal budget. In response to this challenge, the Judiciary initiated a comprehensive strategy that included sweeping cost-containment measures, allowing us to request more modest budget increases from this Committee and the Congress.

The Judiciary adopted a cost-containment strategy in 2004 and has since embraced and institutionalized its economy objectives. Many of the initial ideas for containing costs and growth have come to fruition; others are in various phases of analysis and implementation. Cost-containment is a dynamic process for the Third Branch as we are continually looking for ways to trim costs without adversely impacting the administration of justice. Changes made to date have reduced future costs for: rent, information technology, compensation of court staff and law clerks, magistrate judges, law enforcement activities, law books, probation and pretrial services supervision work, and other areas. I will summarize briefly what we have accomplished, discuss activities underway, and identify new ideas in their initial stages of development.

#### Space Rent

In 2004, our long-range budget projections indicated that rental costs for existing and new facilities would increase by 6 to 8 percent annually, outpacing anticipated budget growth. The Judicial Conference recognized that controlling rent costs was absolutely essential to avoiding personnel reductions in the future. In fiscal year 2005, we projected our General Services Administration (GSA) rent bill would be \$1.3 billion in fiscal year 2011. I am pleased to report that our current GSA rent estimate for fiscal year 2011 is now projected to be approximately \$1.0 billion, \$300 million, or 23 percent, below the earlier estimate, due in large part to the following cost-containment initiatives:

- The first step we took was imposing a national moratorium on courthouse construction from 2004 to 2006.
- A national rent validation initiative identified errors in GSA rent bills that resulted in rent credits, cumulative savings, and cost avoidances totaling over \$50 million to date for the Judiciary.
- To contain the rate of growth in rent, the Judicial Conference in 2006 established a cap of 4.9 percent in the average annual rate of growth in rent paid to GSA. Each circuit judicial council is given a circuit rent budget and must manage rent costs within that budget. Circuit councils decide which projects they can afford, and in some instances, deny requests for new space in order to stay within their allotment.
- A new long-range facilities planning process -- Asset Management Planning -- was approved by the Judicial Conference in 2008 that examines costs, space needs, and functionality in assessing whether a new facility should be recommended at a particular location.
- A memorandum of understanding between the Judiciary and the General Services Administration, signed in 2008, changed the way the Judiciary's rent is calculated for certain federally-owned courthouses. This will provide the Judiciary with certainty about the amount of rent it will pay annually over a 20-year period.
- Recent changes to the *U.S. Courts Design Guide* have lowered costs by reducing office size for chambers and court staff.

### Courtroom Sharing

In furtherance of its aggressive cost-containment efforts, the Judicial Conference adopted at its September 2008 session a revised policy in which two senior district judges will share one courtroom in new courthouse construction projects. A year later, in September 2009, the Judicial Conference extended this 2-for-1 sharing policy to magistrate judges while accounting for circumstances to ensure that judges have adequate access to courtrooms for arraignments and other criminal case proceedings. A study is currently underway to look at courtroom use in bankruptcy courts to evaluate the feasibility of courtroom sharing in those courts. This study is expected to be completed in December 2010.

### Personnel

Turning to personnel costs, we recognize that it may not be possible to obtain the funding needed to meet future staffing and compensation requirements and have been taking steps in recent years to control personnel costs. At its September 2007 meeting, based on a major court compensation study, the Judicial Conference approved recommendations to slow the growth in personnel costs throughout the Judiciary. These recommendations altered the salary progression policy for court staff and established performance management guidelines as a fair and reasonable means to limit future compensation costs. In another action, the Judicial Conference adopted policies to reduce the personnel costs of judges' chambers staff. We estimate that all of our cost-containment measures in the personnel area will reduce compensation costs by nearly \$300 million through fiscal year 2019.

### Information Technology

The Judiciary takes pride in its innovative use of information technology to enhance efficiency and reduce costs. New technology and improvements in the Judiciary's national data communications network have allowed for the consolidation of many of our computer servers at a single location without compromising the performance levels of several key applications. Prior to this initiative, the service delivery model provided court units with local servers as national information technology systems and applications were deployed. Local court staff were given responsibility for technical and administrative work associated with maintaining these systems, performing tasks such as backing up the systems and troubleshooting. Server consolidation takes this burden off of local court staff, allowing them to focus on other court priorities. We estimate that our server consolidation efforts thus far will result in savings and cost avoidances totaling \$65 million through fiscal year 2012.

The next phase of technology improvements will involve upgrades and enhancement of the Judiciary's data communications network with a focus on converged services (combining voice, video, and data traffic over a single, secure network) that is expected to result in improved services and additional cost avoidances.

Looking to the future in automation, the Judiciary is developing requirements for the next generation of electronic case filing and case management systems in the courts. The current

systems have already streamlined the case filing process by allowing attorneys and litigants to file documents over the Internet and have freed up office space formerly used to house paper files. Next generation systems will use cutting-edge technology to provide a seamless case processing system between the bankruptcy courts, district courts, and courts of appeals. A new electronic voucher project for Criminal Justice Act vouchers has the potential for automating this paper-intensive process and enhancing the accuracy and timeliness of payments to private attorneys appointed under the Act.

#### STAFFING INCREASES AND THE JUDICIARY'S CASELOAD<sup>1</sup>

Our fiscal year 2011 budget request includes \$40 million for an additional 942 court support staff positions in probation and pretrial services offices and bankruptcy and district clerks' offices to address growing workload needs. The greatest staffing need is in our bankruptcy clerks' offices which, as I mentioned earlier in my testimony, are handling significant increases in bankruptcy filings due to the economic downturn.

As indicated in the caseload table in our fiscal year 2011 budget request, 2010 caseload projections are used to compute fiscal year 2011 staffing needs. This approach allows us to estimate better the number of clerks' and probation office staff needed to meet workload demands, thus enabling us to provide Congress with a more accurate picture of our appropriations needs for the upcoming fiscal year. Overall, the Judiciary's workload for 2010 is expected to increase, as follows: criminal (+3%); probation (+3%); pretrial services (+2%); civil (+6%); and a substantial increase in bankruptcy filings (+20%). These increases come on top of the 2009 workload growth we experienced for each of these categories. The only caseload decrease we are projecting for 2010 is in our appellate filings (-5%). Let me discuss some recent trends and caseload drivers and offer some context for these projections.

#### Probation and Pretrial Services

Workload in our probation and pretrial services programs continues to grow. The number of convicted offenders under the supervision of federal probation officers hit a record 123,839 in 2009 and is expected to increase again in 2010 to 127,100 supervision cases. In addition to the increased workload, the work of probation officers has become significantly more challenging. In 1988, 27 percent of the offenders under supervision had served time in prison. By 2009, the percentage had climbed to 81 percent. As these figures indicate, probation officers deal with fewer individuals sentenced to probation in lieu of prison, reflecting the continued trend of increasingly challenging offenders being released to the community.

Offenders coming out of prison on supervised release generally have greater financial, employment, and family problems than when they committed their crimes, and they often lack adequate life skills to transition back into society smoothly. Officers help offenders either to re-

<sup>1</sup>Unless otherwise stated, caseload figures reflect the 12-month period ending in June of the year cited (i.e., 2010 workload reflects the 12-month period from July 1, 2009 to June 30, 2010).

establish or secure for the first time appropriate housing, employment, and legitimate community relationships. Successful re-entry into the community improves the likelihood that offenders will pay fines and restitution to victims and become law-abiding, taxpaying citizens.

Using a variety of resources, whether it be working closely with a therapist to change the treatment approach for a sex offender or partnering with state and local agencies to sponsor a job fair for offenders, probation officers utilize every means possible to facilitate successful re-entry of offenders into society. When offenders do not respond, and when there is a risk of harm to the community, probation officers take corrective steps that include seeking a change in release conditions or a revocation that may result in a return to prison. We are hopeful that the evidence-based practices I discussed earlier will have an impact on reducing the incidence of offenders returning to crime.

#### Bankruptcy Filings

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), implemented in October 2005 initially significantly reduced the number of bankruptcy filings, but there have been large increases over the past two years. As I mentioned earlier in my testimony, we forecast that filings will continue to grow in 2010, increasing 20 percent to 1,570,000 filings. The state of the economy, particularly as it impacts home foreclosures and credit availability, is a major factor in the number of personal bankruptcies -- which constitute the majority of bankruptcy cases. The economic downturn is also causing an increase in business bankruptcies, some of which are very large, complex Chapter 11 cases that are time and labor intensive to resolve.

The number of filings alone is not the sole indicator of overall workload. BAPCPA created new docketing, noticing, and hearing requirements that make addressing the petitions far more complex and time-consuming. The actual per-case work required of the bankruptcy courts has increased significantly under the new law, and a new work measurement formula that reflects this additional work is now used to determine staffing needs in the bankruptcy courts.

Although not part of the Judiciary's budget request to the Congress, the workload placed on bankruptcy judges has resulted in a request from the Judicial Conference for additional judgeships. H.R. 4506 supports the Judicial Conference's recommendation for the creation of 13 new permanent bankruptcy judgeships, conversion of 22 existing temporary judgeships to permanent status, and extension of two existing temporary bankruptcy judgeships for an additional five years. The House passed H.R. 4506 on March 12, 2010 and the Judicial Conference supports the prompt passage of identical legislation in the Senate.

#### Criminal Filings

After several years of declining filings, our criminal workload has been growing for the past few years. Criminal filings decreased each year from 2004 to 2007, then increased 4 percent to 70,024 filings in 2008, and another 8 percent to 75,324 filings in 2009. We project 2010 filings to increase again, growing 3 percent to 77,300 filings, with immigration-related

offenses driving the increase. It now appears that the additional annual and supplemental appropriations provided to the Department of Justice in recent years to fill Assistant U.S. Attorney positions, particularly in the five judicial districts along the Southwest border, are resulting in additional criminal filings. The President's 2011 Budget continues the expanded funding for immigration enforcement activities on the border and elsewhere, and it is important that Congress provide the resources needed for the federal courts to keep up with that workload.

#### Civil Filings

Civil filings in the district courts generally follow a less predictable filing pattern. In 2005 civil filings reached a record 282,758 filings but were up and down for several years with 2009 having 257,204 filings. We are currently projecting a 6 percent increase in 2010 associated with asbestos case filings and anticipated class action litigation involving imported drywall from China that is suspected of causing health problems in homes in which it has been installed.

#### Appellate Filings

Appellate filings remained level from 2008 to 2009 (59,406 to 59,399 filings). We are currently projecting that appellate filings will decline by 5 percent to 56,700 in 2010, due in part to a decline in appeals related to recent changes in the federal sentencing guidelines for crack cocaine sentences. As I have discussed in previous testimony, the Sentencing Commission gave those changes retroactive effect which allowed eligible inmates sentenced under the harsher crack cocaine penalties to petition a federal sentencing court for a reduced sentence under the amended guidelines. Since the bulk of those petitions have now been decided by the district courts, we expect that appeals of those decisions will also decline in 2010. However, in *Dillon v. United States*, the U.S. Supreme Court currently is reviewing whether the district courts have broader authority than that authorized by the Sentencing Commission in deciding petitions of this type. The outcome of *Dillon* may affect how many appeals from these decisions are filed in the coming year.

We are also seeing fewer appeals in federal court resulting from Department of Justice Board of Immigration Appeals (BIA) decisions. BIA appeals peaked in 2006 but have declined in recent years and that trend could continue. However, the increased funding being requested in the President's 2011 Budget for the Department of Justice to add new immigration judges and staff to clear case backlogs could result in increased workload for the federal courts.

### **FISCAL YEAR 2011 BUDGET REQUEST**

For fiscal year 2011, the Judiciary is seeking \$7,329,485,000 in appropriations, a 6.8 percent overall increase above the fiscal year 2010 enacted appropriations level. The courts' Salaries and Expenses account, which funds clerks' and probation offices nationwide, requires a 5.9 percent increase. We will work closely with you and your staff during the course of the year to provide periodic updates to the Committee on the Judiciary's fiscal year 2011 appropriations needs. Fiscal year 2011 appropriations requirements for each Judiciary account are included at Appendix A.

This fiscal year 2011 request includes staffing increases in the courts in order to address increased workload requirements, as well as funding requests for several much-needed program enhancements. We believe the requested funding level represents the minimum amount required to meet our constitutional and statutory responsibilities. While the requested increase may appear high in light of the fiscal constraints under which you are operating, the Judiciary does not have the flexibility to eliminate or cut programs to achieve budget savings as the Executive Branch does. The Judiciary's funding requirements essentially reflect basic operating costs, of which more than 80 percent are personnel and space rent requirements.

Eighty-two percent (\$385 million) of the \$469 million increase being requested for fiscal year 2011 funds the following base adjustments, which represent items for which little to no flexibility exists:

- Standard pay and benefit increases for judges and staff. This does not pay for any new judges or staff but rather covers the annual pay adjustment and benefit increases (e.g., COLAs, health benefits, etc.) for currently funded Judiciary employees. The amount budgeted for the January 2011 federal COLA is 1.4 percent.
- Inflationary increases for non-salary operating costs such as supplies, travel, and contracts.
- An anticipated increase in the number of senior Article III judges and average number of filled Article III judgeships.
- Annualization of new staff expected to be hired in fiscal year 2010.
- The projected loss in non-appropriated sources of funding due to the decline in carryover balances available in fiscal year 2011 versus the level available to finance the fiscal year 2010 financial plan (see discussion on the following page).
- Additional costs associated with high-threat trials anticipated in fiscal year 2011.
- Space rental increases, including inflationary adjustments and new space delivery, court security costs associated with new space, and an inflationary increase in Federal Protective Service charges for court facilities.
- Adjustments required to support, maintain, and continue the development of the Judiciary's information technology program which has allowed the courts to become more efficient and has moderated our funding requests for new staff to handle workload increases.
- Mandatory increases in contributions to the Judiciary trust funds that finance benefit payments to retired bankruptcy, magistrate, and Court of Federal Claims judges, and spouses and dependent children of deceased judicial officers.
- Costs associated with Criminal Justice Act (CJA) representations. The Sixth Amendment to the Constitution guarantees that all criminal defendants have the right to the effective

assistance of counsel. The CJA provides that the federal courts shall appoint counsel for those persons who are financially unable to pay for their defense.

After funding these adjustments to base, the remaining \$84 million requested is for program enhancements. Of this amount:

- \$45 million is for additional staff and associated costs to address fiscal year 2011 workload requirements (483 FTE), 6 additional magistrate judges and associated staff, and additional police officers (9 FTE) at the Supreme Court.
- \$26 million will provide for telecommunications and information technology enhancements, and courtroom technology improvements for the Court of Appeals for the Federal Circuit.
- \$6 million is requested for Supreme Court roof repairs.
- \$5 million is to increase the non-capital panel attorney rate from \$126 to \$141 per hour, the statutorily authorized rate. I will discuss this requested increase in more detail in a moment.
- \$2 million would provide for necessary investments in court security, including a national contract for vehicle barrier maintenance at courthouses and a facial recognition pilot program; education and training enhancements at the Federal Judicial Center; and the start-up costs for one new federal defender organization.

#### Non-Appropriated Sources of Funding

I would like to discuss briefly the non-appropriated sources of funding that partially finances the Judiciary's operations and how they moderate our appropriations needs. In addition to appropriations from Congress, the Judiciary collects fees from bankruptcy and civil case filings, from users for on-line access to court records, and from other sources. By statute, a portion of the fees collected by the Judiciary in any given year is available to lower the need for appropriated funds in that year. In addition, fees not utilized during the year they are collected may be carried over to the next fiscal year to offset appropriations requirements in that year. Every fee dollar collected that is not needed to finance current year needs represents a dollar less that the Judiciary must seek from Congress in the following year.

In formulating the Judiciary's fiscal year 2011 budget request, we made certain assumptions regarding the level of fees and carryover that would be available to finance fiscal year 2011 requirements. Because the projection for carryover balances is below the level that was available to finance fiscal year 2010 operations, the fiscal year 2011 request includes \$20 million to replace the anticipated decline in carryover balances. While it is premature for me to identify a specific amount, I am confident that we will not need the full \$20 million we requested to replace carryover balances. This is due to several factors, including the courts' frugal spending while operating under a continuing resolution for the first three months of fiscal year 2010, and increasing bankruptcy filings which may result in higher than anticipated fee collections. As we do every year, we will keep the Committee apprised of changes to fee and

carryforward projections that could reduce our fiscal year 2011 appropriations needs as we move through fiscal year 2010. The Judiciary will submit the first of two fiscal year 2011 budget re-estimates to the Committee in May 2010.

#### **INCREASE IN NON-CAPITAL PANEL ATTORNEY RATE**

We request your support for the program enhancement in our budget that will ensure effective representation for criminal defendants who cannot afford to retain their own counsel. We are requesting \$4,776,000 to increase the non-capital panel attorney rate to the statutorily authorized rate of \$141 per hour, effective January 1, 2011. A panel attorney is a private attorney who serves on a panel of attorneys maintained by the district or appellate court and is assigned by the court to represent financially-eligible defendants in federal court in accordance with the Criminal Justice Act (CJA). In the fiscal year 2010 omnibus spending bill, Congress approved an increase in the non-capital rate paid to these panel attorneys from \$110 to \$125 per hour, and provided a cost-of-living adjustment to the capital rate from \$175 to \$178 per hour. These new rates took effect for work performed on or after January 1, 2010.

Let me reiterate our appreciation for the \$125 panel attorney rate you provided in fiscal year 2010. This \$15 per hour increase represents a significant step in closing the gap between the previous \$110 rate and the statutorily authorized rate of \$141 per hour rate that we are seeking for 2011. The Judicial Conference believes that the \$141 hourly rate is required to enable the courts to attract and retain enough qualified attorneys to accept appointments and to provide them a fair rate of pay. We have sought the statutorily authorized rate as an ultimate goal for several years and believe that achievement of this level of compensation is critical to ensuring that criminal defendants receive their constitutionally guaranteed right to effective assistance of counsel.

In understanding our request, it is important to note the significant financial difficulties that panel attorneys encounter maintaining their legal practices. Predominantly solo and small-firm lawyers are appointed in CJA cases, and these panel attorneys must first cover their overhead costs. With overhead costs of approximately \$70 per hour, at the \$125 rate, that leaves a net average of only \$55 per hour, before taxes. We believe that this net rate of \$55 per hour, when compared to the net national average "market rate" of \$176 per hour for non-CJA private criminal cases, deters qualified attorneys from taking CJA appointments because those attorneys can obtain higher pay on non-CJA cases. Each time a panel attorney is asked by the court to accept a non-capital CJA appointment, he or she must consider the inherent "opportunity" cost associated with the higher hourly rate he or she could otherwise earn on a non-CJA case. Thus, an adequate compensation rate is essential to attract qualified panel attorneys.

The complex nature of federal criminal law necessitates that defense attorneys maintain a significant federal practice in order to ensure the effective representation of their clients. And it is in the interest of the court, the defendant, and the prosecution, that panel attorneys accepting CJA cases be highly experienced in federal criminal law. While experienced panel attorneys may be willing to work at the non-capital CJA rate in a limited number of cases, it often is not

financially possible for them to take a large number of CJA cases. This dynamic may limit the pool of available qualified counsel for eligible defendants.

The CJA authorized the Judicial Conference to implement annual cost-of-living adjustments (COLAs) to panel attorney rates, subject to congressional funding. If the statutory COLAs provided to federal employees (the base employment cost index component only) had been provided to panel attorneys on a recurring, annual basis since 1986, the authorized non-capital hourly rate for fiscal year 2011 would be \$141.<sup>2</sup> The \$141 hourly rate requested approximates the \$139 rate approved by this Committee and included in the 2010 House-passed bill (H.R. 3170). If the Committee were to approve the \$141 hourly rate for fiscal year 2011, the Judiciary in future years would only seek annual COLAs to that rate in order to keep pace with inflation, thus avoiding the large "catch up" increases needed when annual COLAs are not provided – the situation we find ourselves in today.

I will close on this topic by reiterating that the Judiciary greatly appreciates the \$125 non-capital rate Congress provided in fiscal year 2010, but the concern remains that, after overhead is considered, the rate still does not provide compensation that will attract enough qualified panel attorneys to take on the complex work involved in federal criminal cases. I urge the Committee to provide the funding necessary to increase the non-capital panel attorney rate to \$141 per hour in fiscal year 2011.

#### **CONTRIBUTIONS OF THE ADMINISTRATIVE OFFICE**

I would like to outline briefly the important work performed by the Administrative Office (AO) of the United States Courts on behalf of the entire Judiciary. Year in and year out, the AO provides critical support to the courts. With less than 2 percent of the resources that the courts have, the AO does a superb job of supporting our needs.

The AO has key responsibilities for judicial administration, policy implementation, program management, and oversight. It performs important administrative functions, but also provides a broad range of legal, financial, program management, and information technology services to the courts. None of these responsibilities has gone away and new ones are continually added. As an example, despite no new positions, the AO has been instrumental in implementing the Judiciary's cost-containment strategy which has achieved significant savings and cost avoidances.

In my role as Chair of the Judicial Conference Committee on the Budget, I have the opportunity to work with many staff throughout the AO. They are dedicated, hard working, and care deeply about their role in supporting this Nation's system of justice.

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<sup>2</sup>In comparison, since May 1, 2002, the U.S. Department of Justice has paid \$200 per hour to retain private counsel, with five years of experience, to represent current or former federal employees in civil, congressional, or criminal proceedings (pursuant to 28 C.F.R. § 50.16).

The fiscal year 2011 budget request for the Administrative Office is \$87,255,000. The AO's request represents essentially a current services budget with a modest increase for four new positions (2 FTE). This is the first request for new AO staff in 6 years. These positions are needed to address high priority court support functions at the AO including modernization and consolidation of the Judiciary's national accounting system, updating the case management system used in our probation and pretrial services program, and enhancing the AO's court security and emergency preparedness programs.

I urge the Committee to fund fully the Administrative Office's budget request. The increase in funding will ensure that the AO continues to provide program leadership and administrative support to the courts, and to lead the effort for them to operate more efficiently. Director Duff discusses the AO's role and budget request in more detail in his testimony.

#### **CONTRIBUTIONS OF THE FEDERAL JUDICIAL CENTER**

I also urge the Committee to approve full funding for the Federal Judicial Center's request of \$28,694,000 for fiscal year 2011.

The Center's Director, Judge Barbara Rothstein, has laid out in greater detail the Center's needs in her written statement. I simply add that the Center plays a vital role in providing research and education to the courts. The Center's research and its educational programs are highly respected and valued for their quality and objectivity. The Judicial Conference and its committees request and regularly rely on research projects by the Center. The Center's educational programs for judges and court staff have a well deserved reputation for relevance, balance, and quality and greatly help judges and court employees do their jobs well.

The Center has made good use of its limited budget. It uses several technologies to deliver information and education to more people more quickly and inexpensively. The relatively small investment you make in the Center each year (less than one-half of one percent of the Judiciary's budget) pays big dividends in terms of the effective, efficient fulfillment of the courts' mission.

#### **CONCLUSION**

Mr. Chairman, I hope that my testimony today provides you with some insight into the challenges facing the federal courts, the impact of Administration priorities and the weak economy on our workload, as well as what we are doing to contain costs and become more efficient. I realize that fiscal year 2011 is going to be a very tight budget year as non-security federal spending is more closely scrutinized. Our commitment to contain costs and to explore new and better ways of conducting our judicial business is unfailing. These initiatives have significantly reduced the Judiciary's appropriations requirements without sacrificing the quality of justice. I know you agree that a strong, independent Judiciary is critical to our Nation. I urge you to provide the funding needed to enable us to maintain the high standards of the United States Judiciary.

Thank you for your continued support of the federal Judiciary. I would be happy to answer any questions the Committee may have.

**Judiciary Appropriations  
(\$000)**

<b>Appropriation Account</b>	<b>FY 2010 Enacted Appropriation</b>	<b>FY 2011 Request</b>	<b>Change FY 2011 vs. FY 2010</b>	<b>% Change FY 2011 vs. FY 2010</b>
U.S. Supreme Court				
Salaries & Expenses	\$74,034	\$77,758	\$3,724	5.0%
Care of Building and Grounds	14,525	14,788	263	1.8%
Total	88,559	92,546	3,987	4.5%
U. S. Court of Appeals for the Federal Circuit	32,560	35,859	3,299	10.1%
U.S. Court of International Trade	21,350	22,268	918	4.3%
<i>Courts of Appeals, District Courts &amp; Other Judicial Services</i>				
Salaries & Expense Direct	5,011,018	5,309,781	298,763	
Vaccine Injury Trust Fund	5,428	4,785	(643)	
Total	5,016,446	5,314,566	298,120	5.9%
Defender Services	977,748	1,081,195	103,447	10.6%
Fees of Jurors & Commissioners	61,861	64,108	2,247	3.6%
Court Security	452,607	495,038	42,431	9.4%
Subtotal	6,508,662	6,954,907	446,245	6.9%
Administrative Office of the U.S. Courts	83,075	87,255	4,180	5.0%
Federal Judicial Center	27,328	28,694	1,366	5.0%
Judiciary Retirement Funds	82,374	90,361	7,987	9.7%
U.S. Sentencing Commission	16,837	17,595	758	4.5%
<b>Direct</b>	<b>\$6,855,317</b>	<b>\$7,324,700</b>	<b>\$469,383</b>	
<b>Vaccine Injury Trust Fund</b>	<b>\$5,428</b>	<b>\$4,785</b>	<b>(\$643)</b>	
<b>Total</b>	<b>\$6,860,745</b>	<b>\$7,329,485</b>	<b>\$468,740</b>	<b>6.8%</b>

Mr. SERRANO. Thank you so much.

DIRECTOR DUFF'S OPENING REMARKS

Mr. DUFF. Good morning, Chairman Serrano and Representative Emerson. I am Jim Duff, Director of Administrative Office of the Courts. It is a pleasure to be here with you this morning.

I know the families of Stanley Cooper and Joe Gardner will very much appreciate your kind remarks this morning. Thank you.

I echo Judge Gibbons' remarks and thank you for making the judiciary a funding priority for the 2010 appropriations cycle. I would add we are also grateful for the funding the subcommittee provided to GSA for four courthouse construction projects even though they were not included in the President's budget for 2010. You honored the request that we made for those through the funding you provided to GSA.

The 2010 funding you provided will allow the Administrative Office to continue to fulfill its mission providing a broad range of support to the Federal courts nationwide. It is a mission that we have been dedicated to since 1939 when the office was created. We have evolved over the years to meet the changing needs of the judicial branch, but service to the courts has been and remains our basic mission.

Turning to our fiscal year 2011 budget request, the Administrative Office seeks \$87.3 million for the upcoming fiscal year; that is a 5 percent increase over 2010. Our requested increase is primarily comprised of pay and non-pay inflationary adjustments that are needed to maintain current services. The request also includes funding for four new positions to address high priority program requirements that are critical to the operation of the courts.

Specifically, two positions are requested to support a comprehensive modernization and consolidation of the judiciary's nationwide accounting system. It is a multi-year effort that will provide the judiciary with significant improvements in its accounting of appropriated funds. A third position is for a database manager to oversee the replacement of the primary information technology system in probation and pretrial services, and the fourth position is to address the very pressing workload demands in what are very high profile and complex facilities and securities functions at the AO.

I will note that this is our first request to fund additional staff at the AO in 6 years. When I arrived at the AO we imposed a hiring freeze and haven't requested any funding for new staff in the time I have been there, and now that the budget is tightening up we are coming back and asking for four additional positions. So I am very popular with my staff. They say, we told you so. But this is our first request in 6 years for additional staffing.

Before I close, let me return briefly to funding for courthouse construction. For the second year in a row, the President's budget for the GSA does not request funding for new courthouse construction projects that reflect the priorities of the judiciary as detailed in the Judicial Conference's 5-year courthouse construction plan. But for 2011 the judiciary's courthouse priorities are in Mobile, Alabama; Nashville, Tennessee; Savannah, Georgia; and San Jose, California. Each of those is critically needed to address major operational deficiencies at those locations, and I have included our 5-

year plan as an attachment to my prepared testimony. I urge the subcommittee to consider the priorities of the Judicial Conference, with regard to courthouse projects and include funding in your 2011 bill for the four projects I just mentioned.

That concludes my oral remarks and I would be happy to respond to any questions and ask that my written statement be included in the record.

[The statement of Mr. Duff follows:]

STATEMENT OF JAMES C. DUFF, DIRECTOR  
ADMINISTRATIVE OFFICE OF THE U.S. COURTS  
BEFORE THE SUBCOMMITTEE ON  
FINANCIAL SERVICES AND GENERAL GOVERNMENT  
COMMITTEE ON APPROPRIATIONS  
HOUSE OF REPRESENTATIVES  
MARCH 18, 2010

**Introduction**

Chairman Serrano, Representative Emerson, and members of the Committee, I am pleased to appear before you again to present the fiscal year 2011 budget request for the Administrative Office of the United States Courts (AO) and to support the overall request for the Judicial Branch.

First, I join Judge Gibbons in thanking you and your Committee for the support you continue to provide the Judiciary. The funding provided to the Judiciary in the FY 2010 Consolidated Appropriations bill will allow court units experiencing workload increases – primarily district clerks, bankruptcy clerks, and probation and pretrial services offices – to hire additional staff this year to meet their needs.

We recognize the very tight fiscal constraints in which you will continue to operate and appreciate being able to work closely with the Committee throughout the process as the Judiciary's requirements change. This request was developed last fall based on assumptions at that time. To the extent we are able to identify unanticipated fee collections, additional carryover, and reduced requirements in the courts, we will advise the Committee and adjust our request accordingly. The Judiciary seeks only to obtain the funding necessary to meet its obligations and responsibilities to ensure the delivery of justice.

Let me also express my appreciation for your willingness to again include language providing one-year extensions for three temporary judgeships whose authorization had expired. Without these extensions, if a judicial vacancy were to occur in the districts of Hawaii, Kansas, or the Northern District of Ohio, it could not be filled. To maintain the needed complement of judges on these courts, new judgeships would have to be created. The new judgeships would be scored by the Congressional Budget Office and would require an offset.

Legislation that would extend temporary judgeships, as well as create new judgeships, is currently pending in both the House and the Senate. While I fully support the authorization process in creating and extending judgeships, if the judgeship bills do not move in a timely fashion, we may need to request your assistance once again. We must avoid losing judgeships because of the lack of an extension, as has already happened in the Eastern District of California – a court with the highest number of weighted filings per judgeship in the nation, as well as in the District of Nebraska. Restoring the judgeships once they lapse could prove difficult since it would require a PAYGO offset.

### **Role of the Administrative Office**

Created by Congress in 1939 to assist the federal courts in fulfilling their mission to provide equal justice under law, the AO is a unique entity in government. Neither the Executive Branch nor the Legislative Branch has any one comparable organization that provides the broad range of services and functions that the AO does for the Judicial Branch.

The AO does not operate as a headquarters for the courts. The federal court system is decentralized. The AO, however, provides administrative, legal, management, program, security, information technology, and other support services to all federal courts. It also provides support and staff counsel to the policy-making body of the Judiciary, the Judicial Conference of the United States, and its 25 committees, and helps implement Judicial Conference policies, as well as applicable federal statutes and regulations.

The AO is the focal point for communication and coordination within the Judiciary and with Congress, the Executive Branch, and the public on behalf of the Judiciary. Our lawyers, public administrators, accountants, systems engineers, analysts, architects, statisticians, security experts, and other staff provide professional services to administer Judiciary programs and meet the needs of judges and staff working in the federal courts nationwide. These services include:

- Performing core central payroll, personnel, and accounting functions;
- Developing and executing the Judiciary's budget and guiding local court budget execution;
- Collecting and analyzing statistics on court workload;
- Auditing court financial operations;
- Monitoring and reviewing program performance and use of resources;
- Developing and implementing cost containment initiatives;
- Developing and supporting automated systems and technologies throughout the courts, and managing public access systems;
- Coordinating construction and management of court facilities with the General Services Administration (GSA);
- Monitoring U.S. Marshals Service implementation of the judicial facility security program;
- Defining court resource needs through caseload forecasts and work measurement analyses;
- Providing program leadership and support for federal courts, judges, circuit executives, clerks of court, probation and pretrial services officers, federal defenders, and other managers; and
- Developing and conducting education and training programs on court administration, court operations, and information technology.

### **Courthouse Construction and Facilities Planning**

A major effort of the Judiciary over the last several years has been revising and strengthening the process for developing long-range space plans – in essence, the process by which a project is placed on the Five-Year Courthouse Project Plan. Following adoption of an

unprecedented cost-containment strategy by the Judicial Conference in 2004, a national moratorium on courthouse construction was imposed from 2004 to 2006. Thirty-five courthouse construction projects that had not yet received appropriated funding for site, design, or construction were subject to the moratorium and are currently being reevaluated. Only fifteen projects, many of which were shovel ready, have been allowed to proceed since 2004. The Judiciary's FY 2011 Five-Year Courthouse Project Plan includes funding through FY 2014 to complete the projects on the Plan.

During the time since the moratorium was imposed, the Judiciary has reevaluated its space planning policies and practices, and enhanced its budgetary controls. The Judicial Conference has adopted changes to the *U.S. Courts Design Guide* that reduced the size of chambers space for judges and offices for staff. The Conference has also approved a courtroom sharing policy for senior judges and magistrate judges. In addition, the long-range facilities planning methodology has been replaced with a new asset management planning (AMP) process.

The AMP process significantly improves long-range planning with: (1) comprehensive physical and functional assessments of each courthouse throughout the country; (2) standardized planning assumptions; (3) strategies to address current and future space needs; (4) business rules that mandate first consideration of least costly real estate solutions; and (5) a method for establishing the order of precedence for which locations get major projects. The AMP process focuses on cost, and places a greater emphasis on the ability of an existing facility to accommodate additional space, than security or building condition, when determining whether to recommend a new courthouse or a renovation of that facility.

On February 12, 2010, the Executive Committee of the Judicial Conference of the United States, acting on behalf of the Conference, approved a new Five-Year Courthouse Project Plan for FY 2011- FY 2015. This plan takes into account enactment of the Consolidated Appropriations Act of FY 2010 in December 2009, and replaces the five-year courthouse plan included by the General Services Administration (GSA) in its FY 2011 budget justification. Specifically, the Judicial Conference is seeking \$447.9 million in FY 2011 to address the most pressing space requirements of the Judiciary. Those projects are located in Mobile, Alabama; Nashville, Tennessee; Savannah, Georgia; and San Jose, California.

As you know, funding for courthouse construction and major renovation and alteration projects is included in the GSA Federal Buildings Fund budget and not in the Judiciary's budget. In some years this has worked fine, when GSA has requested funding for courthouse projects as recommended in the Judicial Conference-approved five year plan. Unfortunately, that is not the case this year and was not the case last year either. The FY 2011 budget request for the GSA does not include any funding for new courthouse construction.

The GSA budget request does include \$50,900,000 in funding for two large courthouse renovation and alteration projects -- one at the Prettyman Federal Courthouse in Washington, D.C. and the other at the Moynihan Federal Courthouse in New York City -- which are important to the operation of those courts. But, the absence of funding for any new courthouse construction in the President's FY 2011 budget request is problematic for the Judiciary, particularly if it translates into a lower allocation for your Committee. A lower allocation means

that you will have greater difficulty coming up with the funding to support our request for the four construction projects proposed this year, all of which are critically needed to address major operational deficiencies at those locations.

As noted above, the Judiciary has taken strategic steps to improve its courthouse facilities planning with a focus on cost-containment. This effort has been significant and has resulted in only the most important project recommendations going forward. I urge you and your colleagues to consider the recommendations of the Judicial Conference with regard to courthouse project needs and include funding in your FY 2011 bill for the four new prospectus projects in Mobile, Alabama; Nashville, Tennessee; Savannah, Georgia; and San Jose, California. A copy of our Five-Year Courthouse Project Plan is included as an attachment to this testimony.

#### **Southwest Border Judicial Security**

In March of last year, the Judicial Security Committee hosted a one-day border security meeting with federal judges situated in districts along the U.S./Mexico border to discuss the threat posed by Mexican drug cartels. At the meeting, the U.S. Marshals Service (USMS) and other law enforcement agencies briefed judges on the threats and violent activity in Mexico, and discussed possible security measures to improve the protection of judges. Concerned about the likelihood of spillover violence into Southwest border districts, as well as the serious overcrowding of prisoner holding cells and the lack of detention space, I wrote to your Committee seeking additional funding for the Judiciary and the USMS in the FY 2009 Emergency Supplemental.

In early June, the FY 2009 War Supplemental Appropriations Bill was sent to the President for his signature. Included in the bill was \$10 million in two-year supplemental funding for the Judiciary to meet increased workload resulting from additional resources provided to the Executive Branch agencies for immigration and other law enforcement initiatives. In addition, \$4 million was provided to the USMS specifically to enhance the personal security of judges and other judicial personnel along the Southwest border. No funding, however, was provided to the USMS to expand and improve prisoner holding and movement areas in existing court facilities – which is under the funding jurisdiction of the Commerce, Justice, Science, and Related Agencies Appropriations Subcommittee.

Seeking a firsthand assessment of the courts' workload and security needs in Southwest border districts, last July I joined the Director of the U.S. Marshals Service, John Clark, for site visits to Tucson, Arizona and El Paso, Texas. My on-site observation of the sheer magnitude of the work gave me a perspective you simply cannot get from reading reports or studying statistics. Both this Committee and taxpayers should be pleased with the efforts being made. Stepped up enforcement and prosecution efforts in Southwest border jurisdictions during the last several years have resulted in a significant increase in the number of drug, immigration, and weapons cases being filed in courts along the border. The Judiciary's resources must continue to keep pace with these workload increases.

Last year in the Tucson division of the district court for Arizona, felony cases and defendants increased by more than 65 percent from the previous year. Ninety percent of those

cases were drug and immigration related. There were 300,000 apprehensions during the first six months of FY 2009, and 1.2 million pounds of marijuana were seized. At one point, the court processed 323 detainees in a single day. The court facility is sized to handle no more than 120 detainees in a day. To handle the overload, a main courtroom was converted into a processing center. A new courthouse in Yuma, Arizona is desperately needed – and we are pleased to have learned that the GSA recently notified this Committee that it has identified available funds from the American Recovery and Reinvestment Act of 2009 to proceed with that project.

The district court in El Paso faces different challenges than the court in Tucson because of its location on the border. Judges in El Paso have had to empanel anonymous juries because of the high risk of intimidation or retaliation. Many jurors have family members who reside in Mexico, where threats are much greater. Criminal prosecutions in the district also are growing, even though Border Patrol apprehensions are down. For 2009, the office handled 4,027 criminal cases compared to 442 in 1994.

Seeing what the federal courts, the USMS, and the Border Patrol deal with on a daily basis is eye-opening. The federal courts along the Southwest border face significant and immediate challenges. But, they share workload challenges with districts across the country. As I mentioned earlier, the weighted filings per judgeship in the Eastern District of California are more than twice the national average of 472 (1,097 weighted filings per judgeship for the year ending September 30, 2009). Together with the AO, all of these courts are diligently working to find mechanisms within the Judiciary that will allow them to handle their workload increases until a more permanent solution comes from Congress, we urge in the form of new judgeships, facilities, and resources. Certainly, Mr. Chairman, your Committee has been most helpful to the Judiciary by allowing us the flexibility to use additional supplemental resources to address workload increases in the courts resulting from all manner of law enforcement initiatives.

#### **Intercircuit and Intracircuit Assignments, and the Law Clerk Assistance Program**

The number of judicial vacancies and the need for additional judgeships has created an even more pressing need for visiting judge assistance in overburdened courts throughout the country. During FY 2009, the Chief Justice approved 221 intercircuit assignments for 127 Article III judges, including two retired associate justices. In addition to handling caseloads in their home courts, these judges volunteer to help other courts outside their circuits manage increasing dockets, to provide assistance in special circumstances such as a backlog of pending cases or motions, and to hear cases in which all of the judges in a circuit recuse themselves. Circuit chief judges are also very active in assigning judges from one district within the circuit to assist with the caseloads in other districts.

The Judiciary's Law Clerk Assistance Program (LCAP) also has become a practical way for a judge to help another court by assigning legal research and writing tasks electronically to a federal law clerk in another court with the lending judge's permission. Similar to intercircuit assignments for judges, the LCAP promotes the sharing of existing law clerk talent, which has become increasingly necessary as caseloads increase but the number of judgeships does not.

### **Working Together to Improve Service to the Public**

Each day, the federal courts work to deliver justice to the parties who come before them. Much of the work is behind the scenes and done in collaboration with court staff, court executives, judges, and staff at the AO. The AO partners with the courts in many ways during the year to address unique situations and maintain service to the public. Several examples of this partnership follow.

#### **Automaker Bankruptcy Filings**

Last year, when rumors first surfaced that one or more American car makers would file for bankruptcy, the AO began to work with the Southern District of New York, the Eastern District of Michigan, and the District of Delaware bankruptcy courts to prepare for the potential filings that could affect one or more of them.

AO staff developed strategies to handle the burden a mega filing might have on the case management, electronic filing and public access systems, and to prepare for other workload impacts. Over the course of several months, the team worked with the three courts to help them plan for additional personnel needs, physical space demands, public and media inquiries, and security. The AO and the courts worked before any filings took place to address all the issues surrounding the filings.

The effective use of technology was critical to the courts' preparations for the filings without disruptions. Dedicated servers were set up and tested at an outside data center to avoid interference with daily court business. This planning was designed to reduce traffic on the internal data communications network and the public access systems at those courts.

When Chrysler, and later General Motors (GM), filed in the Southern District of New York Bankruptcy Court, the clerk of court contacted the AO court administration staff, and systems were monitored to be certain the servers could handle the increased electronic filing. Traffic was high, but the capacity was adequate in large part because of the advance planning by the courts and the AO.

Over 3,000 docket entries were made in each case the first month after the filing. Hundreds of people, including dozens of press, attended the hearing which the court accommodated with the use of videoconferencing units in overflow courtrooms. The court's Case Management/Electronic Filing System enabled the GM judge to file his decision on Sunday night of July 4<sup>th</sup> weekend and it was immediately accessible to the public.

At a visit to the Manhattan court in November, judges and court administrators provided me with more detail about the court's successful handling of the cases, their meticulous preparation, leveraging of technology, and the leadership from the Chief Judge, and their court's other judges, and court staff.

**Simplifying Jury Service**

We in the Judiciary have long known that creating a positive experience for jurors leads to greater public enthusiasm for the important responsibility of jury service. Last year, Judge Gibbons described for the Committee a pilot the Judiciary had undertaken of an on-line eJuror system that would give potential jurors the option of submitting their juror qualification questionnaire and summons information forms electronically.

Clerk's office staff from 10 district courts worked with the AO over two years to develop and test the eJuror application. National deployment began in June and should be completed by April, 2010. As of this month, more than 60 courts had installed eJuror and, of those courts, 24 have gone "live".

Soon, most members of the public called to jury duty will be able to visit the website of their federal court not only to submit their jury forms 24-hours a day and 7-days a week, but also to get updates on their jury service. Users can update personal information, submit a medical or other excuse, or request a deferral on-line. Jurors may also log into eJuror to learn their current juror status, whether they must report for jury duty or if they are excused. For those completing their jury service, they may use eJuror to print certificates of attendance, which may be required by employers, and to complete surveys about their experience. Potential jurors still will receive print versions of the forms, but they will have the option of either mailing in the print form or going on-line to complete it.

While the primary benefit of the eJuror system is that it provides better and more timely service for jurors, the new application has also been a cost saver for the Judiciary, reducing work requirements for court staff in processing the paper forms and also decreasing postage costs. In fact, the eJuror system has been more successful than we first anticipated. Postage cost savings estimates were initially based on 20 percent on-line questionnaire use, while, to date, we have been experiencing an average of 25 percent on-line responses for questionnaires, as well as 35-50 percent on-line responses for Summons Information Forms. Eventual staffing resource savings are projected to exceed \$1 million a year and postage savings are projected to exceed \$500,000 a year for an overall savings of more than \$1.5 million when it is fully deployed and in use.

**Case Management/Electronic Case Filing (CM/ECF)**

Perhaps one of the Judiciary's greatest collaborative efforts to improve court operations was the development of the Case Management/Electronic Case Filing System (CM/ECF) which was initially created by AO and court staff to manage maritime cases in the Northern District of Ohio in 1995. By 2003, the majority of the courts had implemented CM/ECF, and now the system is used in all district, bankruptcy and circuit courts, in the Court of Federal Claims and in the Court of International Trade. The volume of electronic filings continues to grow, with over 5 million documents filed each month and nearly 450,000 attorneys using the electronic filing feature. Attorney electronic filings now account for 40 percent of the docket entries in district courts. In the bankruptcy courts, attorneys electronically enter the majority of all docket entries and 90 percent of all case openings.

Now that the Judiciary has had over a decade of hands-on experience with CM/ECF and the progressive changes that it has enabled, the courts are evaluating comprehensively their business processes and their system needs for the future. This CM/ECF "Next Generation" project – endorsed by the Judicial Conference Committees on Court Administration and Case Management, Information Technology, and Administration of the Bankruptcy System – is now well underway. Integrated efforts in bankruptcy, district, and appellate communities are defining the requirements for a next generation system.

Judges, clerks, and court staff, are guiding the project with support from the AO. All judges and court staff will have numerous opportunities to shape a new system that will help them work more efficiently. We know the impact CM/ECF has had on the operation of the Judiciary to date and are excited about the future of CM/ECF Next Generation.

#### **Administrative Office Fiscal Year 2011 Budget Request**

I will now turn to the fiscal year 2011 appropriations request for the Administrative Office of the U.S. Courts, which is \$87,255,000. This represents an increase of \$4,180,000 or 5 percent, over fiscal year 2010 enacted appropriations. The requested increase is primarily made up of base adjustments to maintain current services. Specifically, \$3.9 million of the requested increase is for salaries and benefit increases, as well as increased costs for recurring requirements, such as supplies, communications, service agreements, and travel. The budget request does, however, include an increase of \$287,000 to fund four new positions to address high priority program requirements critical to the operation of the courts. Mr. Chairman, this is the first request to fund additional staff from the AO's appropriation in six years.

Two positions are requested to support a comprehensive modernization and consolidation of the Judiciary's nationwide accounting system. This will be a multi-year effort that will provide the Judiciary with significant improvements in its accounting of appropriated funds. Once fully implemented, the AO will be able to assume disbursement functions currently performed by the courts. Included as part of this systems upgrade will be the ability to disburse individual vendor payments electronically, a major initiative of the Department of the Treasury. At present, the AO is not staffed to handle these new responsibilities. Specifically, two additional operating accountant positions are requested to develop and implement the new disbursing capability, which will strengthen internal controls and financial accountability.

A third position is for a database manager to oversee the replacement of the primary information technology system in probation and pretrial services, PACTS, which is reaching maximum capacity with 8,000 users and more than one million records. The PACTS system contains vital information to assist probation and pretrial services officers in supervising offenders and monitoring compliance with conditions of release. PACTS is critical to the probation and pretrial services systems' ability to effectively protect public safety, reduce recidivism, and promote successful post-incarceration re-entry of offenders. This new position will be key to aiding in the security, accuracy, and usefulness of the data contained in PACTS Generation 3.

The fourth position we seek will ensure that workload demands in the high-profile and complex facilities and security functions at the AO are met in a timely and thorough manner. The critical functions of this office require close coordination between program offices throughout the AO, several executive branch agencies, Congress, and two Judicial Conference committees. The issues handled by this office are substantial, and usually of an urgent nature. They include court security, judicial protection, pandemic planning, and continuity of operations, emergency preparedness, courthouse construction, and space requirements.

In addition to the direct AO appropriation provided by this Committee, the AO receives a portion of Judiciary fee collections and carryover balances to offset appropriation requirements as approved by the Judicial Conference and the Congress. The AO also receives reimbursements from other Judiciary accounts for information technology development and support services that are in direct support of the courts, the court security program, and defender services.

The request for the AO reimbursable program includes funding for four new positions to address the effort anticipated in the development and support of the next generation Case Management/Electronic Case Files (CM/ECF) system. As I mentioned earlier in my testimony, CM/ECF is the core case management tool for judges and clerks' office staff. The next generation of CM/ECF is being developed to continue to meet the case filing and case management needs of judges, chambers, clerks' offices, the bar, debtors, litigants, claimants, trustees, and other users and to improve the current level of court efficiency in light of changing technology. This next generation system will incorporate new technologies and enhance functionality in the courts nationwide.

An additional reimbursable position is also requested to support the telecommunications program that the Judiciary is undertaking. A new contract has been awarded under the GSA's government-wide Network program that will replace the Judiciary's existing Data Communications Network (DCN) and provide opportunities to expand the current telecommunications services utilized by the courts. This network will allow the Judiciary to run voice, video, and data services over one network. In addition, the new telecommunications program offered by the AO will provide the courts with centralized services supporting telephone systems, video bridging, and data center hosting. The development, deployment, and management of these additional services will be the responsibility of the AO staff, and the workload associated with this effort will be substantial.

### **Conclusion**

The AO's appropriation comprises less than two percent of the Judiciary's total budget, yet the work performed by the AO is critical to the effective operation of the U.S. courts. Today I have shared with you a few examples of the diverse issues we handle and the types of services and support the AO provides. In addition to striving to perform its fundamental responsibilities in the most efficient and effective manner, the AO looks beyond the immediate day-to-day needs of the courts. It is our responsibility to anticipate and plan for changes in workload, workforce demographics, legislative mandates, resource limitations, and other trends and events so that we can serve the courts effectively in the years to come.

I fully recognize that fiscal year 2011 will be a difficult year for you and your colleagues as you struggle to meet the funding needs of the agencies and programs under your purview. I urge you, however, to consider the significant role the AO plays in supporting the courts and the mission of the Judiciary. The new staff requested – the first in over six years as we self-imposed a hiring freeze for cost containment – are critical to the AO's ability to ensure the efficient and effective operation of the U.S. courts.

This concludes my remarks and I would be pleased to answer any questions you may have regarding the AO and the Judiciary. Thank you.

**Five-Year Courthouse Project Plan for FYs 2011-2015**  
**As Approved by the Executive Committee on Behalf of the**  
**Judicial Conference of the United States**  
**February 12, 2010**  
(estimated dollars in millions)

FY 2011*			Cost	Score	Est. Net Annual Rent
1	Mobile, AL**	Add'l. / C	\$140.3	59.8	\$9.7
2	Nashville, TN	Add'l. S&D / C	\$173.5	67.3	\$7.9
3	Savannah, GA	C	\$95.5	61.3	\$5.3
4	San Jose, CA	Add'l. S	\$38.6	54.5	\$14.6
			<b>\$447.9</b>		<b>\$37.5</b>

FY 2012			Cost	Score	Est. Net Annual Rent
1	San Antonio, TX	C	\$142.2	61.3	\$7.0
2	Charlotte, NC	C	\$126.4	58.5	\$4.9
3	Greenville, SC	C	\$79.1	58.1	\$4.5
4	Harrisburg, PA	C	\$57.3	56.8	\$2.6
5	San Jose, CA	D	\$17.2	54.5	\$14.6
			<b>\$422.2</b>		<b>\$33.5</b>

FY 2013			Cost	Score	Est. Net Annual Rent
1	Norfolk, VA	C	\$104.7	57.4	\$6.1
2	Anniston, AL	Add'l. D / C	\$41.0	57.1	\$1.4
3	Toledo, OH	C	\$109.3	54.4	\$4.6
4	Greenbelt, MD	C	\$118.1	53.8	\$7.9
			<b>\$373.1</b>		<b>\$19.9</b>

FY 2014			Cost	Score	Est. Net Annual Rent
1	San Jose, CA	C	\$223.9	54.5	\$14.6
			<b>\$223.9</b>		<b>\$14.6</b>

FY 2015			Cost	Score	Est. Net Annual Rent
			<b>\$0.0</b>		<b>\$0.0</b>

S = Site; D = Design; C = Construction; Add'l. = Additional  
All cost estimates subject to final verification with GSA.

\*The funding requested by GSA and provided by Congress in fiscal years 2004 and 2005 to construct the Los Angeles, California courthouse project proved significantly inadequate to award a construction contract at that time due to a rapidly escalating construction market and rising costs of building materials. The Judiciary and GSA are presently reviewing all options for proceeding with this project. Therefore, while the Los Angeles project remains the number one construction priority for the Judiciary, no action will be requested until a resolution is reached.

\*\*NOTE: Congress provided \$50.0 out of \$190.3 million needed for Mobile, AL in December 2009.

Mr. SERRANO. Without objection, both statements will be included in the record. We thank you for your testimony. Obviously during the questioning period you can both decide to answer.

#### BANKRUPTCY FILINGS

The fiscal year 2011 Federal judiciary budget request is \$7.3 billion, which would include funding for an additional 1,137 full time equivalent employees, an increase of 3.3 percent over the 34,663 FTEs provided for last year. The largest of these increases is for bankruptcy staff, 483 FTEs. According to CRS, in 2009 total bankruptcy filings in Federal courts increased by 31.9 percent to about 1.4 million from 1.1 million in 2008. Bankruptcy filings due to non-business debts total 1,412,838, a 32 percent increase from 2008. Business filings in 2009 total 60,837, an increase of 40 percent from 2008.

So my questions are do you anticipate that bankruptcy filings will increase at a similar rate for this year and in 2011? Secondly, can you talk in more detail how your requested increase in funding for 2011 specifically addresses the possible continuing upward trend of bankruptcy cases? And lastly, are bankruptcy courts doing anything to promote financial literacy?

Judge GIBBONS. I will address first the filing situation and then address the financial literacy piece of it. Our projections, which are arrived at by means that are understandable fully only to the people who do these statistical projections, but we are thinking 20 percent growth for 2010, which is still a very substantial increase, although somewhat less than we saw in 2008 and 2009. I think you and I are noting slightly different percentages, but that is probably because our figures are from June to June and you may have fiscal year figures. We have 29 percent and 35 percent growth for 2008 and 2009, and 20 percent for 2010.

One thing that is worth noting about the bankruptcy situation is that it is not just the increase in filings that we have experienced. As you know, after the passage of the new bankruptcy legislation in 2005 our filings declined substantially, but the workload required to process an individual bankruptcy case did not decline, but in fact increased.

We now have data showing that, after the passage of that statute, the typical Chapter 7 case required 12 percent more processing time, and Chapter 13 cases required double the time. The number of docket entries nationwide at the end of 2007, at a time when the filings were quite depressed, was actually about the same as it was prior to the passage of the statute, and the number of motions filed and the number of orders that judges were required to generate increased. So this increase in filings comes in addition to the increase in per case workload that was precipitated by the passage of the 2005 statute.

So that is all a part of the background of why we feel that we really must have the increase in staffing in the bankruptcy courts.

#### FINANCIAL LITERACY

With respect to financial literacy, the most prevalent program is one called CARE, or Credit Abuse Resistance Education program and it was started by a bankruptcy judge in the Western District

of New York and now is in all 50 States. It is directed at high school seniors and college freshman. Bankruptcy judges, attorneys, court staff, and bankruptcy trustees all participate, and they engage in outreach to the targeted group, explaining to them the wise use of consumer credit, and this is a group that of course is most at risk for credit abuse.

Our judiciary web site also contains a couple of tools that are available to the public. I brought demonstrative evidence. This DVD is Bankruptcy Basics, Chapter 7 and Chapter 13 for Individuals. It is on our web site. It gets about 4,000 to 5,000 hits per month. The Spanish language version will be posted this spring. It has basic information about bankruptcy.

Then there is another program that is more directed toward financial literacy, Your Day in Bankruptcy Court, that is on the web site and it is designed actually for young people, principally high school students, and it leads them through a series of scenarios that illustrate common financial pitfalls, the consequences of bankruptcy, and so on.

So we are doing work in that area.

Mr. SERRANO. Any comments?

Mr. DUFF. Mr. Chairman, I would just like to compliment our staff in the courts, particularly on the bankruptcy courts for the work they have done this past year. I visited them after the massive filings in New York. They handled it wonderfully. They worked hard and prepared very well for it. And it is some measure I think of how well they handled the matters in that it received very little publicity, the big bankruptcy filings.

Mr. SERRANO. Yes.

Just one side comment, one added comment, part of my personal agenda is to make sure that our language changes. When we say the 50 States, we always say and the Territories. And so I would hope—

Judge GIBBONS. Oh, I am so sorry, Mr. Chairman.

Mr. SERRANO. It is not going to cost you a penny, trust me, trust me. It is not you, it is the whole Congress, the Senate, the staffs, you know. I am not going to get into it, but if you look at the health care bill there is health care for 50 States and there is a little addition for the Territories. The education bill is for the 50 States and then there is a little addition to the Territories. Only sending troops to Iraq and Afghanistan is there equality across the spectrum where everybody gets treated equally.

So I would be interested in knowing what units of the CARE program could be available in the Territories, especially as you move into the Spanish version, it certainly could be used in other places.

Judge GIBBONS. I, of course, unfortunately have no reason to know—obviously to the extent the other programs I talked about are on the web site, they are available. I don't know about the CARE program, but I will certainly find out and suggest that if we have not addressed the need in the Territories, we do so promptly.

Mr. SERRANO. Thank you so much.

[CLERK'S NOTE: Subsequent to the hearing, the Judiciary provided the following additional information:]

The Credit Abuse Resistance Education (CARE) program is a free financial literacy initiative that makes experienced members of the bankruptcy community

available to teach the importance of financial education. CARE's primary target audience is high school seniors and college freshmen who are most at risk because, as active consumers, they are aggressively marketed by the credit card industry at a time when they are not financially savvy.

CARE was founded in 2002 by Judge John C. Ninfo, II, a federal judge in Rochester, New York. CARE is not a national federal Judiciary program, rather it is a grassroots effort that depends on professionals in local bankruptcy communities to sponsor financial literacy programs. Many bankruptcy judges and court staff are active participants who teach in the program. While Judge Ninfo strongly encourages establishing a CARE program in as many locations as possible, it is up to the local bankruptcy community to sponsor a CARE program. CARE has a presence in all 50 states and the District of Columbia but there is not currently a CARE program in any of the U.S. territories. Judge Ninfo has indicated he will continue to reach out to the bankruptcy community in Puerto Rico to encourage them to establish a CARE program there. Puerto Rico led the territories in bankruptcy filings in calendar year 2009 with 11,342 filings. (Guam had 221 bankruptcy filings, the Virgin Islands had 29 filings, and the Northern Mariana Islands had 8 filings.)

There is also a broad range of CARE program materials available online ([www.careprogram.us](http://www.careprogram.us)) in the form of handouts, videos, Powerpoint presentations, and games that can be used by parents, teachers, and others to teach financial literacy. Some of the materials are available in English and Spanish.

#### PANEL ATTORNEY NON-CAPITAL HOURLY RATE

Let me ask one more question before I turn to Mrs. Emerson. For 2010 the non-capital panel attorney rate was increased to \$125, as you mentioned, as we know. The 2011 request for these attorneys would increase to \$141, which is \$2 above what we hoped, this committee hoped last year you would receive. Has the increase had a positive affect on attracting and retaining panel attorneys? Other than increasing the pay for panel attorneys, what efforts are being pursued to recruit the best attorneys in the Federal courts? And lastly, what do you anticipate would be the effect of not receiving funding for an increase in an hourly rate?

That is a softball question. You could tell me the system will fall apart.

Judge GIBBONS. Well, you know of course we hope and believe that the increase will have some positive effect, but it is really too early for us to be able to evaluate that and to tell because there is a delay in the submission of vouchers. There is a delay in knowing what the representation is, but certainly I think we have to assume it would have a positive impact. At the same time, we have long had the ultimate goal of taking the panel attorney rate to the statutorily authorized maximum, which was \$139 last year, now would be \$141.

Our feeling is that we are going to continue to have some recruitment issues with respect to attracting the qualified counsel and that, even at the statutorily authorized maximum, this is a pretty modest hourly rate for attorneys who are called upon to represent criminal defendants in a complex, fairly specialized area of practice, particularly when you consider, one, the important rights at stake and, two, the complexities of the Federal sentencing system.

For retained counsel the average hourly rate is \$246 an hour, almost twice the \$125. When you consider that overhead averages \$70 an hour, your panel attorney at \$125 is left with \$55 an hour in compensation, while your average retained counsel is left with \$176.

So while we are very appreciative of the increase, and of course we believe it will help, we do believe that there is a real need for a greater rate.

You asked about attracting qualified attorneys into the Federal court. Yes, there are some efforts that are made, but they are generally not made on a national level. They are generally made on the individual court level where a court, in communication with the lawyers, local lawyers who are available, seeks to recruit a highly qualified panel of attorneys. I was in the district court for 19 years before I went to the Court of Appeals, and over the years we did a good bit to make sure that the lawyers on our panel were indeed qualified. If somebody called up and said, I want to be on the panel that didn't appear appropriate for the panel, we didn't add them to the panel. And then we tried to encourage the very best lawyers to stay on the panel even when they came to us and said, judge, we just can't afford to do this anymore. We weren't always successful, but yes, we did try. And I feel sure most courts make similar efforts.

Now, was there another part of that that I forgot?

Mr. SERRANO. I might have forgotten the question right now.

Mrs. Emerson.

Mrs. EMERSON. I am trying to stop laughing.

#### COURTHOUSE SECURITY

Judge Gibbons, we mentioned the terrible tragedy that happened in the courthouse in Las Vegas. We have had the plane crash in the IRS building in Austin, Texas. We have had the shootings at the Pentagon and all of it highlights the need for more security or some other form of security at our Federal facilities. I know that you all within the judiciary operate a lot of older buildings, having had an office in one of those in previous years, and I think that obviously there are many courthouses that don't meet today's security standards.

So if you could just fill me in a little bit on whether you are working with the Marshals Service or with GSA to, number one, identify all of those facilities that don't meet the security standards and then how you are addressing those security shortfalls, and can we do that without building entirely new buildings?

Thank you.

Judge GIBBONS. Because the Administrative Office has been extensively involved in that work, I believe Jim might be the more natural person to answer that question. So I will turn to him.

Mr. DUFF. Thank you, Judge Gibbons. What we have done, Representative Emerson, is to adjust our priorities on courthouse construction projects. In a sense security remains a very important element obviously in protecting our judges and the public who go to our courthouses, but security was an aspect of new courthouse construction projects. It fueled the formula that determined which new courthouses we sought. When the budget started constricting and the money became tighter for courthouse construction, we haven't shifted priorities on security, but we are creating a new security priority list for courthouses that need security upgrades. And we haven't taken it entirely out of the courthouse construction criteria for funding, but it is a reduced proportion, I guess, in the for-

mula we use in seeking new courthouse construction projects. But we have created a new list for security priorities and we are focusing on the courthouses that need security the most, and there are a lot. Many of the buildings are outdated in that regard, and we have been very aggressive about identifying those and seeking funding for security upgrades.

Mrs. EMERSON. You know, Mr. Chairman, I wonder if it might not be something worth looking into, the idea of perhaps designating a certain fund within the General Services Administration that would be designated just for this sort of thing as opposed to having to duke it out with everybody else who is trying to get those sorts of funds. But it seems to me that we seem to have increasing number of incidents here. It might be something just to explore. I don't know. As long as you all get the money to do it, it doesn't matter which pot but I am just thinking it might be something that is worth pursuing anyway.

Mr. DUFF. Thank you for that idea.

Mrs. EMERSON. We will try to have a discussion about it.

Mr. SERRANO. I am listening, I am listening.

#### IMPACT OF HIGH THREAT TRIALS IN FEDERAL COURT

Mrs. EMERSON. Let me turn to the Gitmo detainee trials if I might. I know that the budget request includes a \$22 million increase for high threat trials. I also understand that this is an estimate of your costs for defender services, for jurors, for security requirements associated with potential trials of Khalid Sheikh Mohammed and other 9/11 coconspirators. It is also obvious that it is going to be an enormous cost, not only at the Federal level, but also at the State and the local level as well.

Now the chairman and I may disagree about where they think these trial should be. I personally don't think they should be in U.S. Federal courts, but that is not your decision and it is probably not my decision either. But nonetheless, I do know that if these terrorists are tried in the U.S. Federal courts the judiciary and the Marshals Service is going to have to do everything possible to perform these in a safe and efficient manner.

So I would like to hear from you on how high threat terrorism trials impact the operations of a court and other litigants; for example, on days when there is a high threat case, what happens to the other cases and what other security concerns might come into play?

Answer that and then I have got a couple of follow-ons.

Judge GIBBONS. Well, your question really recognizes, I think, that you understand that of course the \$22 million is our guess, because of course we don't know what the situation will be, and there are many, many variables that affect the cost depending on what location we are talking about. For example, if you are talking about a district court, among the things that could be involved from a cost perspective are what kind of technology is already available in the court and what sort of technological needs there might be for the trial. There is a public information function. I mean the courts aren't normally in the business of going out and telling folks what they are doing because there is usually plenty of room for the press in the courtroom. But a big trial, a high security trial raises some

issues in how you are going to make information about what is going on available and how you are going to accommodate the news media and the public interest. There are case management issues, high numbers of filings, there may be more court personnel required to handle the case than normal. There will be additional jury costs, there will be costs and issues to be considered concerning jury selection, are the jurors at risk, sequestration issues possibly. Just what do we need to do with respect to the jurors? Are there extra viewing areas, are we going to set up remote locations? Is the defendant demanding his speedy trial rights promptly? Are we going to have a situation where there is a protracted time for preparation because everybody wants time to get ready or are we going to have a more compressed time?

Defenders are another potential cost. Is the defendant going to need court appointed counsel? What sort of security clearances may defense counsel need to obtain? Is this a death eligible crime and what expenses will be associated with the process of determining whether the Justice Department will seek the death penalty?

Security is another cost. Additional equipment perhaps, additional areas; for example, the coordination issue you talked about with folks entering for this trial versus folks entering for a normal court proceeding. And how do you ensure that the people aren't mixed up and that you get people where they need to be in order to be properly screened. Personnel to conduct the screening and the security exercises is another cost. How high risk is the defendant? What risk is there to witnesses or what risk do witnesses pose? Are there external threats coming in involving the people involved in the proceedings because it is high risk trial? Is somebody threatening to disrupt or harm?

So many, many, many things.

Mrs. EMERSON. What about the impact on the surrounding community?

Judge GIBBONS. Well, that is another thing, and that is a part of the assessment obviously that the marshals would have to do presumably in conjunction with local law enforcement.

So there are just many things to consider in connection with this, many variables. Our expense figures represent our best estimate, but obviously without a great deal of knowledge. No, I don't mean knowledge, we don't lack knowledge about how to do it, we just lack knowledge as—

Mrs. EMERSON. As to whether or not.

Judge GIBBONS. As to whether or not we are going to have to do it.

Mrs. EMERSON. Believe me I got it, I understood what you were saying.

#### DEFENSE COSTS IN HIGH-THREAT TRIALS

You also include \$15 million of an increase for the defender services costs for these types of trials, and I understand that in many cases it is less expensive to use a Federal public defender to provide representation instead of a private panel attorney, but that in multi-defendant cases the Federal defender can only represent one person.

So how would you manage the cost of representing KSM and the other 9/11 coconspirators, defendants if these cases go to Federal court, one? And do you know what the representational costs were for other high profile people like Timothy McVeigh or Ted Kaczynski or Moussaoui?

Judge GIBBONS. I do not have specific figures for either the Kaczynski or McVeigh trials. I don't have the specific figures for the Moussaoui situation either, but I do know that our \$15.6 million estimate was based in part at least on the defense costs for him.

As far as getting a handle on the cost, there are things that courts can do, that we often do in death penalty cases, case budgeting where the lawyer essentially prepares a budget and then it is subject to court approval, not just at the level of the judge who is going to be trying the case, but sometimes involving a circuit approval in advance. There are a number of tools that can be used to try to get an advance view of how costly it is going to be, but I am sure that you recognize that in the course of representation it would be a little hard to predict what is going to happen in these cases if you only look at the course of the Moussaoui trial and all the various things that happened. Neither defense counsel nor the court could have predicted that.

Mrs. EMERSON. I appreciate that. If there is any way you could get your hands on at least the cost of the Moussaoui situation I would be grateful to you.

Judge GIBBONS. I think we can provide that and I think we also can probably provide the costs associated with earlier proceedings.

Mrs. EMERSON. Thank you, Judge.

Mr. DUFF. I am told that the McVeigh trial was about \$16 million, but we will get the other figures for the record.

Mr. EMERSON. Thank you.

[CLERK'S NOTE: Subsequent to the hearing, the Judiciary provided the following additional information:]

The information in the table below provides defense representation costs for the McVeigh, Kaczynski, and Moussaoui cases. The information provided below for defense representation costs in the McVeigh case (\$13.8 million) refines the \$16.0 million figure quoted by Director Duff in his testimony.

Defendant	Case	Defense representation costs (millions)	Charged with death penalty-eligible offense?	Case disposition
Timothy McVeigh .....	Oklahoma City Bombing	\$13.8	Yes .....	Convicted and sentenced to death. Executed June 11, 2001.
Theodore Kaczynski .....	Unabomber .....	2.5	Yes .....	Pled guilty and was sentenced in May 1998 to life in prison without the possibility of parole.
Zacarias Moussaoui .....	September 11th Co-Conspirator.	9.7	Yes .....	Pled guilty and was sentenced in May 2006 to life in prison without the possibility of parole.

## HIGH-THREAT TRIALS

Mr. SERRANO. Thank you so much. Let me just pick up on that.

You just painted a very bleak picture if we do this in Federal court, and I am not suggesting that you did it purposely. You just told us what your feelings are. But we have had, my understanding, over 100 of these trials in this country already. Is it that everybody reacted to New York City, that wonderful town, and that somehow every media outlet in the world would show up and the tourists from Times Square would want to see the trial?

For the record, I am the last standing New York City elected official who supports the idea of having the trials in New York. That train left the station. On that issue I am probably the most unpopular of any party in New York. But my feeling is that the terrorists have different ways of winning or trying to win, and one of the ways that we cannot win is if we run away from our own system and hide them somewhere because we are afraid to take them on in open court.

One of the things they did on September 11th that nobody wrote about, people forget, we know certainly the most important part is the lives they took and the destruction they caused and the disease condition of the workers that are still being felt in New York. But if you were writing a book about the impact and the symbolism of attacking the financial center of our country, the military center of our country, and then they were either heading for the White House or for the Capitol as a legislative branch or the executive branch. They also did something else that nobody has ever written about. It was election day in New York and that election was canceled or stopped about 11 o'clock in the morning. So they disrupted our electoral system, which is at the center of our democracy.

I may be wacko on this, but I continue to think there is nothing wrong with trying them openly in front of everybody in our courts and showing them that we don't run away from ourselves or run away from our system.

However, my question really is if we have had all these trials why all a sudden the feeling that we can't afford it, that we can't handle it, that we can't accommodate, the people will show up, the security? And lastly, there is \$73 million for part of these trials already in the Justice Department's budget set aside? And lastly, why do I suspect, and this part we probably agree on, that if we do it in a military base the Department of Defense with all the money they have will come back to us and say guess what, you know those \$1,700 trillion you give us every month? It is not enough. We need much more in our supplemental budgets to pay for those trials.

Am I wrong on all this? I don't want you to answer to the fact that I am the only New Yorker who still says it is okay in New York.

Judge GIBBONS. You can understand of course that the judiciary is neutral on this issue. I mean, we are not taking a position and would not take a position—

Mr. SERRANO. But with all due respect, you may be neutral, but the picture you just painted—

Judge GIBBONS. I know. I am about to get to that. I certainly did not mean to paint a bleak picture, and that is why I said at the end of my answer to Representative Emerson's question that I was not trying in any way to say that we could not do it. And yes, you are quite right, there are many high threat trials that have been handled in the Federal courts.

One of the points we make frequently with this subcommittee is that if it comes in the door we handle it because we are courts and that is what we do. And so none of that should be interpreted as a statement on my part that we can't do it, that we can't afford it. My only purpose was to try to communicate to this subcommittee the indefiniteness of our estimate about the cost because of all the variables. It does not have any other connotations and should not be interpreted as having any other connotations.

It is probably best that I not go into a little song and dance about the wonders of the Federal courts at this point, but I certainly have the greatest confidence in our judicial system and in all my colleagues in the system, and also great confidence in our employees and the folks who when they are presented with a situation handle it appropriately and are very much up to the task.

So please don't read more in that than I intended. It was just intended to be a listing of the variables that will come into play in terms of how one would handle such a situation when presented with it.

Mrs. EMERSON. Let me say, Mr. Chairman, that I did not assume in any case whatsoever that Judge Gibbons was making a judgment one way or the other. I just was curious as to all of the different pieces that went in and whether \$15 million would possibly cover even one high risk—so I did not interpret you as being anti at all, I just want you to know.

Mr. SERRANO. And again for the record, you are highly respected by this subcommittee and everybody in this Congress. We didn't intend to say that either. It is just that you almost painted a picture of we can't handle it.

Judge GIBBONS. Oh, no, no, no, not intended to be the message at all.

Mr. SERRANO. I know you can handle it if we had to do it that way.

#### NATURALIZATION CEREMONIES

Let me bring you to a happier issue, an issue which for many people is a problem at the beginning but ends up being very happy, and that is when people take their oath of allegiance to become citizens. During last year's hearing we discussed a report from the ombudsman for the Citizenship and Immigration Services that criticized the judiciary for delaying ceremonies and have recommendations for improving the process. I know that you strongly disagree with both the results of the report and how it was conducted. That aside, I understand there were some delays in the process from time to time.

Have there been any changes in the handling and scheduling of these ceremonies since last year?

Judge GIBBONS. To the extent there was a problem then, and you know we do quibble about that to some extent, we believe that any

problem has been resolved. Staff from the AO met with staff of the U.S. Citizenship and Immigration Services several times, invited those folks to meet with our District Court's advisory group. That meeting went well. We offered to set up a focus group of clerks from courts that have a high number of citizens to be naturalized to deal with ongoing issues, but we were never taken up on that offer, and we believe that the relationship between the court that was the main subject of the ombudsman complaint and the regional office for the Citizenship and Immigration Service, we believe that the issues pertaining to that relationship have improved greatly, that their relationship has improved greatly.

Mr. SERRANO. I must say I will make an announcement here that it is not official yet, and I will make it here and it is open to both of my colleagues to join me. I am going to try to lighten the burden on the courts. To me there is nothing better than going to a citizenship ceremony. So I put in a bill yesterday that will allow Members of Congress and Senators to swear in, to give the oath of allegiance to new citizens. And I am just tired of seeing all those other folks have all that fun. I want to be able to give the oath to people in my district because that is a great day and you see those American flags waving and you see all the different folks of different cultures and different communities. It is just wonderful. So I am going to try to alleviate the burden by having some of us do the swearing-in.

Judge GIBBONS. As an experience I highly recommend it. It is really one of those lump in the throat moments.

Mr. SERRANO. It happened because a lady in my district who became a citizen, very active person, said I want you to swear me in. I said, gee, what a great thing. Then I called up and said oops, oops, you can't do it, it is not allowed.

Speaking of that, I now turn to a man who comes from a State that has a lot of swearing-in ceremonies, Mr. Boyd.

Mr. BOYD. Thank you very much, Mr. Chairman. You are right we do have a lot of swearing-in ceremonies.

First, let me apologize for being late to the witnesses and to you, Mr. Chairman and Mrs. Emerson. You know how these schedules are, but I appreciate—

Mr. SERRANO. Besides there is another little issue being discussed these days around here that takes time.

Mr. BOYD. Yes.

Mr. Chairman, I was interested in your comments about your legislation. I take part in a swearing-in ceremony every 4th of July that is done in our City of Tallahassee, and I have always enjoyed that. It is a great honor to be there. So now we won't have to have the Federal judge do it, I understand, I can do it myself.

Mr. SERRANO. My bill, if you care to cosponsor, was introduced yesterday, would allow you to give that oath.

Mr. BOYD. Only if I could cosponsor it though, right?

Mr. SERRANO. No, no, my bill covers you even if you vote against it.

Mrs. EMERSON. We could attach it to the appropriations bill and make sure it gets through and not have to hassle around with omnibus.

Mr. SERRANO. You don't legislate on an appropriations bill.

## PANAMA CITY COURTHOUSE

Mr. BOYD. Judge Gibbons and Mr. Duff, thank you for being here. I will be very brief, and I know this is not part of your budget. The construction part is GSA.

I represent the Northern District of Florida, including Panama City, and we have been trying desperately, myself and the people in that community for the 14 years that I served in Congress, to build a new Federal building because that one there is a leased building and, according to your folks, it is very inadequate. And we think we have gotten close sometimes but gotten on the list, and then it drops back and so on and so forth. My question really to you is if you would care to share with us your thoughts on the pace of the courthouse and Federal building funding and whether or not you believe it is keeping pace and how far behind are we falling?

Judge GIBBONS. Do you want me to try?

Mr. DUFF. You go ahead and start and I will wrap it up.

Judge GIBBONS. You know certainly I think within the judiciary from time to time we have wished that the execution of our 5-year plan was more within our control, but of course it is not only a matter of getting an appropriation, but it is not an appropriation to us directly for it. We do have a very controlled process for assessing needs for new courthouse construction. It is called Asset Management Planning. We adopted it as a part of our cost containment initiative and it replaced our earlier methodology for determining courthouse needs. Cost is more of a driver now than it was previously.

And so I don't know anything about your specific situation, perhaps Jim does, but sometimes localities do think they need a courthouse and sometimes they do have a real need, but sometimes that need doesn't quite get the courthouse to the top of the list.

Mr. DUFF. And I would just add—

Mr. BOYD. If you could when you address it, the list, I know we have been on the list, we have slipped back and those kinds of things. I understand you are trying to strengthen the process you are involved in, but can we strengthen the whole process?

Mr. DUFF. Well, Representative Boyd, I think it is a function of the overall budget of the country, too, trying to be tightened. We are seeing some more restrictions placed on projects that we would like to see move that have been on the list before.

One clarification for Federal buildings, not just courthouses, but for Federal buildings, GSA really takes the laboring oar on that and requests money for Federal buildings. Our 5-year plan really only provides for stand-alone courthouses. But we certainly participate in and inform the GSA decisions.

Mr. BOYD. Just to clarify, and to make sure we are on the same track, this is a courthouse.

Mr. DUFF. Stand-alone courthouse?

Mr. BOYD. Yes.

Mr. DUFF. We would like more, too, but I think it is a function of the overall effort to hold the budget in check as best the government can.

Mr. BOYD. So I assume from that answer that you think the building, the funding of the buildings that we have been doing is

not adequate, it is slipping us further behind as we go? And can you speak to how you can strengthen that process? I understand that you can point to us rightfully so, but how can we solve this problem?

Mr. DUFF. Well, we have been very aggressive in our cost containment efforts to try to reduce the costs of the courthouses. We have done studies on space. We are doing some courtroom sharing now, and our magistrate judges and senior judges are sharing courtrooms. We have been very vigilant as stewards of public funds to try to find ways to reduce the overall cost of building courthouses and thereby advance other projects and move them along more quickly than perhaps they could have been moved before. But the ultimate funding decision of course rests with all of you.

Mr. BOYD. In your experience does solving the location and site purchase problem? I even had a situation where we had the location, we had the location donated to us, and we still weren't making the kind of progress we needed to make, slipped back instead of up.

Mr. DUFF. There are a number of factors that go into the priority list, and some become more urgent than others, some are very critical. It is hard to explain to those in line waiting for it because everyone's needs are great, but we do the best we can with leveling the playing field and treating all equally with limited funding. We do the best we can with it.

Judge GIBBONS. I was just going to say it is a very difficult thing because there are many, many good, sometimes even compelling arguments with respect to courthouses that end up not being built for a very long time.

Mr. BOYD. Mr. Duff, I see you were just passed a note. Do you have something to add?

Mr. DUFF. Well, I could read it. I don't think I can absorb it yet. The 2004 moratorium only went forward with 15 projects that already had money for site and design. In the meantime we have been reassessing all the others, and that process is almost completed. That is just off the top of my head.

Mr. BOYD. No, off the top of her head. So that reprioritization process is underway and will be completed soon?

Mr. DUFF. Yes, sir.

Mr. BOYD. Mr. Chairman, thank you for your time.

[CLERK'S NOTE: Subsequent to the hearing, the Judiciary provided the following additional information:]

The court in question is currently located in a leased building in downtown Panama City, FL. Constructed in 1977, this leased courthouse has been renovated multiple times. The building cannot be renovated any further to accommodate growth.

In 1997, the Judicial Conference approved Panama City, FL for inclusion in its FY 1998-2002 Five-Year Courthouse Project Plan for site and design funding in FY 2002. Because sufficient funding was not provided to support the projects preceding it on the FY 1998-2002 Five-Year Plan, the Panama City project slipped into subsequent years until a moratorium on all projects was imposed by the Judicial Conference in FY 2004.

In a move to control costs, 35 courthouse projects that had not yet received appropriated funding for site, design, or construction, including the Panama City project, were subject to the moratorium and underwent a thorough reevaluation. A separate 15 courthouse projects that had received some Congressional funding, many of which were shovel ready, have been allowed to proceed since 2004. The Judiciary's FY 2011 Five-Year Courthouse Project Plan includes funding through FY 2014 to complete these projects currently on the Plan.

The reevaluation of the space needs associated with districts where the 35 projects are located has been completed and a list of courthouse projects ranked in order of urgency has been compiled. The entire list will be considered by the Judicial Conference Committee on Space and Facilities at its June 2010 meeting. The Urgency Rank Evaluation places the Panama City project at number 12 on that list. However, the Judiciary has been hesitant to add new projects to the Five-Year Courthouse Project Plan until more of the projects currently on the Plan receive appropriated funding. Therefore, despite the reaffirmed need for a new facility in Panama City, it is unlikely it will be added to the Judiciary's Five-Year Plan for several years.

#### CAMERAS IN THE COURTROOM

Mr. SERRANO. Thank you. Under the Judicial Conference policy each Court of Appeals may permit television and other electronic media coverage of its proceedings, but only two of 13 courts of appeals, the 2nd and 9th Circuit Court of appeals have chosen to do so. Has there been any data collected on the two circuits' decisions to allow electronic coverage and any associated costs? If so, what has been learned about cost and potential savings? Also do the 2nd and 9th Circuits have limits on the types of cases that they allow television coverage for? Have other circuits indicated that they are considering coverage of court proceedings?

Judge GIBBONS. I am not aware of any data that the 2nd and 9th Circuits have collected. I do know that with respect to broadcasting proceedings in appellate courts I would be surprised if there were any significant costs one way or another given the growing technology that is available in courts. So I think that from the Conference's standpoint it has really not been a cost issue, but more of a policy issue.

Mr. SERRANO. Now, I don't know if you answered this part, do you know of any other districts that are thinking of doing the same thing?

Mr. DUFF. Of having a pilot project with cameras?

Mr. SERRANO. Yes.

Mr. DUFF. We do know other districts that are considering it. We are trying to come up with a uniform approach to it, and we are on the verge, I think, of doing so. We still have a Judicial Conference policy with regard to cameras in the courtroom. The Conference itself is opposed to cameras at trial court level for a variety of reasons, for example in criminal trials where witnesses can be intimidated. There are elements of the trial that if, we think, were put on television, could change the course of a trial. It could change even the fact that a matter would go to trial. If witnesses are intimidated, if plaintiffs don't want the vast public exposure that comes with television in the courtroom, it might intimidate plaintiffs who have civil rights claims or sexual assault claims not to feel like they could or would want to proceed.

So we have been very cautious about it, Mr. Chairman, and to answer your question more directly, I think there are types of matters that certainly the Judicial Conference feels it wouldn't be a problem.

Mr. SERRANO. So tell me how these two districts are doing this, because I am getting a little confused here. If the Judicial Conference has problems with it, why are these two districts doing it anyway?

Judge GIBBONS. The Conference has a different policy for the appellate courts than for the district courts. The Conference policy is that trials in district courts should not be broadcast. The Conference policy permits appellate courts to do it. The 2nd and 9th are the only ones that have adopted a courtwide policy permitting the broadcasting of arguments. I have a feeling, just based on nothing other than my own experience, that probably there is other broadcasting going on and certainly other requests to broadcast that are not occurring as a result of a court policy.

I know that I was a member of a panel within the last couple of years and I can't even remember what the case was, but we were presented with a request to broadcast a particular argument. And so I am sure that I was not on the only panel within the United States courts where that has ever happened. But I think we know only when there is a court policy of permitting it across the board, which is the case in the 2nd and the 9th.

#### IMPACT OF TRIAL PUBLICITY ON YOUTH CRIME

Mr. SERRANO. All right. I remember a long, long time ago when I was in the State Assembly in New York that I opposed cameras in the courtroom and I did it based—that was the era of the beginning of the hip-hop generation, the hip-hop culture. And a lot of people think hip-hop is rap music, it was also dance and graffiti art form, and so on. And folks who were allegedly or supposedly, Jo Ann, smarter than I said that the kids were drawing their name on the walls as a form of identification, of being somebody or having people notice them. If that was the case, I wondered out loud then in my opposition if seeing a local thug on TV being tried for a crime that pretty much anybody knew he had committed because there were witnesses and everything, that would inspire people to say look at that publicity he is getting for that negative act.

Fast forward to now, there are plenty of other ways unfortunately for young people to be invited into doing the wrong thing. So has anyone ever done a study on the effect on young people of having—because we have many ways in this country of being famous and well-known, you know. You could hold this hearing and be famous tonight on webcast to the dismay of half the Nation maybe or you could do something terrible and get all that publicity for it. Do you know if there are any studies that show the link between that? And by the way, to me those trials are totally different from Supreme Court proceedings. That I may also have problems with because I think to reach a great decision sometimes people have to bicker or something amongst themselves and the public wouldn't understand maybe how that happens. Anyway any thoughts on that?

Judge GIBBONS. I am not aware of any studies. I will say that I think that over time folks have begun to think about obviously the broadcasting of anything. I mean we live in an age in which communications have been entirely revolutionized in our lifetime, but among the reasons that still remain and I think are most compelling in support of the Conference policy are the security concerns, which seem more relevant today than they ever were. If you broadcast trials and you have concerns about safety of jurors, safety of witnesses, just many, many things, it would be undesirable

to raise the profile of people who are participants in trials within the community.

So I think those are among the gravest concerns that exist today.

Mr. SERRANO. I am reminded of those old black and white movies where the accused, the defendant is giving dirty looks to the jury and intimidating half of them. I can just imagine if that is being seen by everybody.

Mrs. Emerson.

Mrs. EMERSON. You know, ever since we put cameras in the House of Representatives we don't have real debate anymore. Everybody does their talking points and they are totally on message because heaven forbid if a constituent would see you. And so I think it actually diminishes our ability to have good dialogue in the House of Representatives. So I tend to agree with you, Mr. Chairman, that it is not a good idea.

#### PROBATION AND PRETRIAL SERVICES

Let me ask a few questions about probation and pretrial services if I could. You all project that in fiscal year 2010 there will be 105,000 charged defendants awaiting trial and 127,000 convicted offenders being supervised in our communities by probation and pretrial service officers. You request an increase of \$7 million and 154 additional positions for probation and pretrial services.

So my first question is how will these additional resources help ensure that people serving under supervised release are not posing a risk to the communities in which they are living? And perhaps I will add one more question with this series? How will the additional resources help offenders released from Federal prison become productive members of society and particularly those who have substance abuse and some mental health problems?

Judge GIBBONS. The numbers that we are requesting in terms of staff increases are driven by the workload increases we have seen, but there are some very, really very exciting things happening in our probation offices in terms of real progress in effective supervision. The Federal probation offices have always been in my judgment highly professional, but success in supervision was always tied to frequency of contact and to the threat of violation involving proceedings before a judge.

We now, as a result of some more modern research, are moving to the utilization of what are called evidence-based practices in supervision. We have a lot of research that we believe will help us in reducing recidivism. Probation officers have available to them data from the States, and I hope the Territories.

[CLERK'S NOTE: Subsequent to the hearing, the Judiciary provided the following additional information:]

While the Judiciary is able to access recidivism data for the 50 states as part of its evidence-based practices initiative, the Judiciary is unable to access recidivism data for offenders in the U.S. territories because those jurisdictions lack automated criminal history records accessible through NLETS. NLETS is a service that links together state, local, and federal law enforcement and justice agencies for the purpose of information exchange and is the Judiciary's primary source for accessing and analyzing recidivism data.

Mr. SERRANO. That will make me happy.

Judge GIBBONS. And they also have data that examines the cases of 100,000 Federal offenders to determine—some of the data shows recidivism patterns of Federal offenders, as I understand it—what has been effective with particular individuals. Now the probation officers are using this data to individualize their approach to the offender. They first look at this data in light of a number of factors involving the defendant. And the four areas they examine are anti-social or criminal thinking and values, whether the individual has a dysfunctional social network, whether his primary issues are lack of employment and education, and whether there is substance abuse, and they can determine which one of these areas they should focus on initially and determine whether the person is most in need of treatment, for example, of some kind, whether mental health or substance abuse, whether the person might be in need of education or job training, just whatever it is. It is a much more individualized and we hope a very effective approach.

Mrs. EMERSON. It is very interesting. Sometimes treating mental health and substance abuse issues are best done in a different kind of a setting.

#### SUPERVISING SEX OFFENDERS

Tell me then, once we pass the Adam Walsh Act and we have been able to increase the apprehension of sex offenders, it is a different situation in many cases, do your probation officers have sufficient resources to effectively supervise sex offenders and protect the citizens in the surrounding communities from them?

Judge GIBBONS. I don't think we would complain about the lack of resources, particularly in light of the adequacy of our funding, for which we are once again most grateful. I will say that supervising sex offenders and helping to prevent that person from re-offending, that is one of the most challenging tasks a probation officer faces. If you get into all—and I am certainly no expert on this, but if you get into the data about sexual offenders and the difficulty of rehabilitation and that sort of thing, it is really a difficult task.

They do have a lot of tools at their disposal. There is not only treatment, but they also do testing and polygraphs. There is another test that they use to ascertain whether the individual is succeeding with treatment and whether the sexual thought patterns have been altered. They can do GPS or other location monitoring technology to make sure the person is staying away from schools and other locations where children would be present. If the person has been an offender against children, they make sure there is compliance with various registration laws.

Child pornography is a very common offense seen in the Federal courts, and it is usually accessed by the individual via the Internet. So the person may be prohibited from working around computers and often personal use of computers. So there is that sort of monitoring they are able to do not only for sexual offenders, but they are able to do in appropriate cases things like surveillance or searches to make sure there is compliance.

Mrs. EMERSON. Thank you very much, Judge.

Mr. SERRANO. Let me ask a question having to do with Mrs. Emerson's favorite Federal agency, GSA.

Mrs. EMERSON. No doubt.

GSA RENT AND GREEN TECHNOLOGY

Mr. SERRANO. The judiciary is working with GSA on a memorandum of agreement on rent calculation to limit rental costs. In your testimony, Judge Gibbons, you indicate that the 2011 rent is expected to be \$300 million less, 23 percent of the amount projected, in 2005. Is the 2010 projected payment for rent on target? Your cost projection for 2011 is \$1 billion, what savings are you taking into account with that projection and does the Administrative Office of the U.S. Courts work with GSA in efforts to explore and implement policy and practices to make the court facilities more energy efficient and more green?

Judge GIBBONS. Well, that sort of touches a number of areas and let me try to address the rent savings first, and then I will probably turn to Jim to talk about our relationship with GSA, the memorandum of understanding and the green technology issue.

Really our progress in containing our rent cost is attributable to a number of steps we took as a part of our cost containment effort. We do believe that we are on target in saying what we have saved in terms of rent costs that were projected in 2005. First, you know we had that moratorium on courthouse construction, but then we followed up with a number of steps. We had our rent validation effort in which we worked with GSA to identify areas where we were not being charged properly. We believe that we saved and had cost avoidances of about \$50 million as a result of that effort. We have had changes in the Design Guide, we instituted a rent cap of 4.9 percent to contain the rate of growth in rent. We have instituted a new circuit-based program of managing the funds available for space improvement where the cap is a major player in restraining the cost. We have the new Asset Management Planning process, which we have referred to previously, and then the Memorandum of Understanding.

All of those things have contributed to this savings we have seen in rent. For the future obviously the courtroom sharing as new construction comes online will help us avoid costs that we otherwise might have incurred.

Mr. DUFF. Yes, Mr. Chairman, I would just add the two things we started when I was appointed. One was trying to improve relations with GSA and two, get the rent under control, and I think we made great progress in that regard with this Memorandum of Understanding. We have taken the play out of rent projections as much as we could. They used to use a market-based rent calculation, and we were finding that it was inconsistent and it was above market rate in many instances. So this new memorandum of understanding we entered into took the play out of it and provided some definition to our rent so we can project it more accurately going forward, we think.

And with regard to the green issue, GSA is really responsible for that, but we certainly encourage it and work with them in any way we can to promote that.

I met with the new Administrator of GSA about 2 weeks ago, Martha Johnson, and was very impressed with her, and I think we are going to have a good working relationship with them going for-

ward. She was certainly very mindful of our needs and called us her biggest customer, which we like to hear, and wanted to work with us. So I was encouraged by the meeting.

Mr. SERRANO. You realize that if you get rents reduced it would be revolutionary. It is just improper use of the language in this country to think that rents can be reduced. Why do I know Mrs. Emerson has something to say?

Mrs. EMERSON. Because I was able to negotiate my rent at GSA at my new office building and told them that I would only pay what I paid my old Federal building. They wanted to charge me double, I said then we are not going to move in, and so they caved in. What can I tell you? So it was a negotiation, right?

Mr. SERRANO. It is her way of reminding me that I don't have a Federal office building in my district.

Mrs. EMERSON. Mr. Chairman, it was not. I didn't know that you didn't.

Mr. SERRANO. No, I don't.

Mrs. EMERSON. Well, we will have to get you one.

Mr. SERRANO. There you go. Please write it up.

Mrs. EMERSON. Instead of a portrait you can get a building.

Mr. SERRANO. Thanks a lot.

With that, let me turn to our colleague the distinguished gentleman from the great State of California, Ms. Lee.

Ms. LEE. Thank you, Mr. Chairman. I apologize for being late, but as you can imagine, it is a pretty busy time.

Mr. SERRANO. If you need me, let me know.

#### WORKFORCE DIVERSITY

Ms. LEE. Welcome, I am glad to see you both. I appreciate the efforts of the Judicial Conference in its commitment to reduce costs and especially during these very difficult times, but I want to make sure that we find the right balance between of course cost savings and that we continue to ensure everyone access to the courts and timely decisions in the court system for all Americans.

Let me ask you, because I asked you last time and I appreciate you submitting the information as it relates to diversity. And I am looking at the numbers here, you know, some areas in terms of the workforce you are progressing, in other categories you are not. I think you have a lot of room for improvement, and I am wondering if you do recruitment at minority serving institutions, Hispanic serving institutions, African American, tribal colleges to boost diversity numbers on this.

Judge GIBBONS. Our Judicial Conference Committee on Judicial Resources has an Ad Hoc Subcommittee on Diversity that grew out of a recognition that we perhaps needed to do a better job in the area of recruitment, and through the efforts of this subcommittee and through that committee we are identifying minority law students—this is particularly for law clerk positions and staff attorney positions obviously, but that has been an area in which we feel we have been particularly lacking in racial and ethnic diversity. But we have been identifying minority law students and other minority organizations and bar associations in hopes of creating pipelines there.

We are in the process or have been, I am uncertain as to the status of sending correspondence to law school deans, we are preparing correspondence to hiring partners at the Nation's top law firms. All that goes largely toward addressing the law clerk/staff attorney piece of this. Of course, that is only a small part of the courts' overall workforce.

I will leave it to Jim to address anything that has been done on a national level, but I do know that local courts typically elect how and where to advertise their vacancies, and I know that many of them have become increasingly aware of the need to make sure that they are advertising in places where their advertisements will be seen by folks of diverse racial and ethnic backgrounds.

Mr. DUFF. Yes, I would just add to that the local court hiring practices, we have encouraged reaching out and diversifying the best we can. The hiring at the courts is done locally for staffing purposes, not nationally. But from a national standpoint we certainly encourage that.

Ms. LEE. It is one thing to encourage and post, but it is another to do really do the outreach. I don't know if you have the resources to really establish a good outreach recruitment effort, and that is something, if it makes sense, you should let us know.

Mr. DUFF. Yes.

Ms. LEE. Do you think that makes sense?

Mr. DUFF. Yes, we are committed to that.

Ms. LEE. But do you have the resources?

Mr. DUFF. I think we probably have the resources now to—I will look at it more closely, but as we have said from the outset, we have been very pleased with the funding that we have been receiving. If we need more in that regard, we would certainly seek it.

[CLERK'S NOTE: Subsequent to the hearing, the Judiciary provided the following additional information:]

The Judiciary believes it has received sufficient funding from Congress in order to continue implementation of its workforce diversity initiative. The Judicial Conference Committee on Judicial Resources' Ad Hoc Subcommittee on Diversity was established in 2004 to examine diversity within the federal judicial workforce and to consider programs, policies, and training on fair employment practices that would benefit the federal Judiciary. The goal of this initiative is (1) to expand the Judiciary's job applicant pool in terms of diversity, and (2) to allow individuals to better understand the role and mission of the federal courts.

As part of the Judiciary's workforce diversity initiative, Committee members attended and made diversity presentations at all circuit judicial conferences during fiscal years 2007 through 2009, with the emphasis that new judges be made aware of the issue and the important role that they can play when making hiring and promotion decisions. The Committee also sends letters to judges encouraging their colleagues to make an extra effort to identify and interview minority individuals for a non-Article III judicial vacancy in their respective districts.

A Diversity Initiative Blueprint was formulated and is revised continuously with input from the Committee and a variety of Judiciary advisory groups. Key components of the Blueprint include:

- Ongoing Outreach to Judges. Completion of a judge-to-judge presentation, emphasizing the critical role that judges play in hiring and promotion decisions. The presentation (contained on a DVD) is included with orientation materials for new judges.

- Outreach to Potential Judicial Employees. Upgrading the Judiciary website ([www.uscourts.gov/careers](http://www.uscourts.gov/careers)) to allow the Judiciary to compete better with other federal agencies for talent. The website now includes a series of Judiciary recruitment videos designed to attract America's best talent to the federal courts with a focus on promoting diversity in the Judiciary's workforce.

- Diversity Toolkit. Recently, the Judiciary distributed a recruitment toolkit to the courts intended to provide information and practical tools to assist courts in reaching out to “hard-to-find” candidates, improving interview techniques, and implementing formal and informal mentoring programs to increase the retention of diverse employees.
- Continued Judiciary representation at college/law school employment fairs.
- Coordinating with external organizations for outreach and recruiting (Minority Bar Association, minority publications, minority corporate counsels, DC Women’s Bar Association.)

Judge GIBBONS. It may be that more could be done at the national level to encourage the outreach with respect to individual court hiring for the law clerk positions. It is kind of a national hiring market, not so for other positions in the courts. I think we might take a more national approach to encouraging local courts to become more actively involved in outreach; in other words, to go beyond just the advertising and the making available.

Even though under our court governance system the hiring is really within the hands of local courts, certainly there is always more that you can do to create a climate in which folks are thinking about doing these things that they ought to do and that would be positive in terms of enhancing diversity.

Ms. LEE. Great. And I think when you think through this and you look at the local courts, we have the tri-caucus, the Black, Hispanic, Asian Pacific American Caucus that could help in your local courts in recruitment efforts.

Judge GIBBONS. I will say that on another note, while we have not done so well in racial, in ethnic diversity, we have done very well in gender diversity even in the lawyer ranks where a majority of all the Federal law clerks in the system are now female and have been for a number of years.

Ms. LEE. Yes. May I have one more minute, Mr. Chairman.

Mr. SERRANO. Sure.

Ms. LEE. And the dismal record for the judges, I am looking at this in terms of African American, Asian and Hispanic judges, on page 128 of the report here. I don’t know how you deal with that.

Mr. DUFF. That is a little bit out of our control.

Ms. LEE. I know, but just for the record it is horrible.

#### MINORITY CONTRACTING

Finally, on the minority contracting piece in the report we asked you that question in our last hearing and you came up with a certain percentage. You say of this total 500 of the total of 4,800 contract awards, 591, 12.11 percent, were awarded to minority and women-owned businesses.

Judge GIBBONS. I think the most striking thing about those figures is what it doesn’t include. We were only able to furnish figures for a few entities like the Administrative Office, but not for all of the courts throughout the country. I think we were able to provide some figures perhaps maybe for the Federal Circuit, but not for other courts. So those figures, they really don’t tell you much at all. And I believe that I was told in preparation for this hearing when I asked about that that we had made an effort to get those figures and had found that those statistics were just not maintained. We do nationally maintain pretty complete statistics on hiring, and not

just who is hired but who is in the applicant pool. But we apparently do not maintain those statistics with respect to contractors.

Ms. LEE. Can we ask you to begin to develop a central repository or some kind of a data gathering mechanism or procedure? Because until we know what is what, it is really very difficult to know what is what.

Judge GIBBONS. I think we can tell you we will begin to look at it. Our courts operate on a system of decentralized budgeting.

Ms. LEE. I know.

Judge GIBBONS. And so—

Ms. LEE. We have got to do something. So beginning to look at it is fine, but we have got to know as we begin to look at it, we have to have an outcome or a goal and we can help you maybe come up with some mechanisms to develop that, but I think it is absolutely essential that we know what is going on with these contracts.

Judge GIBBONS. Perhaps we can take—I mean it would seem to me that the key thing is collecting the information, and apparently why we don't have the information is because when our courts make a contracting decision they don't collect information. And certainly we could begin to look at how we could collect the information.

Ms. LEE. Yes, I think so because given that America is a diverse country, I think our courts want to see some fairness in every aspect of the court system and this is one big aspect of it that there should be some equity and some fairness, and how do you know that until you know it.

Mr. DUFF. Representative Lee, if I might supplement the answer a bit. Part of the request we made today is for increased funding in our accounting system and that new accounting system I think will enable us better to monitor and respond to and be responsive to these sorts of concerns.

Ms. LEE. As long as you have some categories in there that will give us the information in this new accounting system which some—most accounting systems don't have. You have to have a special database, a special repository, a special skills, you know? So look at it within a broader context if you want to attach it to that.

Mr. Chairman, can we make sure we do whatever we need to do?

Mr. SERRANO. I want the record to show that the chairman joins Ms. Lee in that request. She is always on target with this. You know, no reflection on your comments, both of you, but it reminds me when I started in public office 37 years ago. I would ask people what does your department look like in New York State. The answer was we don't keep records because we treat everybody equally. Well, no, we want you to keep records. The Census Bureau this week is asking very pointed questions about who you are and I think you need to know within the court system who is there. So I sign up with that.

[CLERK'S NOTE: Subsequent to the hearing, the Judiciary provided the following additional information:]

As Judge Gibbons stated in here response to Rep. Lee's question regarding contract awards to minority-owned and women-owned businesses, procurement in the federal Judiciary is decentralized throughout the courts nationwide so there is no central repository containing information relating to federal Judiciary contracting actions. A procurement module that will capture Judiciary-wide procurement data,

including data on contract awards to minority-owned and women-owned businesses, is expected to be implemented in the courts in 2013. Data from this module would be available from the system beginning in 2014.

At the present time, the Administrative Office of the United States Courts is able to provide information from its financial accounting system relating to FY 2009 contract awards to minority-owned and women-owned businesses for the following judicial organizations which all share a single procurement database: Administrative Office of the United States Courts, Federal Judicial Center, United States Court of Federal Claims, United States Court of International Trade, United States Court of Appeals for the Federal Circuit, United States Judicial Panel on Multidistrict Litigation.

There was a total of 3,429 contract awards in FY 2009 for the six Judiciary organizations listed above. Of this total, 435 contract awards (12.69%) were to minority-owned and women-owned businesses.

Let me do something here, Ms. Lee. We are trying to wrap up. So if you have another question to ask.

Ms. LEE. One more question.

Mr. SERRANO. Go ahead.

#### SHARING FEDERAL PROBATION PRACTICES WITH STATES

Ms. LEE. Evidence-based practices, just in terms of recidivism at the Federal level, how can we ensure that this information can be shared at the State level with law enforcement officials in the court system, what you are doing, because evidently the recidivism rate has been significantly reduced for Federal levels?

Judge GIBBONS. Well, our recidivism rate was lower to begin with, substantially lower. We hoped to make it even lower. I am not aware of any studies that explain why that is. It may be partly because of the nature of the offenders that we have had, but certainly we are no longer a Federal system where our offenders are not dangerous, because there are in fact many of them very, very dangerous to society and have done very substantial time in prison. But I would attribute it to the fact that we have always just had a really professional, excellent probation system. Evidence-based practices provide a chance for us to be even better, but I was in the district court for 19 years before I went to the court of appeals and one of the great privileges in my life was working with the men and women in our probation system, and I think they just get good results because of the caliber of people they are and the work they do. I don't know what else to attribute it to. And I will bet that has been a position to which probation officers aspire because historically the Federal system has paid better than the State systems.

And I am not telling you it is a high paying job. I am just saying that it has been treated as more of a professional job. They virtually all have at least Master's Degrees in relevant areas and they approach the job with as much professionalism and seriousness as any group of people that I know.

Ms. LEE. If there is no empirical evidence to tell us why, maybe the anecdotal evidence will help, having an evaluation, send something out to the States saying we think this may be why this is working. You may want to consider it, something, really because it is really horrible in all the States. So I would like to talk with you further on how we would do that.

Mr. Chairman, thank you.

Mr. SERRANO. It is okay if you have another question. I need you to cosponsor my new bill.

Ms. LEE. I am.

Mr. SERRANO. You don't even know what it is.

Ms. LEE. But I am going to cosponsor it. I thank you, I want to make sure we follow up on this anecdotal evidence and replicate best practices.

Thank you again.

[CLERK'S NOTE: Subsequent to the hearing, the Judiciary provided the following additional information:]

We do not know for certain why the federal recidivism rate is lower than that of state and local systems, but we are building a comprehensive outcome measurement system to support empirical research that will be able to answer that question definitively. The infrastructure for that system will be complete in two years, but part of it is already done. That part now enables us to gather arrest data from the FBI and all state systems, which provides a baseline recidivism rate for all federal districts and will allow us to measure changes in the future. Our goal is to be able to conduct empirical research to determine what interventions help to foster lasting positive changes in individuals under the supervision of probation officers, and thereby reduce recidivism.

In the meantime, we can offer possible explanations for the difference in recidivism rates between federal and state and local systems. A good portion of federal cases, around 40 percent, are considered low risk as measured by the Risk Prediction Index and reflected in the Criminal History Score computed for sentencing guidelines purposes. It is possible that state and local systems do not have such a high percentage of low risk cases.

In addition, federal probation officers have more experience and education than their state and local counterparts. Typically, the federal system recruits from state and local systems and selects only the best available candidates who already have several years of experience in community corrections. Candidates are attracted to the federal system partly because of better pay and benefits in most jurisdictions, but also because of the excellent reputation of the federal system. On average, federal probation officers have 12 years experience in community corrections. All have bachelor's degrees, and half also possess master's degrees. About 12 percent are fluent in a second language, usually Spanish.

One reason for the excellent reputation of the federal probation system is the exceptional training that federal probation officers receive. All new officers participate in a six-week basic training program on the campus of the Federal Law Enforcement Training Center. Also, probation officers are required to participate in a minimum of 40 hours of training each year, on top of any training they receive in the use of firearms and officer safety. Federal probation officers participate throughout their careers in advanced programs offered by the Federal Judicial Center, the United States Sentencing Commission, and the Administrative Office of the U.S. Courts.

Federal probation and pretrial services officers and their state and local counterparts are increasingly exchanging information about evidence-based practices at conferences such as those of the American Probation and Parole Association and the National Association of Pretrial Services Agencies. Also, the Administrative Office of the U.S. Courts has long published *Federal Probation*, a journal with three issues per year that is available to the public and contains articles written not only by academics, but by practitioners at the federal, state, and local level.

#### RETENTION OF FEDERAL JUDGES

Mr. SERRANO. Mrs. Emerson has no further questions. I just want to add to the question she was talking about. Diversity in courts, in general there is an issue of retention of Federal judges. I don't know if you have touched on that in your testimony, but the whole issue in that case was compensation. Has that changed at all or is that still a problem?

Mr. DUFF. We are still having a problem, Mr. Chairman. The number of judges leaving the bench is increasing and we are seeing troubling trends. It seems to be affecting the gains we have made

in putting a diverse bench together. It has been slow, it is out of our control a bit, but it has had a disproportionate impact on minorities leaving the bench because of the economic impact.

So we have not received pay restoration that we have been seeking and it continues to be an issue, but we are mindful of the difficulty of doing that in this economic climate.

Mr. SERRANO. I understand the judges look around and see people with the same law degrees doing 10 times better than they have, not to make light of it, but tell them that you know a chairman of a committee that represents the area of Yankee Stadium and there are 27 guys there and the minimum salary is \$660,000 a year for a rookie and the other is making \$27 million a year, so I understand. I understand.

#### CHAIRMAN SERRANO'S CLOSING REMARKS

I want to thank you both for your testimony. I have more questions for the record and, Ms. Lee, if you have more questions it will be submitted for the record and same to you, Mrs. Emerson.

We want to thank you for your testimony and want you to know this committee all stands ready to assist you and when we do ask you hard questions and present to you that which we think is fair as diversity in the courts, we do it because it is the right thing to do and we hope you pay attention to that and work on trying to resolve those issues. We thank you for your testimony.

Judge GIBBONS. We thank you very much for the opportunity to be here.

Mr. DUFF. Thank you, Mr. Chairman. If I might add, I wish you all the best with your new bill on naturalization. I will say that I have encouraged our judges to include Members of Congress in the naturalization ceremony, so if your bill passes we will have less opportunity to interact.

Mr. SERRANO. My bill will allow you to give the oath to new citizens.

Ms. LEE. Is that the bill you want me to cosponsor?

Mr. SERRANO. Yes.

Ms. LEE. You got it. Thank you for clarifying.

Mr. SERRANO. The hearing is adjourned.

SUBCOMMITTEE ON FINANCIAL  
SERVICES AND GENERAL  
GOVERNMENT

HEARING

ON

THE FY 2011 BUDGET REQUEST OF  
THE JUDICIARY

Questions for the Record

for

The Judiciary

March 18, 2010

**Questions for the Record**  
**Submitted by Chairman José E. Serrano**

- 1. You've requested 185 additional FTEs for Probation and Pretrial Services Offices. How will this additional staffing requested help ensure that offenders and defendants under supervision will not pose a risk to the communities in which they live? In particular, how will these additional resources assist sex offenders or those with mental health and substance abuse problems?**

Judiciary Response: The Judiciary's fiscal year 2011 request for an additional 185 FTE in our probation and pretrial services program includes 108 FTE to annualize the additional staff we project probation and pretrial services offices will hire in fiscal year 2010 to address the increased workload already experienced, and an additional 77 FTE to address fiscal year 2011 workload needs.

The additional resources requested will be used to hire, train, and equip probation officers who supervise convicted offenders released to the community. Probation officers are required under 18 U.S.C. 3603 to use all suitable means to help offenders under their supervision to improve their conduct and condition, and to report immediately any violation of the conditions of release to the court and to the United States attorney.

The goal in all cases is the successful completion of the term of supervision, during which the offender commits no new crimes; is held accountable for victim, family, community and other court-imposed responsibilities; and prepares for continued success through improvements in his or her conduct and condition.

Offenders "prepare for continued success" during the term of supervision by actively dealing with those circumstances that relate to future criminality, e.g., securing/maintaining gainful employment; addressing addiction/remaining drug free; stabilizing mental health issues; establishing/maintaining healthy family relationships, pro-social personal associations, and stable living arrangements.

In recent years, probation officers have learned from the body of research known as evidence-based practices to address the factors that research has identified as the leading causes of recidivism among federal offenders, namely: (1) antisocial cognition (e.g., criminal thinking and values); (2) dysfunctional social networks; (3) lack of productive employment or education, and (4) substance abuse.

The Judiciary has developed a state-of-the-art actuarial tool to help probation officers both identify and gauge interplay between criminogenic factors in a given case. The tool is part of an extensive case assessment and planning process designed to target resources most efficiently and effectively.

Probation officers work closely with offenders and their families and coordinate with mental health and substance abuse treatment providers available in the community, or on contract with the Judiciary, to identify triggers for criminal activity and to develop strategies to either avoid those triggers or deal with them in a socially acceptable way. Probation officers are also required to be familiar with resources in the community that can address offenders' basic needs:

shelter, employment, education, and medical treatment -- including substance abuse and mental health treatment.

To monitor offenders' progress while under supervision toward remaining crime free, probation officers liaison with local police and consult investigative databases. Officers also administer periodic drug tests and, in high risk cases, conduct surveillance and, if authorized by the court, monitor the offender's whereabouts through electronic means (e.g., GPS) and conduct warrantless searches.

In regard to sex offenders, probation officers typically contract with specialized treatment providers experienced in dealing with sexually-deviate behavior patterns. Probation officers also often arrange for sex offenders to undergo polygraph examinations as part of the treatment process to ensure honest and forthcoming discussions in treatment sessions. In addition, global positioning systems and other location monitoring technologies are used, when ordered by the court, to determine if sex offenders have been in the proximity of schools or other locations where there may be potentially vulnerable victims. Also, probation officers ensure that sex offenders comply with all required sex offender registration laws to decrease further the likelihood of recidivism and early detection of inappropriate conduct.

**2. Would you describe the Judiciary's cost containment policy and how it has been implemented? What are some of the savings that have been achieved in the past year and what is planned for fiscal year 2011?**

Judiciary Response: The Judiciary's cost-containment efforts were started over five years ago to control, and in many cases limit, the cost growth in Judiciary programs both large and small. They began in 2004 when the federal Judiciary looked into the future and saw that its requirements would increase at a pace that would exceed projected funding levels within a few years. Without action, layoffs of court staff seemed inevitable as many of our must-pay costs, such as space rent, were growing at a rate that was unsustainable over the long-term given the pressures on the federal budget. In response to this challenge, the Judiciary initiated a comprehensive strategy that included sweeping cost-containment measures across all programs, allowing us to request more modest budget increases from this Committee and the Congress. The fiscal year 2011 Judiciary budget request reflects lower requirements as a result of measures incorporated since the cost-containment strategy was initiated in 2004. The Judiciary remains committed to developing additional initiatives to continue to slow the growth in its budget requirements.

Following are actions we have taken to contain space rent and courthouse construction costs:

- Our first cost containment step was imposing a national moratorium on courthouse construction from 2004 to 2006.
- A national rent validation initiative identified errors in GSA rent bills that resulted in rent credits, cumulative savings, and cost avoidances totaling over \$50 million to date for the Judiciary.

- To contain the rate of growth in rent, the Judicial Conference in 2006 established a cap of 4.9 percent in the average annual rate of growth in rent paid to GSA. Each circuit judicial council is given a circuit rent budget and must manage rent costs within that budget. Circuit councils decide which projects they can afford, and in some instances, deny requests for new space in order to stay within their allotment.
- A new long-range facilities planning process -- Asset Management Planning -- was approved by the Judicial Conference in 2008 that examines costs, space needs, and functionality in assessing whether a new facility should be recommended at a particular location.
- A memorandum of understanding between the Judiciary and the General Services Administration, signed in 2008, changed the way the Judiciary's rent is calculated for certain federally-owned courthouses. This will provide the Judiciary with certainty about the amount of rent it will pay annually over a 20-year period.
- Recent changes to the *U.S. Courts Design Guide* have lowered costs by reducing office size for chambers and court staff.

As a result of these cost containment efforts we have been able to reduce our space rent costs significantly. We are estimating our fiscal year 2010 GSA rent bill will be \$972 million, about \$200 million below the \$1.2 billion we projected it would be back in 2005. Similarly, in fiscal year 2005, we projected our rent bill would be \$1.3 billion in fiscal year 2011. We are pleased to report that our current GSA rent estimate for fiscal year 2011 is now projected to be approximately \$1.0 billion, \$300 million, or 23 percent, below the earlier estimate, due in large part to the aforementioned cost-containment initiatives.

Other Judiciary cost containment initiatives include:

- Courtroom Sharing - In furtherance of its aggressive cost-containment efforts, the Judicial Conference adopted at its September 2008 session a revised policy in which two senior district judges will share one courtroom in new courthouse construction projects. A year later, in September 2009, the Judicial Conference extended this 2-for-1 sharing policy to magistrate judges while accounting for circumstances to ensure that judges have adequate access to courtrooms for arraignments and other criminal case proceedings. A study is currently underway to look at courtroom use in bankruptcy courts to evaluate the feasibility of courtroom sharing in those courts. This study is expected to be completed in December 2010.
- Personnel - At its September 2007 meeting, based on a major court compensation study, the Judicial Conference approved recommendations to slow the growth in personnel costs throughout the Judiciary. These recommendations altered the salary progression policy for court staff and established performance management guidelines as a fair and reasonable means to limit future compensation costs. In another action, the Judicial Conference adopted policies to reduce the personnel costs of judges= chambers staff. We estimate that all of our cost-containment measures in the personnel area will reduce compensation costs by nearly \$300 million through fiscal year 2019.

- Information Technology

Server Consolidation - New technology and improvements in the Judiciary's national data communications network have allowed for the consolidation of many of our computer servers at a single location without compromising the performance levels of several key applications. We estimate that our server consolidation efforts thus far will result in savings and cost avoidances totaling \$65 million through fiscal year 2012.

Data Communications Network - The next phase of technology improvements will involve upgrades and enhancement of the Judiciary's data communications network with a focus on converged services (combining voice, video, and data traffic over a single, secure network) that is expected to result in improved services and additional cost avoidances.

Next Generation CM/ECF - Looking to the future in automation, the Judiciary is developing requirements for the next generation of electronic case filing and case management systems in the courts. The current systems have already streamlined the case filing process by allowing attorneys and litigants to file documents over the Internet and have freed up office space formerly used to house paper files. Next generation systems will use cutting-edge technology to provide a seamless case processing system between the bankruptcy courts, district courts, and courts of appeals.

New CJA Panel Attorney Payment System - A new electronic voucher project for Criminal Justice Act vouchers has the potential for automating this paper-intensive process and enhancing the accuracy and timeliness of payments to private panel attorneys appointed under the Act.

- Lawbooks - The Judiciary's anticipates cost avoidances of \$23 million through fiscal year 2019 by holding the budget for law book subscription renewals flat at the fiscal year 2011 funding level to reflect reductions in law book collections offset by annual inflationary increases.
- Records Archiving - The Judiciary has identified approximately 79,000 boxes of Judiciary records in storage at the National Archives and Records Administration's (NARA) Federal Records Centers that are past their transfer or destruction date. The Judiciary's Administrative Office is actively working with the courts and NARA to get these boxes transferred or destroyed. The Judiciary is also working with NARA to establish new retention policies to reduce retention times from 25 years to 10 to 15 years. When completed, the Judiciary will realize significant cost savings in annual storage costs.

3. **In 2009, the U.S. Marshals Service implemented a pilot program to assume primary responsibility for perimeter security at selected courthouses that were previously the responsibility of the Federal Protective Service (FPS). This pilot was undertaken in accordance with enacted legislation as a result of concerns over inadequate perimeter security. The pilot program, expected to cover an 18-month period, includes seven courthouses located in Chicago, Detroit, Phoenix, New York, Tucson, and two in Baton Rouge.**

- **Can you bring us up to date on the pilot's implementation?**

Judiciary Response: The USMS and the Judiciary began implementation of the Pilot Project at all seven locations in fiscal year 2009. The pilot courthouses are:

Judicial District	Court Facility
Northern District of Illinois	Dirksen U.S. Courthouse, Chicago
Eastern District of Michigan	Levin U.S. Courthouse, Detroit
District of Arizona (two)	O'Connor U.S. Courthouse, Phoenix
	DeConcini U.S. Courthouse, Tucson
Middle District of Louisiana (two)	Long Federal Building/U.S. Courthouse, Baton Rouge
	Old Federal Building and Courthouse, Baton Rouge
Southern District of New York	Moynihan U.S. Courthouse, New York City

Since the implementation of the pilot, the Judicial Conference Committee on Judicial Security has played an active role in monitoring the status of the Pilot Project. At the Judicial Security Committee's January 2010 meeting, the USMS presented the results of a survey it conducted of USMS district management at each of the pilot districts. Most reported that the pilot was meeting the stated objectives of improving courthouse security through the consolidation of security services under the USMS.

In addition, members of the Judicial Security Committee participated in site visits in three of the districts (Illinois-Northern, Michigan-Eastern, and Louisiana-Middle) that covered four pilot courthouses. During these site visits, meetings were held with the respective chief judges, U.S. marshals, and other court and USMS personnel. Senior Administrative Office personnel met with court officials and the district U.S. marshal in the District of Arizona (two courthouses) to discuss the pilot project and a similar site visit occurred with the Southern District of New York. The consensus, with the exception of Chicago, has been overwhelming support of the pilot program. According to those interviewed, the consolidation of command and control over all aspects of physical security at these sites has resulted in improved protection for both persons and the courthouse.

The issue at the Dirksen U.S. Courthouse in Chicago was whether that facility had been provided sufficient court security officer resources to execute the pilot program effectively. Following the site visit there, which included an assessment of the court security staffing level, it was concluded that additional court security officer resources were necessary and the district was subsequently authorized additional positions.

- **We understand that the Judiciary is working closely with the U.S. Marshals Service on assessment tools to evaluate the program. When will this evaluation be completed?**

Judiciary Response: The Administrative Office utilized a survey instrument as part of the on-site assessment conducted at each of the pilot locations. The survey included questions to encourage feedback on the pros and the cons of the pilot program. The results of the assessment will assist the Administrative Office in meeting its reporting requirement to Congress on the execution of the program and the subsequent evaluation and analysis of the end results. The Judicial Conference Committee on Judicial Security is in the process of preparing a report on

the pilot and anticipates the report will be finalized and submitted to Congress around September 1, 2010.

- **At other court facilities over the past year, has the Federal Protective Service provided adequate perimeter security? If not, why not?**

Judiciary Response: Since fiscal year 2008, the Judiciary has noted a decline in the number of reported instances where security equipment provided and maintained by FPS was not operating and was not repaired or replaced. The USMS concurs with this assessment and credits the decline in reported malfunctioning equipment to the establishment of an FPS liaison to the USMS and Administrative Office, which has resulted in expediting the notification and repair process. Also, FPS replaced or repaired equipment in fiscal year 2008 in response to congressional and Government Accountability Office scrutiny. Additionally, the USMS/Judiciary Perimeter Security Pilot Program can be credited with highlighting the FPS deficiencies and the need for corrective action.

The Judiciary remains concerned that neither the Judiciary nor FPS is aware of inoperable equipment until there is a problem. This deficiency is probably due to the failure of FPS to have a maintenance contract or a process to ensure the operability of the equipment for which it is responsible. Administrative Office staff continue to request that FPS provide a listing and age of the equipment inventory supporting FPS maintenance charges. In most instances, Administrative Office staff have been advised by FPS that the equipment was installed by FPS regional offices many years ago and the records are not always available.

The Administrative Office continues to be concerned about the adequacy of the FPS security billing system, its impact on the ability of the Judiciary to obtain information needed to support its budget requests, and FPS's inability to validate properly the services received and invoices to be paid.

4. **Threats against judges and court facilities have continued. Reportedly, the U.S. Marshals Service estimated that threats against judges now number approximately 120 a day. In September, 2009, a plan to bomb the Paul Findley Federal Building and Courthouse in Springfield, Illinois was uncovered. As mentioned earlier, on January 4, 2010, a gunman wounded a deputy U.S. marshal and killed a court security officer at the Lloyd D. George U.S. Courthouse and Federal Building in Las Vegas. I understand that a review is underway to determine whether all possible protective measures and policies were in place and whether the assessment might be applied to other court facilities. To the extent possible, can you discuss the progress of this review?**

Judiciary Response: The U.S. Marshals Service has worked in strong partnership with the Judiciary to initiate reviews of the Las Vegas event itself, as well as the ramifications on other court facilities around the country. It is our belief that our court security officers effectively repelled the gunman before he could bypass the security of the courthouse. The valiant actions of our court security officers likely saved many lives that day.

Immediately following the shooting, security at courthouses around the country was elevated, until it was determined that the assailant acted alone. Shortly thereafter, Director John F. Clark

of the U.S. Marshals Service (USMS) ordered every USMS office to conduct an immediate review of standing policies and procedures for security and to make adjustments as required.

As we have over 400 courthouses nationwide, the results of the review varied. In several cases, USMS management relocated a court security officer to a different physical position, or requested physical layout changes, in order to improve the capacity to repel intruders.

The USMS initiated an After Action Review of the incident. This internal review is conducted specifically to make observations and findings that need to be considered regarding facility security as well as the actions of the marshals involved. The After Action Review is primarily intended to analyze what worked, what changes should be considered, and how training and planning could be improved. It is critical to learn from this tragedy in order to improve the security of judges, court personnel, and the public at federal court facilities.

On April 28-29, 2010 Administrative Office staff participated in a kick-off meeting of the USMS National Security Review working group. This working group was formed to review courthouse security following the Las Vegas federal courthouse shooting. The working group includes representatives from the U.S. Capitol Police, the Department of State, the Federal Protective Service, and the USMS. A follow-up meeting is planned for July 2010 with a report due to the Director of the USMS in late fall/early winter 2010.

- 5. The Judicial Conference of the United States' Committee on Judicial Security has continued to discuss concerns about personal information about judges being posted on courts' official external websites. Has any guidance been provided to judges to caution them about this and other information on these websites? If so, please elaborate.**

Judiciary Response: The Judicial Conference Committee on Judicial Security believes that too much personal information is available on-line, and that it does represent a potentially serious threat to judges. The Committee has written to all federal judges recommending that they be careful about what personal information is posted on their court's web sites.

The USMS recommends that judges be careful about the information they provide to fraternal and social groups of which they may be members and which might be posted on-line. Unfortunately, a lot of the personal information that a stalker could use to help locate a federal judge (home purchases, home sales, floor plan diagrams of the home, mortgages, vehicle registration and driver's license) is collected and disseminated by local and state agencies, which makes it hard to control.

A district judge recently found that his name has been used as an internet domain name for the purpose of posting scurrilous and hateful text about the judge. The USMS was able to get that internet site taken down, and the Committee on Judicial Security has formed an ad hoc working group composed of judges, USMS analysts, and U.S. Secret Service agents to investigate this problem and develop procedures and checklists for use by judges and the USMS to help protect judges from the threat posed by internet postings.

**6. In January, 2010, the Department of Justice Inspector General released a report Review of the Protection of the Judiciary and the United States Attorneys. The review found that judges did not always report threats and inappropriate communications they received.**

- **Are adequate reporting processes and policies in place to ensure that federal judges report these incidents in an efficient and expeditious manner?**

Judiciary Response: Yes, the Judiciary believes that there are adequate reporting processes and policies in place to encourage federal judges to report threats in an efficient and expeditious manner.

- **What measures are being pursued to further enhance the safety and security of federal judges, court personnel, and their families and what are the costs of these measures?**

Judiciary Response: The Judiciary has taken several steps to encourage judges to report threats against them. Judge Michael S. Kanne (7th Circuit), Chair of the Judicial Conference Committee on Judicial Security was interviewed for the February 2010 issue of The Third Branch, a Judiciary publication widely read by judges throughout the federal courts, specifically to address the DOJ IG report. Judge Kanne said that judges should not be making an initial evaluation of whether a threat is serious. Rather, they should report any inappropriate communication (or threat) to the USMS. It is the USMS's job to make those evaluations, and the USMS has district inspectors and a threat assessment center to do that.

In addition, in March 2010, the Judiciary began providing a section on judicial, courthouse, and internet security at the Federal Judicial Center's training programs for new district judges. The session is specific about the need for judges to report threats and inappropriate communications to their district US marshal for investigation.

Judge Kanne and other members of the Judicial Security Committee will be participating in three Federal Judicial Center regional training sessions for incumbent district court judges during the remainder of fiscal year 2010. Training schedules for bankruptcy and magistrate judges, however, had already been finalized for fiscal year 2010 and having Committee members participate in these programs would not have been practical. Committee staff, however, have provided the FJC with training materials on security that will be used as handouts during the training sessions for these two groups of judges.

In January 2010, a video titled "Project 365 - Security Starts with You," which was produced by the Administrative Office of the U.S. Courts, was mailed to every federal judge for viewing by the judge and his/her family members and staff. The video was the result of collaboration between the Committee on Judicial Security and the USMS and has a section dealing with the need for judges to report threats and inappropriate communications to the USMS promptly. In addition, a new security video was also recently produced by the Administrative Office that is shown during a Judicial Nominee Orientation program. The video strongly encourages the new judges to report to their local marshals anything that they find suspicious or that makes them feel uncomfortable.

7. **To the extent possible, please describe the Judiciary's (including both the Administrative Office of the Courts and the federal courts themselves) continuity of operations planning to respond to various possible disruptions? What amount of the fiscal year 2011 budget request is being allocated to this purpose?**

**Judiciary Response:** Continuity planning programs in the Judiciary predate the September 11, 2001, terrorist attacks. Since the attacks, however, the Judiciary has established an aggressive set of continuity of operations (COOP) solutions that cover all aspects of disaster and emergency scenarios resulting from terrorist, manmade, and natural causes. COOP planning in the Judiciary answers questions such as: What does a court do in the aftermath of a disaster? Can or should the court remain open? If not, where does it transfer operations? Where and when are employees told to report to work? If employees have to be with their families in the aftermath of the disaster, which jobs are essential to resume court operations? How will people contact the court if computer and phone networks are incapacitated? What is the best way to ensure that court users can file documents and the business of the court can continue? These questions form the core of the Judiciary's COOP program.

Every federal judicial district and circuit is required to have a COOP plan. The Judiciary's emergency preparedness program provides for an "all hazards" approach to contingency planning, which means that each COOP plan must be able to respond to any and all situations that may arise. This includes terrorist attacks and natural disasters as well as other events that may interrupt a court's operation such as building renovation or maintenance; mechanical failure of heating or other building systems; or failure of information technology and telecommunications systems due to power loss, malfunction, or cyber attack. COOP plans are meant to be living documents, revised regularly on the basis of emerging issues and needs assessments.

To assist the courts in COOP planning, the Administrative Office of the U.S. Courts established a Judiciary Emergency Response Team (JERT) to respond to the courts' needs after any local, regional or national disaster. JERT activities after hurricanes, the Guam typhoon, as well as regional and local floods, have demonstrated the effectiveness of the JERT in augmenting court plans and responses. To evaluate the effectiveness of Judiciary COOP efforts, the Administrative Office and a number of courts also participate in the annual Eagle Horizon national continuity exercises run by the Executive Branch.

Like the courts, the Administrative Office also has a COOP plan. The plan is based on five key planning objectives (1) ensure the continuous performance of essential functions/operations in support of the Judiciary during an emergency, (2) reduce or mitigate disruptions to operations, (3) achieve a timely and orderly recovery from an emergency and resumption of normal operations, (4) reduce loss of life, minimizing damage and losses, and (5) protect essential facilities, equipment, vital records, and other assets. The plan outlines the overall requirements for a viable COOP capability that ensures the continued performance of essential functions during any emergency or situation that may disrupt normal operations at the Thurgood Marshall Federal Judiciary Building. It also addresses plan activation during extreme conditions requiring the relocation of the COOP Emergency Team to an alternate facility that may be geographically removed from the disaster or threat.

COOP planning in the Judiciary includes a wide range of information technology and telecommunications solutions to ensure vital systems remain operational and available during an emergency. A key component in this effort is the Judiciary's Court Operation Support Center (COSC) located in suburban Virginia. In 2002, Congress directed the Judiciary to take steps to address its continuity of operations in the event of an emergency affecting the use of the Thurgood Marshall Federal Judiciary Building given the building's location in Washington D.C. In response to that directive, the COSC was established in 2005 and now houses critical redundant information systems and applications to ensure that key administrative, technical, and communications support to the courts continues uninterrupted in the event the TMFJB is rendered inaccessible. At the time the COSC was established, staff were transferred from the Thurgood Marshall building in order to operate the COSC facility.

Regarding COOP costs in the fiscal year 2011 budget request, the Judiciary does not specifically track COOP planning costs across the federal court system so it is not possible to provide a comprehensive figure for COOP costs included in the fiscal year 2011 budget request. The fiscal year 2011 request does include \$9.5 million in staff and operating costs for the Court Operations Support Center for COOP and other activities in support of the federal courts nationwide, and approximately \$1.0 million in salary and operating costs for safety, security, and emergency preparedness activities for the Administrative Office. The Judiciary's fiscal year 2011 request also includes a program increase of \$287,000 for four new positions at the Administrative Office, one of which will have some COOP responsibilities.

- 8. The Public Access to Court Electronic Records (PACER) system is used to obtain information in the federal courts, for a fee or fee-exempt for certain users. I understand that some believe that no fee should be charged for access to the information and the FCC National Broadband Plan that was just released recommends that the primary legal documents of the federal government should be free and accessible to the public on digital platforms.**
- **Can you explain how charges are assessed? What groups are using this system, including a breakdown of fee-exempt users?**

Judiciary Response:

PACER Fees

The Judiciary takes its responsibility to establish the PACER fees very seriously. Since well before the E-Government Act, it has been the Judicial Conference's policy to set the electronic public access fee to be commensurate with the costs of providing and enhancing services related to public access to court documents. In fact, prior to a one-cent per-page fee increase in 2004, the Judicial Conference had a history of lowering the fee.

Pursuant to Congressional directives, the Public Access to Court Electronic Records (PACER) program is funded entirely through user fees set by the Judicial Conference. The charge for accessing court filings is 8 cents per page, which is well below the fees charged by commercial services such as Westlaw or Lexis. There is a \$2.40 maximum charge for any single document, no matter its length. The PACER fee does not apply to judicial opinions, which are available through PACER free of charge. Certain categories of users may be exempted by the court from

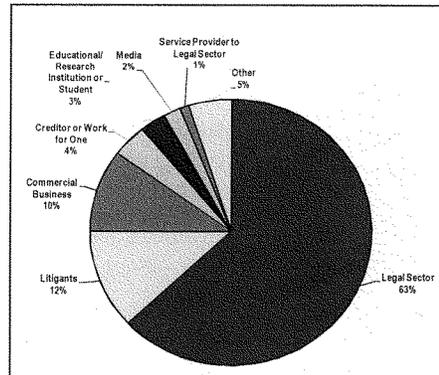
paying a fee including indigents, academic researchers, Criminal Justice Act attorneys, pro bono attorneys, bankruptcy case trustees, section 501(c)(3) not-for-profit organizations, and parties to a court case who are permitted to receive a free copy of filings. Also, no fee had been charged at all if an individual account did not reach \$10 annually (which translated into access to at least 125 pages). In fiscal year 2009, nearly half (49 percent) of all PACER users did not pay fees as a result of fee waivers and exemptions (refer to table on the following page). At its meeting in March 2010, the Judicial Conference approved applying the \$10 threshold to each fiscal quarter within the year, in effect quadrupling to \$40 the amount of data available without charge. With this new \$10 per quarter threshold, we anticipate that, going forward, as many as 75 percent of PACER users will not pay fees.

The Judicial Conference recently attempted to expand free PACER access through a pilot project that provided PACER terminals in Federal Depository Libraries. The purpose of the pilot was to provide access to individuals who would be unlikely to go to the courthouse for free access, have ready access to the Internet, or establish a PACER account. Unfortunately, after only 11 months, the pilot had to be suspended pending an evaluation and an investigation of potentially inappropriate use.

#### PACER Users

In fiscal year 2009, PACER reached a new milestone in registrations, surpassing 1,000,000 user accounts, of which over 325,000 were active. The user base is broad, including members of the bar and litigants, commercial enterprises, academics, media, and the general public. The majority of fee revenue comes from a just a handful of users -- less than 1 percent of PACER users account for nearly 40 percent of fee revenue. The biggest customer is the Department of Justice at approximately \$4 million annually. Other than the Department of Justice, the top 10 customers are major commercial enterprises or financial institutions which generate about 15 percent of total fee revenue.

The pie chart below illustrates a breakdown of the proportion of fiscal year 2009 PACER accounts by user category.



As stated above, certain categories of users may be exempted by a federal court from paying a fee, however, the Judiciary does not keep a centralized list of fee-exempt users. The vast majority of fee-exempt users of the PACER system are Criminal Justice Act attorneys and bankruptcy case trustees. Other fee exempt users include indigents, academic researchers, pro bono attorneys, case trustees, section 501(c)(3) not-for-profit organizations, and parties to a court case who are permitted to receive a free copy of filings. The table below provides information on PACER revenue for fiscal year 2009 including the number of PACER accounts that pay no fee because they are either exempted by a court or their fees were below the \$10 annual threshold that was in place during fiscal year 2009.

#### Fiscal Year 2009 PACER Usage

Usage	Active Accounts		Amount	
	#	%	\$	%
Fee Exempt	5,728	2%	\$19,233,729	18%
Fees Waived (Below \$10)	152,815	47%	\$460,003	0%
<b>TOTAL UNBILLED</b>	<b>158,540</b>	<b>49%</b>	<b>\$19,693,732</b>	<b>18%</b>
\$10 - \$500	148,531	46%	\$13,149,298	12%
\$500 - \$ 1,000	8,490	3%	\$5,933,057	5%
\$1,000 - \$ 2,000	4,793	1%	\$6,633,900	6%
\$2,000 - \$ 5,000	2,933	1%	\$8,891,979	8%
\$5,000 - \$10,000	1,085	0.3%	\$7,463,536	7%
\$10,000 - \$15,000	367	0.1%	\$4,465,184	4%
\$15,000 - \$20,000	204	0.1%	\$3,520,278	3%
Greater than \$20,000	485	0.1%	\$38,920,171	36%
<b>TOTAL BILLED</b>	<b>166,888</b>	<b>51%</b>	<b>\$88,977,403</b>	<b>82%</b>
<b>TOTAL USAGE</b>	<b>325,428</b>	<b>100%</b>	<b>\$108,671,135</b>	<b>100%</b>

- **How are fees computed for PACER usage? What are these costs intended to recover and how much income do the fees generate for the Judiciary annually?**

#### Judiciary Response:

##### Basis for Computing PACER Fees

The basis for computing electronic public access fees has evolved over the past 20 years. In 1988, the Judiciary sought funding through the appropriations process to provide electronic public access services but was specifically directed by Congress to fund electronic public access

services through the collection of user fees. As a result, the electronic public access program relies exclusively on fee revenue. In 1991, an initial fee of \$1.00 per minute for access to electronic information, via a dial-up bulletin board service, was set for the district and bankruptcy courts. Over the next five years, the fee was gradually reduced to 60 cents per minute.

In migrating to an Internet-based public access service, in 1997, the Judiciary adopted the per-page fee option. This was found to be the simplest and most effective method for charging for public access via the Internet. The 7 cents per page electronic access fee was calculated to produce comparable fees for large users in both the Internet and dial-up applications and thus maintain the then current public access revenue level while introducing new technologies to expand public accessibility of the PACER information.

In 2003, Congress expanded the permitted uses of PACER fees to include the operational costs for the Judiciary's case management/electronic case files (CM/ECF) system. In order to provide sufficient revenue to fund fully currently identified case management/electronic case files system costs, the 7 cents per page electronic access fee was increased to 8 cents per page.

#### PACER Revenue

In fiscal years 2007 and 2008 receipts from PACER fees generated \$65 million and \$77 million, respectively. In fiscal year 2009, PACER receipts increased to \$89 million, 16 percent above fiscal year 2008. Fee revenue is anticipated to increase to \$94 million in fiscal year 2010 (6 percent above fiscal year 2009) and \$100 million in fiscal year 2011 (6 percent above fiscal year 2010). PACER fees are available to the Judiciary without fiscal year limitation; thus unutilized fees may be carried forward into a subsequent fiscal year.

In accord with congressional direction, PACER fee revenue is used exclusively to fund program expenses and enhancements that increase public access to the courts, including court websites, on-line juror services, courtroom technology, and Violent Crime Control Act Victim Notification. Currently, the Judiciary is defining its requirements for the next generation of CM/ECF as well as for the electronic public access reporting program. This effort is expected to span the next five years, and the Judiciary plans to use PACER fee revenue to fund these CM/ECF next generation efforts.

#### PACER Fee Schedule

Fees currently being charged for obtaining documents electronically through PACER are as follows:

- § For electronic access to court data via a federal Judiciary Internet site, 8 cents per page up to a maximum charge of \$2.40 per document. (No fees are charged for PACER usage amounting to less than \$10 per quarter.)
- § For printing copies of any record or document accessed electronically at a public terminal in the courthouse, 10 cents per page.
- § For every search of court records conducted by the PACER Service Center, \$26 per name or item searched.

§ For the PACER Service Center to reproduce on paper any record pertaining to a PACER account that is remotely available through electronic access, 50 cents per page.

**9. Please discuss how the role (including case composition and other factors) of the Judiciary has changed over the last several decades?**

Judiciary Response:

Criminal Filings. The role of the federal courts in deciding the constitutionality of federal laws and resolving other disputes over federal laws has remained unchanged. However, new federal laws enacted over the last 30-40 years and the increased resources provided to federal law enforcement agencies to prosecute crimes have significantly changed the types and volume of criminal cases we see in the federal courts today. A 1998 report from the American Bar Association's Task Force on the Federalization of Criminal Law reported that more than 40 percent of federal criminal provisions enacted since the Civil War have been enacted since 1970.

Up until the 1960s and 1970s, the criminal caseload of the federal courts had been dominated by prosecutions that we see very little of in the federal courts today -- selective service, moonshine, and Dyer Act (interstate auto theft) cases. Since 1970, the federal courts have seen a significant shift in the types of criminal cases prosecuted. Criminal caseload in the federal courts today is much more complicated and is now dominated by serious drug cases, immigration violations, and weapons charges. In 1970, drugs, immigration, fraud, and weapons cases constituted 30 percent of criminal case filings compared to 77 percent in 2009.

As a result of the increased federalization of crime and increased resources provided for federal law enforcement efforts, criminal case filings in federal court have increased significantly. From 1970 to 2009, criminal filings in federal court increased 92 percent, from 39,959 to 76,655 with the bulk of the increase attributable to drugs, immigration, fraud, and weapons cases. Immigration caseload skyrocketed after the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The law criminalized illegal immigration entry violations, and immigration-related caseload rose 300 percent from 1995 to 2009 in the five southwestern border courts—the District of Arizona, Southern District of California, District of New Mexico, Southern District of Texas, and Western District of Texas. Criminal caseload in these five districts now account for 38 percent of all federal criminal caseload nationwide, compared to 16 percent of criminal caseload in 1995.

Appellate Filings. Over the last 30 years, there have been substantial increases in the number of appeals filed in the U.S. courts of appeals, from 23,200 in 1980 to 57,740 in 2009. Compared to filings in 1980, appellate courts received more than three times as many criminal and civil appeals and almost three times as many administrative appeals in 2009. Appellate filings have fluctuated in recent years mostly due to changes in the number of appeals brought in federal court in response to Department of Justice Bureau of Immigration Appeals (BIA) administrative decisions. Appeals from BIA decisions spiked in 2005 but have declined in recent years. The federal courts of appeals also saw a sharp increase in filings from criminal defendants seeking relief as a result of the 2005 Supreme Court decisions in *U.S. v. Booker* and *U.S. v. Fanfan* which rendered the federal sentencing guidelines advisory instead of mandatory.

Civil Filings. Civil case filings in the district courts rose substantially from 1980 to 2009, increasing from 168,789 to 276,397 (up 64 percent). Civil filings related to personal injury, prisoner petitions, civil rights, contracts, Social Security, and labor have all increased. Various pieces of legislation have contributed to the increase in civil filings, including the Americans with Disabilities Act of 1990, and the Family and Medical Leave Act of 1993.

Bankruptcy Filings. Bankruptcy case filings increased substantially and steadily after a new Bankruptcy Code was enacted in 1978, and a new bankruptcy court system was established in 1984. From 1984 to 2004, filings increased from 344,275 to 1,618,987. A one-time surge in filings took place in late fiscal year 2005 and early fiscal year 2006, as debtors rushed to file before the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 took effect.

Immediately after the Act took effect, bankruptcy filings plummeted, to be followed by over four years of steady monthly increases. This growth, propelled by the public's increasing familiarity with the new law and, more recently, by the poor economy, has resulted in a total of 1,402,816 filings in 2009. This number is expected to reach nearly 1,600,000 in 2011. The continuing increases are particularly notable because recent work measurement studies in the courts reveal clearly that the changes enacted by the 2005 Act require a great deal of additional work in each bankruptcy case on the part of judges, clerk=s office staff, and bankruptcy administrators.

Overall bankruptcy filings nearly quadrupled between 1984 and 2004. In that same time frame, both chapter 7 filings (liquidation of assets) and chapter 13 filings (debtors with regular income who retain some assets and repay some debts) also quadrupled. Chapter 11 filings, which involve business reorganizations, fell by nearly 50 percent, from 19,913 in 1984 to 10,368 in 2004. Chapter 12, designed for family farmers and family fishermen who may have larger debts than a wage earner filing under chapter 13 but smaller debts than a business seeking reorganization under chapter 11, was temporarily added to the Bankruptcy Code in 1986 (it was made permanent as part of BAPCPA), and had 238 filings in 2004. Compared to 2004, total filings in 2009 are down 13 percent; chapter 7 filings have fallen 14 percent and chapter 13 filings have fallen 12 percent. In that same time period, chapter 11 filings have increased 42 percent and chapter 12 filings have risen 104 percent (to 487 filings, less than 1 percent of all filings). Despite these declines relative to 2004, 2009 filings represent the highest totals since the effective date of BAPCPA (October 2005), and were 35 percent higher than 2008 totals.

Probation and Pretrial Services Workload. Probation and pretrial services workload has changed significantly over the last several decades, paralleling the changes in the federal courts' criminal workload. Between 1980 and 2009, the number of people under post-conviction supervision increased from 64,450 to 124,183 and we can expect the probation workload to continue to grow. This growth is driven by those serving terms of supervised release (after prison).

In addition to the increased workload, the work of probation officers has become significantly more challenging. In 2009 more than 80 percent of federal offenders under post-conviction supervision had served a prison term. In comparison, in 1985, only 48 percent of offenders had served a prison term. As these figures indicate, probation officers today deal with fewer individuals sentenced to probation in lieu of prison, reflecting the continued trend of

increasingly challenging offenders being released to the community. Offenders released after lengthy periods of incarceration face greater challenges in their transition back to the community and are at greater risk of engaging in criminal behavior and failing to comply with court-order conditions.

Influencing the complexity of probation and pretrial services work is the increase in legislative, administrative, and case law change. Such changes often alter the scope of probation and pretrial services officers' work, bring new or modified duties, and require additional education and training to learn how to carry out these duties. For example, the Second Chance Act, signed into law in 2008 and aimed at successful reentry after release from prison, will impact the services provided to offenders, pre-release planning, and post-release supervision strategies. Prior to the passage of the Act, probation and pretrial services offices only had authority to contract for substance abuse and mental health treatment. The Second Chance Act expanded contracting authority to include other types of reentry services which will add to the duties of probation and pretrial services officers.

**10. Information you provided last year to this Subcommittee showed that there is slow progress being made in the effort to increase the diversity of law clerks to federal appellate and district judges. Please update us on your efforts and provide the Subcommittee for the record the diversity breakdown of law clerks in the Federal Judiciary by race and gender for appellate and district judges for the last five years.**

Judiciary Response: No one in the Judiciary doubts the value of diversity among law clerks in federal trial and appellate courts; and yet our numbers suggest that there is significant room for improvement. The Judiciary believes that financial considerations, such as student loans, may be a factor in some minority law school graduates not considering a federal clerkship because of the disparity in salaries between the courts and private law firms. Seeking to attract minority candidates and overcome the pay disparity issue, the Judiciary has taken a number of steps.

The Judicial Conference Committee on Judicial Resources= (JRC) Ad Hoc Subcommittee on Diversity was established in 2004 to examine diversity within the federal judicial workforce and to consider programs, policies, and training on fair employment practices that would benefit the federal Judiciary.

To this end, the Ad Hoc Subcommittee on Diversity has set forth the following goals to increase diversity in the Judiciary: identifying institutional barriers to workforce diversity; removing these barriers; establishing institutional modifications within the Judiciary that reflect diversity realities; and producing sustainable progress toward achieving workforce diversity.

More specifically, through its education and outreach initiative, Committee on Judicial Resources= judges are:

- contacting minority law student (and other minority) organizations and bar associations in hopes of creating and maintaining potential minority pipelines for judicial law clerk positions;
- sending correspondence to law school deans espousing the benefits of clerking and requesting deans share information with students; and

- sending correspondence to hiring partners at the nation=s top firms requesting that they identify and encourage their minority "rising stars@ to consider taking a short leave of absence to clerk for the Judiciary.

Law Clerks by gender:

- In the aggregate, in 2005, 59% of all law clerks were female and in 2009, 60% of all law clerks were female.
- Over that 2005-2009 time period, female law clerks for Bankruptcy Judges grew the most, from 65% to 72%.
- Female law clerks are the majority for all judge types except Appellate Judges, for which they were between 44% and 48% during the 2005-2009 time frame.
- A far greater percentage of the career law clerks are female than male across all judge types (currently 75%), although their percentage is lowest in the appellate law clerk category (currently 64%).
- District Judge term law clerks have been close to a 51- 49 female-male split over the 2005-2009 time period.

**Chambers Law Clerks (Appellate) by Ethnicity/Race: FY 2005 – 2009**

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2005	86.8%	3.1%	1.8%	8.0%	0.3%	0.0%
FY 2006	82.8%	3.2%	2.0%	6.7%	0.2%	0.0%
FY 2007	87.1%	3.5%	2.4%	6.7%	0.1%	0.2%
FY 2008	86.7%	3.3%	2.2%	7.4%	0.1%	0.2%
FY 2009	87.6%	2.5%	2.0%	7.6%	0.1%	0.2%

**Chambers Law Clerks (District) by Ethnicity/Race: FY 2005 – 2009**

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2005	86.0%	4.5%	3.3%	5.8%	0.1%	0.2%
FY 2006	84.9%	4.1%	3.4%	6.0%	0.2%	0.1%
FY 2007	86.1%	3.9%	3.6%	5.9%	0.1%	0.2%
FY 2008	86.1%	4.1%	3.3%	6.2%	0.1%	0.2%
FY 2009	86.1%	3.9%	4.4%	5.4%	0.1%	0.1%

**11. In fulfilling its duties to protect the interior of court facilities, the U.S. Marshal Service hires a number of contractors as court security officers.**

- **Both Judiciary-wide and in reference to security, how much of the courts' work is performed by contractors and what is the nature of that work?**

In general, the majority of the Judiciary's contractor support on a national level is involved in major information technology initiatives, such as the Judiciary's national case management/electronic case files system, human resources system, and financial management system. There is currently no central repository containing detailed contracting information for individual courts throughout the country. A procurement module that will capture Judiciary-wide procurement data is expected to be implemented in the courts in 2013. Data from this module would be available from the system beginning in 2014. However, in general, contractors at courts throughout the country perform work such as audits, courtroom technology installation, cyclical facility maintenance, and equipment maintenance.

With regard to security, all court security officers (CSOs) in the Judiciary are contractors that are employees of private security companies and those companies are under contract to the USMS to provide court security services. There are currently approximately 5,000 full and part-time court security officers in the courts nationwide. Additionally, the USMS is authorized 19 contractor positions at its headquarters to help administer the Judiciary-funded and USMS-administered court security program.

- **What small business contracting requirements are the Judiciary (and Executive Branch entities that it contracts with) subject to and do you comply with them?**

Although not specifically tied to small business contracting, the Judiciary is required by statute to follow (1) the Randolph-Sheppard Act (20 U.S.C. §§ 107) which requires that federal agencies give priority for the operation of vending facilities, including food, beverages or other articles or services, such as coin-operated copy machines, to people who are blind, and (2) the Javits-Wagner-O'Day Act (41 U.S.C. §§ 46-48c) which requires that federal agencies purchase certain products and services from qualified workshops that employ people who are blind or severely disabled.

When the Judiciary orders products or services through an Executive Branch agency (e.g. GSA and the U.S. Marshals Service), the Judiciary is required to follow that agency's contract ordering procedures and procurement policies. Judiciary specific provisions or clauses may be added to such an order provided they do not duplicate or conflict with the agency's established procurement policies and procedures.

**Questions for the Record**  
**Submitted by Ranking Member Jo Ann Emerson**

**1. Defender Services**

The fiscal 2010 bill provides private panel attorneys with an hourly rate increase to \$125 per hour which is a 13.6 percent increase from \$110 per hour rate from the previous year. This fiscal year 2011 budget request includes \$33 million increase is to annualize the cost of the fiscal year 2010 pay increase. Given the size and cost of this fiscal year 2010 increase, it is surprising that the budget request proposes another increase of \$4.8 million to increase the hourly rate to \$141 per hour.

- If \$141 per hour is approved in fiscal year 2011, how much of a funding increase will be required in fiscal year 2012?

Judiciary Response: The table below provides the fiscal year 2011 and fiscal year 2012 costs associated with increasing the non-capital hourly panel attorney rate from the current \$125 rate to the statutory authorized rate of \$141, effective January 1, 2011.

Non-Capital Rate	FY 2011 Cost	FY 2012 Cost	Annualized Cost
COLA Increase (\$125 to \$126)	\$318,000	\$2,228,000	\$2,546,000
Program Increase (\$126 to \$141)	\$4,776,000	\$33,432,000	\$38,208,000
Total	\$5,094,000	\$35,660,000	\$40,754,000

**2. Information Technology**

In fiscal year 2010 the courts received a \$25 million increase to begin implementing a new telecommunications system. The fiscal year 2011 budget requests an additional \$25 million increase, or \$50 million in total, for continuation of this project. I understand that your current phone system is outdated especially with the exponential growth of data communications.

- How many years will this project take to complete and how much will it cost?

Judiciary Response: To address existing and new business requirements such as data reliability, enhanced voice services, emerging demands for greater mobility, and the need for redundancy and disaster recovery, the Judiciary is making significant investment in its communications infrastructure.

We are addressing these needs in several ways. First we are improving court network infrastructure by implementing LAN redundancy and increased WAN speeds in our larger court houses. These upgrades will give the courts more reliable access to national and local applications. The Administrative Office has also developed a preliminary architecture and supporting cost model for a national phone offering. It is anticipated that this phone offering will reduce a significant portion of the costs associated with replacing aging phone technology on a local basis.

The \$50 million contained in the fiscal year 2011 budget request -- \$25 million in the funding base and a program increase of \$25 million -- is required for known and hidden costs, such as assessing and upgrading local and wide-area networks, making necessary alterations to computer rooms and telephone closets, and acquiring equipment. If the \$25 million program increase requested in fiscal year 2011 is funded, the Judiciary anticipates non-recurring \$25 million (of the \$50 million) in the fiscal year 2012 budget request, and retaining \$25 million in the funding base for operations and continued support of implementations over a projected six-year period. Since local telephone systems will be replaced only as they reach the end of their useful life, we anticipate full implementation and migration to the system to take 72 months, with operations and maintenance continuing thereafter.

- **Once fully implemented will your data communications costs decline? Will we see this savings identified in future budget requests?**

Judiciary Response: The methodology we are following assumes that such a national service would supplant the need for local court procurements of phone systems, leading to a reduction in local phone-related expenditures. Our cost models suggests that if 75 to 90 percent of the courts were to take advantage of a national phone service offering over a five to six-year migration schedule, the initial capital investment – while significant – could be recovered within 72 months, and cost avoidances would accrue thereafter. It is very difficult to pinpoint returns on investment since the national phone system is being deployed as an optional service offering to the courts. Our estimated adoption rates project the capital investment being recovered in approximately 72 months, but actual adoption rates will ultimately drive the cost avoidances and savings the Judiciary may realize. The Administrative Office will track closely any cost savings or avoidance associated with the new national service and adjust local court budget allotments accordingly.

### 3. **Space and Facilities**

**Much of the \$5.6 billion provided to the General Services Administration in the stimulus bill is being allocated to make Federal buildings more energy efficient.**

- **Have many Federal courthouses are being renovated with stimulus funding?**

Judiciary Response: Based on the information the Judiciary has available, the GSA Public Building Service's spending plan for the American Recovery and Reinvestment Act (ARRA) includes approximately 258 buildings (existing and new) of which 144 are Judiciary occupied.

The 144 ARRA projects in facilities occupied by the Judiciary are comprised of:

- 26 large projects, including new federal courthouses and high performance green building full and partial building modernizations, and
- 118 "green" building limited-scope projects which include building systems upgrades and facade and roof upgrades.

- **Is the Judiciary currently experiencing energy or water consumption savings, if not yet when do you expect to achieve these savings?**

Judiciary Response: These projects are still underway so no savings can be reported to date. GSA charges the Judiciary for operating costs, including utilities, through the rent bill. Any savings resulting from green building technology will accrue to GSA's Federal Buildings Fund. We would anticipate that any cost avoidance realized by the GSA through its green building efforts would be passed on to the Judiciary through reductions in operating costs in the rent bill received from GSA.

#### 4. **Temporary Judgeships**

**For the past several years, the Financial Services bill has included language extending temporary judgeships in Kansas and Ohio that were scheduled to expire. I understand that the Judiciary has requested authorizing language to continue these temporary judgeships. Can you describe why it is important to continue these judgeships and the impact if the judgeships expire?**

Judiciary Response: The Judiciary greatly appreciates the Committee's inclusion of language in the fiscal year 2010 Consolidated Appropriations Act extending the temporary judgeships in Kansas and Ohio-Northern for one year. (The Act also extended a temporary judgeship in Hawaii for one year.)

The Judiciary did not request authorizing language in its fiscal year 2011 budget request to extend the temporary judgeships in Kansas and Ohio-Northern. Authorizing legislation that would extend temporary judgeships, as well as create new judgeships, is currently pending in both the House and the Senate (H.R.3662 and S.1653, respectively). The Judiciary is hopeful that the Congress will pass and the President will sign into law a new judgeship bill, or at a minimum, a bill authorizing temporary judgeships before the end of the fiscal year.

Without another authorizing extension, the first judicial vacancy that occurs in the districts of Ohio-Northern and Kansas after November 15 and November 21, 2010, respectively, will result in a lapse of the judgeship. The caseload in each district supports the need to extend these judgeships. If the judgeships were allowed to lapse, caseload would have to be shifted to other judges, increasing their workload and possibly delaying the judicial process.

Restoration of a lapsed temporary judgeship after its authority has expired is subject to PAYGO rules under the Congressional Budget Act and must be offset with a reduction in direct spending or a statutory increase in revenue. Restoring each judgeship would require an offset of \$200,000 in the first year, \$1,000,000 over five years, and \$2,000,000 over ten years.

A simple extension of a temporary judgeship does not score for Congressional Budget Office purposes, and the judgeship remains intact. If authorizing legislation is not enacted by the end of fiscal year 2010, the Judiciary once again would urge the Subcommittee to include a provision in the annual appropriations bill providing a one-year extension for these expiring judgeships.

Two temporary judgeships lapsed in fiscal year 2004, one in the District of Nebraska and one in the District of California-Eastern. To this day, these judgeships have not been restored and the impact on the courts has been tremendous. In California-Eastern, the weighted filings per judgeship was 1,097 for the year ending September 30, 2009. That is more than twice the national average of 472 weighted filings. S.1653 and H.R.3662 would restore the temporary judgeship for Nebraska and would provide four new permanent judgeships and one temporary judgeship for California-Eastern. Each of these new judgeships are scored by the Congressional Budget Office as new direct spending requiring a PAYGO offset.

**Questions for the Record  
Submitted by Congresswoman Barbara Lee**

- 1. Last year when I inquired about minority and women owned business's access to Judicial contracting opportunities, you responded that there is not a central repository that can track the access of minority and women owned businesses across the many Courts and Judicial organizations that receive federal funding.**

**Director Duff, will you please keep this subcommittee up to date on any efforts to create a central repository of this critical data and share as much detailed contracting information as you can with the subcommittee?**

Director Duff's Response: We will certainly keep the Subcommittee informed of our efforts to create a central repository of data regarding contract awards to minority-owned and women-owned businesses. As Judge Gibbons and I discussed at the hearing, procurement in the federal Judiciary is decentralized throughout the courts nationwide so there is not currently a central repository containing information relating to federal Judiciary contracting actions. We are currently working on a procurement module that will capture Judiciary-wide procurement data, including data on contract awards to minority-owned and women-owned businesses. It is expected to be implemented in the courts in 2013. Data from this module would be available from the system beginning in 2014.

- 2. Judge Gibbons, I was very pleased to hear about how dedicated the federal Judiciary is in their commitment to continue to reduce recidivism for federal offenders. I appreciate that despite the comparatively low recidivism rate, when compared to some States, you are still pursuing new "evidence based practices" to drive those rates even lower.**

**Judge Gibbons, will you please keep this subcommittee updated on improvements, based on "evidence based practices," to policies and procedures reducing recidivism and on any plans that are in place to share those improved practices with the states?**

Judge Gibbons' Response: We will be happy to keep the Subcommittee informed regarding our efforts to reduce recidivism through evidence-based practices and other initiatives, as well as information sharing with our state colleagues on improved practices in the federal probation and pretrial services program that may be useful in state systems.

THURSDAY, APRIL 15, 2010.

**FY 2011 BUDGET REQUEST FOR THE U.S. SUPREME  
COURT**

**WITNESSES**

**JUSTICE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME  
COURT OF THE UNITED STATES**  
**JUSTICE STEPHEN BREYER, ASSOCIATE JUSTICE OF THE SUPREME  
COURT OF THE UNITED STATES**

Mr. SERRANO. The subcommittee will come to order. Just two personal notes at the beginning. Number 42 is in honor of April 15th, 1947, for those of you who are a little young in the crowd. That is the day that a man named Jack Roosevelt Robinson stepped on a baseball field for the first time and, in my opinion, in the process integrated not only baseball, but integrated America. And we honor him today throughout Major League Baseball, and I thought it would be fitting to honor number 42.

By the way, a good story in the New York Times about Mariano Rivera of the Yankees as the last player to wear number 42, and your favorite committee chairman is quoted in the story.

Mrs. EMERSON. And what is, if I may ask, the Yankee's record so far, Mr. Chairman?

Mr. SERRANO. You are out of order.

Also I would like to note before we begin this hearing that there has been a change at the Court which has special meaning to the Court, to the American society in general and to me personally, because Sonia Sotomayor comes from the South Bronx from the area that I represent, the area that I grew up in, and her parents were born on the same island of Puerto Rico that I was born on. So of course it was a special time to see her become part of the very prestigious and very honorable Court.

This morning we gather to hear about the fiscal year 2011 budget request for the Supreme Court. We have the distinct honor of being joined by two distinguished Justices of the Supreme Court regarding its appropriations request for the upcoming fiscal year, and we do so at a time when the Court's longest-serving member, Justice John Paul Stevens, has recently announced that he will retire when the Court finishes the work for the summer. I know that I speak for every member of this committee when I ask the Justices here today to pass along this subcommittee's appreciation and thanks to Justice Stevens for his decades of service to our country.

These annual hearings are a rare and important opportunity for our two branches of government to interact. Congress, of course, has constitutional responsibility over Federal spending, which includes appropriations for the Supreme Court and the rest of the judiciary. Although I always have some concern about asking the third branch to come and testify before us, these hearings provide

a valuable chance not just to help us understand the Supreme Court's budgetary needs, but for the Nation's highest court to discuss issues affecting the judiciary as a whole. Hopefully our two branches get to know one another a little better as well.

Meeting the needs of the judicial branch is a priority for the subcommittee. The courts have a vital role to play in our society where the rule of law is a core principle. We need to be sure that the courts have the resources they need to dispense justice with reasonable speed and care, as well as proper regard for the rights of defendants and litigants and the needs of society.

At the same time we must also exercise due diligence in spending matters and balance competing needs. In some years the percentage increases requested by the courts have been substantial, as have those of many agencies. As we put together our plans for fiscal 2011, we face a more austere environment for nonemergency spending. We look forward today to a discussion of the budget needs of the Supreme Court as well as a broader conversation about the Federal judiciary as a whole.

Our witnesses are Justice Clarence Thomas and Justice Stephen Breyer, both of whom have appeared before the subcommittee previously. In fact, I think Justice Thomas may be on his way to setting a record for appearances before the committee. We will have to put up your number. Justice Thomas was nominated to the Court in 1991 by the first President Bush after serving as Assistant Secretary of Education for Civil Rights, Chairman of the Equal Employment Opportunity Commission, and as a judge on the Court of Appeals for the District of Columbia, among other positions, and we welcome you again to the committee. I say that with great admiration when I say that you have been here so many times before us to share your testimony with us.

Justice Breyer joined the Court in 1994 as a nominee of President Clinton. Before that he was a professor at Harvard Law School, staff member for the Senate Judiciary Committee, and judge and then chief judge on the Court of Appeals for the First Circuit.

We welcome both of you today, and we are glad that your previous appearances before the subcommittee were pleasant enough that you agreed to return for repeat performances. Thank you for joining us today.

Mr. SERRANO. And now I would like to turn to my colleague and my sister Mrs. Emerson, our ranking member.

Mrs. EMERSON. Thank you.

Welcome, Justices Thomas and Breyer. I really appreciate so much that you come before us today.

An independent judiciary, trusted and respected by all citizens and committed to fairly and expeditiously resolving difficult and controversial questions, is a fundamental institution for our Nation. Although the Supreme Court budget is not large in comparison to other Federal programs, I am pleased you are here today and recognize the importance of your testimony and appearance before the subcommittee. Outside of the confirmation process, which we have no opportunity to participate in, which should be quite interesting this year, today's hearing is one of the few instances when the Supreme Court and the legislative branch interact, and

it is, in my opinion, a worthy interaction as we recognize and appreciate and respect the prerogatives of each branch. I look forward to hearing from you both about the resources necessary for the operation of our Nation's highest court as well as any thoughts you all might have regarding our judiciary system as a whole.

As the witnesses are aware, the Federal deficit is projected to be \$1.6 trillion this year, and the Congress is going to have some difficult spending decisions to make not only this year, but for many years to come. Please know that I will work with Chairman Serrano to make sure you all have the necessary resources to fulfill your constitutional duties. Thank you all.

Thanks, Mr. Chairman.

Mr. SERRANO. Thank you.

By the way, that question about the Yankee record, is that because the Cardinals are having a better start?

Mrs. EMERSON. The Cardinals are doing phenomenally well, knock on wood.

Mr. SERRANO. There is always September.

Mrs. EMERSON. Well, that is what happened last year, but for now I am enjoying it, you know.

Mr. SERRANO. Justice Thomas and Justice Breyer, the floor is yours. As you know, the routine is that your written testimony will be printed in the hearing record. Please proceed with whatever oral statements you care to make, and then we will have some questions.

Justice THOMAS. Good morning, Chairman Serrano, Mrs. Emerson, Members of the committee. Justice Breyer and I are pleased to return, and we will pass along your kind wishes to our colleague Justice Stevens. We will certainly miss him. He is a wonderful man.

We have with us today a number of members of the Supreme Court staff. We have the Clerk of the Court, Mr. Bill Suter. We have Marshal Pamela Talkin, and the counselor to the Chief Justice, Jeffrey Minear. And we have our Public Information Officer Kathy Arberg, and our Acting Budget Manager Venita Acker.

As I said, we are pleased to be here, and we have submitted a statement for the record, as is our custom.

And you are right, Mr. Chairman, I may well be the longest-serving member of this committee. I think it is 15 years now. And maybe I will get off for good time or good behavior.

But the Court's budgetary needs, as you have indicated or alluded to, are tiny. We understand this is a period of austerity, and we have, as in previous years, been very serious about our responsibility to review our budget needs. And I emphasize the word "needs." We do not look at this as wants or a wish list.

In the years I have been before the committee, we have only asked for what the Court has needed. In some years, in my opinion, we haven't even asked for that. The largest request, as you remember, was actually—it had to do with the modernization project, which is simply a matter of keeping the building from falling down around us.

The budget request as in previous years is in two parts. We have the salary and expenses, which Justice Breyer and I will address, and we have the building and grounds, which the Acting Architect

of the Capitol Stephen Ayers will address. But on that latter category, let me make a couple of comments, and I will be brief.

The modernization commenced in 2003, fiscal year 2003. And there is some confusion about the year simply because the first portion of the modernization actually had to do with the construction of an annex, which is an underground facility, and that was necessary to handle the portions of the building that were going to be occupied with construction initially or changed. With respect to the completion date, we had some initial slippage in the early part of the modernization project. Since then it has been timely. It is scheduled to be completed this summer, and with the close-out activities finishing early next calendar year.

With respect to our salaries and expenses request, that portion of our total budget this year request is \$77,758,000 for fiscal year 2011. That is an increase of \$3,724,000, a 5 percent increase. Now, 70 percent of that increase is nondiscretionary, it is mandatory. It is basically what is required to continue operating at our current level. It is an adjustment to our base. It is increases in salary. It is mandatory increases in benefits. There is an additional \$173,000 that is simply in there for inflation to cover inflationary increase.

Last year we asked for an increase of \$799,000 in addition to those base adjustments, and we did that to hire personnel and to get the appropriate equipment to bring our Web site in house. That has been an early success. In the first 2 weeks that that system, that the Web site, has been up, we have had 25 million hits from around the world. As you remember from discussions in the early years, we were ecstatic about 1 million hits in a month. It has been well received and universally praised. This allows us now to make adjustments, the things that we talked about early on. If you visit it, you will see it is a much better site. Things that used to take several hours to get on site, changes that could only be made within a matter of hours or not made at all are now made in a matter of minutes, 3 to 5 minutes to put something there.

As I indicated last year, though, there is one area where we would probably come back this year to ask for some increase. And we do this again with some reluctance, but recognizing in all candor that this is a need. It involves the security area. I think in parting last year, I was asked whether there was one area in which I thought we would have additional needs beyond the technical area, and I said it would be security.

What we did is we had our security personnel do a complete review of our needs, and their suggestion or their request, which was pretty well documented, was that we needed 24 additional police officers. And the reason that you need the additional police officers is with the opening of the building after the construction, we will have more pedestrian traffic. In addition to that, we will have an entrance to the building, an underground entrance, that was closed and did not need to be policed in the way that the other entrance was policed. That will require additional police officers. We also have additional needs at our command center.

Now, rather than coming here with a request as required or the personnel or security people asked for, we are going to ask for half of that. We are going to ask for 12 rather than the 24 and make do with that. But as I indicated, that is a request that our security

personnel feel pretty strongly about. That again will result in an \$886,000 increase in our nonadjustment to the base request.

With that, Mr. Chairman, I will just simply respond to your questions at the appropriate time.

Mr. SERRANO. Thank you.

Justice BREYER. That is fine.

Mr. SERRANO. Thank you so much.

Justice THOMAS. That is the first time he has ever agreed with me. Well, it is not the first time.

Justice BREYER. No, I agree with him all the time.

Mr. SERRANO. I hope somebody is taking notes of this.

Mrs. EMERSON. C-SPAN is.

Mr. SERRANO. My first question would be one that you touched on, but I just wanted to clarify. So you believe that the modernization project will be completed on time this summer?

Justice THOMAS. Well, on time as is currently projected, not from the initial completion date—we are a year behind.

Mr. SERRANO. Well, yes, on time based on last year's testimony where you said it would be this summer.

Justice THOMAS. That is right. It is expected to be done this summer with the close-out activities drifting into the early part of next year.

Mr. SERRANO. What would those close-out activities be?

Justice THOMAS. I think it is basically we have got some grounds, perimeter work to do. We also have some cleanup to do, removal of construction trailers, et cetera, those sorts of things.

Mr. SERRANO. Overall how would you characterize the Court's experience with the modernization process in terms of adequate budget, resources, and disruption, if any, to the Court's operation?

Justice THOMAS. From my perspective, I think it has been spectacular. In any big projects we have a choice. We could move out of the building as they, in essence, rebuilt it. You are talking about plumbing, and wiring, structural work, heating and air, and some security issues. Now, if you look around town, many people evacuate the buildings in order to accomplish this. We chose to stay, and they have had to work around us. Now, there have been glitches, things weren't perfect, but I would characterize the resources, the handling of this, from my perspective, as excellent, recognizing that there are imperfections.

Mr. SERRANO. Well, as difficult as it must have been to have this work going on while were you there, I always felt it was very important and symbolic that you would stay. If I was a bad stand-up comic, I would say if you move, where would the protesters know where to go?

Justice THOMAS. They would figure it out.

Mr. SERRANO. But there was definitely a need for continuity, and I am glad you chose to do it that way.

Question. You said you could really use 24 officers, but you are only going to ask for 12. You are not going to get too many committees asking why you are asking for the lesser number; they actually applaud that. So do you feel that the 24 was maybe too much of an ask, or are you being nice to us because of the budget problems, or do you actually think you can do it with 12?

Justice THOMAS. We have not asked for a budget or any increase in security personnel since 2006, and we have managed to do with what we had, or what we have. We try to do that before we come to this committee. Now, we would like—we think the appropriate number is 24. It is a comfortable number. It is a number that gives us some leeway. But we can with a minimum or baseline number of 12 make it work. So it would be not a luxury, but a better, more practical, a more flexible number to have the 24. And I think most agencies would come in and ask for the 24.

Mr. SERRANO. Right.

Justice THOMAS. But as I have said, we have never in the time that I have been coming here ever asked you for more than we have needed. We have been very stringent, particularly during Chief Justice Rehnquist's tenure. He was very strict about what we asked for.

Mr. SERRANO. One last question on that. These 12 new officers, I am just curious, do you select them from an existing law enforcement force, are they trained only for the Supreme Court, are they totally new hires, or do they get transferred from Capitol Police or somewhere else?

Justice THOMAS. I think in the past we used to take quite a few people from, say, the District police force, Metropolitan Police, and various agencies around town. We normally now hire new people, and we send them off to the Federal law enforcement facility and training facility down in Brunswick, Georgia, which probably is excellent merely because it is in Georgia. And so it is normally an entry-level job. We have had good luck with keeping them. We have had very little turnover. In the early years we had quite a bit of turnover, and that got to be a problem. But after we reached parity in benefits and salary and retirement, that has pretty much ended.

Mr. SERRANO. Let me ask you one last question before I turn it over to Mrs. Emerson. The Court has requested \$6.3 million for 2011 to finish roof repairs to the Court building. Is this request part of the Court's modernization project, or is this something new?

Justice THOMAS. That is separate. That is in the buildings and grounds category. The Architect of the Capitol will handle that, but that roof, that is a part of the maintenance. The roof is an old roof, it is the original roof. And this has been an ongoing project, and this 6.3 million is to finalize the repairs on the roof. It is the final phase of that, but it is not a part of the modernization project.

Mr. SERRANO. I think you spoke about this in the past, forgive me if I am wrong, but I think you said part of what we wanted to accomplish was not only to make the building more workable for everyone, but also to make it easier for folks to visit. Do you think we have accomplished that?

Justice THOMAS. I think we have. I think we can always debate around the margins, as to whether or not this approach or that is a better approach. I think we all have different opinions about that, but I can remember my own first venture up steps in the Supreme Court. I was overawed by it, and it is a national treasure, but it is also a building where we work. And I think we have managed to maintain that balance both in the modernization project and the additions. There are going to be new things, such as a new

film. I think there is more artwork there. I think the building is maintained in an excellent fashion. So the answer to that, I would say, is yes.

Also on the Web site, I think, is an opportunity to see more of the building and more of what we do. Just the ability to show what is there without actually having the physical intrusiveness or disturbances that you would have is outstanding. So I think there are a number of opportunities to do that. I think the building—and you have been there—it is a fabulous place to work and to visit. So I think that we have accomplished that. Justice Breyer may have a different view of that.

Mr. SERRANO. Do you have a different view of that?

Justice BREYER. I will wait to see what happens. We had at one point, I think, about a million people a year coming through. I think that is good. I think the number has dropped a lot because of the construction probably, and I hope to get back to a million or more. I think it is important that people go through that building. It is their building, and they ought to know about it.

Mr. SERRANO. Thank you.

Mrs. Emerson.

Mrs. EMERSON. Let me ask a combination modernization/security question just back related to the 12 officers. Given the recent events, the plane crash into the IRS building in Texas, the shootings at the Las Vegas courthouse and at the Pentagon, that shows that we perhaps, perhaps not, need heightened security at some of our Federal buildings. Obviously you all are a high-profile building. You are being very kind by asking for 12 officers, but have you all had any additional security threats over the last year or so that might give us reason to think 12 new officers won't be enough?

Justice THOMAS. Without getting into too many details in an open hearing, one of the reasons for the request is actually we have individuals who work on—one person actually now—who actually do the work on threat assessment. And we are going to upgrade that because of the volume, without getting into the details of it. We understand the importance of analyzing those threats and remaining current and following up on that.

Mrs. EMERSON. So within the new modernization project, you will have a new police command center in the building, correct?

Justice THOMAS. That is already—

Mrs. EMERSON. You have that already?

Justice THOMAS. Yes.

Mrs. EMERSON. And what about the additional entrances to the buildings once the modernization is completed; how many additional entrances will there be for purposes of security? In other words, if we have 3 new entrances and only have 12 new officers—

Justice THOMAS. We will have enough officers to cover the entrances, but the point is that, as I said, it would be sometimes you can have things that are adequate that you can get through the process with, and then sometimes you could have a little more. And what we try to do is not to come here before this committee, particularly now in this austere period, and ask for more than we actually need.

Mrs. EMERSON. And Justice Breyer mentioned having—hopefully once the modernization project is complete, more visitors will come, and so that is important, too.

In fiscal year 2010, we funded the \$3 million building and grounds request for perimeter security. Has the Architect of the Capitol implemented those security improvements as of today, for example?

Justice THOMAS. We are in the final phases. We have one side of the building to do.

Mrs. EMERSON. Okay.

Justice THOMAS. And that will be done after the construction is done.

Mrs. EMERSON. So you think it will be on schedule and within budget?

Justice THOMAS. Based on everything I have heard, yes.

Mrs. EMERSON. That is good.

Let me switch subjects. According to your-all's budget submission, in 2009 there were 88 cases argued and 84 cases disposed of by opinion. Back in the 1970s, 1980s, early 1990s, there were well over 100 cases argued per year and disposed of by opinion of the Court. So one could ask the question then is the Court less efficient than in previous decades, or it could be other factors.

So I am just curious. Could you describe how the Court, number one, decides what cases it will accept? And do you consider this decrease in cases argued compared to earlier decades to be significant? I am just interested in your thoughts on these trends and whether you expect it to continue in future years or not.

Justice THOMAS. First of all, with respect to the future, I don't know. When I went on the Court in 1991, we had about 120 cases a year. I liked that number. Some members of the Court may not agree with it, but I think 100 to 120 would be good.

But the question is what is in our pool of cases. In the 8,000 petitions we get each year, each member of the Court goes through those petitions. I do it usually on the weekend. You go through 2 or 300 that come in that are filed or that are received during the week, and you make an assessment. What you are looking for is whether or not it is a Federal issue that is substantial or significant. And then you have other problems, whether there are some—we call them vehicle problems; in other words, a jurisdictional problem or some other reasons you can't take the case. Then we go to conference, and we do that individually, and we show up and we cast our votes. Four votes in the case is, of course, the cert petition is granted.

I don't know why the number has gone down. People have had different theories. I suspect that there has been a change in our—to some degree in our mandatory jurisdiction. It is virtually all discretionary now. It may be that the courts of appeals are agreeing more, I simply don't know. There haven't been until recently, or hasn't been, comprehensive legislation that would produce the kinds of cases that would fill our docket. I asked that this be looked into before, and I don't know anyone yet who has more than a theory. I see nothing, no documented reason yet, for the trend. I thought I happened upon one, but to this date I haven't had that substantiated.

Mrs. EMERSON. Thank you, Justice Thomas.

Justice Breyer, you look like you want to say something.

Justice BREYER. No. I think it is a very good question. I will try to keep it to the 2-minute version. The 10th-graders are the ones that I really like to talk to about this because it helps them understand what we do.

And I make a couple of points. Justice Thomas likes to have evidence. I used to be a professor, and so I don't need any evidence; I like theories. I try to point out most laws in the United States, almost all of it, is State law. Federal law is about 3 percent. That is the law passed by you in Congress and the Constitution, and we only handle Federal cases. And Justice Thomas very well said which Federal cases.

The basic rule is that we are there really to work out differences among other judges. If all the other judges in the United States who handle these questions are in agreement on what these words mean, why us? Jackson said that; he said, we are not final because we are infallible, we are infallible because we are final. Now, no one knows what that means. What it means is we don't have the last word because we are so brilliant. We are, of course, brilliant, but only, only, only in the sense that someone has to have the last word. So if they all agree, why us? And if they disagree, though, then we have to work it out. So there you have the basic criteria.

Now, why has that criteria ended up with fewer cases in the last few years? Here is where I bring in the theory, and it is a very old theory. You can read it in 1584 in Montaigne. He says this king or whoever it was was so stupid, he thought by writing a lot of laws, he was going to reduce the number of lawyers because he was going to explain everything. Doesn't he know every word in a bill is a subject for an argument in court and a decision?

So I think what has happened is our diet has become like AEDPA, ERISA, and that is because if we go back 10 years, those are the laws you passed. And now you, I gather, have passed a law with 2,400 pages. If you have passed a law with 2,400 pages, it probably has a lot of words, and I would predict as a test of the theory that 3 or 4 years today, no one is ever going to ask us again why we have so few cases.

Mrs. EMERSON. Oh, that was a good answer. Thank you.

Mr. SERRANO. It was a great answer.

Mr. Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman. And as I always have to begin my statement when the Chairman brings up the subject, I just want to begin by saying, Go, Sox. That limits my time.

Mr. SERRANO. Is that White Sox or Red Sox?

Mr. SCHIFF. Red Sox.

Mr. SERRANO. Red Sox? You have 3 minutes.

Mr. SCHIFF. You have to stick by your principles, and it is worth it.

I have a couple of questions in looking at the request in terms of salaries and expenses. It says this sum reflects an increase of 5 percent over the appropriation for 2010. What does that represent in terms of percentage increase of salary for staff? I didn't know whether the 5 percent meant a 5 percent salary increase, or

5 percent was including salary and benefits, and therefore the salary increase was less than 5 percent?

Justice THOMAS. No, 5 percent is the overall—the increase of the overall budget. And the increase of the salaries are merely—it is less than that, it is whatever we have—it was the cost-of-living increase plus whatever in-grade natural promotions that are required. But beyond that, they are not arbitrary increases, and it is not 5 percent. Five percent is the overall increase. For example, if we are required to increase benefits because of the benefit package, that goes up. If you are required to pay into whatever you are required to pay additionally into retirement systems, that has increased.

Mr. SCHIFF. Justices, if you could get back to us with an indication whatever that will mean on average salary increase for staff if you don't have that figure available.

Justice BREYER. He says it is about 1.4 percent.

Mr. SCHIFF. Thank you. And I appreciate that frugality. All our staff are facing the same kind of difficult economic challenges as well as people around the country, and appreciate your efforts to keep your budget reflective of economic times.

I do want to say that I hope, continue to hope, this year with the longer term in mind and the broader issue of judicial salaries that we can delink judicial salaries from our own, which I think has not served us well, and has not served you well, but particularly hasn't served judges well. But that is a topic for probably another discussion.

I wanted to raise an issue that I have been studying for some time and increasingly feel more and more strongly about, and I think it may be a difference of opinion. I think Justice Breyer and I have discussed this perhaps in the past, and that is the issue of cameras in the courtroom. Is there any plan in the works to change, to pilot or in any way increase the use of cameras at the Supreme Court?

Justice BREYER. Mr. Minear tells me that the Judicial Conference is currently considering a pilot project that I guess they are favorably disposed to it.

Mr. SCHIFF. That would be a pilot project in your courtroom?

Justice BREYER. No, it wouldn't be in our courtroom.

Justice THOMAS. No.

Justice BREYER. It would not. The Judicial Conference does not have to do with—our Court—it has to do with the lower courts.

Mr. SCHIFF. Well, let me raise specifically the issue in your courtroom. I will share my thoughts on that. I would be interested to hear your own.

I would think probably of any courtroom within the system, appellate courts, both the courts of appeal and the Supreme Court, would be probably the best situated for cameras in the sense that you don't have the same kind of jury issues that you might have at the trial court level. You have the ability of the judges to consider whether counsel are playing to the cameras. And I would think particularly at the level of the Supreme Court that counsel would be very circumspect about playing too much to the cameras, given that if that is not the predisposition of the bench, it would not help them in their advocacy. And I think that this is one of the

few areas of the public sector that remains free of cameras, and we are still using sketches and audiotapes, which seems anachronistic.

I just think that change is inevitable. I would be interested to hear whether you would contemplate a pilot in your own Court or why the dynamic is so different with an audiotape versus a videotape.

Justice BREYER. The answer is I think I don't know. I think I know fairly well after a long time the arguments for and against. If you bring courtrooms into—cameras into the oral argument, there is a big plus for the Court and for the public. I think they will see that we do our job seriously; we don't always get everything right, but we take it very seriously. People are well prepared, the lawyers are well prepared, the judges are trying to think out problems that are difficult problems. And for the public to see that, I think, would be a plus.

So why not do it? The concerns are not, I think, totally the ones you have mentioned, but that is part of it. The concerns are if we bring it into our Court, we are assembled, and if it is in our Court, it is likely to be in every court in the country, including criminal procedures where there are separate problems raised as well, judges, juries, witnesses and so forth.

A second problem is will understanding be promoted if you can— you can only show the oral argument, which is 1 percent of what goes on. And people relate to what they see much more than they relate to what is in writing. And we are deciding cases that we have results for 300 million people, and only 6 of them are in front of us, and we have to worry a lot about what our ruling will do to the 299,999,000, et cetera, that aren't there, and so will there be misunderstanding about that?

And the third, which I think is minor, but it is possibly there, it is not that the lawyers or judges or anybody would act up. I don't think they really would. We just had the Canadians in a visit to us, and they have it in there, their Supreme Court, and it has worked out all right. But there is some concern about what—I mean, we have a group of people in our press room who know how the Court works, and when you read what they say, you know it is being written about by someone who knows how the Court works. That isn't always so. The cameras don't always have the time, and will there be misperception given?

Now, you can take those three worries I have listed and say in your own mind, they don't stack up against the plus. I can understand that. But our jobs are those of trustees for this institution that has served America well, and there is no going back. I think there is no such thing as an experiment on this in the Supreme Court; you have to decide it. And that is why I think what is needed is a comfort level; that by giving a comfort level, it may come sooner rather than what I tend to agree with you on, inevitably later.

Now, how to get that comfortable is a long, complicated matter. I have always said it will involve studies, and serious studies, not just ones promoted by the press, serious studies of what has happened in different places. And when I say that, everyone goes to sleep, because when you mention the word "study," that is a good somnolific. But I think something like that is necessary.

I like these pilot programs even in other courts. I think there are things to be learned, and I think eventually we will get the comfort level, but I think we are not there yet.

Mr. SCHIFF. If I can engage a little bit on that, because I think you mention three different points, probably the most substantial being that, well, people could misunderstand because the case only ostensibly applies to the litigants in the Court, but it affects millions. There is, in my view, a far greater chance of misunderstanding if the public isn't able to see. There is far greater, I think, opportunity for people to be suspicious of the outcome or misunderstand the process or misapprehend the process. They don't have the window into the Court's workings that would be provided by actually watching.

And so your first observation, I think, is the much more compelling one, which is it would be beneficial to the Court because people understand what it does better. It would be beneficial to the public to gain that understanding. I think that clearly trumps any risk of misunderstanding, which is always going to be present, and I think is more present when things are done less visibly than with more visibility.

Is that the tapping of the gavel?

Mr. SERRANO. The 9-minute gavel, yes.

Mr. SCHIFF. Okay. I will wrap up, Mr. Chairman. Thank you. I knew I shouldn't have made the comment about the Red Sox.

I also think that the kind of slippery slope point that if you do it in the appellate court, you must do it in the trial courts isn't necessarily so. And there are different factors that work when you have a jury and when you don't.

And finally, the fact that the print media may be very good and very professional, and you have less control with the electronic media, that is true in our profession as well. A lot of what we do is in writing, and a lot of what all government bodies do is in writing, and I don't find that a compelling reason not to go forward.

At the end of the day, I think you put your finger up and you said, we just have to decide. I don't think a study is going to give you a comfort level. I think the only thing that will give you a comfort level is by taking the plunge. I also think, Justice, it is just inevitable. And if it is inevitable, we might as well plunge forward.

And I appreciate the chairman's indulgence. Thank you, Mr. Chairman.

Mr. SERRANO. Thank you.

The gentleman brings up an interesting issue, one that the chairman, since his days in the State assembly, has dealt with about cameras in the courtroom. My concern, just on the record, is one that will probably get me badly spoken of tonight on some talk shows, but it is precisely the fact both on the left and on the right there will be evening talk shows, not the news, but the talk shows, grabbing clips from that day's Supreme Court proceedings and saying, did you hear Breyer? What a jerk. Did you hear how many questions he had? Did you hear Thomas? Oh, my God.

Justice THOMAS. Or you didn't hear me.

Mr. SERRANO. Did you see them there?

That is my concern. And I am sure, in the desire for full disclosure, people are going to say tonight that, you know, what am I,

for covering things up? I wish there was a way that we could let the public see more and not just invite people to treat the Court the way they treat us.

Justice BREYER. There is a difference. Can I?

Mr. SERRANO. Sure.

Justice BREYER. It is sometimes overlooked, but I think it is an important one in the nature of the jobs. Your job is to write some words on a piece of paper, and those words tell people what to do or what not to do. But they don't tell on that paper, they don't say why you wrote the words. That is not the nature of the job. So obviously there is an inside story that is not on that paper.

A judge's job is different. A good appellate judge, the ideal is you write not just the words, but you write the reasons why you wrote the words. And if you are honest and good, they explain the real reasons why you wrote the words.

So in that sense the process is quite different, and it is a process that takes place much more in writing and much less even in conversation among us than, say, a job like yours. They are different, but I can see your concern there, and, of course, it is something that worries us.

Mr. SCHIFF. Mr. Chairman, if I could just jump in, one quick point.

Mr. SERRANO. You know, Mr. Crenshaw here is not happy. Go ahead.

Mr. SCHIFF. Mr. Crenshaw is such a gentleman, he will allow me 30 seconds, please.

No one is suggesting that your job is the same as ours, but I am suggesting that the public would benefit from a better understanding of your job just as it benefits from a better understanding of ours. People watch your arguments and listen to your arguments because they find the questions you ask shed light on sometimes your own thinking, sometimes on the issues in the case. I think the more the public has a chance to see how thoughtful and probing those questions are, I think, as your original comments indicated, it is good for the Court, and it is good for the public.

I yield back, Mr. Chairman.

Mr. SERRANO. Mr. Crenshaw.

Mr. CRENSHAW. Thank you, Mr. Chairman.

I might make the observation that today's hearing is being televised, and one thing is irrefutable: When you put Members of Congress on television, they tend to talk longer than they do when they are not on television. So I don't know if that is true to the Supreme Court, but we have kind of seen that over the years.

Let me say that I have looked at the numbers and listened to your testimony. The budget requests are certainly reasonable, a modest increase. The building is pretty much on time and on budget. You are asking for 12 instead of 24 additional security folks. So I don't have a lot to quarrel with in terms of budget requests.

I just have a couple of questions I am kind of curious about. Number one, how does the Court decide who comes here to testify? Is that an opportunity that everyone seeks and that you have done such a good job that you are invited back, or is it because you draw straws and you come up short every time?

Justice THOMAS. Well, actually it is probably a combination. But if you would bear with me 1 minute, I would like to just address the question of the increases on—the 5 percent increase that Mr. Schiff asked before, and that is the proposed increase for 2011 for the members of the Court is 1.4 percent. That is the mandatory increase. And for the Court personnel it is 1.4 percent also. So it is different from the 5 percent that is the overall budget. They are unrelated.

I was asked in my early years on the Court to participate, to be a part of the budget committee, and that meant that you came up here as a part of that and testified. I don't know how that selection was made except when the Chief Justice asks you to do something, you normally try to be positive and be a part, help him out. I think it is good for the Court and good for the institution to be asked to do these things. And I think, like anything else, you get used to it, and you would know the process, and they like that continuity, especially with a new Chief Justice. And he asked that we participate in this, and I think we—I think I—speaking for me, I enjoy this. I have gotten to know the members of the committee, and I think it is good for both institutions.

Mr. CRENSHAW. Well, you do a great job, and I am glad you are here.

Let me ask you a more serious question. That is as we get ready to kind of watch the nomination process of a new Justice, the discussion about diversity will come up, ethnic diversity, racial, gender diversity. I know you-all don't have a whole lot to do with the selection. That is outside your hands. But you-all do select clerks. And I was just looking at the kind of list of the clerks who have served over the years, and it seems to me there is a disproportionate share of clerks that come from either Harvard or Yale. And I look out in the audience and I see some young people who might aspire to be a clerk for a Supreme Court Justice someday. I wonder what they think when they look at that, and the kind of question becomes—is the reason for that because people from Harvard or Yale are more qualified to be Supreme Court Justice clerks, or do a disproportionate share of students from those schools apply? And is that something that you-all think about, you know, the educational diversity aspect of being a clerk?

Justice THOMAS. Well, that is an interesting question. The courts are predominantly Harvard and Yale. There is no educational diversity there to speak of. The only member of the Court who is non-Ivy League is the member who is retiring, who announced his retirement. So I don't think that is unusual. You do have excellent candidates from those two schools, Harvard and Yale.

I, for one, think that there are excellent kids all over the country. I think there are excellent potential nominees to the Court all over the country. And I would be concerned about it, but I am not—I think you have elections for that. That is up to the President.

With respect to the selection of the law clerks, I tend to hire from a very broad pool. I have a clerk from Harvard and one from Yale this year, and one from Utah and one from Notre Dame. I really don't see it as a negative when a kid is number 1 or top of the class. The pool may not be as deep at some of the other schools, but there is a pool nonetheless. But others, you know, it is an indi-

vidual thing. I hire my own clerks, and I have my own criteria. And I am certain the other members of the Court have theirs, and with that may go their comfort level with moving beyond the Ivy Leagues or too far beyond.

Mr. CRENSHAW. Mr. Chairman, one last question. I have always got two bright people in front of me today, and when I was reading law, one time I read a case, and I can't remember the case and I can't remember the Justice, but the statement was that versatility of circumstance often mocks the natural desire for definitiveness. Does that ring a bell with you-all? Was that Felix Frankfurter? Not that you would know that, but I always wondered who said that. I need to go back and look that up.

Justice BREYER. Google.

Justice THOMAS. You should Google it, yes.

Mrs. EMERSON. I will do it.

Justice THOMAS. On your BlackBerry.

Mr. CRENSHAW. I will do that. I once Googled a quote by Jonathan Swift. There was a book called Confederacy of Dunces, and interestingly enough, I just Googled that because it was based on a quote by Jonathan Swift, who Mr. Schiff knows, who said, whenever a true genius appears on the scene, you will know him by the sign. The dunces all form a confederacy against him. So I will go Google that quote, and maybe I can find out who said that.

Mrs. EMERSON. I will do it for you. Write it down.

Mr. CRENSHAW. Thank you, Mr. Chairman.

Mr. SERRANO. Thank you.

Ms. Lee.

Ms. LEE. Thank you very much.

Good morning. Let me just say once again how delighted I am to see you both. It is really a rare opportunity that we have a chance to interact with the judiciary, so thank you for being here.

I want to follow up Mr. Crenshaw. Boy, he asked my question, but let me just follow up a little bit and take it a little bit deeper in terms of how I would like to see your answer a little bit more in terms of a broader answer.

First of all, I started here on Capitol Hill as an intern in the early 1970s, became a chief of staff, and then went to California, ran for the legislature, and now I am back here. It has been very difficult. And I have seen some progress in terms of women and people of color in these key positions. Not enough. Actually we have, to the Speaker's credit, looked at diversity here on Capitol Hill, and we are still not where we should be in terms of reflecting the diversity of our great country.

Now we are in the midst or the final stages of the census. We know based on the previous census we are looking at 15.4 percent persons of Hispanic decent, 12.8 percent African American, 4.5 percent Asian, 1 percent American Indian. And so I know that the courts want to strive to be representative of the American people in terms of your staffing and law clerks, but we have to examine, I think, each agency and each branch of government to really look at how it does reflect the diversity of our country.

And Harvard and Yale are great law schools, they are excellent institutions. However, we know that there are few minorities attending these law schools. And so I want to find out if you have

an actual concerted effort to identify law clerks from schools like Howard or Texas Southern or even, in terms of regional diversity, Boalt Hall in California? And how do you do this, and is there a way we can look at what those numbers are currently?

And secondly, just in terms of I know your budget is a relatively small budget, but if you do contract out any of your activities or services in terms of vendors and projects, and if you do contract these out, do you have any information as it relates to women and minority-owned vendors and how you are doing in that respect, if you do have a contracting program? I know I asked this question last year, and, Justice Thomas, your response was the law clerks reflected, or you thought they reflected—

Justice THOMAS. Well, the pool that we—that is the pool for us. All of our clerks, or virtually all, with rare exception come from the courts of appeals. So you start with the courts of appeals, that is our base. Then it is individual after that. But I know of very few clerks who have not at least clerked at the court of appeals. Some clerk more than once or clerk at various levels. So the clerks that you are looking at, you look first at the courts of appeals; then you look at what we pull from that.

Now, I have to admit I have a broad base as far as the law schools, probably as broad as anyone at the Court with exception of maybe Justice Stevens, and so there are quite a few in the pool. The reality is that it is the Hispanics and Blacks who do not show up in any great numbers.

Ms. LEE. They don't show up why?

Justice THOMAS. Well, you just look in the pool.

Ms. LEE. So how do we increase the pool?

Justice THOMAS. Well, I don't think it is up to us.

Ms. LEE. I would hope there would be a strategy.

Justice THOMAS. I don't think it is up to us to increase the pool. The pool comes from law schools and from other judges. And then there are other things that go into that. But with that aside, as far as—I don't really—I have to admit, I don't really disaggregate my selection process that way. I just broaden it, and the kids show up. I have had very good success in kids who have done well. But—

Ms. LEE. Who are people of color and minorities?

Justice THOMAS. Yes, I mean, but mostly—you know, again, that is not as big an aspect of what I do. It happens. There are some who show up, and I don't even know what their color—

Ms. LEE. No, I understand that, but in a country where we have a history of discrimination, to show up—

Justice THOMAS. I understand that.

Ms. LEE [continuing]. Just to show up, but we need to have a concerted effort to make sure those who show up are inclusive of the population.

Justice THOMAS. But what is there is there. I think that what you look at is what is in the pool.

Ms. LEE. But what is in the pool has to do, unfortunately, with some of your decisions on the Supreme Court that have really shut out many people of color in some of these institutions. So if we go there, we could really have a good, healthy discussion about some of your decisions. But I would think that we would want to see a broader pool.

Justice THOMAS. I think everybody wants it.

Ms. LEE. And you would find ways to help at least at the court of appeals.

Justice THOMAS. The wanting and the reality are two different things. I think that we should have people from all over the country on the Court. And as I have indicated, we tend to heavily lean toward one region in the country.

Ms. LEE. Justice Thomas, I am trying to figure out how do we change that? Because you don't want to see a Supreme Court that is discriminatory, de facto, and that is what happens.

Justice THOMAS. I think you do that—as I said, you broaden the areas that you look. Many of us do that. I don't think we have the capacity to change other Federal judges' hiring practices.

Ms. LEE. You don't have the capacity, but—

Justice THOMAS. To change other Federal judges' hiring practices.

Ms. LEE. Wouldn't it be great if you sent out an edict to say, Wouldn't it be nice to have a diverse law clerk pool that reflects this whole country?

Justice THOMAS. I think they know that. I think that that is one thing—

Ms. LEE. They may not if you don't have the pool of people there to pull from. They may not know that; that that is what you all want to see. Somehow you need to communicate if that is what you would like to see, rather than just say, We will take who shows up. Because we know who is going to show up, especially from Harvard and Yale.

Justice BREYER. I would say this conversation is not as in date as you might think. That is, when I came to the Court 15 years ago, I was a little surprised at the small number of minorities and people of color and Hispanic background who were law clerks. I would say in the last 15 years, there has been a sea change, and I think that it has not been as difficult as people might think. And I think once you establish credibility in the areas of people who might think, "Well, I don't even have a chance," you say, "No, you do have a chance." I can't say that, but I have to know people who will know other people who will tell other people. And then gradually people begin to think, "Oh, yeah, maybe I do have a chance". And then they maybe get into this pool, whatever the pool might be. In other words, like anything else, when you are hiring people or anyone else hires people, you have to do so through networks and contacts. That is at least part of it. And I have seen that change.

So I don't think I have had a huge problem here in this respect. Not perfect, but not the kind of problem that I think you might be thinking of. I think there have been quite a few in my office of very, very diverse backgrounds. And it has not—I will even tell the chairman, I have even, Mr. Chairman, had a law clerk y sus abuelos son de Ponce—I don't even know if Ponce should be considered part of Puerto Rico because after all, if you are from Ponce, you are really special.

Ms. LEE. Mr. Chairman, I think the facts would speak for themselves. I would just like to ask to see a report of ethnic, gender,

and regional diversity. Is that possible, a current report, so we can look at that?

Mr. SERRANO. This is a very important issue for us and for this committee and it has been for me as it has been for you, Ms. Lee. I can understand what the justices are saying, and maybe it is not their role to say, Send me this person or that person. So in view of that—

Ms. LEE. I understand that.

Mr. SERRANO. In view of that, this committee asked the Judicial Conference to give us a report. And the report that came back was pretty pathetic about the numbers at that level in their courts. So what this committee wants to continue to try to do is apply pressure, if you will, where the pressure needs to be, which is at those so-called lower levels, to make sure that the pool is increased.

Our information is that that is not happening; it continues not to happen. And I intend for this committee to begin to tie what we do to an understanding that the federal judiciary can't come every year and ask for a lot of support from us and then continue to give us those numbers.

Ms. LEE. Sure. And I understand that, and I have seen those numbers. And I hope we get an updated report also, Mr. Chairman. But I also think somehow there should be some sense of intent, or the Supreme Court justices should make a statement that this is something you would like. You can't say, Yes, send us a diverse pool. But you can at least indicate in some way that it would be nice to see diversity reflected, and anything you could do would be very helpful. You all would know how to nuance that.

Justice BREYER. I agree with that.

Ms. LEE. I am just asking if somehow you can do that minimally.

Justice BREYER. Done. I agree with you.

Ms. LEE. Thank you very much.

Mr. SERRANO. For the record, I want to state that Ms. Lee asked a question I was going to ask and—

Ms. LEE. Mr. Crenshaw asked it.

Mr. SERRANO. Justice Thomas, you and I have discussed this publicly for a while. This is still a concern. And I add to my concern in the past to Ms. Lee's current concern which I think is important; that in a way that does not compromise the integrity of the Court, the Supreme Court itself speak in some way on this issue. I am not asking for a Court decision. I am still waiting on the one where the Puerto Rican can run for President of the United States. That is another issue.

But you make some kind of a statement that things have to change at the lower level because there is a problem. And, unfortunately, every year when you folks come here, it is the Court that takes the brunt of the questions when, in fact, I agree with you that the pool is a problem.

But in addition to the pool being a problem, or in spite of the pool being a problem, I think if the Court was to say we need this to change, we could begin to see change. And I have nothing against Harvard or Yale. There are different places throughout the country that can provide good folks.

Now, whenever we have you before us, we try to speak only to budget issues and we can't pass up the opportunity to touch slight-

ly on other things. We won't get into any decisions. As we honor the long tenure and important contributions of Justice Stevens over the next few months, I cannot help but notice that we lose certain unique characteristics from the demographics of the courts with his or anyone's retirement at the end of this term. Justice Stevens is our last remaining member of the Court to serve in the military during World War II. He is the one remaining Protestant member of the Court and the last justice whose Supreme Court confirmation hearing was not televised, amongst other things.

As we reflect on what we lose from Justice Stevens's long tenure and experience, we must also begin to look forward to what people want and expect of a new nominee. Absent any judicial philosophy, which all of us here probably have a different opinion on, are there any experiences, legal or otherwise, that you believe the Court would be well served by in a new justice?

And secondly, do you think having all the current justices with previous judicial experience at the Federal courts of appeals helps or hinders deciding cases? Do you think the Court would do well to have a justice with experience at the State level of our judicial system, as Justice Souter did, or perhaps to have an experience as an elected official, as some other members have had? So without again getting into philosophy, what best serves the Court in your opinion?

Justice THOMAS. Well, to all of the above, Mr. Chairman, I would say yes. I don't think it matters as much what the experience is, as long as it is experience making decisions, and hard decisions. Just as I think it helps us if someone is from a different part of the country, it helps us if someone practiced law or maybe taught a particular area or prosecuted or defended in a particular area. A judge on a lower court, a trial judge versus an appellate judge, all of those things help—Byron White was a wonderful judge, another World War II veteran. He had not been a judge at all. He was a deputy attorney general and in private practice before he came on the Court. Just an excellent member of the Court.

So I think all of the above works. What we look for, those of us who have been there a while, someone we can get along with, an honest person, a person who will be conscientious, a person who will realize it is a small group of us making hard decisions. I don't think we ever discussed, at least during my tenure, how a particular person would vote. And that is the way we operate. But I don't have a formula for what a judge should actually have. I like the way the Court is; people come at problems with different perspectives and with a different background. I think it is helpful to have that sort of mix. And I think that most sitting judges learn in doing this job that it is a humbling job, simply because the only people who have ready answers are the people who have no authority to make the decision and no responsibility to make the decision. Those of us who have to make it, have to be more cautious and have to be more humble about our abilities. So I don't think any of us would come out and say to you, We have a formula for what the next member should look like. Just as long as the person is a capable, good person.

Justice BREYER. I think in respect to what you are talking about, you should keep in mind the job—and it's why it is a better job for

an older person, in a way—it is sitting in a room. That is how I spend my day; I spend my day looking at the word processor. You are reading and you are writing. I told my son that. I said, “If you do your homework really well, you get a job and you can do homework the whole rest of your life.” But what that means is you have to know not just what those books say—that is part of it—and what all those cases say and what the briefs say—that is part of it—but you have to have what I would call a certain kind of imagination because you have to be able to think yourself beyond the room into the lives of the people whom these decisions will actually affect, and you have to have a realistic imagination so you will understand what the impact of this decision is going to be on those people.

I cannot give you a magic touchstone that will tell you whether you have that kind of person. All I can tell you is that the nine people that are there try as hard as they can, and sometimes they succeed and sometimes they don't. But it is that kind of imaginative experience of others that really, I think, makes the difference in terms of how you write those words.

Justice THOMAS. Yeah.

Mr. SERRANO. It is interesting, Justice Thomas, when you say it is a humbling experience. I will tell you a quick experience that I had. I represent, as you know, the South Bronx and there are a lot of immigrants in the South Bronx, there are a lot of folks with English as a second language, a lot of poor folks, a lot of folks with little education. So I have been explaining on a daily basis, after 20 years in Congress, what it is a Member of Congress does. It is a daily routine for me, either in a school or in a community center or on the street.

When Sonia Sotomayor was being considered, granted, a lot of the excitement was that she was a woman from the Bronx, that she was a Hispanic woman, that her parents were from Puerto Rico. But there was no explanation on my part as to what she was being nominated for. Everybody understood “el Corta Supremo.” It was as if they knew that this was huge, this was big, this was important, this was the coming of age for the community; and it became something where everywhere I went you are going to make sure this happens: Right, oh, yeah, I spoke to the Senate and it is a done deal.

But the importance—I have told you in the past, much to the dismay of some of my friends on the left, that I feel a little uneasy about having a hearing for the Supreme Court because of the respect I have for the Court. I don't always agree with its decisions, but I have a respect for what it is. It is humbling, but the public understands. The public understands the importance of what you do and the bearing it has on the future of our country. So we always thank you for your service and tell the other seven that we do the same for them.

Justice THOMAS. Thank you, Mr. Chairman. And it is always an honor being here. You and I have been at this together for a decade and a half.

Mr. SERRANO. I am glad to hear that you don't think there has to be a judge on the court up here, because I am not a judge.

Justice THOMAS. And you don't have to be born in the United States. You never have to answer that question.

Mr. SERRANO. Really? So you haven't answered the one about whether I can serve as President, but you answer this one?

Justice THOMAS. We are evading that one. We are giving you another option.

Mr. SERRANO. Thanks a lot.

Justice THOMAS. Thank you, Mr. Chairman.

Mr. SERRANO. Mrs. Emerson.

Mrs. EMERSON. Carrying on this thread a little bit, so the last three justices appointed to the Supreme Court were 55, 56 and 50. The last retiree, 90. Some have referred to becoming a justice or an appellate judge as taking the veil. And I am just curious, do you all think that it is good for the Court to have these younger justices serve terms that could be easily 40 years in length? I am curious.

Justice THOMAS. Well, you are talking to a person who was appointed in his forties. I guess I am sort of an extreme example of your example. I can say this, and let me answer it this way: I am very pleased that I had the opportunity to work with members of the Court who had long tenures. Each of them brought something unique. They have a view of the law and the job that is different and has more depth to it than when those of us in our first 2 or 3 years. They have been there.

To hear Justice Stevens talk about being there in the early days with Justice Stewart, and what the decisions were, and having sat on so many cases that now form the precedential foundation for much of our jurisprudence, it gives you an advantage when you have people with that much experience.

I don't have a magic formula for how long judges should be on courts. If it was 25 years, I would be close to done; I would move on to another phase of life. But it is not that. It is a lifetime appointment in this country. And I see from my perspective, not necessarily for me, but I see some advantages to it and some disadvantages. But so far I just simply do not see, in serving with members who were in their later years, I just haven't seen all that many disadvantages. They have been wonderful colleagues, to a person.

Mrs. EMERSON. I appreciate that. Justice Breyer.

Justice BREYER. I don't know if the right number is 40. I don't know what it is. It needn't be that long. But you would have missed Holmes, some of Holmes's service and Brandeis. What I think is important is that they be long-term. And the reason I think that is because it means that you will have members appointed by different Presidents. And while Presidents make a huge mistake if they think they are going to appoint somebody who is going to agree with them all the time, they—Teddy Roosevelt appointed Holmes. Three months later he is on the wrong side of the Northern Securities case and Roosevelt says, "I can carve a judge with more backbone out of a banana." He was pretty annoyed.

But on general philosophy, on general philosophy, there is more of a correlation. All right. I came to this Court. I have been a judge in New England. I grew up in San Francisco. I spent a lot of time teaching, and I suddenly thought, my God, I have met a lot of people who I disagree with on something, but boy they are really here and they really disagree. And then I think about that for 5 min-

utes, and I think that is a very good thing. This is a very big country. There are 300 million people. They have 900 million points of view. There is every race, every religion, there is everybody under the sun in this country. And they have learned how to live together under law. And our greatest perk, our greatest benefit, is we get to sit there and see that.

So it is a very, very good thing that I serve with people who don't always agree with me—sometimes they might—but who don't always agree with me and have different points of view. I think you ought to serve at least long enough to be sure you pick up a lot of that.

Mrs. EMERSON. I appreciate that.

Let me ask another question that is a rather touchy subject. And I promise you, I am not trying to put you on the spot. But this is a big issue, given the fact there are a lot of judicial vacancies around the country at all levels. Are we having a tough time retaining judges because we are not giving any cost-of-living increases?

Justice BREYER. Yes.

Justice THOMAS. Yes.

Justice BREYER. In my opinion, yes.

Mrs. EMERSON. Easy enough.

Justice THOMAS. Not only are you having trouble retaining some of the ones who are on the bench, we are beginning to see pushback or resistance to even being nominated by some of the best talent in the country. But that is just a part of the reality.

But I would like to just take a brief second to touch on just one aspect of the diversity question because I think Ms. Lee had a good point. One of the things that you run into when you visit law schools that are not the Ivy Leagues is a sense among the students—and it doesn't matter whether they are minorities or women or males—that is, just many of the students—that there is no chance that they can be here at our Court as law clerks or any other capacity. That is something that I think we certainly can eliminate in saying that that possibility exists. And that spreads throughout.

I also think that Justice Breyer is absolutely right that a lot of our hiring—there are only four to each of us a year. There is no system. We all do it individually. It depends on the people you know. So if you know more people, say, at the University of Georgia or George Mason or other schools, the University of Missouri or Creighton, you have a tendency to rely on their advice about a young person who is applying. And it is very individualized. So the broader that net is and the more—the least resistance you have to people applying, the more chances you have of bringing some of the individuals in who are now being excluded on a large scale or a significant scale.

Mrs. EMERSON. And I am grateful for you saying that. I look at my husband, who is a brilliant attorney, who got into two schools, the University of Missouri and Yale. He applied to only two and chose to go to the University of Missouri to prove that he could be as good, if not better, than a Yale lawyer. That is a terribly silly reason and risky. But nonetheless, I just think it is important to move just beyond the Ivy Leagues because there are so many

young people, who just simply can't afford to go to the Ivy League schools, who are brilliant and deserve to have opportunities. And I am glad to see the sensitivity toward bringing in more diverse schools.

Mr. SERRANO. We are going to wrap up in a couple of minutes, both of you. When you spoke about the lack of pay or other reasons, I am reminded of a thought I have every so often; and that is that we are a people who love our country. We love our system, and we should. It is the greatest system in the world. We love our democracy, and we should. It is the greatest democracy in the world. We love it so much that at times we act like we are trying to impose it on other people in other countries because we like it so much.

We don't care so much for the people who run the system or the people who make the judging systems. It seems like a lot of Americans think this runs by itself, it was set up and it runs by itself.

So there is this incredible contradiction, but healthy, I guess, where we love what we have going, but somehow the roads get built by themselves and nobody has to approve that budget, and the hospitals get funded by themselves, and there is no one in the courts except a computer.

Let me ask you just a couple of more questions and we will wrap up. This one, bear with me, there is a brief statement before. There has been some confusion as to the Supreme Court's requirements for granting cert and stays in capital cases; that is, in cases involving the death penalty. My understanding is that generally the Supreme Court only requires four votes to grant cert, which allows that case to be reviewed by the Court.

However, it is also my understanding that the Court has never made explicit its policy for granting stays in cases involving the death penalty, although many scholars of the Court indicate that the Court needs a five-person majority to grant a stay in death penalty cases. This results in potential situations in which the Court could grant cert to hear a case involving the death penalty for a particular individual, but not stop an execution from going forward.

Would it be possible to get a firm explanation of the voting requirements that are necessary to grant a stay of execution in capital cases? Do you think that cases such as those discussed in the recent New York Times article on this issue where the Supreme Court decided to hear a case involving the death penalty, but refused to stop an execution going forward until the Court had heard the merits of the appeal, does that present a problem? And I apologize if you feel that I may be going into Court decisions. I am trying not to do that at any of these hearings.

Justice THOMAS. I think it is a fair question, without discussing the actual case involved. I think that would be inappropriate. The practice has been, since I have been at the Court, to be very sensitive to this difference between the number of members of the Court it takes to grant cert versus the number it takes to stay any action, not just executions. And in the past, the reason it rarely comes up is because it is resolved internally with individuals casting a vote to stay it, even if they don't agree with it. So you don't have that inconsistency. And occasionally you might have a dif-

ference of opinion as to the underlying merit of the grant. But there are reasons in these sort of exceptional cases why you don't get the fifth vote, but the normal practice is that the five is almost automatic. So it is rare.

Justice BREYER. It is important to see, in things like this, because it is a very important matter, that there are informal ways of working things out. And so the four who would like it granted also are thinking, well, there is an issue here. And you might have enough discussion with the other members of the Court where you would think, well, it would be an issue, but it is not necessarily a winning issue you have here. And others might test the strength of feeling, and it is perhaps a little bit like you might have in a caucus or something, or a discussion where you try to get things to work out. And normally it works out, not always to everybody's satisfaction, but normally it works out.

Mr. SERRANO. Thank you.

Justice THOMAS. That difference is always there. And just by the rarity of the occurrence you can see that it works out. And I think Justice Breyer's keyword there is these "informal" arrangements, of which we have many at the Court, allow you to make adjustments as circumstances change.

Mr. SERRANO. Right. Just ending here.

March 18th, you started hosting the Web site, the Court itself. Will you be keeping records of the different pages or parts within the site that get hits? And how will you use that?

Justice THOMAS. I am not aware of whether or not we are going to do it for each page. But let me have our Web people, our IT people, prepare a report and get back to you.

Mr. SERRANO. Great it would be good to find out and also how you are going to use that data.

Justice BREYER. If you have a chance, it is [www.supremecourt.gov](http://www.supremecourt.gov).

Mr. SERRANO. I have been there.

Justice BREYER. Good.

Mr. SERRANO. And by the way, I apologize—talking about technology—for being a little late today. I was putting on Facebook that we were going to be on C-SPAN. So I thought it was important.

And to make our C-SPAN friends happy, my last question is: Last year C-SPAN aired a special series on the Supreme Court. All the justices agreed to be interviewed. The series enabled the public to hear directly from the justices about their work.

What other steps have the justices taken, either individually or collectively, to help inform the public about the Court's operations and its important role in our democracy and in our constitutional structure? I just say that I am a big fan, as I told you before about the whole situation with Sotomayor, of informing the public more and more and more of what the Court is all about, because it is so important.

Justice THOMAS. I think that on what you see—when we started this conversation about informing the public, think of the things we were talking about—making the briefs available. All of the briefs are now available.

Mr. SERRANO. A short time after.

Justice THOMAS. That is right. It is a joint arrangement with the ABA. It is right after they are filed.

Now, with a joint arrangement with C-SPAN, you saw that wonderful presentation where every member participated. And C-SPAN does a particularly good job because they don't have an angle other than to get it done right. And I think you are going to see that the Web site, the fact that we have control of it now, allows us to do more and more of this; to do things, for example, to work with our historical society, to work with other institutions, the ABA and organizations like C-SPAN, to make the Court accessible to people who can't get there.

We can talk about oral arguments. Oral arguments are a minuscule part of the decision making process in my opinion. And it is also a minuscule part of what we do and what happens at the Court.

But there is so much more that is already there, and more that will be accessible to the public on the Web site and in other ways. You will see more cooperation with, I think, organizations like C-SPAN and the American Bar Association.

Justice BREYER. I think that may be the only single thing we can do in response to your earlier question; and that is, Why do people in this country not understand what it is we do? And although you, I am sure—and I know that we do, and I have seen him give an infinite number of speeches, Justice Thomas, to the Horatio Alger Society, any group that comes into the Court. We are talking to high schools, we are talking to grammar schools when they come in.

Yesterday I was at Duke, talking to some law schools. And C-SPAN is such a help in this, beyond belief, because they will put these things on. I grant you sometimes it is for insomniacs, but nonetheless it is very helpful. I mention it because—

Mr. SERRANO. When it is midnight in New York, it is 9:00 in California.

Justice BREYER. Justice O'Connor has been devoting her retirement years to this, as has Justice Souter. And what the "this" is, is trying to get teaching of civics restored to the high schools and trying to get, say, you or others in the government to explain to children through a lesson plan, through a lesson plan, what it is you do, so they take it in in an organized way.

She has a Web site. The Annenberg Foundation has been supporting it. There are other foundations, Carnegie, that support it. And I believe in it completely and I am sure you do too. And we love spending time doing that.

Mr. SERRANO. I know that the last time I was at the Court seeing certain people that I see here at this hearing dressed in a special attire to make a presentation, that was quite historic and beautiful.

Once again, thank you for coming before us. Thank you for the service to our country. As we move forward on this budget process, we will take into consideration your request. And you know that in the past, we have done the right thing and we will continue to do the right thing.

Justice THOMAS. Thank you, Mr. Chairman. Thank you, Mrs. Emerson.

Mr. SERRANO. The hearing is adjourned.

**Statement of Justice Clarence Thomas  
Associate Justice of the Supreme Court of the United States  
before the  
Subcommittee on Financial Services and General Government  
of the  
House Committee on Appropriations  
April 15, 2010  
10:00 am  
Rayburn House Office Building, Room 2358-A**

Chairman Serrano and Members of the Subcommittee:

Thank you for your kind welcome. Justice Breyer and I are pleased to appear before you, on behalf of the Supreme Court, to address the Court's budgetary requirements and requests for the fiscal year 2011. We share your appreciation that this hearing is one of the few occasions in which Members of the Court meet with Members of Congress, and we are grateful for the opportunity and consideration shown to us.

Several members of the Court's staff are also present here today, including William Suter, Clerk of the Court; Pamela Talkin, Marshal of the Court; Jeffrey Minear, Counselor to the Chief Justice; Kathy Arberg, our Public Information Officer, and Venita Acker, our Acting Budget Manager.

Mr. Chairman, when we have appeared before this Subcommittee, you and the Ranking Member have spoken generously of the important role that the Supreme Court plays in our constitutional structure. We likewise recognize the important role of Congress, including its responsibility to make appropriations for the operation of the government. We also recognize

the important role of this Subcommittee in that process, and we would like to express our thanks for your support in addressing the Court's needs in fiscal year 2010.

The Supreme Court's budgetary needs are tiny compared to the whole federal government. We nevertheless take very seriously our responsibility to review carefully our needs and seek no more funding than necessary. We are well aware that, in these difficult times, we must be especially vigilant in maintaining budgetary discipline.

As is customary, the Supreme Court's budget request is set out in two parts: first, "Salaries and Expenses of the Court"; and second, "Care of the Building and Grounds." Justice Breyer and I will address the salaries and expenses portion, while the Acting Architect of the Capitol, Stephen Ayers, will present a statement to the Subcommittee concerning the budget request for the Care of the Building and Grounds.

Before we turn to salaries and expenses, I would like to make some brief observations on one subject pertaining to the Building and Grounds; that is, our ongoing modernization of the Supreme Court building. We expect that this project, which commenced in earnest in 2003, will be completed this summer, with construction close-out activities extending through the end of the year and into early 2011. Although the project encountered delays in its early stages, and the scheduled completion is behind the 2008 target date, the project remains within its original budget. Throughout the project, Court personnel have met regularly with the staff of the Architect of the Capitol and the construction contractors in order to

ensure that the project stays on budget and that no further slippage in the schedule occurs.

The primary focus of my testimony today, however, is the Court's appropriation request for salaries and expenses. The Court requests an appropriation of \$77,758,000 for fiscal year 2011. That sum reflects an increase of \$3,724,000, or 5%, over our appropriation for fiscal year 2010. Most of the increase—more than 70%—represents base adjustments. Those unavoidable adjustments include \$2,665,000 for required increases in salary and benefit costs, and \$173,000 for inflationary increases in fixed costs of the Court's necessary operations.

Last year, the Court sought a new appropriation, in addition to base adjustments, of \$799,000 to enable the Court to manage its own Website and integrate it with the Court's other operations. We are grateful for the Subcommittee's support of that request, which included \$496,000 for five new technology positions and \$303,000 for required hardware and software. Just six months into fiscal year 2010, we can already report concrete results. On March 18, 2010, the Court commenced in-house hosting of its Website and took over site management responsibilities from the Government Printing Office. Our new, Court-managed Website has a variety of innovative features that will appeal to the legal community and the general public. In the first two weeks of operation, the Website received more than 25 million "hits" from users around the world. We have already received positive response from our users and will continue to improve the Website in the coming months.

This year, the Court's only program increase is directed to the Court's security needs. Last year, when I appeared before the Subcommittee, you asked whether the Court had adequate funding for security. At that time, I alluded to the possibility of a need for additional security funding in fiscal year 2011. The Court's security personnel have since studied the Court's requirements and have determined that the police force should be increased by 24 officers. But we are aware that Congress expects every agency of government to do more with less. Therefore, we have limited our request to twelve new officers, and will reevaluate our security needs once those new officers are in place.

We request a modest additional appropriation of \$886,000 to fund the twelve new police officer positions. The Court would employ those new officers primarily to supplement perimeter security for the Court building. Those positions are necessary because the Court Modernization Project, among other things, will result in new pedestrian entrances and the reopening of one of the vehicle entrances that was closed during the renovation. The Court needs to provide adequate security at those posts and to enlarge the capacity of its Police Command Center, which coordinates police activities throughout the building. While I do not wish to dwell on security details in this public hearing, I do want to emphasize that those in charge of Court security feel strongly that the Court needs the additional manpower that we request today.

The Court's request for additional police officers comes only after a careful evaluation of the Court's minimal needs. The Court has not requested additional police positions since fiscal year 2006. Instead, the

Court has relied on existing strength to meet increased responsibilities. As I pointed out earlier, our internal evaluation suggests that the request for twelve new officer positions may in fact meet only half of the Court's present needs. We will continue to monitor that matter and inform the Subcommittee next year if we conclude that we still have essential but unmet security requirements.

In closing, I would like to reiterate that we are aware of the severe budgetary constraints facing the federal government, and we recognize that the Committee must balance the needs of all the agencies under its jurisdiction and make difficult decisions in applying available funds to the most pressing needs. The budget request we submit, as in previous years, represents only what we think is absolutely necessary to fulfill the Court's mission. We appreciate your careful attention to our modest needs and will be pleased to respond to your questions.

**STATEMENT OF STEPHEN T. AYERS, AIA, LEED AP  
ACTING ARCHITECT OF THE CAPITOL**

**Regarding Fiscal Year 2011 Appropriations**

**U.S. SUPREME COURT, CARE OF THE BUILDING AND GROUNDS**

**Subcommittee on Financial Services and General Government  
Committee on Appropriations, U. S. House of Representatives**

**April 15, 2010**

Mr. Chairman, I am pleased to submit this formal statement regarding the Office of the Architect of the Capitol's (AOC's) Fiscal Year 2011 budget request for the care of the building and grounds of the Supreme Court of the United States (SCUS).

The AOC is responsible for the structural and mechanical care, maintenance, cleaning, and operation of the buildings and facilities supporting the Congress. This responsibility includes the Capitol Building, the House and Senate Office Buildings, as well as the U.S. Botanic Garden, the Library of Congress buildings and grounds, and the U.S. Capitol Police buildings and grounds. Our Agency also undertakes the design and construction of new facilities and the renovation of existing facilities on behalf of the Congress.

For the Judicial Branch, the Architect of the Capitol, by authority of 40 U.S.C. 6111a-6111b, dated May 7, 1934, is responsible for the structural and mechanical care of the Supreme Court building and grounds, to include the design and construction of new facilities and the renovation of existing buildings.

**Operations and Maintenance**

The AOC's priorities continue to be the care and maintenance of the U.S. Supreme Court to ensure the safety and security of personnel and visitors, as well as to make improvements to the building and grounds. Our FY 2011 budget request continues to focus on these important priorities, and therefore we have requested \$14,788,000 to meet

the requirements of the Court for the care of the building and grounds. This request is \$263,000 more than the FY 2010 enacted amount. Program increases totaling \$6,385,000 have been requested to fund two additional permanent positions (\$85,000), and to fully fund the final phase of the roof system project (\$6,300,000). Costs have increased from last year by \$65,000 for mandated pay-related items, agency contributions, and benefits adjustments. In addition, general inflationary costs for current operations and maintenance services increased by \$13,000.

During FY 2009, we made significant improvements to building systems, grounds, and our maintenance processes. They include refurbishing, maintaining and repairing numerous private restrooms, repaving and restriping the A Street parking lot, upgrading the cable television system, installing ADA compliant water coolers in public spaces, replacing firebrick on Southeast Quadrant fireplaces, and sustained pointing and grouting of exterior marble joints of the north entrance walls, interior stairwells, and the second floor interior walls.

We also continued our program to track the preventive maintenance of mechanical and other equipment, and bar coding these assets in order to schedule routine servicing. Our regular care and maintenance of the facility includes pressure washing the annex garage concrete and marble terraces, and performing maintenance and a variety of repairs to the grounds and interior courtyards. In addition, numerous minor repairs and improvements were made to the building's plumbing, heating/ventilating/air conditioning (HVAC), and electrical systems. As part of the ongoing building security project, we recently installed new infrastructure, raceways, and security devices.

#### **Roof System Repairs**

The requested increase of \$6,300,000 in FY 2011 will fund the final phase required to repair deteriorated roof components, and to fully restore the highly decorative and original historic roof to optimum condition. Funds in the amount of \$7,500,000 have been

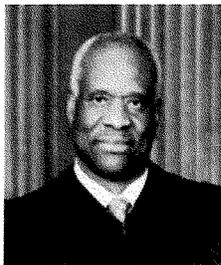
appropriated to date for this project. Repair work began in FY 2007 and will continue through calendar year 2011.

**Building Modernization Project Status Update**

I am pleased to report that the cost estimate for the U.S. Supreme Court Building Modernization Project remains within budget. This two-phased construction project began in summer 2004, and is scheduled to be completed in 2010. In FY 2007, an additional \$6.3 million was appropriated to attain full funding for the estimated cost to complete, which brings the appropriated budget authority to \$122.3 million. Project work is completed in the Northwest, Northeast, and Southeast Quadrants. Work is ongoing in the Southwest Quadrant and the remaining two mechanical rooms. The Southwest Quadrant is scheduled for completion in summer 2010. At that time, work will continue in the basement mechanical rooms, parking garage, and final commissioning of systems will be conducted. Upon completion of this work, the site will be demobilized, which is scheduled for the end of 2010.

**Conclusion**

Mr. Chairman, while we recognize that these are fiscally-challenging times, we believe that it is important to continue to invest in the Supreme Court's infrastructure to ensure the seat of our Federal judicial system will continue to endure. Our budget request for FY 2011 directly corresponds with our responsibility as stewards to maintain and preserve the facilities in our care. We will continue to work closely with you, the Subcommittee, and the Court on these important matters. We appreciate your continued support of our efforts.



Clarence Thomas, Associate Justice, was born in the Pin Point community of Georgia near Savannah June 23, 1948. He married Virginia Lamp in 1987 and has one child, Jamal Adeen, by a previous marriage. He attended Conception Seminary and received an A.B., cum laude, from Holy Cross College, and a J.D. from Yale Law School in 1974. He was admitted to law practice in Missouri in 1974, and served as an Assistant Attorney General of Missouri from 1974–1977, an attorney with the Monsanto Company from 1977–1979, and Legislative Assistant to Senator John Danforth from 1979–1981. From 1981–1982, he served as Assistant Secretary for Civil Rights, U.S. Department of Education, and as Chairman of the U.S. Equal Employment Opportunity Commission from 1982–1990. He became a Judge of the United States Court of Appeals for the District of Columbia Circuit in 1990. President Bush nominated him as an Associate Justice of the Supreme Court, and he took his seat October 23, 1991.



Stephen G. Breyer, Associate Justice, was born in San Francisco, California, August 15, 1938. He married Joanna Hare in 1967, and has three children - Chloe, Nell, and Michael. He received an A.B. from Stanford University, a B.A. from Magdalen College, Oxford, and an LL.B. from Harvard Law School. He served as a law clerk to Justice Arthur Goldberg of the Supreme Court of the United States during the 1964 Term, as a Special Assistant to the Assistant U.S. Attorney General for Antitrust, 1965–1967, as an Assistant Special Prosecutor of the Watergate Special Prosecution Force, 1973, as Special Counsel of the U.S. Senate Judiciary Committee, 1974–1975, and as Chief Counsel of the committee, 1979–1980. He was an Assistant Professor, Professor of Law, and Lecturer at Harvard Law School, 1967–1994, a Professor at the Harvard University Kennedy School of Government, 1977–1980, and a Visiting Professor at the College of Law, Sydney, Australia and at the University of Rome. From 1980–1990, he served as a Judge of the United States Court of Appeals for the First Circuit, and as its Chief Judge, 1990–1994. He also served as a member of the Judicial Conference of the United States, 1990–1994, and of the United States Sentencing Commission, 1985–1989. President Clinton nominated him as an Associate Justice of the Supreme Court, and he took his seat August 3, 1994.

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SUBCOMMITTEE ON FINANCIAL  
SERVICES AND GENERAL  
GOVERNMENT

HEARING

ON

THE FY 2011 BUDGET REQUEST OF  
THE U.S. SUPREME COURT

Questions for the Record

for

The U.S. Supreme Court

April 15, 2010

**Questions for the Record  
Submitted by Chairman Serrano**

- 1) Will the Supreme Court keep track of the hits on various Website pages? If so, how will the Court use that information?**

Our Data Systems department will be keeping track of data relating to the types of browsers used to access the Court's Website, what pages or features of the Website are the most popular, what geographic areas (domestic and international) generate the most hits, and what errors, if any, are identified through page browsing.

Data Systems will use this information to assess the volume of Website use, analyze those aspects of the Website that can be improved, and identify and correct errors. By monitoring such data, the Court will be able to operate the Website more effectively and serve the public more efficiently.



WEDNESDAY, APRIL 28, 2010.

**FY 2011 BUDGET REQUEST FOR THE GENERAL  
SERVICES ADMINISTRATION**

**WITNESS**

**MARTHA N. JOHNSON, ADMINISTRATOR OF GENERAL SERVICES**

Mr. SERRANO. Good morning. I am sorry I am somewhat late. I was trying to reach a group that came from Puerto Rico for tomorrow's big bill, and so we are all running all over the place. And yes, we ran that race this morning, and I finished the race.

Mrs. EMERSON. You ran it or walked it.

Mr. SERRANO. I ran it. It might have looked like I was walking, but trust me.

Mrs. EMERSON. Oh, no, no, no, I thought it was a walk race, not a run race.

Mr. SERRANO. You mean versus like a Republican-Republican and a Democrat-Democrat.

Mr. SERRANO. No, it was a race.

And my team, the Serrano Peppers did very well.

Mrs. EMERSON. What a cute name.

Mr. SERRANO. Yes. Okay. Today we hear testimony on the fiscal year 2011 budget request of the General Services Administration, GSA. We welcome Administrator Martha Johnson, who was confirmed this February to discuss this agency's fiscal year 2011 budget submission. Ms. Johnson served as co-lead for the Obama Presidential Transition Agency Review Team for GSA. Among other positions, she served as GSA chief of staff from 1996 to 2001 under then Administrator David Barram. From 1993 to 1996, she was assistant deputy secretary at the Department of Commerce.

Congratulations on your confirmation. We are glad to have an administrator in place and are happy to have you here for your first hearing before us.

The GSA has been supporting Federal agencies and their workers since 1949 by acquiring goods and providing services and facilities to support the needs of those agencies. The GSA performs a wide range of services from the construction of Border Patrol stations through the management of many e-gov initiatives.

Additionally, the GSA coordinates and evaluates government-wide policies related to the management of government property, technology and administrative services.

The Recovery Act provided GSA with \$5.55 billion for green projects, new construction, including Federal Court houses, lands ports of entry and initial construction of the DHS consolidated headquarters on St. Elizabeths campus in D.C. This project, at 4.5 million total square feet, is the single largest commission in GSA's

history. I look forward to a discussion of GSA's continuing implementation of the Recovery Act funds.

The administration is requesting \$674.8 million in discretionary funding for 2011, which is a 13.5 percent increase over 2010. Given the President's freeze on nonsecurity discretionary spending, we will need to take a close look at all agency requests for increases.

Administrator Johnson, this subcommittee looks forward to the remarks you will make today. I would like to ask that you please keep your opening statement to 5 minutes. Your entire written statement will be submitted for the record.

And now I would like to turn to my colleague, my sister, the greatest ranking member in the world, and a person who believes that races are walks.

Mrs. EMERSON. Probably because I would have had to have walked it, Mr. Chairman.

Mr. SERRANO. Or because every race for you in November is a walk.

Mrs. EMERSON. I only wish. Is that an endorsement?

Mr. SERRANO. I stand by my previous statement.

Mrs. EMERSON. Thanks, Mr. Chairman.

We really appreciate your being here, Ms. Johnson, and we welcome you for your first appearance before the Appropriations Committee.

I must tell you that having spent a lot of time reviewing the GSA budget, I find it one of the more complex budgets in our jurisdiction. So I really appreciate the Chairman holding this hearing. And I appreciate the fact that you all really touch the lives and workings day to day of every Federal agency and every Federal employee. And the fact is that the level of business you all do is quite staggering.

Just to make a couple of comments. The Federal Buildings Fund has grown to over \$9 billion a year, and that is not including the one time influx of the \$5.5 billion that we gave you of stimulus funds last year. You all manage a portfolio of almost 9,000 buildings and structures for the Federal agencies that have a replacement value of \$70 billion, and you procure over \$40 billion in goods and services for the Federal agencies.

So even though it has been a year since the stimulus bill was enacted, I am still having some issues with that \$5.5 billion worth of stimulus money that we gave to the General Services Administration. Many of the buildings that, as I told you, that were receiving funds for modernization were or are recently constructed buildings, and I am still not satisfied, or I guess it is just not clear to me, why these new buildings were prioritized when you were still facing about a \$5.5 billion backlog in building repairs.

With regard to annual energy savings it is unclear to me how much in energy savings will be realized from the modernizations, as well as the appropriations accounts which reflect the savings.

And I will just make a side comment that apparently in the Greening of the Capitol, we are all getting new toilets in our offices. And in order to save the amount of water that we need to save for energy purposes, one would have to flush their toilet 69 times a day in order to achieve the water savings that we have

been told that these \$660 toilets will cost. So therein lies my real sort of antipathy about this particular issue.

I am opposed to the use of stimulus money to fund the escalation costs of buildings already being constructed. And I will be curious as to how many new jobs, if any, were created by devoting millions of so-called stimulus funds to cover escalation costs.

Mr. Chairman, I hope to continue working with you to ensure oversight of billions of taxpayers' dollars being managed by GSA. I just want to make sure that GSA is not just spending money because we gave it to them and because they have lots of it, but that every dollar is being used to improve the efficiency and operations of the Federal Government.

So thanks so much for being here today and I look forward to your testimony.

Mr. SERRANO. Thank you so much.

Please proceed. As I said, please limit it to 5 minutes, and we will put your full statement in the record.

Ms. JOHNSON. Thank you so very much.

All right. Chairman Serrano, Ranking Member Emerson and distinguished members of the subcommittee, thank you for inviting me to appear before you today to discuss GSA's fiscal year 2011 budget request. I would also like to thank you for your continued support of GSA through the appropriations process. The funds you provided to GSA in the Recovery Act and in our fiscal year 2010 appropriation are being dedicated to some of the most pressing problems our Nation is facing: stimulating the economy through job creation, reducing the Federal Government's carbon footprint, and increasing energy security, and ensuring that taxpayer dollars are being spent wisely and transparently.

As Administrator, my vision is to transform GSA into an innovative change agent for the government. We will change the way we acquire, manage and dispose of our assets to improve the environmental and financial performance of the government. We will accelerate our efforts to open government through our government-wide policies and expertise in citizen engagement and collaboration. GSA will offer new sustainable products and services to our customers and, in so doing, will influence their behaviors to reduce consumption, reduce waste, improve efficiency and effectiveness.

We will make this transformation and improve our performance so that GSA is known across the government for three things: innovation, customer intimacy and operational excellence. We have demonstrated our commitment to improving these three dimensions of performance by embedding them in our new mission statement, which is, GSA's mission is to use expertise to provide innovative solutions for our customers in support of their missions and by so doing foster an effective, sustainable and transparent government for the American people.

With that said, GSA's fiscal year 2011 budget request further supports our efforts to achieve our mutual goals of economic recovery, sustainability, and open government. Our budget requests \$675 million in net budget authority. This amount is just 2.8 percent of our total planned obligations of \$24 billion. The majority of our funds come in the form of customer reimbursements for goods

purchased or rent paid for space under GSA jurisdiction, custody or control.

For the Public Buildings Service, GSA requests \$9.2 billion in new obligational authority. Of these funds, \$676 million are requested for the construction and acquisition of critical facility projects for the Department of Homeland Security, Food and Drug Administration, Federal Bureau of Investigation, Customs and Border Protection, and the exercise of the lease-purchase option to acquire a building used by the Internal Revenue Service in Martinsburg, West Virginia.

We also request new obligational authority of \$703 million for repairs and alterations to Federal buildings. These funds are used to prevent deterioration and damage to buildings, which not only protects the government's investment but helps to ensure the health and safety of building occupants.

For GSA's operating appropriations our fiscal year 2011 budget requests \$321 million. Our operating appropriations provide for GSA's Office of Government-Wide Policy, the many government-wide programs of the Operating Expenses account, the GSA Office of the Inspector General, the Electronic Government Fund, the pensions and office staffs of former Presidents and the Federal Citizen Services Fund. This year's budget also requests funding for a new appropriation, the Federal Acquisition Workforce Initiatives, whose purpose is to improve Federal contracting.

In fiscal year 2009, GSA's Federal Acquisition Service realized positive net operating results for all portfolios for the first time since establishment. Revenues increased in all FAS portfolios, resulting in total revenues of \$9.9 billion, an increase of nearly 7 percent over fiscal year 2008.

In fiscal years 2010 and 2011, GSA anticipates continued growth in FAS business, as we foster collaboration and develop new partnerships.

The Recovery Act just over one year ago provided GSA with \$5.85 billion, including \$4.5 billion to convert existing GSA facilities into high-performance green buildings; \$1.05 billion for the construction of new Federal buildings, U.S. courthouses and land ports of entry; and \$300 million to replace motor vehicles across the fleet. As of March 31, 2010, we have obligated over \$4.3 billion in Recovery Act funds and used the full \$300 million provided for the energy efficient motor vehicles.

These funds have a tremendous impact on the economy, and we have acquired a number of motor vehicles and demonstrated significant impact on energy usage. We have done our best to maximize economic impact of our recovery funds. We are awarding construction contracts for less than initial estimates. Using our existing authorities, we sold motor vehicles that we replaced with Recovery Act funds and retained nearly \$45 million in proceeds, which we can then reinvest in new hybrid vehicles.

To conclude, your approval of GSA's budget request for 2011 is a critical step towards helping GSA achieve our mutual goals of economic recovery, sustainability, and open government. Thank you.

[The information follows:]

4/23/2010

**STATEMENT OF MARTHA N. JOHNSON  
ADMINISTRATOR OF GENERAL SERVICES  
BEFORE THE  
HOUSE APPROPRIATIONS COMMITTEE  
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
UNITED STATES HOUSE OF REPRESENTATIVES  
APRIL 28, 2010**



Chairman Serrano, Ranking Member Emerson, and Distinguished Members of the Subcommittee:

My name is Martha Johnson and I am the Administrator of the General Services Administration (GSA). Thank you for inviting me to appear before you today to discuss GSA's fiscal year (FY) 2011 budget request. I would also like to thank you personally for your continued support of GSA through the Appropriations process. The funds you provided to GSA in the Recovery Act and in our FY 2010 Appropriation are being dedicated to some of the most pressing problems our nation is facing: stimulating the economy through job creation, reducing the Federal government's carbon footprint and increasing energy security, and ensuring that taxpayer dollars are spent wisely and transparently.

Today, GSA is better positioned than ever to meet the President's objectives and help other Federal agencies to deliver a "government that works" for the American people. Our government-wide reach makes us uniquely qualified to help fulfill the President's performance and management agenda. GSA provides workspace for over one million Federal employees across the U.S. and offers over 12 million products and services to Federal agencies in locations around the world. The agency is responsible for government-wide administrative policy, and we have demonstrated leadership in opening government through a variety of web sites and new media tools.

Our mission is to support other Federal agencies in their missions. Here, our challenge is to provide our Federal customer agencies with the solutions and expertise that they need in order to deliver a truly modern government. We must increase trust by increasing transparency, maximize our social and environmental benefits by

focusing on sustainability, and improve our business practices by promoting innovation and collaboration.

As Administrator, my vision is to transform GSA into an innovative change agent for government. We will change the way we acquire, manage, and dispose of our assets to improve the environmental and financial performance of the government. We will accelerate our efforts to open government through our government-wide policies and expertise in citizen engagement and collaboration. GSA will offer new, sustainable products and services to our customers and in so doing will influence their behaviors to reduce consumption, reduce waste, and improve efficiency and effectiveness.

We will make this transformation and improve our performance so that GSA is known across government for three things: innovation, customer intimacy, and operational excellence. We have demonstrated our commitment to improving these three dimensions of performance by embedding them in our new mission statement and in our new strategic goals. Our new mission statement asserts that:

*GSA's mission is to use expertise to provide innovative solutions for our customers in support of their missions and by so doing foster an effective, sustainable, and transparent Government for the American people.*

We have re-defined our strategic goals, to guide us as we transform GSA and move forward to carry out our new mission.

Our first strategic goal is innovation. GSA must become an innovation engine for the Government. We have the opportunity to use our government-wide perspective and expertise, our centralized procurement and property management role, and our unique statutory authorities to move Government forward. We have already made

significant contributions to Federal sustainability by deploying hybrid-electric vehicles in the Federal motor vehicle fleet and by testing cutting-edge, green technologies in Federal buildings. We are making significant strides in testing cutting-edge information technology, employing collaborative tools, and pressing for new practices, including Cloud Computing, to improve the effectiveness of Government at a lower cost to taxpayers.

The second way we will improve our performance is by enhancing customer intimacy. We cannot succeed unless our customers succeed. Therefore, we must seek a deep understanding of and resonance with our customers and their missions. GSA must be a membrane between Government and industry. We must develop connections between customer requirements and industry solutions. Instead of filtering this information, our membrane must facilitate and accelerate the flow of data, information, and knowledge between GSA and our Federal agency customers, industry, and the public. Transparency, participation, and collaboration are both the tools and the outcome of enhanced customer intimacy.

GSA already has some impressive accomplishments in Open Government: We make government contract award data easily available to the public and searchable through our Federal Procurement Data System and through our support of USASpending.gov. We have long provided a single point of access to a variety of government information and services through our operation of the award-winning web portal of the U.S. Government, USA.gov and GobiernoUSA.gov. More recently, GSA deployed a web-based public dialogue tool that Federal agencies can use to collaborate

with the public on various initiatives. Within 60 days of launch, 22 of 24 major agencies had used this public dialogue tool to conduct at least one public dialogue.

GSA's third strategic goal is operational excellence. Using our expertise to deliver meaningful and useful solutions for our customers, our industry partners, and our employees -- day over day, week over week, year over year -- is operational excellence. We will strive for such performance excellence by seeking continuous improvement in our operations. GSA intends to re-engineer and reverse-engineer our business processes to ensure that they are able to perform with reliability, efficiency, economy, and effectiveness.

The Commissioner of the Public Buildings Service (PBS), Bob Peck, has already started the transformation in PBS by introducing the concept of "global project management" which creates integrated, cross-functional teams, each of which will be dedicated to a single project for the life of that project. This approach replaces the traditional process of passing customers through multiple PBS organizations as a project proceeds from requirements development, to contracting, and into construction management. "Global project management" integrates and focuses our resources, thereby delivering "operational excellence": While the obvious advantage is increased performance, the bonus is that such techniques wring inefficiencies out of the system, reducing costs and surfacing further inefficiencies. This self-reinforcing loop frees up more and more of our customers' resources to dedicate to fulfilling their missions.

These new strategic goals of innovation, customer intimacy, and operational excellence clearly link GSA operations and the President's performance and management agenda. In addition, they are deliberately chosen so that GSA employees

can understand their direction and take actions to support them within the scope of their ordinary responsibilities. The collective energy of over 12,000 strategically aligned employees is the foundation for both a GSA transformation and GSA's positioning as a change agent for the Federal government.

GSA's new strategic goals guide our leaders in operational decisions, and when requesting and allocating resources, and setting priorities in a fast-paced and constantly changing environment. The goals also support outcome-focused and data-driven performance management at GSA. This is perhaps the biggest change that we will undertake. We plan to use emerging technologies to sort and share data, and use networking and collective intelligence technologies to turn that data into information. GSA and our customer organizations will be thus able to make business decisions based on accurate evidence and knowledgeable analysis.

To jumpstart this link between our strategy and performance, we answered the President's call for high-priority performance goals. We began by choosing clear and measurable objectives that will deliver meaningful progress towards achieving our new strategic goals in the next 12 to 24 months. Our high-priority performance goals are challenging, but they will deliver near-term performance improvements for the Federal government and for our citizens. This work reflects the President's priorities and will produce some dramatic near-term achievements and increased performance confidence in sustainability, open government, and improvements to GSA business processes.

Our first high-priority performance goal is "sustainability". GSA will promote and foster a sustainable environment, economy, government, and Democracy by reducing

our own consumption of resources, and by providing our Federal agency customers with solutions that help them manage and reduce their consumption, as well. This high-priority performance goal is supported by three measures by which GSA will identify and change administrative policies so that they will enhance Federal sustainability, begin collecting greenhouse gas emissions disclosures from vendors who do business with GSA, and increase the percentage of waste that is diverted from landfills through recycling across Federal building inventory.

We aligned this high-priority goal with our strategic goal of "innovation". GSA is positioning itself to become a "green proving ground" for the Federal government, evaluating new technologies and practices to measure the return on investment and assess the viability of wider deployment. This goal captures the excitement for "greening" the Federal supply chain. GSA will provide a greenhouse gas tracking and management tool to other agencies, and we will help the Federal government become the largest government entity – and the first in the United States – to obtain greenhouse gas emission disclosures from our vendors. We plan to use our expertise in government-policy and acquisition planning to help Federal contracting officials incorporate vendor emissions disclosures into procurement decisions.

Our second high-priority performance goal sets short-term objectives for expanding open Government and transparency. GSA will drive greater transparency and openness in government through the adoption of agile technologies, processes, and expertise for citizen engagement and collaboration built around innovative solutions that provide a more effective, citizen-driven government. This goal is supported by performance improvement targets for GSA's direct contacts with citizens, for the citizen

engagement solutions we provide to other agencies, and for our efforts on behalf of the Administration to expand the use of social media tools to increase public participation in government.

GSA has aligned this high-priority performance goal with our strategic goal of “customer intimacy”, because building a transparent and open Government benefits all of our customers: other Federal agencies, our stakeholders in the Administration and in Congress, and the American public. This goal supports our desired outcome of harnessing the collective intelligence of large groups to build a more effective government. One way we are doing this is through our participation in the “Better Buy project”, a joint initiative between GSA’s Federal Acquisition Service (FAS), the National Academy of Public Administration, and the American Council for Technology - Industry Advisory Council (IAC). The Better Buy project is an on-line public dialogue that solicits advice on ways to use collaborative technology to improve Federal acquisition processes. In response to an idea submitted through the Better Buy project, FAS is testing the viability of using a public wiki to conduct market research and develop requirements for two major IT acquisitions. A “wiki” is a public website that allows users to edit and add information: The FAS Better Buy wiki allows interested parties to help write a draft solicitation, ask questions, and engage in meaningful technical debate on each section. These pilots demonstrate how collaboration and social media can be used to increase the efficiency and effectiveness of Federal acquisitions.

Our third high-priority performance goal is “excellence in solutions delivery” which aligns with our strategic goal of operational excellence. An example is the initiative

underway in PBS in which GSA will work with our customer agencies, starting with three this year, to develop strategic portfolio plans. These long-term plans will help us develop strategic partnerships and jointly identify outcomes that best meet mission workplace needs, manage customer real estate costs, and maximize the performance of GSA's inventory of real property assets.

Strategic portfolio plans will re-shape the way that GSA manages real property assets by improving space utilization and operational efficiencies. Portfolio plans will transform our approach to fulfilling customer workspace requirements. GSA will form strategic partnerships with our customers jointly, to plan mutually-beneficial solutions for long-term workspace needs. We will use portfolio plans, combined with data on real estate markets and available inventory, to offer more comprehensive solutions for meeting new customer requirements. Portfolio plans will give GSA new insight into the future needs of our customers, allowing us to focus on longer-term solutions which more effectively utilize our portfolio of real property assets.

One final goal, which is our highest priority, is the successful implementation of the Recovery Act. We did not submit a high-priority performance goal on this critical initiative because it is a statutory mandate, but it is no less important than our other goals and it is the subject of significant effort and management attention. We are committed to fulfilling the purpose of the Act by stimulating job growth and retention and improving the environmental performance of our assets.

With your permission, I would like to turn the conversation to the American Recovery and Reinvestment Act of 2009 ("Recovery Act") and provide you with an update on GSA's efforts to implement this critically important legislation.

**AMERICAN RECOVERY AND REINVESTMENT ACT**

Just over one year ago, the Recovery Act provided GSA with an unprecedented \$5.85 billion, including \$4.5 billion to convert existing GSA facilities into high-performance green buildings, \$1.05 billion for the construction of new Federal buildings, U.S. courthouses, and land ports of entry, and \$300 million to replace motor vehicles across the Federal fleet with new and more efficient vehicles.

As of March 31, 2010 we have obligated over \$4.3 billion in Recovery Act funds, including \$4 billion for Federal buildings and the full \$300 million provided for energy-efficient motor vehicles.

These funds have had a tremendous impact on the economy. We have acquired over 17,000 motor vehicles from American manufacturers, awarded construction contracts to more than 500 companies in 50 States, 2 U.S. territories, and the District of Columbia, and we have injected over \$547 million in Federal outlays into the economy. As of the reporting quarter ending in December 31, 2009, our Recovery Act funding recipients reported that 1,702 prime contractor jobs had been funded as a result of the \$2.4 billion we had obligated at that time.

We have done our best to maximize the economic impact of our Recovery funds. We are awarding construction contracts for less than our initial estimates. This has resulted in approximately \$173 million in funding being made available for reallocation, which has already been invested in additional high-performance green features on new and existing projects. These projects will create additional jobs and add more sustainable features to Federal buildings at no additional cost to the taxpayers. Using our existing authorities, we sold the motor vehicles that we replaced with Recovery Act

funds, and retained nearly \$45 million in proceeds from those sales. With those proceeds, we will purchase new hybrid-electric vehicles, as part of a larger effort that will double the number of hybrid motor vehicles in the Federal fleet by December 31, 2010.

The funds provided in the Recovery Act provided a much-needed capital infusion that greatly accelerated our progress towards meeting our sustainability goals. Recovery Act investments in the Federal fleet and in our Federal buildings will help us to reduce energy and water consumption and will help make our inventory of Federal buildings into a proving ground for new green building technologies and practices.

We anticipate that all new construction and major building modernization projects will achieve at least a Silver certification in Leadership in Energy and Environmental Design (LEED) from the U.S. Green Buildings Council. We are aggressively deploying innovative green building technologies and, to date, we have installed 37 energy-efficient lighting system projects, 7 photovoltaic roofs, and 136 advanced meter projects. We are also increasing our use of renewable energy and co-generation to power offices with low- and no-carbon energy. As we deploy cutting-edge, sustainable design and technology, we are evaluating performance and capturing data on the environmental and economic payback, to share with industry and other Federal agencies.

For example, at the Major General Emmett J. Bean Federal Center in Indianapolis, Indiana, we will install a state-of-the-art photovoltaic roof with over 4,500 solar panels, producing over 1.4 megawatts of electricity. We will also install a smaller array of four alternative photovoltaic systems, to allow for a comparative evaluation of

commercially available photovoltaic solar panels operating in Midwest climates. This test project, conducted jointly with the Department of Energy and Sandia National Laboratories, will provide long-term operational and maintenance "lessons learned" for each of these systems. In total, the photovoltaic systems on this building are expected to reduce its peak electrical usage by as much as six percent as well as provide a proving ground for emerging technologies.

At the Columbus, New Mexico, Land Port of Entry, we will invest Recovery Act funds to design a net zero energy facility. A net zero energy building is a highly energy-efficient building that uses renewable energy-generation technologies to produce as much energy as it consumes from traditional utility grids over the course of a year. This design will reduce greenhouse gas emissions and will also support the tenant's mission requirement to maintain critical systems in the event of a complete loss of utilities.

Recovery Act funds provided to procure new, energy-efficient motor vehicles have also produced impressive results. Each vehicle we acquired replaced a vehicle in the Federal fleet with a lower miles-per-gallon rating. We estimate that the 17,246 motor vehicles purchased will save 16.7 million gallons of fuel over their lifetime, and will reduce Federal greenhouse gas emissions by 334 million pounds over the same period. The procurement included 3,101 hybrid-electric sedans, the largest one-time acquisition of hybrid vehicles ever by the Federal government, and 35 hybrid buses. This acquisition tripled the number of hybrid vehicles in the Federal fleet in just one year and, as I mentioned earlier, we will double that number again by December 31, 2010, ending with over 11,000 hybrids across the Federal fleet.

GSA Recovery Act funding has created jobs, benefitted local communities across the country, and delivered lasting progress toward building a more sustainable national infrastructure. The investments funded by the Recovery Act will help reduce energy consumption in our Federal buildings and in the Federal fleet, and will increase our use of clean and renewable sources of energy. Our investments are helping to stimulate job growth and retention in critical sectors. The funds that you, the Subcommittee, entrusted to us gave GSA a unique opportunity to help improve Federal environmental performance and to contribute to economic growth in our nation. I thank you for that opportunity, and I hope that we have proven worthy of your confidence.

#### **FY 2011 BUDGET REQUEST**

GSA's FY 2011 budget requests a total of \$675 million in net budget authority. This amount is just 2.8% of our total planned obligations of \$24 billion. The majority of our funding is provided through reimbursements from Federal customer agencies, for purchases of goods and services or as rent paid for space in Federally-owned and – leased buildings under GSA jurisdiction, custody or control. GSA requests appropriations to support capital investments in the Federal Buildings Fund, to provide for our government-wide responsibilities, and for other activities that are not feasible or appropriate for a user fee arrangement.

Our FY 2011 budget request provides for an increase of \$80.3 million over our FY 2010 enacted level.

Our budget requests an increase of \$25.5 million to the Government-wide Policy appropriation. This request would provide for the modernization of the Integrated

Acquisition Environment (IAE) and other government-wide information systems, which will improve Federal acquisition processes and reduce operating costs by moving critical acquisition systems to a common platform. We have requested permanent funding for the Office of Federal High-Performance Green Buildings, to support GSA's government-wide role in improving the sustainability of Federal real property. We have also requested funding for improvements in our Federal Advisory Committee activities, to improve transparency and increase citizen participation in Government.

We have requested \$24.9 million for a new appropriation, the Federal Acquisition Workforce Initiatives Fund, to improve Federal contracting and increase the effectiveness of Federal spending by investing in the civilian acquisition workforce. This request would provide for new initiatives to address gaps in acquisition workforce development activities and to support increases in the acquisition workforce requested by other agencies in the FY 2011 President's Budget.

Our request for the Federal Buildings Fund increases net budget authority by \$25 million. This increase provides for a capital investment program that meets customer needs, complements efforts underway through the Recovery Act, and contributes to the sustainability of our portfolio of Federal buildings.

#### **FEDERAL BUILDINGS FUND**

Our FY 2011 budget requests \$9.2 billion in New Obligational Authority (NOA) and an appropriation of \$292 million for the Federal Buildings Fund. Our request proposes a capital investment program of \$1.38 billion, including headquarters consolidation projects for the Department of Homeland Security (DHS) and the Food

and Drug Administration (FDA), new construction projects to house U.S. Customs and Border Protection (CBP) and the Federal Bureau of Investigation (FBI), and the exercise of a lease-purchase option to acquire a building used by the Internal Revenue Service (IRS).

We have requested \$676 million in NOA for New Construction and Acquisition, including \$590 million for Executive Agencies and \$86 million for two land port of entry facilities. Our request includes the following projects:

- St. Elizabeths DHS Consolidation and Development in Washington, DC (\$268 million);
- St. Elizabeths West Campus Infrastructure in Washington, DC (\$99 million);
- St. Elizabeths Historic Preservation Mitigation in Washington, DC (\$5 million);
- St. Elizabeths Highway Interchange in Washington, DC (\$8 million);
- FDA Consolidation in White Oak, MD (\$174 million);
- Denver Federal Center Remediation in Lakewood, CO (\$8 million);
- P.V. McNamara Federal Building FBI Garage in Detroit, MI (\$4 million);
- IRS Annex (Purchase) in Martinsburg, WV (\$25 million); and
- Land ports of entry in Calexico, CA and Calais, ME (\$86 million).

GSA also requests NOA of \$703 million for Repairs and Alterations (R&A) to Federal buildings. The request includes \$218 million in NOA for four major building modernizations, \$103 million for four projects within the Design program, \$335 million for non-prospectus level projects, and \$47 million for Special Emphasis programs. Our proposed major modernization projects are:

- Major General Emmett J. Bean Federal Center in Indianapolis, IN (\$66 million);
- James C. Corman Federal Building in Van Nuys, CA (\$11 million);
- Daniel Patrick Moynihan U.S. Courthouse in New York, NY (\$28 million); and
- Frank Hagel Federal Building in Richmond, CA (\$114 million).

Our Design program would provide:

- West Wing Design Phase II in Washington, DC (\$6 million);
- Federal Building / Parking Garage (FBI) in Los Angeles, CA (\$51 million);
- Edward J. Schwartz U.S. Courthouse and Federal Building (ICE) in San Diego, CA (\$22 million); and
- E. Barrett Prettyman U.S. Courthouse in Washington, DC (\$23 million).

Our Special Emphasis programs would provide:

- \$20 million for Energy and Water Retrofit Conservation Measures;
- \$20 million for Fire Prevention Program; and
- \$7 million for Wellness and Fitness Program.

GSA is dedicating \$20 million to our Energy and Water Retrofit and Conservation program, to reduce on-site energy and water consumption in existing Federal buildings. This Special Emphasis program will upgrade Heating, Ventilation and Air Conditioning (HVAC) and lighting systems, install advanced metering, increase water conservation, support new renewable energy projects, and many other items that will conserve energy in Federal buildings. This program is *in addition to* the energy conservation measures

that are already incorporated into our prospectus-level New Construction and Repairs and Alterations project requests.

GSA is also dedicating, in support of the Administration's new health and wellness initiatives, \$7 million to our Wellness and Fitness program to upgrade, replace, and improve space within Government-owned buildings in support of employee wellness. Typical projects will include upgrades to fitness centers, cafeterias and snack bars, and health units, as well as facility alterations necessary to expand services.

In addition to our capital program, GSA requests New Obligational Authority for our operating program, in the amount of:

- \$5.3 billion for the Rental of Space program, which will provide for 197 million rentable square feet of leased space;
- \$2.3 billion for the Building Operations program; and
- \$136 million for the Installment Acquisition Payments program.

#### **OPERATING APPROPRIATIONS REQUEST**

Our FY 2011 budget requests \$321 million for our operating appropriations. Our operating appropriations provide for GSA's Office of Government-wide Policy, the many government-wide programs of the Operating Expenses account, the GSA Office of Inspector General, the Electronic Government Fund, the pensions and office staffs of former Presidents, and the Federal Citizen Services Fund. This year's budget also requests funding for a new appropriation, the Federal Acquisition Workforce Initiatives Fund.

The largest increase in our request is for the operating requirements of the Office of Government-wide Policy, including the Office of Federal High-Performance Green Buildings. The proposed increase of \$25 million is primarily made up of the \$21 million increase for modernization and upgrades to government-wide information systems to improve reliability and transparency. Funds provided would be used to increase system capacity, improve data quality, and lower operating costs in future years for multiple Federal systems. Timely investment in these systems is critical to fulfilling the Federal Funding Accountability and Transparency Act and the President's Open Government Directive. The funds requested would be used for system modernizations necessary to improve data reliability, interoperability, and accessibility. Increased accessibility and transparency of government spending data, regulatory information, and contracting opportunities will attract new entrants into the Federal market which in turn improves competition.

GSA has also requested \$24.9 million for strategic investments in the Federal, civilian acquisition workforce, through the Federal Acquisition Workforce Initiatives Fund. These funds would provide for activities that foster and promote the development of the government-wide acquisition workforce and support the responsibilities provided for in the Office of Federal Procurement Policy Act. Funding is requested to mitigate the risks associated with gaps in either capacity or capability of the acquisition workforce, to improve the effectiveness of the workforce, and to maximize competition and value. Our request includes \$6 million to create and maintain the contractor inventory database required by section 743 of Public Law 111-117, the FY 2010 Consolidated Appropriations Act.

Additional funds requested for GSA operating appropriations include increases for the Federal pay raise and inflation, along with proposed program increases to:

- fund new and existing Electronic Government projects to improve the efficiency and effectiveness of Government operations through information technology, improve the transparency of Federal operations, and increase citizen participation in Government.
- provide high-performance green building standards for all types of Federal facilities;
- develop and enhance multiple government-wide databases to improve Federal reporting and transparency; and
- reflect the full-year cost of the pensions and related benefits for the former Presidents.

#### **FEDERAL ACQUISITION SERVICE**

In FY 2009, the Federal Acquisition Service (FAS) realized net operating results of \$209 million. For the first time since establishment of FAS, all portfolios realized positive net operating results. Revenues increased in all FAS portfolios, resulting in total revenues of \$9.9 billion in FY 2009, an increase of nearly seven percent over FY 2008 levels. In fiscal years 2010 and 2011, GSA anticipates continued growth in FAS business, as we foster collaboration and develop new partnerships to expand sustainable acquisition practices in the Federal community.

GSA and FAS are committed to improving the environmental performance of the Federal government by providing products, services, and expertise in sustainable

acquisition. FAS has developed a web-based management tool to track greenhouse gas emissions, fuel and energy consumption, and other data. This tool is pre-populated with emissions data from GSA programs and is offered for free to other Federal agencies, to assist them in making cost-effective energy use and emissions management decisions.

FAS led an inter-agency team which developed recommendations for the White House Council on Environmental Quality (CEQ) and OMB on "greening" the Federal supply chain. These recommendations were prepared in response to Executive Order 13514, "Federal Leadership in Environmental, Energy, and Economic Performance", and included a feasibility assessment of tracking and reporting greenhouse gas emissions of Federal contractors and vendors. FAS is also working with the Carbon Disclosure Project and several Federal agencies to request greenhouse gas emissions disclosures from major vendors. GSA has set an Agency High-Priority Performance Goal of obtaining disclosures from at least 60 key Government vendors by September 30, 2011. This will allow our customers to consider greenhouse gas emissions when considering vendors.

FAS is also working to change its own business offerings to help its customers make informed decisions regarding sustainable and environmentally-preferable products and services. FAS is currently developing green purchasing training for its customers. This training will highlight applicable laws and regulations, share environmental considerations for developing statements of work, and share best practices and solutions for complying with Federal green purchasing regulations.

FAS is taking steps to accurately list and supply ENERGY STAR and Federal Energy Management Program (FEMP) designated products on GSAAAdvantage!®, GSA's on-line ordering system. FAS has initiated partnerships with ENERGY STAR and FEMP to share data and ensure that products identified as ENERGY STAR or FEMP-compliant are accurately labeled. FAS has also added alerts to GSAAAdvantage!® to notify buyers of ENERGY STAR and FEMP-compliant alternatives when they choose products that are not environmentally-preferable.

GSA and FAS are taking the lead in sustainable acquisition for the Federal government. We are committed to assisting agencies in making sustainable procurement decisions that support their missions while delivering value to the American public.

#### **SUMMARY STATEMENT**

I accepted President Obama's nomination as the Administrator of General Services in order to transform GSA into an agent of change. GSA is uniquely qualified to make a dramatic impact on Federal sustainability by increasing the efficiency and reducing the environmental impact of our Federal buildings, fleet vehicles, and the Federal supply chain. We can and will do more to engage our citizens, to capture and use their collective intelligence, and to open up government and Democracy to the American public. And we will take our own performance to the next level: We will excel at innovation, we will be intimate with our customers, and we will be known for achieving results.

The accomplishments that I have shared with you today demonstrate GSA's commitment to leading change. GSA is an organization with tremendous history of innovation, a deep and growing understanding of our customers and their missions, and a great skill at delivering solutions. We will meet our current challenges and we will seize the opportunities that lie ahead.

Your approval of GSA's budget request for FY 2011 is a critical step toward helping GSA to achieve our mutual goals of economic recovery, sustainability, and open Government. GSA is dedicated to delivering on these goals, and we will use our expertise to provide innovative solutions for our customers in support of their missions and by so doing foster an effective, sustainable, and transparent Government for the American people.

**CLOSING STATEMENT**

Mr. Chairman, this concludes my formal statement. I look forward to continuing this discussion of our FY 2011 budget request with you and the Members of the Subcommittee.

Mr. SERRANO. Thank you.

Thank you for your testimony. One of the objectives of the Recovery Act was to commence with expenditures and activities as quickly as possible, and that is a quote, in order to help create jobs and stimulate the economy. Some observers have expressed concern that while GSA should ensure funds are prudently managed, its Public Buildings Service has not expended the \$5.5 billion in funds it received as rapidly as the Recovery Act intended. In March 2009, GSA identified 254 projects it would fund through Recovery Act appropriations, including \$4.2 billion in new construction and building projects upon which GSA could start construction quickly. That is another quote. Seven months later, GSA had only expended \$57 million in Recovery Act funds. And the latest report from GSA indicates that \$295 million has been expended.

So the question is, why does it take so long to begin expending funds on these projects? And if GSA last year testified that it would streamline its procurement process in order to speed the award and execution of Recovery Act contracts, what is the status of the accelerated initiative, and how effective has it been in reducing the time it takes to get Recovery Act funds into the economy?

And I think if there was a criticism that you are going to hear over and over again, it would be, how come the money is not being spent as quickly as it should have been? It would seem to many Members of Congress that your agency is one that can expend money quicker than others, and you have got things in the pipeline all the time, so why isn't it happening?

Ms. JOHNSON. There are a couple of ways of approaching that.

First of all, as I arrive at GSA, one of my critical goals is to help GSA do some significant business process reengineering. I think we need to work on our systems and reduce significantly some of the bureaucratic process that we are working with.

With respect to recovery funds, the thing that is important to lay out is that when we have actually funded projects, there is a tremendous amount of economic activity that is already under way, because when we obligate the money, that is a contract to a contractor. The contractor then goes to the bank, gets the money that will allow them to borrow against, then goes and hires people, then puts them to work, then finishes the job to our satisfaction, then bills us, and then we fund it.

So the obligation and the funding are separated substantially, but a fair amount of economic activity is under way. We are actually leveraging the American taxpayer dollar by encouraging and engaging in private financing, which then we essentially reimburse when the project is done. So there is that—our funding is a lagging indicator of the activity, and that is where I think some of the confusion is.

Obviously, that process, the initial contracting, the initial obligation, needs to be done as promptly and sufficiently as possible, and those projects need to be managed well. We do have a PMO across the entire country which is watching those and trying to stay on top of the project management calculus of them. But it is that delay that is not to demonstrate that there is no money moving; there is a significant amount of money moving. It is private money, and then we will reimburse at the end.

Mr. SERRANO. All right. I am trying to follow this. So you say the key here is that you reimburse at the end?

Ms. JOHNSON. We fund at the end.

Mr. SERRANO. So if you obligate to me \$100 million, I begin to hire people and spend my own money?

Ms. JOHNSON. You go to the bank and get money. You go and get financing for your project, knowing that you have the backing of this contract with which you can go to the bank. Then you hire the staff, and you start moving on the project. They do the work. And then as the project reaches certain milestones, they can come and bill us for the dollars, and then that will be returned to the contractor.

Mr. SERRANO. Okay. So then the accusation, if you will, or the criticism of GSA, would be you are not spending the money as quickly as you promised. You would say, we are, it is just that we haven't made the payments because the project is not completed. But the money is moving around, and dollars that would ordinarily not have been expended by these contractors are because you are backing them up with the dollars? I don't want to put words in your mouth.

Ms. JOHNSON. Yes. I think this is not simple, and I think that the notion of spending money is—you know, we fund it at the end, but there is money moving, and there are people working.

But I think it is useful to look at when we obligate, when we do that contracting, so that you know what to expect. Trying to reconcile this number to this number is sort of a lot of, I think, unnecessary, you know, complexity. But the fact that we are letting out those contracts is a critical milestone. And then when the money—it is really a lagging indicator. When the whole recovery project is over, we are going to be able to look back and be able to tell you, you know, the final big numbers.

Mr. SERRANO. Well, I would suggest to you that, not your public relations, but your public information effort to be one that explains that a little clearer to the Congress because we see it totally differently. And what you are explaining now to me makes sense, which is scary, because any time a Federal agency makes sense to us, we have to be very nervous about that. But it does make sense, but that is not the criticism. The criticism is just the opposite. So I think that message, if it is correct and I take it at your word, then it has to be put forth.

Ms. JOHNSON. Thank you. I will certainly pay attention to that. I believe probably 90 percent of my job is going to be communications, and I think it is because our processes are complicated.

Mr. Serrano. Let me tell you, the administration is requesting \$674.86 million, an increase of \$80.4 million, or 13.5 percent, above fiscal year 2010. Could you explain what the increase accounts for?

Ms. JOHNSON. The delta there, about \$25 million of that is for the Federal Buildings Fund. The rest of it is sort of the \$55 million; about \$5 million of that is \$1 million for the e-gov fund, some money for the Inspector General, some money to deal with benefits for former Presidents, sort of some catch-all of a couple of things like that.

The big chunks, there is about \$24.9 million, \$25 million, that is being tagged we hope for the acquisition workforce for working on the acquisition workforce, which the President has identified as a critical issue that we need to pay attention to.

The other chunk, the other approximately \$25 million, is a combination of two things. One is the Integrated Acquisition Enterprise. And that is working with all of the contracting information, which is now in many different places, to pull that together so that it is integrated, and we can really take command and understand the procurement process better.

And then another \$4 million, I believe, for the Office of Federal High-Performance Green Buildings, which is a particularly special project in my mind with respect to our sustainability challenge, a place where we can have the expertise and the combined capacity to share ideas and understand what is happening in terms of green building work.

Mr. SERRANO. Thank you.

Mrs. Emerson.

Mrs. EMERSON. We may disagree on this, but let me start that way. But you said in your testimony with regard to ARRA money that the Recovery Act provided you all at GSA with an unprecedented \$5.85 billion, including \$4.5 billion to convert existing GSA facilities into high-performance green buildings.

To the best of my knowledge, there was nothing in the language of the ARRA that said you should use that \$4.5 billion to convert existing facilities into high-performance green buildings, and we are double-checking that. So, in other words, you were given the money, but it wasn't directed for that purpose, to the best of our knowledge, and I will double check, and I could be wrong.

Ms. JOHNSON. And I need to double-check that, too. I am assuming that, but—it is specific word for word?

Mrs. EMERSON. It is specific that it did for high-performance green buildings, because I did not recall that when I read the bill that it did say that.

Ms. JOHNSON. My staff is telling me it is.

Mrs. EMERSON. Well, and I will readily admit to being incorrect about that.

However, just to go back, I know Joe was correct in saying that you know, obviously, there is a lot of confusion out there among the public about moneys that are obligated and not spent, but you know, obligation—I actually interpret obligated the way that you describe it, that is just how I personally would. But that is just because we built a courthouse in my district, and I used to have fights about that all the time.

However, I went to your Web site that tracks the spending of the stimulus funds, and it says that 1,700 jobs have been created as a result of GSA's stimulus funding. So that was as of December 31, I think. And at that time, you all had obligated \$2.2 billion, so let's just say you had spent \$2.2 billion. But 1,700 jobs, \$2.2 billion, works out to \$1.3 million per job. Is that correct?

Ms. JOHNSON. That is one way of cutting the numbers. And I am not sure that it is really apples and apples.

Mrs. EMERSON. I know. But that is why it shouldn't be on the Web site then.

Ms. JOHNSON. I appreciate that comment, and I appreciate the need to be ever more clear and accurate. And we need to be reporting jobs funded by the quarter, because that is really the best way for people to see.

Mrs. EMERSON. Well, yeah, because, I mean—okay. So if the next jobs report will be based on activity through March 31st and you all have obligated over \$4 billion, there sure as heck better be a whole lot more jobs than 1,700 jobs for people, or it has to be calculated different because people are going to go berserk.

And if I can say, well, you know, GSA, we gave them all this money, and they have created 1,700 jobs, and every person is getting paid \$1.3 million—well, I mean, technically I could say that based on what the Web site says, and that wouldn't be incorrect, but it is also misleading to your disadvantage.

Ms. JOHNSON. Yes, it certainly is. And I think that the whole notion that we are creating jobs is actually the wrong way to characterize it, because we are funding jobs that have to be done. And being very clear with the public about that is very important.

Mrs. EMERSON. Yeah, because, I mean, people will just not be happy and already are not happy with the fact that it is costing an awful lot per job, and they are government-paid jobs instead of private-sector jobs. So it is my recommendation that you all go back and try to rework that, okay?

Ms. JOHNSON. I will do so.

Mrs. EMERSON. Also, it is my understanding that GSA considers one phase of a multi-year project to be one project, and therefore, all projects started with stimulus funds or the ARRA funds are fully funded, by your definition. However, many of the projects are multi-year projects or multi-phase projects that were started with stimulus funds, such as the Department of Commerce headquarters, I guess, is a good example.

So could you provide for the committee the out-year funding requirements of following phases for stimulus projects, like escalation costs? You know, I need to have—well, I will go on to this next question. But if you could provide for us a list of all those things, that would be really helpful.

Ms. JOHNSON. We will certainly work to keep you informed on what we see as—I mean, if you take the DHS St. Elizabeths project, we have a notion that it is a \$3.4 billion project, and we know specifically what the Coast Guard piece is and what phase 1 and 2 and so on are. And of course, when you have projects that are that long, they don't just cover multi-year. They actually cover whole business cycles, where you know the cost of steel can go up and then suddenly the cost of labor can go down. So I think we need to do a good solid job on projecting it.

Mrs. EMERSON. But we are at this point in time—I mean, I think every single bid for every construction project that is going on in my district—and these are not government-funded, these are private—I mean, every single one of my developers who are actually building anything are getting bids that are you know far lower than before because people just want this work to go on. So I suspect that, you know, to your advantage you could probably get more work done for less money now.

Ms. JOHNSON. Yes.

Mrs. EMERSON. And that is what—that whole multi-phase thing makes me nervous because it is projected. And I don't necessarily—the way that GSA has said, well, this is—you know, like my courthouse in Cape Girardeau, it is going to cost this much. Well, based on today's prices, it is going to cost this much, but usually, it is not based—it is not calculated that way, so you know, it could be that it could be, you know, \$10 million cheaper, and \$10 million cheaper is a lot of money.

Ms. JOHNSON. It is.

Mrs. EMERSON. Even though it doesn't sound like it.

Ms. JOHNSON. Yes. And I think that we need to do a better job in doing our risk assessments and explaining them as well. Because when you are doing projections, anyone can do all kinds of projections, so we need to help people understand what they are based on.

Mrs. EMERSON. Yeah. So, then, back—do you want me to stop, Mr. Chairman?

Mr. SERRANO. No.

Mrs. EMERSON. Okay. I just didn't know if I had gone over.

Mr. SERRANO. You did.

Mrs. EMERSON. You are correct on this language, and I apologize.

I just want to ask you about escalation costs. After the stimulus bill passed, GSA decided to devote over \$150 million to cover escalation costs of ongoing construction projects, and right now, there shouldn't be any escalation costs, but that is beside the point. Given that you all have requested over \$600 million in reprogramings to address cost overruns in capital projects over the past 6 years, you all have had a history of underestimating project costs. I mean, I am not blaming you. You weren't at least in your present position at the time.

So could you update us on how your estimates from the original spend plan have changed over the past year? And what are you—given the fact that construction costs have pretty well declined over the past few years, what are you all doing with those savings?

Ms. JOHNSON. For the Recovery Act money, what we are doing is realizing some lower bids than we expected. And that means that we have, therefore, more money to go further down the project list with, which we are delighted to be able to do. So we are actually able to move further than we thought we were going to be able to given the original allocations.

I agree with you that in a market that is moving, first up, in the beginning of the decade, and then down, that we need to be very tightly communicating what that is meaning for our projections. And I am happy to do our best to share that and to lay out a risk profile next to it.

In some cases, the project escalations, as I understand it, are simply to get projects going that have for some reason been stopped. But I will supply you more detail with that afterwards.

Mrs. EMERSON. I really would appreciate it just because if I hadn't lived and breathed those projects for 5 years on a daily basis, I probably wouldn't be quite as concerned.

Ms. JOHNSON. You can understand the difficulties, yes.

Mrs. EMERSON. And it was frustrating. And it is not all the fault—no party is at fault totally, but the communication and probably the lack of transparency was very troublesome.

Ms. JOHNSON. Yes. One of my goals is transparency.

Mrs. EMERSON. Thank you.

Ms. JOHNSON. Thank you.

Mr. SERRANO. From the great State of Florida and one of the greatest Members in the history of Congress.

Mrs. EMERSON. He is looking for your vote, Deb.

Ms. WASSERMAN SCHULTZ. Really? I am shocked. You had me at hello.

Thank you, Mr. Chairman.

And welcome. It is good to see you. Thank you for being with us this morning.

I have a more locally oriented question as well as a broader public policy question. And since all politics is local, I will ask you the local one first. From what I have observed in looking at the President's budget, the budget for GSA does not request funding, again, for new courthouse construction projects that were included on the Judicial Conference's 5-year courthouse construction plan. And I know under the leadership of Chairman Serrano, in the last fiscal year, we were able to include construction funding for those courthouses, for some courthouses on the list, in spite of that fact in the last fiscal year.

But in reviewing the 5-year courthouse project plan for 2011 to 2015, as approved by the Judicial Conference, I was particularly disappointed to note that the Federal courthouse in Fort Lauderdale was not on that 5-year list, despite having been included on the list as recently as 2007. You may or may not be familiar with the serious deficiencies in the Federal courthouse in Fort Lauderdale. It leaks like a sieve. They are out of room. They have judges sitting on top of each other, a very antiquated facility, and many potential safety risks for both people who work there and constituents of mine who go there every day.

So I would like to know why the Federal courthouse in Fort Lauderdale was not included on the 2011 to 2015 list, and if you can explain the process moving forward, and what role you play in that process for GSA?

Ms. JOHNSON. We have over the last 15-plus years of course been engaged in a significant judiciary relationship in building and renovating courthouses. The first customer visit I paid when I came into this job was to the Administrative Office of the Courts. It is a very important relationship for us, and we are working very hard to have a good and rational and fair and open process with them. And what we do is work off their priority list, so it is in conjunction with them that we develop our priorities. And so I—

Ms. WASSERMAN SCHULTZ. Fort Lauderdale was on the list as recently as 2007. Why is it not on the list anymore?

Ms. JOHNSON. I don't know that I have the answer to that right now. I can supply that to you. I believe it is because it is not currently on the list, but I will verify that and get back to you.

Ms. WASSERMAN SCHULTZ. Well, it was on the list, and now it went off the list.

Ms. JOHNSON. It dropped off.

Ms. WASSERMAN SCHULTZ. Yeah. I need to know why it dropped off the list.

Ms. JOHNSON. It is not on the judiciary's list, so we need to discuss with the judiciary to understand how they set their priorities.

Ms. WASSERMAN SCHULTZ. And how quickly can a feasibility study be completed in the event that it was on the list?

Ms. JOHNSON. It depends upon what the judiciary instructs us to do. Feasibility studies, we can launch one fairly rapidly. But I think what we need to do is really understand the needs in order to do a proper study.

Ms. WASSERMAN SCHULTZ. Well, I can assure you that there is no greater need than in Fort Lauderdale for a Federal courthouse.

Ms. JOHNSON. I stand advised.

Ms. WASSERMAN SCHULTZ. So I look forward to working with you on helping others to understand.

Mr. SERRANO. Now have we finished discussing this courthouse?

Ms. WASSERMAN SCHULTZ. Yes. Higher on the priority list and my broader policy question, Mr. Chairman, is last year GAO investigative staff reported that they were actually able to smuggle bomb-making materials into 10 high-security Federal facilities in four different cities. They were actually able to assemble those items once inside the buildings. And apparently, a lot of those bomb-making components weren't even on prohibited lists coming into those facilities.

Now, from what I understand, each Federal building has a security committee, and they come up with their own list of prohibited items, as opposed to there being a one central, you know, broader general list of prohibited items. That doesn't really make very much sense in this age of homeland security and our need to make sure that we protect our facilities. You have some courtrooms that ban cell phones, and others allow them. I mean, it is very inconsistent.

So what role does GSA play in building security, and do you have anything to do with determining what is included on those lists?

Ms. JOHNSON. The Federal Protective Service, which is with the Department of Homeland Security, is our partner in building security matters. Together we work on understanding the risk profiles of buildings, and we rely on the interagency security committee's standards around that. So there is a process, to that extent, that I understand. Beyond that, I would need to learn a little bit more and get back with you with fuller details. But this is very much of a partnership within another agency.

Ms. WASSERMAN SCHULTZ. It is pretty disturbing that there isn't any consistent list of prohibited items and that bomb-making materials could be brought into any government facility. You know, especially just having passed the Oklahoma City bombing anniversary, you know, we are being vigilant through TSA at making sure that we have a standardized list of materials and people know what is expected of them. I mean, I think just for day-to-day life in America, going into a Federal building in Oklahoma City versus going into one in Miami, there shouldn't be a difference in what you can carry into those buildings.

And I would hope that you could work towards making sure that there was one consistent policy and that we tighten up the list to the degree that you don't already have control over it.

Ms. JOHNSON. I think it is very important for the American public to have the expectation that Federal buildings are consistently accessible. I do know that with the various missions of agencies, we have different levels of security, so I will look into that and get back to you on it.

Ms. WASSERMAN SCHULTZ. Thank you very much.

Thank you, Mr. Chairman, I yield back the balance of my time.

Mr. SERRANO. Thank you.

Following her line of questioning but being more global here, the 2011 budget request does not include funding for the acquisition or construction of additional space for the judiciary. This subcommittee has supported these projects in previous bills, and the judiciary's caseload will likely continue to grow. What were the major factors that resulted in an old courthouse construction in an acquisition project scoring too low to be funded in 2011? And given that it takes years to construct courthouses, are you confident that the judiciary's future space needs will be met without initiating any new courthouse construction projects in 2011?

So we have a situation here where we have been very supportive in this subcommittee of these construction projects. You are proposing none this year. They need space. What do you project will be the bearing of this decision on their space needs? And do you anticipate courthouse funding will continue to be limited to alteration and expansion rather than new construction in future years?

Ms. JOHNSON. There are a number of different pieces that I need to bring to this answer.

First of all, of course, as I said earlier, we have been under way with a massive judiciary program and appreciate the support that we have received with respect to funding new construction as well as repairs and alternations.

The Recovery Act allowed us to fund construction on seven courthouses. And so, within the last period of time, there are a number of courthouses that received some additional support or some support so we could move forward on them through the Recovery Act. We are currently looking at the judiciary's priority list, and the top one is Austin, and that one was funded to get under way through the Recovery Act. The second one I believe is Salt Lake City. And that courthouse we have procured the space, and we have done the design, and we are now waiting for authorization, so there is an authorization need in order to proceed.

So we are continuing to work down the list that the judiciary supplies, and with recovery money, we have been able to continue aggressively with seven other courthouses.

Mr. SERRANO. Well, that answer is a mixed bag. I will tell you why. Those of us who voted for the Recovery Act and voted for all these massive programs to move our economy ahead were under the understanding that where there was no money to contract something or to fill out the needs of a project, that Recovery Act moneys can go in there and fill that gap, but where there was money being expended, the idea was not to supplant that money but actually add to it.

So we actually had had from this committee, generously, moneys in the budget for the judiciary. Now basically what you are telling us is, we are not going to spend that money because we are getting it from another place, but then that was not the intent. That certainly was not the reason I voted for it. Again, let me repeat it: Where there was no money to spend, go ahead, that highway that has been sitting out there for 10 years and you could never build it, build it now, that will help the economy. But where you were spending money, we are giving you more to spend, again for the same reason, but not for you then to say, I am not going to spend that. So the administration's request and GSA's request almost contradicts the presentation made to Congress, am I correct?

Ms. WASSERMAN SCHULTZ. It cancels it out.

Mr. SERRANO. Yeah. That is how you understood it, right?

Mrs. EMERSON. Exactly.

Mr. SERRANO. We have three people here. That is how we understood it.

Ms. JOHNSON. I appreciate that.

The Recovery Act certainly did give us some room to support courthouses, and that was not meant to displace budget, annual budget processes. In addition, however, we are balancing a large portfolio of requests. And in this year's budget request, a substantial portion of it is for St. Elizabeths, which is another major priority of the administration, the FDA and some remuneration work with the Denver Federal Center. So there are other pressing needs on the portfolio. And in this year's calculus, it was important also to support those other projects. So we are trying to play a careful calculus of all of the needs on the portfolio.

Mr. SERRANO. Okay.

Well, two points. First, it should be obvious to you by now that this subcommittee wants the judiciary to be taken care of with their physical needs, and it is a shame that the request came the way it came. Secondly, it is easier for a committee chairman and it is easier for a ranking member to respond to a request for dollars rather than to create a request.

Ms. JOHNSON. I appreciate that, yes.

Mr. SERRANO. So if you ask for \$1 billion, I could always go to leadership, I could go to everybody else and say they asked for \$1 billion. That agency asked for \$1 billion. I need to give them something, even in a tight economy. But if you ask for nothing and then I am going to give you something, then I will be the one you know spending money, not reacting. So you put us in a difficult situation when you don't ask.

We had an agency here that never wanted money. It is called the SEC, and you see why they didn't want money; they didn't want to supervise anybody. I mean oversight.

So keep in mind that you put us in a difficult situation here in trying to do what we want to do.

Ms. JOHNSON. I appreciate that you are intent and eager to help us with the courts, and I will hold that thought in my mind.

Mr. SERRANO. Okay. Talk to us about the DHS headquarters consolidation. GSA is working with the Department of Homeland Security to consolidate DHS operations for more than 40 locations around the Washington, D.C., area into 7 to 10 locations. St. Eliza-

beths will become the new DHS headquarters, ultimately employing more than 14,000 Federal employees. Establishing a new headquarters at St. Elizabeths will cost an estimated \$3.4 billion. What is the status of this project? Are there any emerging issues that might push completion beyond 2016, as currently scheduled?

Ms. JOHNSON. Right now, we are quite confident that we are moving forward on St. Elizabeths, and it is a good story. In fact, Friday, I am going to go over and see the site, and it was featured in the Washington Post recently. It is not just shovel-ready. The dirt is moving over there. There is activity going on for the Coast Guard headquarters, which is the first major piece of the project. The next phases involve consolidating and renovation of about seven headquarters buildings, and some of the utility and security fencing and historic preservation work, as well as highway interchange. So there is a lot of work going on and expected.

We are comfortable that the Coast Guard building will be completed and online in 2013 and that the full project should be delivered by 2016. Our current slogan is, on schedule, on budget, and on green. We are really excited about St. Elizabeths.

Mr. SERRANO. Okay. And as a result—so you are confident still for the 2016?

Ms. JOHNSON. Yes, I am. Yes, I am.

Mr. SERRANO. Now, as a result of moving folks out of there, out of the different places, you will have empty space. Do you have a plan for backfilling, and how do you see this working itself out? Will you have space that you don't have any need for?

Ms. JOHNSON. Yes. We have quite—it is a complex plan, but it is an important one to understand. We have something like 50 Federal locations that are housing DHS employees at this point, and we also have a number of leased buildings as well, leased space, something like 84 leases with another 9 pending. The overarching, the arc of work is going to be moving people out of those leases and into Federal space, backfilling either DHS people moving to St. Elizabeths or simply moving to St. Elizabeths. So it is the leased space that is housing employees that will then be able to fill up the Federal spaces that will be vacated. See, it is sort of a little bit of a moving game that way. At the end, I think we will only have about five leases. Some of them—between now and 2016, when all of the people will be relocating to St. Elizabeths, I believe we are very confident that we will find Federal workers to fill the Federal space that we have. So, yes, it is an integrated plan, and it is not a simple one, but I think it is a very sensible one.

Mr. SERRANO. Okay.

Mrs. EMERSON.

Mrs. EMERSON. These are easy questions.

Ms. JOHNSON. Oh, good.

Mrs. EMERSON. As we talked in my office and as you know, in our statement of managers accompanying the fiscal year 2010 appropriations bill, you were directed to review the 10 largest Federal agencies to determine levels of funds spent on office products through the GSA schedules and to do comparisons based on the fact that we had—well, actually, the Department of Homeland Security had voluntarily decided to try to save money. I mean, the whole thing started when DHS said, we are going to save \$42 mil-

lion or something over 5 years because we can go directly to Staples or any other entity to buy our office supplies. So, anyhow, that report is due to the committee here in June.

Ms. JOHNSON. Yes.

Mrs. EMERSON. Do you suspect that we will receive it on time?

Ms. JOHNSON. Yes, I do. It is under way. I am looking forward to it myself. I am going to learn a lot from it. We have been looking at the 2009 expenditures for office supplies across about 10 agencies, looking at credit card records and GSA advantage records and e-mail records over at the Department of Defense. It does look as if the spend on office supplies is somewhere between \$700 million and \$1.3 billion. It is a significant amount.

However, it is also really hard to be sure we are tracking it well, because many of the purchases are in that \$300 to \$500 range, and they are just so granular it is hard to track. But at least we are getting our arms around it, and I think out of that we are going to have some real good lessons learned and ability to figure out ways in which we can consolidate buying.

Mrs. EMERSON. So is it too early to say that there are certain issues that you have uncovered in the study?

Ms. JOHNSON. I think it is too early, certainly for me.

Mrs. EMERSON. And I suspect, too, that then, based on what the study finds, you are going to implement certain steps to ensure that employees who use the schedules are getting the best possible prices?

Ms. JOHNSON. Yes. We actually have a fair amount of activity under way already.

Mrs. EMERSON. Can you share a little bit about that?

Ms. JOHNSON. Yes. First of all, we are working hard with our own contracting officers so that they understand the schedules even better and have better information about what pricing has been obtained on those schedules and what options they have.

Mrs. EMERSON. Let me ask you something. How many contracting officers do you have?

Ms. JOHNSON. I am sorry, I don't know. I will have to—

Mrs. EMERSON. I mean, would it be 100?

Ms. JOHNSON. Oh, thousands.

Mrs. EMERSON. Thousands.

Ms. JOHNSON. Yes. So training is a significant leverage point for them, and getting them the information about pricing is a significant leverage point across the agency. I mean, in the Public Buildings Service as well.

Mrs. EMERSON. Thousands of people. But I am talking about thousands—you don't have thousands of people doing office supplies?

Ms. JOHNSON. No, no, no. In terms of the contracting work.

Mrs. EMERSON. Right. I would understand that there would—yes, across the board, I know. I was just talking about office supplies. I am so sorry.

Ms. JOHNSON. I am so sorry.

Mrs. EMERSON. If you have thousands doing that, that is not a good thing.

Ms. JOHNSON. No, no. I will see if I can answer that more granulated question in writing. We are also embarking on training con-

tracting officers in the 10 agencies across the government so that they will understand the schedules better and how to use them. We are keen on helping compliance with the regulation out of the Defense Authorization Act, which is about getting three bids for every schedule's contract. And that is something that we follow, but not everyone has, and that regulation is where we are trying to help people train and understand that. And we are also keen on putting online the terms and conditions of contracts so the contracting officers have more information available to them. So it is about openness as well as training.

Mrs. EMERSON. Okay. I appreciate that. And I will really look forward to reading that report. I am sure we both will.

Ms. JOHNSON. Yes, I will, too.

Mrs. EMERSON. Let's talk about the State Department Foreign Affairs Security Training Center in the stimulus bill; \$70 million was appropriated to the Department of State to construct this Foreign Affairs Security Training Center in Queen Anne's County, Maryland. Obviously, we all know that you have received a lot of attention for the way that this project has been handled, including charges that the site was selected without the involvement of the local community and that there were some press reports that said GSA sent reps to the community. Your representatives weren't able to answer any questions, even the most basic ones.

And I know that it is always a little touchy when you are going into a new area and trying to build a new facility. But if you could just fill us in, number one, what the status of the project is to date? Have the local, the concerns of the local residents been addressed? And I also understand that the State Department is concerned that the funds won't be obligated before the availability of the stimulus funds expire, so can you just tell me if you think that is likely?

Ms. JOHNSON. Yes. Currently, I will say that we have been concerned about, devoting resources and time and some energy to being sure the community learns what it needs to know and is engaged in a dialogue about this project. We have held—we held the prerequisite two community meetings, and we delayed one because of the snowstorm. And then we held two more in which we had some particular workshops on the issues that seemed to be the most contentious.

So I think we have done a solid job of doing outreach. There is no question that there is concern in the community. We have taken some people on visits of other training centers, so we have taken them to see what the kinds of facilities would be and tried to do some extra work to be sure that that information is conveyed.

Currently we are waiting for the environmental assessment. The draft of the environmental assessment should be arriving the first part of May. With that draft, I think we will have a kind of a fork of decision. One is, should we release that for public comment, or should we move directly into an environmental impact statement process? And we are waiting to see what the draft says.

Mrs. EMERSON. Does NEPA require you to do an EIA before construction would begin, or are you doing that just in case there is a lawsuit?

Ms. JOHNSON. I don't know what the process requirements are. We certainly feel the environmental impact statement needs to be done before construction.

Mrs. EMERSON. No, I mean, it would have to be. But I don't know if the law requires just for you to have an environmental assessment as opposed to the whole, the 2 or 3 year long environmental impact statement, because that is how long that takes and the EA is much shorter.

Ms. JOHNSON. We are waiting to see what the EA is telling us, because we simply are doing that due diligence to understand actually what we are facing in terms of the issues. And we do want to be very careful about that because the community is concerned. So that is where we are. We are also doing everything we can to be sure that the money from the State Department is obligated, yes, so that it can be secured and behind this whole process to support it.

Mrs. EMERSON. Now that we know what obligated means, before it is spent.

Mr. SERRANO. On its way.

Mrs. EMERSON. It is on its way.

Ms. JOHNSON. Nailed and tagged, not dispersed.

Mrs. EMERSON. Well, any information you can get to us beyond what you have said today would be helpful.

Ms. JOHNSON. I would be happy to.

Mrs. EMERSON. Okay. I appreciate that.

Let me ask you about this, and don't get sensitive about this, but this is an issue.

Mr. SERRANO. You are going over your time or what?

Mrs. EMERSON. No. What I am going to mention.

Mr. SERRANO. No problem.

Mrs. EMERSON. In Missouri, approximately \$41 million of stimulus funds are for buildings in our State. And we have got about a 9.5 unemployment rate. But within the construction industry, it is anywhere from 35 to 40 percent. And so it is important for me that the benefits of this spending are being felt in our local job market. Can you tell me how GSA guarantees that your contractors and subcontractors employ people who are legally authorized to work in the United States, and are the procedures the same for construction contractors as well as for service providers?

Ms. JOHNSON. Let me answer the parts of that that I know for sure. GSA has some 23,000 contractors with HSPD-12 badges, which means a substantial, a substantial effort has gone into being sure that our contracting workforce is secure. The terms for getting an HSPD-12 badge I think are something like you will be working in the building or you are on a job that is going to be over 6 months, so it makes it worthwhile. For sites that workforce is not yet in buildings or that is a shorter-term assignment, we bake into the contract that the contractor has to guarantee that the workforce that they are using, the workers that they are using, will conform to all of the rules.

Mrs. EMERSON. So does that go down to the subcontractor, and the subcontractor of the subcontractor, and that subcontractor of that third subcontractor?

Ms. JOHNSON. My expectation is that it does. Let me confirm that.

Mrs. EMERSON. If you would, just because, this is where we are having some issues in my congressional district. Because I have got, you know, with such high unemployment in the construction industry, we have a number of subcontractors of subcontractors who are actually hiring people who don't have appropriate documentation to be in the United States. And I am not—and so it is the employer who should be in trouble here.

But our overall general contractors are not responsible for the two, say if you are going down two subcontractors. And at least that is what we have been told; the law would not—they don't have to be responsible for, you know, the final subcontractor, if you will, on verifying employment. So I am just troubled by this because we have had two or three instances in my district in the last month where, you know, my folks in those communities can't win bids. They haven't been able to win any of the bids to put their people to work because we are using undocumented workers.

Ms. JOHNSON. I will look into that. You are talking basically about a double-click or the double-click-through and how far the reach of our requirements extend.

Mrs. EMERSON. Right. I mean, I would hope that they would be more strict than—you know, because it is a government-sponsored project. But I just want to be sure given the trouble we have had.

Ms. JOHNSON. I will learn about that myself and communicate it right back to you.

Mrs. EMERSON. Very good. I appreciate it.

Thanks, Mr. Chairman.

Mr. SERRANO. That does not upset me, what you just said.

Mrs. EMERSON. Thank you.

Mr. SERRANO. However, the other side of that issue is that when the economy was doing well, there were always these folks employed. Some people have said they were undocumented. Others have said they were not citizens. When the economy went back and the construction industry was hit, they were let go in the same numbers as everybody else was let go. So that this is really only an issue if you are letting people go, some were kept who were not documented or not citizens, and those who were American citizens were let go. But prior to this, the comment always was that, without that community, you couldn't just about build anything in this country because they were very much a part of that community.

Mrs. EMERSON. And I am not saying that at all. I am just saying that the employer should be at fault here. I am not blaming the folks who are working because they are trying to help their families.

Mr. SERRANO. What I am saying is that this was not an issue before the economy hit bottom, so it is only an issue now—

Mrs. EMERSON. Oh, right, right, right.

Mr. SERRANO [continuing]. If these folks were let go and those folks were not let go. But everybody across the board was let go. Those folks we talk about, whether they were just documented or undocumented immigrants, are as unemployed in that area of employment as everybody else.

But anyway, Mr. Boyd, Mrs. Emerson claims that I am being extra nice to all members of the committee in my presentation because I am looking for votes for tomorrow. That is not true. I do think you are one of the greatest Members in the history of Congress, and I now recognize you.

Mr. BOYD. Thank you, Mr. Chairman.

I was delighted to get that call from you over the weekend.

Mrs. EMERSON. Good for you, Allen.

Mr. SERRANO. Thank you.

Mr. BOYD. I didn't know who that New York number belonged to. I quickly figured out.

Mr. Chairman and Ms. Johnson, let me first apologize to you all for being late and beg your forgiveness for not being here on time.

But also, Ms. Johnson, thanks for your service, and I want to follow up on a question that was asked earlier by Representative Wasserman Schultz relative to the Federal building situation.

I have a similar situation in the congressional district that I represent in Panama City with a Federal courthouse that is, according to your predecessor, extremely inadequate and needs to be replaced. I have a letter from your office here in front of me with a report, a building project survey. That report is fairly detailed, as you know—I am sure you are quite familiar with those reports—and a certification of need. And this project actually was on the 5-year plan at one time and dropped off. And my question really to you is, what can you tell the committee about, when this report leaves your office, about the funding, I noticed in your report, you said that you had not gotten a request from AOUSC. Obviously, that would be the case. What can you tell the committee about how we can—what we can do to correct some of this?

Ms. JOHNSON. My—

Mr. BOYD. Panama City, Florida, I am sorry. Make sure that note has got Panama City, Florida, on it.

Ms. JOHNSON. You got it. Thank you.

Mr. BOYD. Not Panama.

Ms. JOHNSON. We have struggled for a long time with the fact that the judiciary has a very long list of needs. And of course, we have been really aggressively working that for, well, over a dozen years, 15, 20 years. We are trying very hard to work with the courts against their internally derived priority listing. I think it is through the judiciary that we need to—they are our customers. We are trying very much not to assume that we know more than they do about this sort of thing. So we really do try to pay attention to their list of priorities.

Currently the list is—you know, we can get going on their top list one, Austin. The second one we are sort of stalled right now because of authorization matters. But we are always trying to be on top of their top priority. So I think the straight-up response is, we need to work with the judiciary to help them work their portfolio so that it has the right priority listing.

Mr. BOYD. I thank you for that, and I know that your job is just to do the building, not to prioritize. And I totally understand that.

Mr. Chairman, I want you to know, this is something that I have been working on for many, many years. On the list, off the list, you know, I don't understand that honestly. Maybe I do and just want

to be in denial. But it is—you know, I hope that whatever this committee under this leadership can do with you and Mrs. Emerson, that we would try to do better.

Mr. SERRANO. I should tell you, before you came into the committee meeting, a lot of the questioning was around the needs of the judiciary. Debbie spoke about it. I spoke about it. Mrs. Emerson spoke about it. This committee has been good to the judiciary for obvious reasons, and we are concerned that they are not asking for a request.

Before you came in, the answer was, which I said in a respectful way, was not the greatest answer, was that there were recovery moneys that were spent on the courthouses, and therefore, they were not asking for money. I told them that puts me in a difficult situation because it is easier for me to respond to a request up or down on the amount than it is to create an amount in a budget that wasn't requested. And that is what we are faced with now.

Mr. SERRANO. We stand ready to move ahead and continue to put the message forth that the needs of the judiciary have to be met.

Mr. BOYD. Thank you very much, Mr. Serrano.

Mr. SERRANO. Let me ask you a question about construction versus leasing. It is one that troubles me somewhat. I see a trend moving away from ownership by GSA towards leasing, and I don't fully understand it. I don't know if it is GSA's economic recovery package for landlords other than for the Federal Government, but I trust this landlord.

By the way, could you look up to the ceiling? If this was the GSA Building, you wouldn't allow that, would you?

Ms. JOHNSON. Absolutely not.

Mr. SERRANO. Just for the record, it is pretty embarrassing. I am glad we are not on C-SPAN. It could be very embarrassing to see that.

So my question is: What factors has GSA taken into account in deciding whether a particular facility's needs should be met through direct Federal construction or through leasing? Which do you tend to prefer?

And also, if leasing has any of the characteristics that it has in areas of my congressional district, the condition of any of the buildings require so much repair that it may not be cheaper in the short run, but certainly in the long run, to build something that is up-to-date; something with the technological needs in mind, not where you have to rewire a whole building. You and I could come up with a million reasons why a modern building is better.

So why this trend to move away?

Ms. JOHNSON. The proportion of the Federal building inventory—that is, leased as opposed to owned—has sort of tipped over the 50 percent mark, which is raising this kind of question regularly.

We are a very steady tenant. The government is often in a building that has particular needs for the government agency. So we are keen on having our own buildings wherever it makes sense, and that would be our preference. It is also important because when we own the buildings, then we are collecting rents which then fuel the Federal Buildings Fund and allow us to do the repairs and alterations and future construction. It is the notion of the Federal

Buildings Fund replenishment that pushes us towards wanting to have owned inventory.

The difficulty, of course, is that there are needs by our customers for flexibility and short-term needs. The Census is the prime example of a lot of leasing done to support a particular mission. And I am aware that something like 70 percent of the requests for space right now are for space that is in the under 10,000 size and in a shorter time frame. So it just fits in flexibility terms for that.

However, I do believe that the way the leasing—agencies come to us, and if we cannot supply them a new building, we do need to turn to the leasing alternative rather than not meet their mission needs. And so there are times when we would much rather be building and constructing and owning the buildings, buying in the inventory that we have been using and so on. But there are simply some funding constraints that keep us from being able to engage in capital building projects.

Mr. SERRANO. That may be the case momentarily, but we seem to see a trend that is moving away. You say you were what, now, 50 percent or more is leasing?

Ms. JOHNSON. Yes.

Mr. SERRANO. If you were a GSA analyst or an outside analyst on the future of GSA, is that the way to go? Is that healthy for GSA to be leasing so much?

Ms. JOHNSON. I think we would agree that, as I said, if we had our druthers we would like to be in owned inventory more aggressively, but that the leasing alternatives are what we are coping with given the way the funding mechanisms support the long-term capital projects.

Mr. SERRANO. Okay. Well, again, we told you what this committee thinks on the judiciary, and I think we are clear on the fact that it is probably not the best way to go, to continue to grow in the leasing category. And I think the repairs and the other issues will become a major problem.

Mrs. EMERSON. Let me ask a follow-up to that.

What do you think is the cause of the annual deficit in the whole?

Ms. JOHNSON. The whole building fund problem? There are about four things; let me see if I can get to the four. First of all, as we are growing the leasing inventory, we are not collecting rents that replenish it. There is no question that that is the cycle that I was just talking about. In addition, our inventory is aging. Our average age of buildings is 46 years. Over 30 percent of the inventory was built before 1949. It is an old inventory, so to speak, and that means it is much more expensive to maintain. So more and more dollars are required to replenish and renovate the current inventory. I think that is putting stress on the fund.

The building fund has enjoyed appropriations something like 28 out of the 37 years it has been in existence. So we know this cycle is not self-sustaining. So there are those economic pressures on it.

Mrs. EMERSON. The long-term impact on the buildings fund, though, is not good.

Ms. JOHNSON. Right. Not good.

Mrs. EMERSON. I am interested in—this isn't a "gotcha" thing, but it is a pet peeve of mine.

Again, one of your performance goals says that you want to award leases at an average rental rate of not less than 7.5 percent below industry averages for comparable office space in fiscal year 2011. Which is a wonderful thing, until it comes to the Census. Where in my home town you are paying—let's see, similar space to what Census is running at. I know that this is a short-term lease, but it is seriously 70 percent more than what the market cost is today. I mean, even my office space at the Federal building that I did have to negotiate with you all, because I didn't like the price you offered me, so we negotiated it down. So I thought it was very much of a win-win for everybody. But the office space at my beautiful new courthouse in Cape Girardeau is less than half of this office space for the Census.

And I am not saying—I know they didn't want to go in the Federal building because it scares people, and I understand the psychology of not putting a Census office there. But needless to say, that sort of flies in the face of what your performance goal is. I just point that out as something that I think we would be happy to work with you on, but I think it means we are going to have to—

Ms. JOHNSON. Yes. The short-term leasing is expensive. And not being able to put Census offices in Federal buildings is also a bit of a constraint. And that is something that we always struggle with when we are sending out the Census teams to secure space.

In addition, we have to do all of the build-out, which is all paid back in that short time frame. So there are expenses associated with that short-term lease that also jack up the price.

This is one of the reasons it is a performance goal. We need to be continuously monitoring this and managing this.

Mrs. EMERSON. I can't imagine that a Census office would need anything particularly fancy. Who am I to know? I just thought you had to work with workers. If they set it up like our office, it wouldn't be much build-out at all, other than for new toilets.

Mr. SERRANO. Mrs. Emerson and I have to move on today to a couple of events, and we don't want to keep you here much longer. But I do have a question. What you heard here is what you heard here also; it is this whole leasing thing that makes people nervous.

So you are moving into a GSA building?

Mrs. EMERSON. I am in Federal—in our courthouse, that I told you, I have day-to-day involvement in the construction.

Mr. SERRANO. Good rent?

Mrs. EMERSON. I negotiated a great rent, actually. I said I would only pay the same rent at the new courthouse that I paid at the old courthouse.

Mr. SERRANO. I wish I had a Federal building in my district.

You are requesting \$9 million in IT funds.

Mrs. EMERSON. Excuse me. Do not increase my rent.

Mr. SERRANO. I don't have a Federal building.

You are requesting \$9 million in IT funds for the Federal Acquisition Workforce Initiative; \$24.9 million in funding for Federal Acquisition Workforce Initiatives Fund; and have \$8 million projected carryover from fiscal year 2010 for the Acquisition Workforce Training Fund.

I understand that the proposal for this was developed so late in the process, that GSA is one of the few agencies to actually prop-

erly have a budget for IT. That is good for you, but makes us concerned that plans for it may not be that well thought-out.

If you understand what I just said, you are much better than I am. But I have been rehearsing this for the last 2 days. But I do understand.

Do you have other funds that will be used for the same or similar purposes?

Ms. JOHNSON. For acquisition workforce; government, if you will. There are two funds. One is for training. And then this Acquisition Workforce Initiative is about a number of different things: improving the materials, the curriculum for training across more than just contracting officers to include programs in project management. It is also meant to fund sort of the inventory to understand who is in the workforce, who are the contractors, what kind of skills do they have—sort of track and know what our workforce is.

And then the third is to build that community. There is so much now available to people that they can share among themselves. They don't have to go off and get a degree, but they can be sharing their best practices in communication and mentoring and helping each other through their career paths. That would be a third piece that we would be paying attention to.

So I come from the world of leadership development and talent development, and I do believe that the acquisition workforce needs some real attention and some support. I think we do need to upgrade the curriculum. We need to create the communities where they can be working with each other. And I think we also need to have an inventory so we know who they are, where they are, and be much more informed about it. I think this is driving us to better data so we can manage it better.

Mr. SERRANO. And is there still interest, as there was in the past, in working not only at GSA but in government in general? Do you get that sense? People still think it is a good job? I am not talking about Members of Congress.

Ms. JOHNSON. Speaking for myself, I was delighted to come to GSA. I think we are entering a period of a bit of a renaissance. And I will say at GSA it is because we are so profoundly involved in sustainability. Young workers want to join GSA because we have a huge role to play in the green agenda.

Mrs. EMERSON. Let me also tell you that a lot of young professionals who are in commercial real estate and the like really like the idea of going to work at GSA. The hardest part of going to work at GSA or any Federal agency or department is the crazy application process. And I know John Berry at OPM is trying to really, really work hard on making it résumé-based now.

So the only downside to trying to apply is that if you don't get referred for one job, you have to start from scratch again. I think that is frustrating. But I know a lot of people who have great expertise, and there is a lot of opportunity for growth there because you all do things that other agencies don't.

Ms. JOHNSON. Yes, we are in a wonderful position that way.

Mr. SERRANO. Before we let you go, let me just say that there is an ongoing back-and-forth between Mrs. Emerson and me about the St. Louis Cardinals and the New York Yankees. And just for

the record, in 1949 when the Agency was formed, the Yankees won the World Series—but then they were winning all of those years.

Mrs. EMERSON. I was just born the next year after that.

Mr. SERRANO. The next year after that, I came to New York saying someday I want to be a Congressman.

Thank you so much for your testimony and for your service. Please understand that while we are a committee who wants to be supportive, we do have concerns. You have some concerns from everybody here about the judiciary and its needs and the difficult position you have put us in by not asking for any money.

And the whole leasing issue is one also that is of great concern to us.

I will submit some questions for the record. One of them speaks to the territories. We hope that when you look at what you do, you remember there are millions of people, American citizens who live under the American flag, but who don't live in a State, and they should be treated equally as we allocate resources.

Thank you.

SUBCOMMITTEE ON FINANCIAL  
SERVICES AND GENERAL  
GOVERNMENT

HEARING

ON

THE FY 2011 BUDGET REQUEST OF  
THE GENERAL SERVICES  
ADMINISTRATION

Questions for the Record

for

The General Services Administration

April 28, 2010

Financial Services Subcommittee Questions for the Record  
 From Chairman José E. Serrano

1. It appears that the fiscal year 2011 budget request projects an increase in the cost per square foot of space leased by GSA. Why should lease costs be rising in the current real estate market?

Cost per square foot leased is a lagging indicator. Most of the leases provided for in the FY 2011 budget request were negotiated and awarded years before the current downturn in the market. New and replacement leases are currently being awarded at lower market rates; however, any cost reductions are not enough to offset annual rent increases that are built into leases that were awarded at the top of the market. The current downturn in the market will eventually be reflected in future years, as a larger portion of GSA leases are re-negotiated in the current market.

GSA rental costs per square foot are also influenced by space requirements in support of the Decennial Census and increases in operating expenses and taxes paid by the lessor.

2. Please provide a table showing, on a comparable basis for each of fiscal years 2006 through 2011, the actual, estimated, or proposed amount provided for building operations within the Federal Buildings Fund, along with the corresponding number of square feet served and the cost per square foot.

The following table compares total Building Operations costs to rentable square feet of space in GSA-owned buildings and leases in which GSA makes utility, janitorial, operations and maintenance, or other payments directly to the service provider. This table excludes leases where GSA pays the landlord for all services and expenses.

	Building Operations costs in thousands of dollars	Rentable Square Feet in thousands	Cost per RSF
FY 2006 Actual	\$1,953,544	208,110	\$9.39
FY 2007 Actual	\$2,089,394	206,283	\$10.13
FY 2008 Actual	\$2,180,071	211,198	\$10.32
FY 2009 Actual	\$2,228,717	212,701	\$10.48
FY 2010 Estimated	\$2,325,376	216,231	\$10.75
FY 2011 Request	\$2,346,348	220,818	\$10.63

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3. Please provide a detailed list of the basic repairs and alterations projects under \$2,790,000 that GSA is requesting \$335,297,000 to perform.

GSA is currently developing its Basic Repairs and Alterations Program for FY 2011. GSA allocates program funds to each Region based on size of inventory and type of space. Each region prioritizes planned projects within its allocation, using a standard process. Projects are managed locally, but tracked and reported in nationwide information systems.

GSA completed several thousand basic repair and alteration projects in FY 2009, and has an equivalent number underway in FY 2010. Since this is an exhaustive list of projects, the following chart is provided, listing the type of work completed in FY 2009 and the percentage of obligations within each category. This chart is representative of the work that would be completed in FY 2011.

Type of Work	FY 2009 Obligations (in thousands of \$s)	% of Total Obligations
Interior Construction & Finishes	\$96,704	27.0%
Heating, Ventilation, & Air Conditioning	\$57,306	16.0%
Roofs	\$35,816	10.0%
Exterior Enclosures	\$32,235	9.0%
Other (inc. Environmental & Security work)	\$32,235	9.0%
Plumbing	\$21,490	6.0%
Electrical Systems	\$17,908	5.0%
Fire Protection	\$17,908	5.0%
General Minor Repairs	\$17,908	5.0%
Conveying Systems	\$14,327	4.0%
Structural Systems	\$14,327	4.0%
TOTAL	\$358,163	

4. Does GSA pay Homeland Security for security charges on vacant space? If so, how much and are the per-unit security charges for vacant space lower than those for occupied space?

For vacant space in an otherwise occupied building, GSA pays the same security charge as all other tenants (basic security rate, plus a building-specific charge). Security charges for completely vacant buildings are currently handled on a case-by-case basis. The basic security charge for FY 2010 is .66 cents per rentable square foot.

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5. Please provide a table showing, on a comparable basis for each of fiscal years 2006 through 2011, the actual or estimated amount to be spent on utility costs from the building operations line in the Federal Buildings Fund, along with the corresponding number of square feet served and the average cost per square foot.

The following table compares total Building Operations costs to rentable square feet of space in GSA-owned buildings and leases in which GSA make utility, janitorial, operations and maintenance, or other payments directly to the service provider. This table excludes leases where GSA pays the landlord for all services and expenses.

	Utilities costs in thousands of \$s	Rentable Square Feet in thousands	Cost per RSF
FY 2006 Actual	\$334,056	208,110	\$1.61
FY 2007 Actual	\$356,118	206,283	\$1.73
FY 2008 Actual	\$406,781	211,198	\$1.93
FY 2009 Actual	\$353,355	212,701	\$1.66
FY 2010 Estimated	\$462,012	216,231	\$2.14
FY 2011 Request	\$463,882	220,818	\$2.10

6. The budget proposes \$35 million for the Electronic Government Fund.
- a. How has the \$34 million provided in FY 2010 been expended: how is the fund managed and who makes decisions about projects to be undertaken and expenditures to be made?

The Electronic Government (e-Gov) Fund is managed centrally at GSA, in the Office of Government-wide Policy. GSA, in consultation with the Office of Management and Budget (OMB) and the Federal CIO Council, identify projects and prepare expenditure plans for the e-Gov Fund. GSA and OMB jointly prepare expenditure plans, which are submitted to the Committee. GSA works closely with OMB's Office of E-Government and Information Technology to ensure that actual and planned project expenditures are made in accordance with the notification provided to Congress. Monthly meetings are held between GSA and OMB to manage project progress and funds management.

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Planned spending for projects is as follows:

1. Improving Innovation, efficiency and effectiveness	\$11 Million
2. Citizen Engagement Platform (CEP) / Web 2.0	\$ 5 Million
3. Federal Funding and Accountability Transparency Act Impl.	\$ 8 Million
4. Efficient Federal Workforce	\$ 7 Million
5. Accessible and Transparent Government Information / Data.Gov	\$ 3 Million
<b>TOTAL</b>	<b>\$34 Million</b>

As projects are executed and estimates on individual projects are reviewed, we will notify the Appropriations Committees of any realignment of funds.

- b. What, if any, contributions are expected or assumed from other Federal agencies in fiscal year 2011?

No other agency contributions are expected for the E-Gov Fund projects and programs. Projects funded by the E-Gov Fund are funded entirely from this appropriation. Only certain legacy E-Gov initiatives and Lines of Business that were initiated in the prior administration (and continue to be beneficial) are funded through agency contributions.

- c. Please provide examples, in non-technical terms, of possible pilot projects that have been carried out and that will be carried out with this funding, and explain the benefits expected to result to the government from these projects.

**1. Improving Innovation, Efficiency and Effectiveness (\$11 million):** The goal of this program is to create a set of capabilities that will allow GSA to become the catalyst for rapid adoption of new technologies and services. GSA will provide Federal agencies with a much-needed centralized source of services for websites, citizen engagement and open Government tools. A robust and comprehensive platform at GSA can propel more cost effective Government operations, ensure effective citizen engagement, and advance simple but robust services delivery. The Federal Cloud Computing Initiative – including the apps.gov site are good examples. Benefits include:

- Better, faster ways to acquire new technology and services
- Accessible, easily-scalable, and elastic solutions
- Resource pooling for sustainable, cost-effective services
- Building better software in an agile manner
- Working to reduce agency IT infrastructure footprints (including data centers); thereby reducing energy consumption and encouraging more sustainable computing practices.

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- 2. Citizen Engagement Platform (CEP) / Web 2.0 (\$5 million):** The CEP will provide a variety of ideation, challenge and other engagement tools, assistance, and best practices to make it easy for agencies to engage with citizens, and conversely, easy for citizens to engage with government. CEP will create a more open, transparent and collaborative Government by making available public dialogue tools enabling agencies to improve their interactions with citizens. OMB envisions CEP will assist Federal agencies to collect ideas from the public, permit the public to comment on these ideas and provide a mechanism so that the best ideas can be voted upon.

CEP will provide expertise to Federal agencies that have little experience or resources to identify, assess, acquire, and implement citizen engagement tools (e.g. blogs, wiki's, dialogs, polling). In FY 2010, the CEP supported citizen participation by assisting 23 agencies with online citizen dialogues operating on a virtual software-as-a service platform. Benefits include:

- Transparency and open Government
- Engaging citizens with Government
- Innovation, efficiency, and effectiveness
- Optimizing common services and solutions and eliminating duplication of these services at the agencies

- 3. Federal Funding and Accountability Act (FFATA) Implementation -- USASpending and Dashboards (\$8 million):** The USASpending.gov website was developed to meet FFATA requirements by creating a public-friendly website that would improve public access to a wide variety of U.S. Government data. USASpending.gov provides easy access to the expenditures and payments of Government funds through contracts, grants, loans and other mechanisms. This information can be searched and sorted by payee, locations and other designations.

The Dashboards are part of the transparency. Accountability dashboards such as the IT Dashboard, USPerformance, Earmarks, and the Small Business dashboard are adding new perspectives for the American people to see not only how their money is being spent but how it is performing. The IT Dashboard provides agencies and the public with access to see Federal IT investments online and to track their progress over time. The IT Dashboard will display data received from agency IT budget submissions through the Exhibit 53 and 300 reports, including general information in over 7,000 Federal IT investments and nearly 800 investments classified as major by the agencies. This data is updated regularly and additional updates are planned for FY 2010 and FY 2011. Other dashboards will be developed.

Benefits include:

- Provides the public with information about how their tax dollars are spent.
- Builds public trust in Government and could spur economic growth.

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- 4. Efficient Federal Workforce (EFW) (\$7 million):** The EFW program is a government-wide effort led by GSA to identify and strategically leverage innovative technologies, enabling Federal employees to work in real time from remote locations. The initiatives funded by this program will reduce travel, space requirements, and energy consumption, while supporting emergency preparedness capabilities. The EFW program will provide a significant expansion of technologies for file sharing and access management, information architecture, and strategic investments in systems and services that span across all agencies, rather than relying on agency-centric systems.

Benefits include:

- Increasing timeliness, responsiveness, and cost-efficiencies through rapid adoption of common technology strategies across Federal agencies.
- Enhancing the ability of Federal employees to remotely work with other employees at other agencies, and with the public, through a common, secure collaboration platform.
- Attracting the next generation of technologists to Federal service, demonstrating that innovation, creativity, and cutting-edge opportunities are woven into the fabric of public service.
- Reducing the Federal Government's carbon footprint.
- Improving the Federal Government's capabilities to maintain continuity of operations during national and regional emergencies.

- 5. Transparency of Government Information / Data.gov (\$3 million):** Data.gov allows the public to easily find, download, and use high-value data sets that are generated and held by the Federal Government. Data.gov helps realize the vision of open and transparent Government by "democratizing" data, making it available in "Internet time" and permitting broad use of the data in combinations that are not presently available to the public. Data.Gov now has over 250,000 Government datasets available for public use, promoting a more accessible and transparent Government.

Benefits include:

- Real-time citizen interaction with the Government
- Citizens see the Government is making fact-based decisions
- Increased Public awareness of Government data
- Improved interfaces and standardized approach to data sharing
- Provides cross domain access to data
- Increased number of applications (including mobile)
- Increase trust in Government to the public

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- d. What are you doing to ensure that underserved populations are being addressed as you proceed with these projects?

The E-Gov Fund projects and other information technology projects work to bring more information to the public so that information can be utilized in multiple modes this eventually provides the greatest dissemination of information. This contrasts with the past when the Government kept the information and published summary reports.

- GSA used E-Gov funds to support the re-design of GobiernoUSA.gov, the official web portal of the U.S. government in Spanish. The redesign has made the Spanish website more navigable and easy to use. It makes vital Federal information and services available to the Spanish-speaking community.
- All e-Gov systems are tested for accessibility for persons with disabilities and usability test and improvements are made.

7. GSA is requesting \$9 M in IT funds for the Federal Acquisition Workforce Initiative, \$24.9 M in funding for a Federal Acquisition Workforce Initiatives Fund, and has \$8 M projected carryover from FY 10 for the Acquisition Workforce Training Fund. I understand that the proposal for this was developed so late in the process that GSA is one of the few agencies to actually properly have it on budget. That is good for you, but makes us concerned that the plans for it may not be that well thought-out.

- a. Do you have other funds that will be used for the same or similar purpose?

GSA does not have other funds available for the purposes of the Federal Acquisition Workforce Initiatives Fund.

The Acquisition Workforce Training Fund created by the Services Acquisition Reform Act is used to support preparation of the acquisition workforce in civilian agencies. These resources are limited and provide for a portion of the training and development needs for the civilian agency acquisition workforce.

The Federal Acquisition Workforce *Initiatives* Fund is requested to meet the gaps in workforce development such as knowledge sharing and management, workforce data management, certification quality assurance, and other acquisition workforce development needs.

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- b. Do you have a detailed explanation of what this money will be used for? If so, what is it?

The requested funds will be allocated to three main workforce development goals:

**1. Improve Training and Development Programs (\$9.9 million):**

- Update training materials and focus on the needs of the full acquisition workforce including contracting officers, contract specialists, program and project managers, and contracting officer technical representatives;
- Develop career paths and jobs skills analysis to ensure the acquisition workforce is appropriately trained and developed to meet the changing environment of Federal acquisition; and
- Analyze current and future workforce needs in order to identify and build solutions to support the acquisition programs.

**2. Develop a Comprehensive Acquisition Workforce Management Infrastructure (\$9 million):**

- Manage acquisition workforce data and information technology needs related to civilian agency acquisition workforce initiatives; and
- Create and maintain a comprehensive contractor inventory database.

**3. Adopt a More Strategic Approach to Acquisition Human Capital Planning (\$6 million):**

- Improve knowledge sharing across agencies and the acquisition community by supporting on-line information sharing;
- Increase participation in structured career development programs; and
- Manage a workforce rewards and recognition consortium to identify and promote best practices.

- c. Will all of these funds be used in FY 11? If not, what is the actual amount GSA will expend in FY 11?

Yes. Funds requested for this appropriation would be available for obligation only in the year appropriated.

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From Chairman José E. Serrano

8. The Budget Request includes \$25 M for the Integrated Acquisition Environment—a federal procurement reform program.

GSA has requested \$20.5 million to modernize multiple government-wide information systems.

- \$15 million will be used to consolidate and re-architect the 8 independent systems of the Integrated Acquisition Environment (IAE) into one integrated procurement platform.
- \$5.5 million will be used to harmonize and integrate multiple government-wide systems maintained by the Office of Government-wide Policy for use by all agencies.

- a. Do you have other funds that will be used for the same or similar purpose?

The Integrated Acquisition Environment (IAE) is an interagency electronic government project funded by contributions of benefitting agencies. GSA collects approximately \$54 million per year for the operations and maintenance of IAE. Nearly all of these funds are used to maintain the existing systems. Without appropriations for IAE modernization, the project is expected to take 5 to 8 years, and GSA would have to increase our collections from other Federal agencies' appropriations.

There is no other source of funds for the critical investments which are necessary to maintain government-wide systems other than IAE.

- b. Do you have a detailed explanation of what this money will be used for? If so, what is it?

**Integrated Acquisition Environment (IAE) (\$15 million):** IAE is actually a portfolio of eight separate systems with their own contractors, each providing all aspects of information technology support including: maintenance, help desks, and hosting. GSA's IAE modernization strategy will integrate the eight systems into a single platform, rather than continuing to support eight separate systems.

While IAE will receive \$54 million from agency collections in FY 2011 for operation and maintenance of the legacy systems, the additional \$15M will be used to move systems to a new hosting contract and to a new, consolidated architecture:

- \$1.1 million will be used to integrate the Federal Procurement Data System (FPDS) integration into the IAE consolidated platform known as Architecture and Operations Contract Support (AOCS).
- \$9.8 million will be used for competitively-awarded software enhancements driven by the AOCS consolidation efforts in FY 2011. Based on current plans

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to consolidate systems in a phased approach, this funding will allow six of the eight systems to be consolidated by early FY 2012. For example, we will redesign the Centralized Contractor Registry (CCR) and eliminate 20 year old Cobol code and improve the registration process, which generates 75% of our level 1 help desk calls. The new, simplified architecture will be created, which will begin to improve data quality. The remaining two systems will be consolidated one each in FY 2012 and FY 2013, respectively.

- \$3.3 million will be applied to the development of the consolidated hosting efforts as driven by the AOCS platform.
- \$0.8 million will be used for Independent Verification and Validation (IV&V) across the entire range of IAE systems to review, analyze, evaluate, inspect and test each IAE product and service offering.

A key strategy is to **separate software development functions from hosting and operations & maintenance activities**. AOCS will be responsible for developing requirements based on a well defined architecture, acceptance testing and integration. Software enhancement vendors will be responsible for design, coding, and unit testing of the software enhancement. This separation of duties is expected to greatly improve testing, since AOCS will have a vested interest in testing a product that they will become responsible for supporting, and the fact that enhancements are being competitively awarded will reduce cost.

GSA will manage the IAE software using the **open source software methodology** in order to enhance competition and the ability of smaller and more innovative contractors to compete. Any software developed at government expense will be owned by the government and the associated software and documentation will be publicly available ("open source").

The **consolidated hosting contract** will provide hosting facilities for all of the IAE systems. Consolidating into one facility provides immediate benefits from a security certification and accreditation standpoint since each of the systems share common solutions for physical and internet security, so one set of documentation can be used for all eight systems. As modernization progresses, GSA will acquire more capable and virtualized equipment that is inherently more reliable and flexible.

The Federal Service Desk will provide **consolidated level 1 help desk support** for all of the IAE systems and some non-IAE systems. To date, GSA has already migrated six of eight total IAE systems to the consolidated help desk. A consolidated help desk will allow IAE to monitor service levels and trends that may indicate the need to change. Level 2 and 3 help desk support will continue to be provided by the incumbent vendors until all systems are transitioned to AOCS, at which time the consolidated help desk will also provide level 2 and 3 support.

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**Integrated Policy Infrastructure (IPI) (\$5.5 million):** OGP will modernize its currently disparate technology platform, positioning OGP to be able to respond in a more rapid and flexible manner to high-priority requirements. The modernization effort will also facilitate quality improvement, harmonization, and integration of government-wide data, enabling improved analysis and information sharing.

- c. Will all of these funds be used in FY 11? If not, what is the actual amount GSA will expend in FY 11?

Yes. Funds requested for this appropriation would be available for obligation only in the year appropriated.

9. GSA is requesting a \$290 M increase in Repairs and Alterations—from \$413.7 million in FY 2010 to \$703.4 million. That is sizeable increase. What is it for and will GSA be able to expend the entire \$703.4 million in FY 11?

GSA's FY 2011 repairs and alternations request of \$703.4 million is consistent with amounts provided in fiscal years 2007 (\$618.2 million), 2008 (\$722.1 million), and 2009 (\$692.3 million).

In FY 2009, GSA received significant funding for the Repairs and Alterations program through the American Recovery and Reinvestment Act. As a result, GSA's FY 2010 request focused more heavily on the Construction and Acquisition program.

To date, GSA had obligated more than \$4.1 billion of the \$5.5 billion received in Recovery Act funding, and repairs and alterations needs continue to arise across the inventory. GSA's FY 2011 capital program request seeks funding in support of critical customer requirements for SSA, USAOC, ICE, EOP, and FBI.

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From Chairman José E. Serrano

10. As you know, I have an ongoing interest in making sure that the territories participate fully in Federal programs and initiatives. Please provide an update of Recovery Act construction in the territories.

GSA's Recovery Act project plan includes 4 projects in U.S. Territories, totaling \$146 million.

Puerto Rico:

- San Juan, PR FBI Field Office Consolidation project (\$43 million) will consolidate the Puerto Rico FBI field offices into one facility that meets their security/facility requirements and addresses FBI's expanding mission. This project includes design of a new FBI Field Office and design and construction of a new parking lot. All contracts are in place except for the award of the Art in Architecture commission, which is expected by September 2010
- Frederico Degatau Federal Building and Ruiz Nazario Courthouse, Hato Rey, PR project (\$101 million) will replace the entire HVAC system, as well as other systems improvements, for the largest GSA-owned asset in the Caribbean. Design is complete and construction contract award is expected in Summer 2010.
- Jose V. Toledo Federal Building and Courthouse, San Juan, PR (\$168 thousand) building tune-up and re-commissioning is complete and a contract to execute the initial recommendations has been awarded.

U.S. Virgin Islands:

- St. Thomas, USVI, Charlotte Amalie Ron De Lugo Federal Building (\$1.7 million) re-commissioning is complete and a contract has been awarded for building systems replacement and tune-up work. Installation of stand-alone photovoltaic units will be conducted under a separate contract and contract award is expected in Summer 2010.

11. Did the recent earthquake in Mexicali impact any of the several GSA land port of entry projects in the area?

The only impact caused by the recent earthquake was to the Calexico West Land Port of Entry (LPOE); however, it was mostly non-structural. Calexico West was temporarily closed and traffic was routed to Calexico East where damage was minimal. The port has since reopened. No other LPOEs were damaged.

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From Chairman José E. Serrano

12. GSA received \$4 M for the Office of High-Performance Green Buildings in the Recovery Act. How much of that has been expended? If not all of it will be expended by the end of the fiscal year, why is additional money being requested for fiscal year 2011?

GSA will obligate the entire \$4 million provided in the Recovery Act this year. As of May 28, 2010, GSA had obligated a total of \$1.8 million, and additional \$400 thousand is expected to be obligated in the first two weeks of June.

The Recovery Act is also available to fund the salaries of individuals assigned to the office. As of January, the Office was staffed by only two individuals; however, by the end of FY 2010, GSA expects the Office will be fully staffed with nine employees. GSA is on track to meet the planned obligations by the end of the third quarter.

Financial Services Subcommittee Questions for the Record  
Submitted by Ranking Member Jo Ann Emerson

**1. Department of Homeland Security Consolidation at St. Elizabeth's:** DHS currently occupies 7 million square feet of office space in 50 locations around the metro DC area. The consolidation has been proposed as a cost efficient alternative to leasing.

- Has GSA conducted a detailed study on how much of this space is leased, how much is owned, what the savings will be and what will become of this vacant office space after DHS is consolidated? Please provide this information for the record.

In consultation with DHS, GSA has conducted a detailed study of DHS space in the National Capital Region as part of the strategic consolidation of DHS headquarters elements. Approximately 75 percent of DHS headquarters space is currently in leased locations and the remainder is in Federally-owned locations. The cost advantage of relocating to St. Elizabeths is greater than \$500 million on a 30-year net present value basis. Generally, when Federal employees vacate space in the private sector, building owners re-position their buildings to lease them to other tenants from either the private or the public sector.

According to information your office has shared, just over half of the funds provided for the consolidation have been obligated.

- Please describe the current schedule for construction at St. Elizabeth's.

Phase 1a: US Coast Guard Headquarters  
FY 2009 Design Completion  
FY 2009 Start Construction  
FY 2013 Complete Construction

Phase 1b: US Coast Guard Command Center and Amenity Space  
FY 2010 Design Completion  
FY 2010 Start Construction  
FY 2013 Complete Construction

Phase 2a: DHS Headquarters Elements and the National Operations Center  
FY 2011 Design Completion  
FY 2011 Start Construction  
FY 2014 Complete Construction

Phase 2b: FEMA  
FY 2012 Design Completion  
FY 2012 Start Construction  
FY 2014 Complete Construction

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Submitted by Ranking Member Jo Ann Emerson

Phase 3: TSA, CBP, and ICE  
FY 2013 Design Completion  
FY 2013 Start Construction  
FY 2016 Complete Construction

- Is the estimate of \$3.4 billion for the total cost of the project still accurate, and when will the entire project be completed?

The estimated total project cost for St. Elizabeths is \$3.338 billion, including a total of \$1.3 billion from DHS. The project is anticipated to be complete in 2016.

- 2. Security of Federal Buildings:** Recent events including the plane crash into the IRS building in Austin, and the shootings at the Las Vegas courthouse and the Pentagon have highlighted the security needs of all Federal facilities. I understand that many Federal buildings and courthouses are older and do not meet current security standards.

- Are you concerned that there are older Federal facilities that do not meet appropriate security standards such as setbacks from road, lobby configurations to allow for security screening, securing air-intakes, and secure elevators and corridors for judges?

GSA is committed to providing safe and secure workplaces for Federal employees and the visiting public. We appreciate that all facilities do not have the same security measures and are constantly evaluating security, with the Federal Protective Service and our tenant agencies, using a risk-based approach to apply the appropriate countermeasures to mitigate the risk.

- Can you address some of these concerns in your alterations and repairs account without constructing new facilities and wouldn't that be significantly cheaper?

Yes. GSA can meet our customers' needs by improving existing buildings instead of building new ones. This saves money by recapturing the value of the Government's investment in land, building construction, and infrastructure. Reusing our existing assets is our most sustainable investment and it would not be prudent to replace 1,500 real estate assets providing 175 million square feet of rentable office space strictly to address security. The market now offers a great variety of products for upgrading existing buildings and our risk assessments are becoming more sophisticated. We are working with our

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Submitted by Ranking Member Jo Ann Emerson

customers to take a second look at other projects as well, checking our study assumptions and conclusions to ensure we are spending prudently.

- If an agency approaches you with a facilities security requirement, do you prioritize them higher than other repair and alterations needs?

Security requirements are not addressed in isolation but are part of a broader evaluation of facility needs. Building modernization projects are proposed based on a combination of factors including agency mission requirements, customer urgency, project readiness, and building condition. GSA incorporates items like security requirements, fire and life safety, and building systems into project proposals. Proposed projects are prioritized in a manner consistent with available resources. Security is integral to all work in a building and is incorporated into GSA plans and projects accordingly.

- 3. Courthouses:** When Acting Administrator Paul Prouty testified before this subcommittee last year, he promised that GSA would start using the Administrative Office of the Courts' priority list when making funding decisions. However, there is no GSA request in FY2011 for courthouse construction at all.

- I realize you were not at GSA for the preparation of the budget request, but you will be for next years, and does GSA still use the AOC's priorities in its decision making process?

Yes, GSA does use the AOC's priority list in making funding decisions. The decision to request funds for new construction or major renovation of any project requires a careful evaluation of the physical and financial condition of the assets, the long-term needs of the customer agencies and market factors. GSA must assess the priorities of our entire portfolio and consider our total new construction and repair and alterations project needs. The capital program we request in each year must be made in the context of these priorities.

The two highest priorities of the Courts are already underway. Austin, TX was the Judiciary's highest priority for new construction last year and GSA has allocated \$112 million for this courthouse in our Recovery Act project plan. Salt Lake City, UT was the Judiciary's second highest priority. GSA received \$211 million for this project in the FY 2010 Consolidated Appropriation. GSA's Recovery Act project plan also includes 7 courthouse projects (including Austin, TX) and repair and alteration work on more than 110 courthouses.

Financial Services Subcommittee Questions for the Record  
Submitted by Ranking Member Jo Ann Emerson

- Will GSA use the judicial conference list to prepare your FY2012 request?  
Yes, the Judicial Conference priority list will be one of the factors that GSA will use to develop the FY 2012 capital project request.

4. **2010 Census:** Last year I was disappointed to learn that GSA awarded \$411,000 for a 16-month lease for the U.S. Census in Cape Girardeau. This made headlines in district given that the going rate for similar space is probably 70 percent less than the \$50/square foot GSA awarded in its contract. I raised this issue at last year's hearing, but it has led to my continued interest in leased space for the 2010 Census. Specifically,

- How much extra space is being used to conduct the Census?

GSA is providing approximately 4.3 million rentable square feet (RSF) at 513 locations across the country.

- How much of that space is in Federally-owned buildings?

10 local Census Offices were sited in owned Federal buildings and U.S. Postal Service properties, totaling approximately 70,000 RSF.

- How much space is in leased facilities?

GSA is providing over 4.2 million RSF in leased facilities. There are 503 new leases, including 484 local Census Offices, 13 temporary Regional Offices, and 6 warehouses.

- What will be the total cost of the leased space to the Federal government?

The office space lease terms range from 16 months to 39 months. Their total value, including the cost of tenant improvements is approximately \$330 million.

- How does this compare to the 2000 census?

In 2000, there were 520 total local Census Offices requested. For 2010, Census requested 494 total local Census Offices. This is 26 fewer leases, or approximately 160,000 (RSF) less, than in 2000.

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**5. Repairs and Alterations:** The President's budget for FY 2011 requests \$703 million for repairs and alterations to Federal buildings. It is my understanding that the repairs and alterations backlog at GSA was \$6.6 billion at the end of FY2006, and that today, 3 ½ years later, the backlog is still \$5.5 billion.

- Given that Congress appropriated \$5.5 billion to the Federal Buildings Fund, much of which has been directed toward repairs and alterations projects, how can the backlog still be so high?

While a large portion of the Recovery Act appropriation to GSA is being used for repairs and alterations, all Recovery Act funded projects are not exclusively aimed at reducing GSA's investment liability. The \$4.5 billion provided for repairs and alterations were directed to assist GSA in transforming the GSA portfolio into high-performance green buildings. GSA is currently assessing the full impact that the Recovery Act appropriation will have on the 10 year investment liability horizon.

- What is GSA's current estimate for how long it will take for the Federal Buildings Fund to take care of the backlog?

The GSA investment liability is a total of the known current and future repair and alteration needs over the next ten years. Since the liabilities have not yet been incurred, it is not something that would be eliminated, but rather addressed as the liabilities become current. New needs will constantly arise.

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Submitted by Ranking Member Jo Ann Emerson

**6. Out-year costs (the "tail") of Stimulus Projects:** It is my understanding that GSA considers one phase of a multi-year project to be one project, and therefore all projects started with Stimulus funds are fully funded by your definition. However, many of the projects are multi-phase projects that were started with stimulus funds, such as the Department of Commerce headquarters?

- Could you provide for the Committee the total out-year funding requirements by building of the following phases for stimulus projects?

Four of the new construction projects that were funded through the Recovery Act appropriation will require additional phases prior to full implementation of the current consolidation or full facility construction plans.

Project	Recovery Act funding in thousands	Estimated future funding requirement in thousands
DC, Washington DHS Consolidation and Development of St. Elizabeths Campus	\$450,000	\$1,417,849
PR, San Juan FBI Field Office Consolidation	\$42,667	\$154,506
NM, Columbus U.S. Land Port of Entry	\$4,062	\$72,100
CA, Otay Mesa U.S. Land Port of Entry	\$21,296	\$160,230
<b>TOTAL</b>	<b>\$518,025</b>	<b>\$1,804,685</b>

Seven repair and alteration projects will require additional phases. The phases selected for Recovery Act funding were chosen because they could be independently implemented and they meet the criteria previously identified for Recovery projects. GSA does not expect to immediately move on to additional phases of these projects.

Project	Recovery Act funding in thousands	Estimated future funding requirement in thousands
IN, Indianapolis Major General Emmett J. Bean	\$36,650	\$143,534
HI, Honolulu Prince Jonah Kuhio Kanaianaole Federal Building and U.S. Courthouse	\$121,000	\$198,650
DC, Washington Truman Building *	\$14,735	\$54,700

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DC, Washington 1800 F Street Building	\$161,293	\$178,943
DC, Washington Department of Interior Building	\$61,546	\$50,400
DC, Washington Lafayette Building	\$128,827	\$118,809
DC, Washington Herbert Hoover Building	\$185,167	\$537,895
MI, Detroit, P.V. McNamara Federal Building Complex	\$55,290	\$55,974
<b>TOTAL</b>	<b>\$764,508</b>	<b>\$1,338,905</b>

\* \$54,700 thousand for the Truman Building is the amount necessary to complete Phase I; GSA does not have an estimate for Phase II at this time.

**7. Deficit of Leasing Operations:** In your annual performance report that was a part of the fiscal year 2011 budget justification, it shows that administering leased space is a revenue loser for GSA. Specifically leased Funds from Operations operated at a 2.1% deficit or \$98 million a year.

- What is the cause of this annual deficit and what is GSA doing to rectify the situation?
- What long term effect does this have on the Federal Buildings Fund?

GSA continuously monitors leases that are losing money, and actively works to return those leases to break-even. There are several reasons why leased expenses have exceeded leased revenue in FY 2009:

- a. In some instances, we make lease payments to the lessor before collecting rent for the tenant agencies. GSA recognizes this is not the most prudent business process and is an issue we are working to address. We have taken action to improve billing timeliness: We have developed a Rent Bill Management (RBM) program, which is a process, policy, and tools that ensure that we bill our customers for the space that they occupy, whether they are in leased or Federally-owned space. However, some challenges remain:
  - Rent increases from lessors are manually adjusted in our billing system, creating a lag in charging our customers increased rents;
  - Previously, we did not start billing customers until all aspects of the customer's occupancy were complete. In 2007, we implemented the Interim Billing Process, by which we will initiate customer billing, even if all project costs have not been fully reconciled. Interim Billing ensures that we begin receiving revenue for space that a customer is occupying while

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- they continue to work through the Occupancy Agreement process in obtaining a customer's signature on the final Occupancy Agreement; and
- Taxes are sometimes billed inconsistently by lessors, leading to untimely billing to our customers. GSA policy requires lessors to submit a proper invoice and evidence of payment within 60 calendar days of the tax due date. However, an internal review found that processing late tax payments had created problems for GSA and that crossing fiscal years may make it impossible to recover the money from the tenant agencies.
  - b. Accounting adjustments for step rents, periods of free rent, and broker commission credits amounted to approximately \$31 million in FY 2008 and \$27 million in FY 2009. Over the life of a lease, these adjustments will reverse and have a positive impact on profitability.
  - c. In limited instances, GSA can save money over the long-term by terminating leases early. The termination costs associated with early lease buyout often lead to significant losses in the year of the buyout, as revenue will not offset these termination costs. However, this action is a long terms savings to the taxpayer.
  - d. Some leases incur lump-sum tenant improvement costs up front -- prior to occupancy -- that are not offset by the revenue generated in the first year, but are recovered through fees charged over the life of the lease.
  - e. GSA's vacancy rate contributes negligibly. Vacancy rates in the leased inventory were a historic low of 1.1% in 2009; we estimate that it contributes less than 15% to the total operating losses of our leased portfolio.

GSA is taking aggressive action to reduce the losses from the leased inventory. On a monthly basis, PBS is reviewing every lease experiencing a financial loss to determine the driving factor and taking corrective actions. GSA is examining all of its operating accounts, including lease accounts, to find ways of controlling costs and reducing expenses. We plan to improve matching revenues and expenses to ensure timely collection of rent and look for operational efficiencies across the organization. Additionally, we are working with our customer agencies to create long-term, strategic customer portfolio plans and help shape customer requirements.

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**8. Undocumented workers:** Approximately \$41 million of the stimulus funds are for buildings in Missouri, a state with a 9.5% unemployment rate. It is important that the benefits of this spending are being felt in the local job market.

- How does GSA monitor compliance by contractors and subcontractors that its employees are authorized to work in the United States over the duration of the contract?

All of GSA construction and service contractors receive a Homeland Security Presidential Directive 12 (HSPD-12) compliant background check that includes an undocumented worker check. These background checks are conducted by the Federal Protective Service.

**9. Fleet Management Software:** President Obama has made it a priority to ensure that Federal agencies develop policies to foster a more sustainable approach to the use of natural resources and taxpayer resources. As the agency responsible for determining the policies and procedures to manage the 645,000 vehicle U.S. government fleet, the GSA will play a central and very high profile role in helping to make the vision of a more sustainable and efficient government a reality.

GSA has an opportunity to lead by example, and reduce the size and cost of the government vehicle fleet. One way this can be done is to incorporate fleet management platforms that allow GSA and other agencies to keep and maintain fewer vehicles. One such platform uses the technology associated with car sharing operations, which have been highly successful in cities such as Washington, D.C., Wilmington, Delaware, as well as other urban areas and college campuses around the country. This is a concept that, in my opinion, makes a great deal of sense. It would seem, based on the initial success of such a fleet management program in the District of Columbia that GSA and its federal agency counterparts could benefit from using this technology.

- Is the GSA currently considering the integration of fleet management software into its fleet, and if so, at what stage are these considerations?
- If GSA is not currently exploring the use of fleet management technology, I would be interested to know the policy and budgetary rationale for that decision.

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On May 5, 2010, GSA Fleet awarded a contract to Zipcar, the largest car-sharing provider in North America, to perform a pilot using its car-sharing technology developed specifically for the public sector: FastFleet. The pilot will be conducted over a 6 month period beginning in June 2010, using 15 - 20 GSA Fleet vehicles under lease to the Navy. This pilot will help determine if FastFleet's car sharing technology can be used to effectively reduce the size of the Federal government's fleet. If successful, GSA Fleet will work with its customers to identify opportunities for applying the technology to meet federal car sharing needs on a larger scale.

In March 2009, GSA's Office of Government-wide Policy published a Final Rule update of the Motor Vehicle Management Regulation (41 CFR 102-34), adding a requirement that all Federal agencies implement Fleet Management Information Systems in their operations to improve management and reporting of critical inventory, cost, miles traveled, and fuel use data. GSA published Federal Management Regulation Bulletin B-15 to detail the requirements for these systems.

GSA is assisting Federal agencies in meeting this requirement by forming an interagency working group to develop a low-cost tool for the management of agency-owned vehicles. The Federal Fleet Management System (FedFMS) is based on the existing fleet management system used by GSA Fleet to manage GSA's leased vehicle fleet. This existing system is being reviewed by the interagency working group to manage data for agency-owned vehicles and will be modified to meet their specific needs. When complete, FedFMS will provide a basic low cost system to collect, and analyze agency-owned motor vehicle data and provide required reports.

**10. Administrator's Surge Account:** How much funding is included in the FY 2011 budget for the Administrator's Surge account and for what purposes? How does this compare to the past 3 fiscal years?

The FY 2011 budget includes \$2,500,000 for the Administrator's "surge" account. These funds provide a pool of resources for small projects and improvement initiatives that could not be predicted or planned during the annual budget process.

The budget has been the same for the past 3 fiscal years. No increases or decreases.

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- 11. Office of Inspector General audits:** Please provide the number of pre-award audits and post-award audits completed by the Office of Inspector General (OIG) for each fiscal year beginning in fiscal year 2006 and include the estimated numbers for FY 2010 and 2011.

The following table shows the number of pre- and post-award audits of the Multiple Award Schedule (MAS) Program completed by GSA's OIG.

	FY 2006 Issued	FY 2007 Issued	FY 2008 Issued	FY 2009 Issued	FY 2010 Planned	FY 2011 Planned
Pre-award MAS	76	68	68	66	55	56
Post-award MAS	8	9	5	10	10	20

**12. Rent Increases:**

- What is the average rent rate increase that Federal agencies have experienced over the past four fiscal years?
- Please differentiate between Federally owned and leased space.
- Please compare to commercial rent rates nationwide for each year.

**OWNED PORTFOLIO:** For the period FY 2006 to FY 2010, the average GSA shell rate<sup>1</sup> ranged from \$15.22 to \$16.33 per square foot, for a net change of 7.29% over the five years, while the Torto Wheaton Research (TWR) Net Asking Rent index ranged from \$17.54 to \$18.56, for a net change of 5.82%. From FY 2005 to FY 2009, GSA rates increased 3.9% while market rates increased 15.2%. Over a longer period, FY 2004 to FY 2010, GSA rates increased 2.89% while market rates increased 15%.<sup>2</sup>

**LEASED PORTFOLIO:** For the period FY 2007 to FY 2010 (the earliest full data set available), the average GSA shell rate ranged from \$18.46 to \$19.82, for a net increase of 7.36% over the three years. During the same period, the TWR

<sup>1</sup> The analysis examines shell rents per square foot, which represent the core rent in each case, and do not include building or location-specific operating rents. The most realistic market comparison index is Net Asking Rent (Torto Wheaton Research Net Asking Rent measure). Torto Wheaton Research is now CBRE Econometric Advisors (CBRE-EA), an independent research firm owned by CBRE which provides robust nationwide market research. CBRE-EA is one of many data sources GSA uses for national analytics.

<sup>2</sup> The data examined reflect the average shell rental rate per square foot. For the owned portfolio, warehouse space, and properties with rates based on return on investment (ROI) analysis properties are not included. Shell rates do not include operating expenses. are not included in this analysis. For the leased portfolio, general use and warehouse space are included.

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Net Asking Rent for the same period ranged from \$19.01 down to \$18.56, for a net loss of 2.36%. GSA leases executed at higher rates were locked in as market rates fell. Similarly, lease rates locked in at lower rates often avoid market increases.

GSA consistently awards lease contracts at 9 percent below commercial market rates or better. GSA leased space is provided to our Federal customers at cost, plus a 5 to 7 percent fee. Thus, GSA has consistently provided leased space to our customers at below commercial market rates.

<b>Lease Rates Paid to by GSA Relative to Commercial Market Rates for New Lease Contracts Effective FY 2005 to FY 2009</b>	
<u>Fiscal Year</u>	<u>Lease Rates Relative to Market</u>
FY 2005	-9.17 %
FY 2006	-9.23 %
FY 2007	-10.58 %
FY 2008	-9.38 %
FY 2009	-10.13 %

13. Federal Acquisition Service: Several years ago, GSA reorganized the Federal Acquisition Service (FAS) in order to coordinate and streamline the supply and technology services. The Committee was informed that such a reorganization would result in savings of dollars and workforce at the FAS.

- Please quantify and detail the savings GSA was able to achieve for its customer agencies by fiscal year since the reorganization.

GSA officially established the Federal Acquisition Service (FAS) on May 1, 2007 with the goal of providing best-value services, products, and solutions to our customers that increase overall government effectiveness and efficiency. The key outcome of the FAS reorganization was to improve GSA's organizational capability to deliver excellent acquisition services that provide best value for our Federal agency customers and the American taxpayers. The integration of the Federal Technology Service and the Federal Supply Service into FAS was driven by the need for GSA to align its operations in such a way that customer needs could be better served in the current market environment.

FAS created management efficiencies by reducing redundant functions, achieving greater economies of scale and clarifying roles and responsibilities across the entire organization. Savings within FAS were realized through the elimination of redundant operations such as the need to have two Commissioners, Controllers, Chief Information Officers and regional Senior

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Executives. In addition, FAS achieved savings through a decrease of over 780 full time equivalents (FTEs) from FY 2006 to FY 2009. Qualitative benefits from the establishment of FAS include a more sophisticated understanding of customer requirements, stronger management of the agency's acquisition processes and programs, and greater integration of FAS business lines to provide multiple channels for customers to acquire the products, services, and solutions they need.

- Detail the specific efforts launched in order to capture and record customer savings information, as GSA committed to the Committee at the time the reorganization was approved.

Savings to customer agencies are dependent on the amount of business volume facilitated by FAS acquisition vehicles. As a result, it is difficult to estimate customer agency savings. However, a number of efforts are underway to ensure best value to our Federal agency customers.

GSA is dedicated to ensuring our customers get best prices on Schedules, so increased efforts are being implemented to achieve optimal pricing at the schedule contract level. These efforts include training on how to negotiate a Schedule contract. GSA also utilizes Office of the Inspector General's contract audit findings to assist contracting officers in negotiating improved pricing and terms and conditions. GSA is currently undertaking several initiatives to drive greater consistency in pricing structure, and system enhancements to ensure currency of pricing on GSA Advantage and of pricing practice disclosures.

Another effort revolves around a Federal Strategic Sourcing Initiative (FSSI) for office supplies. GSA is committed to ensuring our customers are getting the best possible price on office supplies. GSA's FSSI strategy includes several key features: 1) point-of-sale discount requirement whenever the customer uses a Government Purchase card for payment; 2) opportunity for firm agency commitments; 3) a higher minimum order was established; 4) a reverse auction procedure was developed; and 5) delivery requirements were set at 3-4 day ground transportation.

An additional effort to increase customer savings includes working with Federal agency customers to transition from FTS2001 to the more efficient and cost-effective Network Universal and Network Enterprise contracts.

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- Please detail the number of FTE's and contractors at the FAS from FY2006 to present. Please describe how many FTE's and contractors were reduced from FY2006 to present as a result of the FAS reorganization.

In FY 2009, GSA's FAS realized 3,600 FTE, a reduction of 781 FTEs from FY 2006. This dramatic reduction in staffing has generated savings during this timeframe. However, acquisition skills and expertise are becoming more critical in order to achieve greater efficiencies in leveraging Federal procurement dollars. This trend requires GSA to increase FAS staffing, and we requested an increase of 122 FTEs in FY 2011, over FY 2010 levels.

GSA utilizes contract labor to fill its needs in areas that require a highly skilled workforce which is rapidly changing as well as in areas that require short term flexibility in the relative size of staff required. GSA also utilizes contract labor to assist in supply operations distribution centers which are subject to seasonality of customer purchases and require a flexible workforce that can be changed quickly to meet the current customer requirements. This flexibility can more efficiently be achieved through a contract labor force that can increase or decrease with a short lead time. Approximately 1,150 contractors were assigned to the FAS organization on April 30, 2010. Historical counts of contractor FTE are not available within FAS. Consequently, to estimate the use of contract support, FAS uses dollars spent on contractors as an indicator. Contractor costs rise and fall with increases and decreases in business which is supported by the trend within FAS. Based on FY 2006 through present, spending on contracts has remained relatively unchanged despite increases in business volume.

**14. Non-GSA Construction:**

- How much is proposed in the entire President's FY 2011 budget for new design and construction for non-defense departments and agencies. Please provide the non-GSA requests by agency.

GSA is not in a position to respond on the budget requests of other agencies.

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**15. Vacant and Under-utilized Space:**

- What percentage of GSA space is underutilized or vacant?

GSA maintains a vacancy rate in its inventory that is significantly below private sector benchmarks. GSA ended FY 2009 with a vacancy rate of 2.6%, excluding space vacant due to an on-schedule prospectus-level modernization. This is well below the 15.7% nationwide office vacancy rate in the private sector during the same period.

- How many properties is that?

At the end of FY 2009, GSA had 92 leased assets that were underutilized or vacant per the Federal Real Property Council's (FRPC) definition. This represents less than 2% of GSA's leased space. GSA is working to terminate or buy-out these leases, or backfill the space.

In FY 2009, 75 owned assets were underutilized or vacant (per the FRPC standards) for a reason other than an on-schedule prospectus-level modernization. Fifteen of these assets were already in excess status and are in the disposal process. GSA will continue to optimize its portfolio by minimizing vacant and underutilized space in its inventory.

- What five agencies have the most underutilized or vacant space?

GSA is not in a position to respond on other agencies' utilization of real property.

- What plan is in place to dispose of these properties?

GSA will continue to work diligently to optimize the GSA portfolio and dispose of unneeded assets that are excess to the needs of GSA. GSA annually analyzes customer need, market conditions, and asset performance and characteristics for all of its owned assets and, based on this analysis, develops a long-term strategy for the asset. During this process, assets that will be considered excess in the next five years are identified. PBS uses this process to plan disposals pending within the next five years.

GSA also supports other landholding agencies in disposing of their unneeded real property and reducing Federal spending by providing a variety of asset management and disposal services. GSA assists those agencies in developing asset management plans and strategies, in accordance with Executive Order 13327, "Federal Real Property Asset Management", and provides a variety of asset utilization and disposal services, including:

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- Understanding the role of each asset in supporting agency mission objectives;
- Examining current and future utilization alternatives;
- Collecting and organizing title, environmental, historical and cultural information; and
- Identifying real estate and community issues affecting the property.

16. **Restructuring of the Federal Buildings Fund owned portfolio:** In FY 2002, GSA began the restructuring of its owned portfolio. The goal was to reposition the portfolio by disposing of assets that were financially underperforming, adding new inventory through construction, and strategically reinvesting in key assets to improve the condition of existing space.

- What were the outcomes of this restructuring?

Between FY 2002 and FY 2009, GSA disposed of 194 underutilized and excess owned and leased properties, removing almost 11 million rentable square feet from the inventory.

- Is the Federal Buildings Fund financially healthier because of these efforts? Please detail.

Yes. As a result of this effort, GSA has eliminated \$461 million in repairs and alteration needs from its portfolio, allowing the agency to allocate scarce capital dollars more effectively. Additionally, the restructuring produced almost \$198 million in receipts from disposals since FY 2005, which were returned to the FBF and used to invest in the portfolio.

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Submitted by Ranking Member Jo Ann Emerson

**Follow-up from the Hearing:** Provide more detail on the Recovery projects that are escalations of existing projects (Jackson, El Paso, & Little Rock CHs; Calais, Peace Arch LPOEs; several Modernizations). In general, provide more detail on what causes re-programmings and escalations.

Re-programmings and escalations are used to obtain additional funding when appropriated funds are insufficient to complete the required work in a capital project. The shortfall in project funds can be caused by several factors. The most common reason is sudden changes in construction market conditions. Budgets for capital projects must be developed several years prior to the start of construction and in most cases these budgets are set prior to the start of design. Therefore, any changes in the construction market will have dramatic effects on the final cost of construction that can not be anticipated when establishing a budget. There are also national and international events that can affect the cost of construction with little or no advance warning. These come from both natural disasters and man-made events. Escalations may also be created when due to unforeseen site and construction conditions or labor and construction disputes.

Financial Services Subcommittee Questions for the Record  
From Congressman John Culberson

1. How will applications, like Cloud Computing, allow agencies to improve public participation in helping the Government to achieve its mission, improve service, and identify and solve problems?

Cloud computing can be used by government agencies to improve service and better achieve their mission. As defined by NIST, cloud computing is "a pay-per-use" model for enabling available, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, services) that can be rapidly provisioned and released with minimal management effort or service provider interaction." Cloud computing allows agencies to reduce their overall infrastructure cost, ramp up bandwidth on demand (to respond to seasonal demands or emergencies such as the Gulf Oil Spill), and reduce the carbon footprint through reduced server footprint and power usage. Reducing the cost of their IT infrastructure provides the government with resources to improve mission performance.

Implementing cloud computing has numerous advantages and will help agencies improve public participation and the infrastructure that supports agency out-reach program.

1. Cloud computing can help in bring new levels of performance, availability, and dynamic flexibility to enterprises, develop collaborative communities, and connect multiple business systems.
2. Cloud computing applications require fewer up-front capital expenditures than traditional IT brick-and-mortar investments. This will enable agencies to accrue significant cost savings in the long run, thereby allowing agencies to re-direct funds to critical, mission-related programs. Additionally, most Cloud computing services are usage based, therefore, agencies can provide applications with little to no up-front investment and only pay for what is actually used.
3. Because cloud computing applications can be quickly procured, government services can be rapidly ramped up or decommissioned to respond to both anticipated and unanticipated periods of citizen demand, such as information gathering and dissemination.
4. Cloud computing enables government to provide libraries of reference implementations for common citizen-facing applications such as blogs, information sites, information gathering sites and the like. This means that development time for public engagement sites can be dramatically reduced, replacing application development with customization of agency-specific reference templates, and reducing the cost of citizen engagement tools.
5. Cloud computing promotes transparency by allowing more rapid and less expensive access to crucial datasets of public interest, such as Census data,

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geospatial data and performance data, providing a robust and flexible infrastructure for a wide range of citizen applications ranging from geo-location and planning to performance evaluation.

6. Agencies can utilize public and private cloud computing service providers to host government information, applications, and even automated (web) services in the cloud. This opens the possibility for the agencies to develop new and innovative ways of granting the public access to and the use of government services. USASpending.gov, which is hosted in NASA's cloud environment (known as Nebula), is one example. Others possibilities include hosting government data and (web) services on full platforms such as Google and SalesForce. Doing so opens the possibility for a robust public "apps" ecosystem which goes beyond mere data access to enable public-driven and designed applications that use, transform and make the data available for specific public purposes, driven by the public's own innovation.
7. Cloud Computing enables agencies to engage the citizen population by standing up collaborative and informational sites that scale to the size of the demand. The global use of social media has grown 82% year-over-year according to The Nielsen Company. Recognizing that the public is growing more accustomed to communicating through this method and that some of these services can be purchased as a cloud service, the government can augment their citizen outreach activities by leveraging these solutions to increase public participation. For example, agencies have access to, via Apps.gov, a suite of social media tools (wikis, RSS feeds, video, document sharing, idea generation, et. al.), which can quickly be adopted and implemented to increase public participation in government. More recently, GSA announced an RFI for a new corporate email system. It is accepting comments to the RFI at the BetterBuyProject's wiki, as opposed to more traditional procurement channels.
8. Since cloud services are metered and billed by the provider according to use, agencies are better positioned to gauge stakeholder interest based on actual usage of any specific cloud solution. Agencies can use this data to more effectively adjust their portfolio of external and internal engagement activities.
2. What other tools is GSA using to improve transparency and accountability to the federal government?

GSA is using many applications, including cloud computing, to help the Government to improve transparency and accountability. For example, GSA is creating platforms of citizen engagement and challenge tools that agencies will be able to use to conduct dialogs with their stakeholders, customers, and employees to identify ideas to solve problems. In addition to these platforms, GSA used IdeaScale to create a tool for agencies to use to engage the public in creating their Open Government Plans. GSA identified and solved the policy issues and constraints so that each

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agency didn't have to spend valuable time and resources in solving the same issues. These included security, privacy, and accessibility for people with disabilities. Twenty-three agencies used the platform, getting over 1,200 ideas, almost 12,000 votes, and more than 2,100 comments. By providing this capability centrally, the Government has insight into the overall comments across Government with mass problem solving capability. All of these platforms are being hosted in a cloud infrastructure which provides the scalability needed for an effective solution.

Financial Services Subcommittee Questions for the Record  
From Representative Wasserman Schultz

Explain why Ft. Lauderdale, FL Courthouse is not on the AOC's priority list.

In 2004, the Judicial Conference declared a two year moratorium on courthouse construction. At the time, approximately 35 projects for which GSA had no authorization or funding were deleted from the Administrative Office of the Courts' five-year plan. These projects were to be reviewed by the Judiciary under their new Asset Management Planning process to determine the continued need for the projects. The results of the reviews were to be provided after all of the reviews were completed. We have not yet received any results.

Provide the Subcommittee with more details on how excluded item lists are developed for Federal buildings.

There are two categories of items that are excluded in Federal facilities: "unlawful" and "prohibited".

- Unlawful Item: An item that is prohibited from being brought onto Federal property by Federal law (such as 18 USC 930), regulation, or court order.
- Prohibited Item: An item that is prohibited by a facility security rule established by a facility's Designated Official, under 41 CFR Part 102.71.20, or other regulation and approved by the procedures outlined in this policy. Examples would be cameras or cell phones.

GSA, in conjunction with the Designated Official and the Federal Protective Service (FPS), jointly discuss building security and security operations for facilities. GSA and FPS have developed minimum baseline standards for entry into Federal facilities.

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