

**FINANCIAL SERVICES AND GENERAL  
GOVERNMENT APPROPRIATIONS FOR 2009**

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

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SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
APPROPRIATIONS

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**PART 6**

	<b>Page</b>
<b>Federal Judiciary</b> .....	<b>1</b>
<b>Supreme Court</b> .....	<b>101</b>
<b>District of Columbia</b> .....	<b>133</b>



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# **FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2009**

WEDNESDAY, MARCH 12, 2008.

## **FEDERAL JUDICIARY**

### **WITNESSES**

**HON. JULIA SMITH GIBBONS, UNITED STATES CIRCUIT JUDGE,  
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT  
JAMES C. DUFF, DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED  
STATES COURTS**

### **CHAIRMAN SERRANO'S OPENING STATEMENT**

Mr. SERRANO. Good morning to everyone. The subcommittee will come to order.

We will hear testimony today on the subject of the fiscal year 2009 budget request for the Federal Judiciary. It is interesting, and I just got this terrible feeling, I get about three binders ahead of time. I said, what happens if I pick up the binder for tomorrow's hearing and start reading. Tomorrow is the Supreme Court.

We all know the important role that an independent Federal Judiciary plays in our constitutional system. Judiciary, like other government entities, needs sufficient resources to properly function and perform its constitutional duties. This subcommittee, as a provider of those resources, plays an important role in helping to maintain our government's overall system of checks and balances.

For fiscal year 2009, the Judiciary has requested \$6.3 billion in discretionary funding, an increase of nearly \$475 million over fiscal year 2008. I look forward to a discussion today on this request, as well as the impact of action this committee took during fiscal year 2008 at the request of the Judiciary with regards to court security and pay for public defenders.

Joining us today to testify in support of the budget request is Judge Julia Gibbons of the U.S. Court of Appeals for the Sixth Circuit. Since 2004, Judge Gibbons has served as Chair of the Budget Committee of the Judicial Conference. Judge Gibbons testified before this subcommittee last year, and we are pleased to have you here once 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 to Chief Justice William Rehnquist.

We welcome you both today. We very much look forward to hearing from you.

Also, I would like to tell you that as of this morning, President McCain has been challenged—I mean Senator McCain, has been challenged out West as to whether he is eligible to be President. I keep asking every lawyer, every judge that comes before me, please clarify whether I can be President, because he was born in the Panama Canal Zone and I was born in Puerto Rico. So I hope if he gets a favorable ruling, which he should, it includes me too. There is more than one way to make me happy.

Okay. We thank you.

Speaking of a person who has no doubts that he can be President, and should have been, and should be, Mr. Regula.

Mr. REGULA. Mr. Chairman, I hope you don't run, because I might have to do a cross-over.

Mr. SERRANO. Thank you so much.

#### MR. REGULA'S OPENING STATEMENT

Mr. REGULA. I am happy to welcome you, and look forward to your testimony. Your local colleagues have softened me up as much as they can as to what your mission is today.

Mr. SERRANO. Thank you. You realize tomorrow's headlines, unfortunately, will not be anything that you say; it will be that I said President McCain.

We welcome you. Please understand that all of your testimony will be fully inserted in the record. So we ask that you stay to a 5-minute presentation.

Judge Gibbons.

#### JUDGE GIBBONS' TESTIMONY

Judge GIBBONS. Thank you.

Chairman Serrano, Representative Regula, other members of the subcommittee, I testify before you today as Chair of the Judicial Conference Committee on the Budget. As mentioned, appearing with me today is Jim Duff, the Director of the Administrative Office of the U.S. Courts.

Mr. Chairman, let me begin today by thanking you and your colleagues for making the judiciary a funding priority in the fiscal year 2008 appropriations cycle. The courts are in good financial shape for 2008. The funding you provided will allow us to finance continuing operations in the courts, as well as address workload needs.

We are particularly appreciative of the \$25 million you provided in emergency funding to respond to workload associated with immigration enforcement initiatives being implemented by the Department of Homeland Security and the Department of Justice. We are also grateful for two provisions that were included in the omnibus bill, an increase in the non-capital hourly rate paid to private panel attorneys who represent eligible defendants under the Criminal Justice Act, and a pilot project in our court security program. I will return to the pilot project again in a moment.

Turning to our fiscal year 2009 budget request, the judiciary is requesting \$6.7 billion for fiscal year 2009, an increase of \$475 million over the 2008 enacted level. \$407 million, or 86 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. We are not requesting any new staff in our clerks and probation offices.

The remaining \$68 million of our requested increase is primarily for program improvements in our information technology program and for an enhancement in our defender services program to increase the hourly rate paid to private panel attorneys representing indigent defendants in Federal criminal cases. We are appreciative of the rate increase you provided this year, but believe an additional increase is warranted.

The judiciary's budget request reflects our continuing efforts to contain costs. We are now more than 3 years into an intensive effort to reduce costs throughout the judiciary, and our cost-containment program is producing results. Today, we have achieved the most significant savings in our space and facilities program through an ongoing rent validation project in which court staff analyze GSA rent billings and identify errors for GSA to correct and give us rent credits. GSA has been very cooperative with us in this endeavor.

In the information technology area, we are consolidating the deployment of computer servers throughout the country, which generates savings from reduced maintenance and equipment replacement costs. We are also containing personnel costs. At its September 2007 meeting, the Judicial Conference approved recommendations from a major court compensation study that will slow the growth in personnel costs throughout the judiciary. Containing costs is a top priority for us.

I want to talk briefly about the pilot project approved in the 2008 omnibus bill. Last year in my testimony I discussed with you the judiciary's concerns about the expense and quality of security provided to the courts by the Federal Protective Service. The subcommittee responded to these concerns by approving a pilot project authorizing the United States Marshals Service to assume perimeter security duties from FPS at a limited number of court facilities on a temporary basis. Seven courthouses have been selected for the pilot. One of these is the Moynihan Federal Courthouse in Manhattan. The pilot project will begin later this year and will be in effect for 18 months. We will evaluate the project and provide you with the results.

An issue that has received significant attention from Congress and the Administration in recent years is illegal immigration. Significant resources have been provided to the Department of Homeland Security for immigration enforcement, and the President's fiscal year 2009 budget request continues these investments. Despite zero tolerance immigration enforcement initiatives like Operation Streamline, we understand that in recent years resource constraints in the justice enforcement system on the border have limited the number of immigration cases being prosecuted in the Federal courts.

It now appears that additional resources are making their way to the border. The Department of Justice received emergency funding this fiscal year to hire additional Assistant U.S. Attorneys and Deputy U.S. Marshals on the border, and more border resources

are included in the President's 2009 budget request. We expect to see the courts' workload in that region increase from this infusion of resources.

Our fiscal year 2009 budget request does not ask for new funding for new clerks or probation office staff on the border or elsewhere. Congress provided us with \$45 million over the last 2 years to address immigration-related workload, and so the courts are well-positioned in the short-term to respond to the increased workload.

But I do want to emphasize that we are in need of additional judgeships on the southwest border, and I would also make a special plea for the subcommittee's support of the \$110 million requested for the General Services Administration in the President's budget to fund fully the new Federal courthouse in San Diego. This is our top space priority.

In conclusion, I would ask that my written statement be placed in the record, along with the statements of the AO, the Federal Judicial Center, the Sentencing Commission, the Court of Appeals for the Federal Circuit, and the Court of International Trade.

I am of course available to answer 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 12, 2008

**INTRODUCTION**

Chairman Serrano, Representative Regula, and members of the Subcommittee, 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 2009. In doing so, I will apprise you of some of the challenges facing the federal courts. This is my fourth appearance before an appropriations subcommittee on behalf of the federal Judiciary and my second 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 2009 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 discuss several information technology innovations that are examples of the Judiciary's continual efforts to improve federal court operations.

**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 Sentencing Commission, the Court of Appeals for the Federal Circuit, and the Court of International Trade be included in the hearing record.

**FISCAL YEAR 2008 FUNDING**

Mr. Chairman and Representative Regula, let me begin today by thanking you and your colleagues for making the Judiciary a funding priority in the fiscal year 2008 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 as well as to address workload needs. We are particularly appreciative of the \$25 million you provided the Judiciary in emergency funding to respond to workload associated with immigration enforcement initiatives being implemented by the Department of Homeland Security and the Department of Justice. 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 appreciated the opportunity to work with the Subcommittee to identify our highest priority funding needs when your allocation was significantly reduced during conference on a final bill.

We also are grateful for several provisions included in the omnibus bill, which we believe will improve federal court operations. Two that are particularly important are the pilot project to assess the feasibility of transferring responsibility for perimeter security at several designated primary courthouses from the Federal Protective Service to the U.S. Marshals Service and the increase in the non-capital hourly rate paid to private panel attorneys who represent eligible defendants under the Criminal Justice Act. I will discuss the pilot project in more detail next and return to panel attorney rates later in my testimony.

### **COURT SECURITY**

Mr. Chairman, during my testimony last year I conveyed to the Subcommittee the Judiciary's concerns regarding the expense and quality of security provided the courts by the Federal Protective Service (FPS). FPS provides, on a reimbursable basis, exterior perimeter security for federal agencies, including at courthouses and multi-tenant court facilities. The Judiciary's FPS costs are paid from our Court Security appropriation and fiscal year 2009 billings are projected to be \$72 million.

Last year I spoke of incidents of inoperable FPS-provided exterior cameras at courthouses and the absence of cameras altogether at key locations resulting in "dead zones" with no camera surveillance, despite our paying FPS for the equipment. Security lapses such as these left courthouses with serious security vulnerabilities. Fortunately, to help ensure that the courts had adequate security, the United States Marshals Service (USMS) assumed responsibility for repairing or replacing FPS-provided perimeter cameras at a number of courthouses where it was apparent that FPS did not have the resources to do so. This resulted in the Judiciary's paying for the same services twice: once to FPS in its security charges, and also to the USMS in the funding we transferred to it for systems and equipment for interior and perimeter courthouse security. The Judicial Conference had become increasingly concerned about this issue and consequently, in March 2007, it endorsed a recommendation to expand the USMS's current mission to include perimeter security of court facilities nationwide where the Judiciary is the primary tenant.

This Subcommittee responded to the Judiciary's concerns. As I just mentioned, the fiscal year 2008 omnibus appropriations bill includes a provision approving a pilot project permitting the USMS to assume responsibility from FPS for perimeter security at several designated courthouses. Specifically, the pilot project involves the USMS monitoring the exterior of the courthouses with court security officers and assuming control of FPS monitoring equipment. The USMS, working with the Administrative Office of the U.S. Courts, selected seven courthouses for the pilot. I would note that one of the sites is the Daniel Patrick Moynihan U.S. Courthouse in Manhattan. The other six sites are: the Everett McKinley Dirksen U.S. Courthouse, Chicago, Illinois; the Theodore Levin U.S. Courthouse, Detroit, Michigan; the Sandra Day O'Connor U.S. Courthouse, Phoenix, Arizona; the Evo A. DeConcini U.S.

Courthouse, Tucson, Arizona; the Russell B. Long Federal Building/U.S. Courthouse, Baton Rouge, Louisiana; and the Old Federal Building and Courthouse, Baton Rouge, Louisiana.

The pilot project is anticipated to begin in the fourth quarter of fiscal year 2008 and will be in effect for approximately 18 months at which time an evaluation of the pilot will be provided to the Subcommittee. The annualized cost of the pilot is estimated to be \$5 million, which will be offset by anticipated reductions in FPS billings. We appreciate your concern with the security of our courthouses, and we will provide the Subcommittee with updates as the pilot project gets underway.

#### Work of the U.S. Marshals Service

I would like to say a few words about the vitally important work of the U.S. Marshals Service. Inside the courthouse, judges, court staff, attorneys, jurors, defendants, litigants, and the public depend entirely on the USMS for their safety. Heightened security at courthouses due to high-threat trials and terrorism concerns have made the work of the USMS more difficult, and it has responded extremely well to those challenges. For judges like myself, the USMS also ensures our security outside of the courthouse, and it takes this charge seriously. In September 2007, the USMS established a new Threat Management Center that serves as the nerve center for responding to threats against the Judiciary. The Center provides vital data to U.S. Marshals nationwide on threats against judges and court personnel. The USMS also has overseen the installation of nearly all of the 1,600 intrusion detection systems in the homes of federal judges in order to provide increased judicial security outside of courthouse facilities. This has been a two-year effort and includes ongoing system monitoring by a security firm. All of us in the federal court family are grateful to John F. Clark, Director of the U.S. Marshals Service, his staff, and the U.S. Marshals throughout the 94 judicial districts for their dedication and responsiveness to the security needs of the federal Judiciary. The USMS operates within very tight resource levels, and we urge Congress to fund fully the USMS's fiscal year 2009 budget request to enable it to continue meeting its statutory mandate to protect the federal Judiciary.

#### **RETROACTIVITY OF CRACK COCAINE SENTENCING AMENDMENT**

Mr. Chairman, I would like to discuss an issue that has received some attention in recent months: the changes to federal sentencing guidelines for crack cocaine offenses approved by the U.S. Sentencing Commission. The Commission is a bipartisan, independent agency within the Judicial Branch that was established by the Sentencing Reform Act of 1984 to develop national sentencing policy for the federal courts. The Commission promulgates the sentencing guidelines that federal trial court judges consult when sentencing defendants convicted of federal crimes.

On May 1, 2007, the Commission submitted a package of amendments to the federal sentencing guidelines that, in the absence of congressional action to the contrary, went into effect on November 1, 2007. Among the amendments was one that modified the federal sentencing guidelines for crack cocaine offenses. The amendment reduced the base offense level, or starting point, for crack cocaine offenses under the guidelines downward by two offense levels. This amendment does not affect the statutory mandatory minimum penalties for crack cocaine

offenses established by Congress. The Commission took this action to alleviate some of the longstanding problems associated with the penalty scheme for cocaine offenses, which requires 100 times more powder than crack cocaine to receive the same statutory mandatory minimum penalty commonly referred to as the 100-to-1 ratio.<sup>6</sup> As a result of the amendment, the average sentence for crack cocaine offenders sentenced on or after November 1, 2007 will be approximately 16 months less than those sentenced before that date.

The Commission is authorized by statute to decide whether amendments that reduce penalties should be given retroactive effect. In December 2007, the Commission voted unanimously to give retroactive effect to the amendment for crack cocaine offenses. Retroactivity of the amendment became effective on March 3, 2008.

Pursuant to statute, once the Commission has given an amendment retroactive effect, a defendant, the director of the Bureau of Prisons, or a court on its own may move to have a defendant's term of imprisonment reduced pursuant to the Commission's policy statement on retroactivity and the limits of the amendment. The Commission estimates that approximately 19,000 federal offenders over a span of several years may be eligible to seek to have their terms of imprisonment reduced as a result of retroactivity. These individuals were sentenced throughout the country although a large number of potentially eligible offenders were sentenced in districts located within the Fourth Circuit (West Virginia, Virginia, Maryland, North Carolina, and South Carolina).

A federal sentencing judge will make the final determination of whether an offender is eligible for a lower sentence and how much that sentence should be lowered. That determination will be based on many factors, including whether the offender's reduced sentence or release would pose a danger to public safety.

I will not discuss the merits of retroactivity since such policy decisions are outside the Budget Committee's area of responsibility; however, I will note that the Criminal Law Committee of the United States Judicial Conference supported the Commission's decision on retroactivity. The Criminal Law Committee and its staff at the Administrative Office of the U.S. Courts have been working closely with the Commission to give the courts sufficient time, resources, and guidance to prepare for and process these cases. It is this process that I would like to take a moment to discuss.

We anticipate there may be an initial surge of motions for reductions in sentence filed in the federal courts. These filings will be handled by various district court components, including district judges, clerks offices, probation and pretrial services offices, and federal defender offices. It is generally agreed that a large number of motions for a reduction in sentence will not involve court hearings and will be decided on written filings, so our workload associated with processing those cases should not be unduly burdensome. The cases that require hearings will require more court resources. At present, no extraordinary measures have been necessary to address the increased workload due to retroactivity, although additional resources will be available if needed

for smaller districts that may be disproportionately impacted by the number of federal offenders seeking a reduction in sentence based on retroactivity.

We believe retroactivity will have the greatest impact on our probation offices. The crack cocaine offenders who may be released after a federal judge grants the motion for a reduction in sentence will require close probation supervision, drug testing, and possibly drug and other treatment services as do other federal offenders leaving federal prison. At this time, however, our fiscal year 2009 budget does not request additional staffing or other resources associated with retroactivity of the crack cocaine sentencing amendment. The Judiciary believes the additional workload associated with retroactivity can be absorbed within existing resource levels.

### **IMPACT OF INCREASED BORDER ENFORCEMENT**

Another issue that has received significant attention from Congress and the Administration is illegal immigration, so I would like to discuss the impact of increased border and immigration enforcement initiatives on the work of the federal courts. In recent years the Administration has dedicated significant resources to address the issue of illegal immigration. The President's Fiscal Year 2009 Budget includes \$12 billion for the Department of Homeland Security (DHS) for border security and enforcement efforts, a 19 percent increase over fiscal year 2008, and a more than 150 percent increase since 2001. DHS has used the funding to increase the number of border patrol agents significantly, particularly on the southwest border with Mexico. Since 2001, more than 5,000 additional border patrol agents have been hired with most of them placed along the southwest border. In fiscal year 2008, DHS received funding to hire an additional 3,000 border patrol agents, and the President's Fiscal Year 2009 Budget includes funding for another 2,200 agents, bringing the total to 20,000 agents. When fully staffed the Border Patrol will have more than doubled in size since 2001.

The level of criminal case filings in the federal courts in the five judicial districts along the southwest border is high by historical standards -- 19,825 filings in 2007 versus 17,184 in 2001 -- but filings have not increased commensurate with the increased resources provided to DHS for border enforcement. Despite zero tolerance border initiatives such as Operation Streamline in which nearly everyone apprehended for violating U.S. immigration laws is prosecuted, resource constraints in the justice system have precluded more cases from being prosecuted in the federal courts. Staffing shortages in U.S. Attorney offices, lack of detention beds needed to secure offenders awaiting prosecution, and staffing constraints in U.S. Marshals offices have resulted in the establishment of certain threshold levels in some border districts that must be met before a case is prosecuted. For example, a U.S. Attorney in one district may prosecute someone coming into the country illegally after the tenth attempt, while a U.S. Attorney in another district may prosecute after the fifth attempt.

To the extent the federal courts are perceived as a factor that limits the number of cases that can be prosecuted on the border, I would note it is Congress that establishes the number of district judgeships and the districts to which they are assigned, and Congress and the Executive Branch that control the authorization, funding, and construction of new courthouses. The district

courts on the southwest border have not received any new district judgeships since 2002 despite Judicial Conference requests for additional judgeships in 2003 (11 judgeships), 2005 (11 judgeships), and 2007 (10 judgeships). In recent years Congress has been responsive to the need for new courthouse space on the southwest border, and we hope that you will support the additional \$110 million included in the President's Fiscal Year 2009 Budget to fund fully a new federal courthouse in San Diego, California. The Judicial Conference designated the San Diego courthouse a judicial space emergency in 2003, but the General Services Administration has been unable to award a contract for the project due to escalating construction costs in Southern California.

It now appears that Congress has taken steps to address the resource needs across the justice system on the southwest border by providing additional resources beyond those provided to DHS. In fiscal year 2008 the Department of Justice received \$7 million in emergency funding to hire more assistant U.S. Attorneys (AUSAs) in the five judicial districts along the southwest border. The U.S. Marshals Service received \$15 million in emergency funding to address southwest border workload needs including the hiring of 100 additional deputy U.S. Marshals. The President's Fiscal Year 2009 Budget includes \$100 million for a new Southwest Border Enforcement Initiative focusing law enforcement and prosecutorial efforts on fighting violent crime, gun smuggling, and drug trafficking in that region. If funded, this initiative will increase the number of AUSAs along the southwest border by another 50 positions. The President's Budget also seeks \$88 million to expand detention capacity along the southwest border. The resultant increase in criminal filings we expect to see from this infusion of resources will impact our district judges, clerks offices, probation and pretrial services offices, and federal defender offices on the border. I would note, however, that the Judiciary's fiscal year 2009 budget submission does not request funding for new clerks or probation office staff on the border or elsewhere. Congress provided the Judiciary with \$45.4 million over the last two years -- \$20.4 million in fiscal year 2007 and \$25.0 million in fiscal year 2008 -- to address immigration-related workload so, from a staffing perspective, the courts are well positioned in the short term to respond to the increased workload that we expect will materialize. However, as I just mentioned, we do require additional district judgeships on the southwest border, and construction of a new federal courthouse in San Diego is the Judiciary's top space priority.

#### **COST CONTAINMENT EFFORTS**

The Judiciary recognizes that continuing pressures on the federal budget due to the conflicts in Iraq and Afghanistan, investments being made to improve security here at home, and the goal of eliminating the budget deficit by 2012, will necessitate austere federal spending going forward, particularly for non-security discretionary programs. Indeed, the President's Fiscal Year 2009 Budget proposes a 0.3 percent increase in this category of spending, well below the rate of inflation. The Administration and Congress are rightfully concerned about overall federal spending and budget deficits, and we recognize that you face tough choices. I want to assure the Subcommittee that the Judiciary is doing its part to contain costs.

We are now more than three years into an intensive effort to reduce costs throughout the Judiciary. As I mentioned in my testimony last year, this cost containment effort was born out of our fiscal year 2004 experience in which a funding shortfall necessitated staff reductions of 1,350 clerk and probation office employees, equal to 6 percent of the courts' on-board workforce. As a result of this situation and the prospect of continuing federal budget pressures, the late Chief Justice William H. Rehnquist charged the Judicial Conference's Executive Committee with developing an integrated strategy for controlling costs. After a rigorous six-month review by the Judicial Conference's various program committees, the Executive Committee prepared, and the Judicial Conference endorsed in September 2004, a cost-containment strategy for the federal Judiciary. The strategy focuses on the primary cost drivers of the Judiciary's budget -- compensation costs and the rent we pay to the General Services Administration for courthouses and leased office space. We have had great cooperation Judiciary-wide as we have moved forward on implementing cost containment initiatives. I will highlight several cost containment initiatives for you.

#### Containing Rent Costs

The amount of rent we pay to GSA has been a matter of concern to the Judiciary for a number of years. Since fiscal year 2004 we have made a concerted effort to contain rent costs, with considerable success. In fiscal year 2004, prior to the implementation of cost containment, we projected that our GSA rent bill would be \$1.2 billion in fiscal year 2009. I am pleased to report that our current GSA rent estimate for fiscal year 2009 is now projected to be \$200 million less, or \$1.0 billion, 17 percent below the pre-cost containment projection. Following are two of our rent containment initiatives that have contributed to these reduced rent costs.

- Rent Validation Project. In recent years we have been working cooperatively with GSA to reduce our space rent costs through a rent validation program that has yielded significant savings and cost avoidances. This rent validation initiative originated in our New York courts where staff spent months scrutinizing GSA rent bills and found rent overcharges. The cumulative effect of this discovery were savings and cost avoidances over three fiscal years totaling \$30 million. The Administrative Office expanded this effort nationwide by training all circuit executive offices to analyze and detect errors in GSA rent billings. Although it is quite time consuming, detailed reviews of GSA rent billings are now a standard business practice throughout the courts. Through this national effort, in fiscal year 2007 we identified additional overcharges totaling \$22.5 million in multi-year savings and cost avoidances, bringing cumulative savings/cost avoidances to \$52.5 million. We anticipate receiving additional rent adjustments and credits resulting from over \$10 million in rent errors that we recently reported to GSA. By identifying and correcting space rent overcharges we have been able to re-direct these savings to other Judiciary requirements, thereby reducing our request for appropriated funds.
- Rent Caps. To contain costs further, the Judiciary established budget caps in selected program areas in the form of maximum percentage increases for annual program growth. For our space and facilities program, the Judicial Conference approved a cap of 4.9 percent on the average annual rate of growth for GSA rent requirements for fiscal years

2009 through 2016. By comparison, the increase in GSA rent in our fiscal year 2005 budget request was 6.6 percent. This cap will produce a GSA rent cost avoidance by limiting the annual amount of funding available for space rental costs. Under this initiative, circuit judicial councils around the country will be responsible for managing rent costs in their circuits, which will require the councils to prioritize space needs -- and in some instances deny requests for new space -- in order to stay within the 4.9 percent cap.

#### Containing Information Technology Costs

Another cost containment success has been identifying and implementing more cost-effective approaches in deploying computer servers around the country. Before this initiative, each court unit maintained local servers to access Judiciary applications and databases. New technology, along with improvements in the Judiciary's national data communications network, has allowed the consolidation of servers at a single location without compromising the performance levels of existing applications. In some cases performance has actually improved. As a result of this initiative, the Judiciary reduced by 89 the number of servers needed to run the jury management program, producing savings of \$2.0 million in the first year and expected savings of \$4.8 million through fiscal year 2012. In addition, servers that run the case management system in our probation program were consolidated, with projected savings and cost avoidances of \$2.6 million through fiscal year 2012. The Judiciary expects expanded implementation of this initiative to result in significant information technology cost savings or cost avoidances. A big cost saver will be the consolidation of servers for the Judiciary's national accounting system in fiscal year 2008, which is expected to achieve savings and cost avoidances totaling \$55.4 million through fiscal year 2012.

#### Containing Personnel Costs

A major focus of the Judiciary's cost containment efforts involves controlling personnel costs. At its September 2007 meeting, the Judicial Conference approved recommendations from a major court compensation study which will slow the growth in personnel costs throughout the Judiciary, specifically in clerks and probation offices and judges' chambers staff. The approved actions will reduce funding available to the courts for annual salary step increases for employees, limit the number of career law clerks (who are typically paid more than term law clerks), revise salary setting policies for new law clerks, and modernize the federal courts' position benchmarks which govern the classification and grading of staff nationwide. We estimate these measures may save up to \$300 million from fiscal year 2009 through fiscal year 2017.

### **INNOVATION IN THE FEDERAL COURTS**

While we look to contain costs wherever possible, we continue to make investments in technologies that improve federal court operations, enhance public safety, and increase public access to the courts to name just a few examples. The Judiciary is a leader in taking state-of-the-art technology and adapting it to the courts' unique needs, and we continually look for innovative ways to apply new technologies to our operations. These investments are made possible through

the funding we receive from Congress, and we are grateful for Congress's continuing support of our information technology program. Let me describe for you several of our innovations.

#### Use of Global Positioning System Technology

Some of our probation and pretrial services offices are now using Global Positioning System (GPS) technology to monitor around the clock the location of individuals under pretrial release or post-conviction supervision. As a condition of their sentence or supervised release, an offender or defendant might be required to carry a GPS unit. Some GPS tracking devices let officers send a text message or voice message directly to the receiver worn by the offender enabling an alert to be sent if the offender wanders into forbidden territory.

An incident that occurred in California offers an example of the application of GPS technology. A defendant on a GPS tracking device was ordered by a federal judge to stay away from his ex-wife due to a prior history of domestic violence. He was also subject to an active restraining order. In the middle of the day, the defendant drove by his ex-wife's place of employment. The pretrial services officer received a text message alert and immediately contacted the defendant on the tracking device, instructing him to come to the office. The officer contacted the ex-wife, the court was notified, and appropriate action was taken. In this instance, the pretrial services officer had established exclusion zones around the wife's home and work. For convicted sex offenders whose victims included children, these exclusion zones can include schools, parks, and playgrounds. Many offenders help defray the cost of monitoring on an ability-to-pay basis. GPS monitoring can cost up to \$9 per day, roughly double the cost of less expensive electronic monitoring, but still well below the more than \$63 per day required to incarcerate an offender.

#### Case Management/Electronic Case Files System

The Case Management/Electronic Case Files (CM/ECF) system is an electronic case management system that provides federal courts with docket management capabilities, including the option of permitting case documents to be filed with the court over the Internet. Managing case filings electronically is more cost efficient than the labor- and space-intensive process of paper filings previously used. The electronic case filing system was launched in November 1995, when a team from the Administrative Office of the U.S. Courts helped the U.S. District Court in the Northern District of Ohio cope with more than 5,000 document-intensive asbestos cases. The court faced up to 10,000 new pleadings a week, a workload that quickly became unmanageable. The team developed a system that allowed attorneys to file and retrieve documents and receive official notices electronically. More than 10 years and several upgrades later, the system has fundamentally changed how the entire judicial system operates. The system is currently operating in all of our district and bankruptcy courts and will be operational in all of the regional courts of appeals in early 2009. Over 30 million cases are on CM/ECF systems nationwide, and nearly 350,000 attorneys and others have filed documents over the Internet. On average, four million new electronic documents are filed into the system each month, and roughly half of those are filed over the Internet by attorneys. CM/ECF is considered the world's most comprehensive court electronic case filing system. It has been one of the most important innovations in U.S. federal court administration.

#### Public Access to Court Electronic Records

The Public Access to Court Electronic Records (PACER) system is an electronic access service run by the federal Judiciary that allows the public to obtain case and docket information from federal appellate, district, and bankruptcy courts via the Internet. The PACER system offers an inexpensive, fast, and comprehensive case information service to any individual with a computer and Internet access. Users can retrieve, among other information, a listing of parties and participants in a case, a compilation of case-related information, such as cause of action, nature of suit and dollar demands, judgments or case status, and appellate court opinions. The data is displayed directly on the user's computer screen within a few seconds. The system is available 24 hours a day and is simple enough that little user training is required. The PACER program has been hugely successful. In 2007 alone, over 350 million requests for information were processed by PACER. As directed by Congress, nominal fees are charged for accessing court records although some records are available without charge. Given the high-volume usage of PACER, the fees collected in the aggregate are substantial. Congress has authorized the Judiciary to utilize these fees to run the PACER program as well as to offset some costs in our information technology program that would otherwise have to be funded with appropriated funds. The Judiciary's fiscal year 2009 budget request assumes \$68 million in PACER fees will be available to finance information technology requirements in the courts' Salaries and Expenses account, thereby reducing our need for appropriated funds.

#### **THE JUDICIARY'S WORKLOAD<sup>1</sup>**

I turn now to a discussion of the workload facing the courts. As indicated in the caseload table in our fiscal year 2009 budget request, 2008 caseload projections are used to compute fiscal year 2009 staffing needs. Our projections indicate that caseload will increase slightly in probation (+1%) and pretrial services (+3%) and increase substantially for bankruptcy filings (+23%). For 2008 we are projecting small declines in appellate (-3%) and criminal (-3%) caseload, and a steeper decline in civil filings (-8%). 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 115,930 in 2007 and is expected to increase again in 2008 to 116,900. In addition to the increased workload, the work of probation officers has become significantly more challenging. In 1985, fewer than half of the offenders under supervision had served time in prison. By 2007, the percentage had climbed to 80 percent. As these figures indicate, probation officers no longer deal primarily with individuals sentenced to probation in lieu of prison. Offenders coming out of prison on supervised release have greater financial, employment, and family problems than when they committed their crimes. In addition, the number of offenders sentenced in federal court with

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<sup>1</sup>Unless otherwise stated, caseload figures reflect the 12-month period ending in June of the year cited (i.e., 2008 workload reflects the 12-month period from July 1, 2007 to June 30, 2008).

prior criminal convictions more than doubled between fiscal years 1996 and 2006, and the severity of the criminal histories of persons under probation officer supervision has been increasing as well. Offenders re-entering the community after serving time in prison require close supervision by a probation officer to ensure they secure appropriate housing and employment. Successful re-entry improves the likelihood that offenders will pay fines and restitution and become taxpaying citizens.

Recent legislation will also increase the workload of probation and pretrial services officers. For example, we expect that the Adam Walsh Child Protection and Safety Act of 2006 will significantly increase the number of sex offenders coming into the federal court system. The Adam Walsh Act also increases the registration requirements for sex offenders, which means probation officers must coordinate closely with state and local authorities to ensure that law enforcement and the public receive the required notice. Monitoring the behavior of sex offenders is challenging and requires intense supervision on the part of probation and pretrial services officers to protect the community.

As I discussed earlier in my testimony, the retroactive application of the crack cocaine sentencing amendment will also have an impact on the work of probation officers although it is difficult to predict with certainty at this point how many current federal prison inmates will gain early release and enter the federal probation system.

#### Bankruptcy Filings

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), implemented in October 2005, has significantly affected workload trends in the nation's bankruptcy courts. While filings are still below pre-BAPCPA levels -- 751,056 filings in 2007 versus 1,635,725 filings in 2004 -- we forecast that filings will increase 23 percent in 2008 to 923,000 and top one million filings in 2009. The state of the economy, particularly as it impacts home foreclosures and credit availability, will be a major factor in the number of personal bankruptcies -- which constitute the majority of bankruptcy cases. It is possible that 2008 bankruptcy filings will be above the current projection.

The number of filings alone, however, should not be viewed as 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. Our bankruptcy courts have indicated that the actual per-case work required of the bankruptcy courts has increased significantly under the new law, at least partially offsetting the impact on the bankruptcy courts of lower filings. For example, BAPCPA requires Chapter 7 filers to complete and pass a complex means test and receive a credit counseling briefing by an approved agency. Also, filers under Chapters 7 and 13 may not receive a discharge of their debts unless they have completed an approved financial management course. These and other new requirements must be reviewed by the clerk's office, which must take further action if the filers do not meet the requirements. BAPCPA also requires more than 35 new motions and pleadings in various chapters of the bankruptcy code. Each new motion requires judicial review and can result in hearings, orders, and opinions, thus consuming more judicial resources.

#### Appellate Filings

After hitting an all-time high of 68,313 filings in 2006, appellate caseload declined to 58,809 filings in 2007 and is expected to decline by 3 percent to 57,300 filings in 2008. This decline comes on the heels of significant workload growth from 2002 to 2006 during which filings increased 20 percent initially due to a surge in challenges to Board of Immigration Appeals (BIA) decisions in the appellate courts and later due to the large number of criminal and habeas corpus petitions filed by state and federal prisoners from 2004 to 2006 challenging their sentences pursuant to the Supreme Court's decisions in *Blakely v. Washington* (2004), and in the consolidated cases, *United States v. Booker* and *United States v. Fanfan* (2005). After the initial surge of sentence-related filings associated with these decisions, we are now seeing appellate filings for criminal and habeas corpus petitions approach pre-*Blakely* and *Booker/Fanfan* levels.

About one-third of all BIA decisions are challenged in the federal appellate courts with 70 percent of those challenges occurring in the Second and Ninth Circuits. While BIA appeals have dropped in the last year, these cases continue to demand extensive resources since they often turn on a credibility determination by a Department of Justice immigration judge, thus requiring close judicial review of a factual record by the appellate courts.

#### Civil Filings

Civil filings in the courts generally follow a more up and down filing pattern. In 2005 civil filings reached a record 282,758 filings, declined to 244,343 filings in 2006, then increased again to 272,067 filings in 2007. The increase in 2007 was due primarily to asbestos diversity case filings in the Eastern District of Pennsylvania. The Judiciary projects civil case filings will continue this up and down pattern, decreasing 8 percent to 250,500 filings in 2008.

#### Criminal Filings

Criminal filings in the federal courts have been trending downward the last several years, and this trend is expected to continue through 2008. From the previous year, filings declined 2 percent in 2005, 3 percent in 2006, and a half-percent in 2007 to 67,503 filings. Filings are projected to decline another 3 percent in 2008 to 65,800 filings.

Last year I testified that criminal filings were likely depressed due to significant vacancies in AUSA positions nationwide and that once vacancies were filled criminal filings would reverse course and begin to increase. As I mentioned earlier in my testimony, it now appears that additional resources are being provided to fill AUSA positions, particularly in the five judicial districts along the southwest border with Mexico. Also, the Administration is committing more resources to the prosecution of sexual exploitation of children. In fiscal year 2008, the Department of Justice received \$5 million to hire 40 additional AUSAs to prosecute these exploitation cases under the Adam Walsh Act. I would emphasize that our criminal caseload projection for 2008 does not take into account the impact additional AUSAs will have on criminal case filings, so we may see 2008 filings above the projected level.

### **FISCAL YEAR 2009 BUDGET REQUEST**

For fiscal year 2009, the Judiciary is seeking a 7.6 percent overall increase above the fiscal year 2008 enacted appropriations. The courts' Salaries and Expenses account, which funds clerks and probation offices nationwide, requires a 7.4 percent increase. Fiscal year 2009 appropriations requirements for each Judiciary account are included at Appendix A.

The goal of our fiscal year 2009 request is to maintain staffing levels in the courts at the level Congress funded in fiscal year 2008, as well as to obtain funding for several much needed program enhancements. As I noted earlier in my testimony, we are not requesting additional staff for our clerks or probation offices. We believe the requested funding level represents the minimum amount required to meet our constitutional and statutory responsibilities. While this may appear high in relation to the overall budget request submitted by the Administration, I would note that 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 for personnel and space requirements.

Eighty-six percent (\$407 million) of the \$475 million increase being requested for fiscal year 2009 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 cost-of-living adjustment is 2.9 percent for 2009.
- An anticipated increase in the number of on-board senior Article III judges.
- The projected loss in non-appropriated sources of funding due to the decline in carryover balances available in fiscal year 2009 versus the level available to finance the fiscal year 2008 financial plan (see discussion on the following page).
- Space rental increases, including inflationary adjustments and new space delivery, court security costs associated with new space, and an 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, in recent years, has allowed the courts to do more with less -- absorbing workload increases while downsizing staff.
- 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.
- Inflationary increases for non-salary operating costs such as supplies, travel, and contracts.

- 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 \$68 million requested is for program enhancements. Of this amount:

- \$33 million will provide for investments in new information technology projects and upgrades, and courtroom technology improvements.
- \$18 million to increase the non-capital panel attorney rate from \$100 to \$118 per hour. I will discuss this requested increase in more detail in a moment.
- \$8 million is requested for the Supreme Court's exterior renovations and roof system repairs.
- \$5 million is for additional staff and associated costs to address fiscal year 2009 workload requirements (32 FTE), two additional magistrate judges and staff (9 FTE), library renovations and new equipment at the Court of Appeals for the Federal Circuit, and the start-up costs for two new federal defender organizations.
- \$4 million would provide for necessary investments in court security, such as court security systems and equipment and new positions at the U.S. Marshals Service (9 FTE).

#### Non-Appropriated Sources of Funding

I would like to discuss briefly the non-appropriated sources of funding that the Judiciary uses to partially finance its operations and how they impact our appropriations needs. In addition to appropriations from Congress, the Judiciary collects fees from bankruptcy and civil case filings, from the public for on-line access to court records, and from other sources. 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 2009 budget request, we made certain assumptions regarding the level of fees and carryover that would be available to finance fiscal year 2009 requirements. Because the projection for carryover balances are below the level that was available to finance fiscal year 2008 operations, the fiscal year 2009 request includes a line item requesting appropriated funds -- \$95 million in the courts' Salaries and Expenses account -- to replace the anticipated decline in carryover balances. (New fee collections are projected to be flat from fiscal year 2008 to fiscal year 2009 so there is no restoration requested or needed for that component of our financing.) While it is premature for me to identify a specific amount, I am confident that we will not need the full \$95 million we requested to replace carryover

balances. This is due to several factors, including the courts' frugal spending during the continuing resolution for the first quarter of fiscal year 2008 and fewer judge confirmations than we anticipated. As we did this past year, we will keep the Subcommittee apprised of changes to fee and carryforward projections that could impact our fiscal year 2009 appropriation needs as we move through fiscal year 2008. The Judiciary will submit the first of two fiscal year 2009 budget re-estimates to the Subcommittee in May 2008.

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

We believe that one program enhancement in our budget request deserves strong consideration in order to ensure effective representation for criminal defendants who cannot afford to retain their own counsel. We are requesting \$17.5 million to increase the non-capital panel attorney rate to \$118 per hour, effective January 2009. 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 2008 omnibus spending bill, the Subcommittee approved an increase in the non-capital rate paid to these panel attorneys from \$94 to \$100 per hour, and provided a cost-of-living adjustment to the capital rate from \$166 to \$170 per hour. These new rates took effect on January 1, 2008.

While we are very appreciative of the increase to \$100 per hour for non-capital work, we believe a more significant increase 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. This is critical in order for the Judiciary to ensure that persons represented by panel attorneys are afforded their constitutionally guaranteed right to *effective* assistance of counsel.

We believe there is a direct relationship between the lack of qualified panel attorneys available to take CJA appointments and the significant financial difficulties panel attorneys encounter maintaining their legal practices at the current rate. It is predominantly solo and small-firm lawyers that take on CJA cases, and these panel attorneys must first cover their overhead costs. With overhead costs of approximately \$64 per hour, at the \$100 rate, that leaves a net average of only \$36 per hour, *before taxes*. We believe that this net rate of \$36 per hour, when compared to the net national average market rate of \$148 per hour for non-CJA private criminal cases, prevents the courts from attracting sufficient numbers of qualified attorneys to take 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.

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 2009 would be \$136. While the Judicial Conference supports

the \$136 rate, it is mindful of the constrained federal budget environment and, therefore, proposes attaining the authorized rate in two stages, an \$18 per hour increase in fiscal year 2009 from \$100 to \$118 per hour, with a second increase to \$140 per hour in fiscal year 2010 (the \$140 rate includes a \$4 COLA to the fiscal year 2009 rate of \$136). The Judiciary is committed to fully restoring the non-capital panel attorney rate, in a cost-conscious manner, by implementing the authorized rate over two years.

I will close on this topic by reiterating that the Judiciary greatly appreciates the \$100 non-capital rate Congress provided in fiscal year 2008, but the concern remains that, after overhead is considered, the rate 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 Subcommittee to provide the funding necessary to increase the non-capital panel attorney rate to \$118 per hour in fiscal year 2009.

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

I would like to briefly outline the important work performed by the Administrative Office (AO) of the United States Courts. Year in and year out, the AO provides critical support to the courts. With only a fraction (1.3%) 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, yet the AO staffing level has been essentially frozen for 15 years. As an example, despite no new staff, 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 country's system of justice.

The fiscal year 2009 budget request for the Administrative Office is \$82.0 million. The AO's request represents a current services budget, no additional staff or program increases are sought. All of the requested increase is necessary to support current services, mainly standard pay and general inflationary increases, as well as funding to replace the anticipated lower level of carryover amounts with appropriated funds in fiscal year 2009.

I urge the Subcommittee to fund fully the Administrative Office's budget request. The increase in funding will ensure that the Administrative Office continues to provide program leadership and administrative support to the courts, and lead the efforts 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 Subcommittee to approve full funding for the Federal Judicial Center's request of \$25.8 million for fiscal year 2009.

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 are vital in preparing new judges and court employees to do their jobs and in keeping them current so that they can better deal with changes in the law, and in tools -- like technology -- that courts rely on to do their work efficiently.

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 as well as what we are doing to contain costs and become more efficient. I realize that fiscal year 2009 is going to be another tight budget year as increased mandatory and security-related spending will result in further constrained domestic discretionary spending. We recognize the fiscal constraints Congress is facing. Through our cost-containment efforts and information technology innovations we have significantly reduced the Judiciary's appropriations requirements without adversely impacting the administration of justice. I know you agree that a strong, independent Judiciary is critical to our nation. I urge you to fund this request fully in order 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 Subcommittee may have.

**Judiciary Appropriations  
(\$000)**

<b>Appropriation Account</b>	<b>FY 2008 Enacted Level (P.L. 110-161)<sup>1</sup></b>	<b>FY 2009 President's Budget (Feb. 4, 2008)</b>	<b>% Change: FY 2009 vs. FY 2008 Enacted</b>
<b>U.S. Supreme Court</b>			
Salaries & Expenses	\$66,526	\$69,777	4.9%
Care of Building and Grounds	12,201	18,447	51.2%
<b>Total</b>	<b>78,727</b>	<b>88,224</b>	<b>12.1%</b>
<b>U. S. Court of Appeals for the Federal Circuit</b>	<b>27,072</b>	<b>32,357</b>	<b>19.5%</b>
<b>U.S. Court of International Trade</b>	<b>16,632</b>	<b>19,622</b>	<b>18.0%</b>
<i>Courts of Appeals, District Courts &amp; Other Judicial Services</i>			
Salaries & Expenses <sup>1</sup> Direct	4,619,262	4,963,091	7.4%
Vaccine Injury Trust Fund	4,099	4,253	3.8%
<b>Total</b>	<b>4,623,361</b>	<b>4,967,344</b>	<b>7.4%</b>
Defender Services <sup>1</sup>	846,101	911,408	7.7%
Fees of Jurors & Commissioners	63,081	62,206	-1.4%
Court Security	410,000	439,915	7.3%
<b>Subtotal</b>	<b>5,942,543</b>	<b>6,380,873</b>	<b>7.4%</b>
<b>Administrative Office of the U.S. Courts</b>	<b>76,036</b>	<b>81,959</b>	<b>7.8%</b>
<b>Federal Judicial Center</b>	<b>24,187</b>	<b>25,759</b>	<b>6.5%</b>
<b>Judiciary Retirement Funds</b>	<b>65,400</b>	<b>76,140</b>	<b>16.4%</b>
<b>U.S. Sentencing Commission</b>	<b>15,477</b>	<b>16,257</b>	<b>5.0%</b>
<i>Direct</i>	<b>\$6,241,975</b>	<b>\$6,716,938</b>	<b>7.6%</b>
<i>Vaccine Injury Trust Fund</i>	<b>\$4,099</b>	<b>\$4,253</b>	<b>3.8%</b>
<b>Total</b>	<b>\$6,246,074</b>	<b>\$6,721,191</b>	<b>7.6%</b>

<sup>1</sup>Pursuant to P.L. 110-161, fiscal year 2008 appropriations include \$25 million in emergency appropriations (\$14.5 million in the courts' Salaries and Expenses account and \$10.5 million in the Defender Services account) for workload associated with DOJ and DHS immigration enforcement initiatives.

STATEMENT OF PAUL R. MICHEL  
CHIEF JUDGE, UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT  
BEFORE THE SUBCOMMITTEE ON  
FINANCIAL SERVICES AND GENERAL GOVERNMENT  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 12, 2008

Mr. Chairman, thank you for allowing me to submit my statement supporting the United States Court of Appeals for the Federal Circuit's fiscal year 2009 budget request.

Our request totals **\$32,357,000**, an increase of **\$5,285,000** (19.5%) over the fiscal year 2008 appropriation of **\$27,072,000**. The primary justification for such an unusual increase is the need to accommodate seven senior judges who will expand our court's judicial output in 2009.

Thirty percent of this requested increase (**\$1,575,000**) is for Congressionally- and contractually-mandated adjustments to base (such as COLAs and escalation in rent and contracts). The only addition included in the adjustment to the base appropriation is \$298,000 to lease chambers outside the courthouse for senior judges for whom there is no space in the courthouse.

Four Federal Circuit judges are eligible to take senior status now; three more will become eligible in fiscal year 2009; and another judge will become eligible in fiscal year 2010. Of the three Federal Circuit judges who will become eligible to take senior status in fiscal year 2009, at least two are expected to do so. An increase to the Court's base of \$298,000 will cover the cost of an *off-site lease* for these two judges and up to three of the other four senior judges who are eligible for senior status.

Seventy percent of the Federal Circuit's fiscal year 2009 budget request, **\$3,710,000**, is to fund three specific program requests.

- The first specific program request (**\$1,860,000**) is to build out off-site chambers for five senior judges.
- The second specific program request (**\$932,000**) is for twelve law clerk positions for active judges, and
- The third specific program request (**\$918,000**) is for court improvements and a court employee position.

**Part I**

Half of the seventy per cent increase for specific program requests (**\$1,860,000**) will fund *build out* of leased chambers for five of the seven judges who either are, or will be, eligible to take senior status in FY 2009. This amount is based on an estimate coordinated with the Administrative Office of the United States Courts and on personal

experience with GSA in renovating chambers in this courthouse. This amount will provide the leased chambers with the furniture, furnishings and finishes consistent with the U. S. Courts Design Guide. The amount requested is the amount needed to support judges eligible and expected to take senior status now through FY 2010 and for whom there is no room in the existing courthouse.

As noted, two of the seven judges who will be eligible to take senior status have indicated a desire to do so when they become eligible for senior status in fiscal year 2009. Personal circumstances make it likely that at least two more will also do so. It is imperative then that the Federal Circuit acquire suitably built-out, off-site leased chambers for the two judges who have indicated a desire to take senior status in fiscal year 2009, two or three of the four already eligible, and another who is likely to do so in fiscal year 2010.

## Part 2

Twenty-five percent of the specific program requests (**\$932,000**) will fund twelve additional law clerk positions. The Court is requesting \$932,000 to cover the cost of hiring an additional law clerk for each of the court's active judges for six months of fiscal year 2009. The court's increased workload now justifies funding a fourth law clerk for each active judge. Four law clerks are the norm at every Federal Appeals Court in the Nation except the Federal Circuit. In our fiscal year 2008 appropriation, Congress authorized three additional law clerks but provided no funding. We are now requesting funding for all twelve additional law clerks: the three approved but unfunded in Fiscal Year 2008, and the remaining nine, for a total of twelve, or one per judge.

Patent infringement cases make up one-third or more of the Federal Circuit docket. The number of patent infringement cases has grown by more than 25% in the 15 years since the third clerk was first provided. Patent infringement cases are critical to the Nation's economy, and the decisions of the Federal Circuit in these cases often have significant and sometimes dramatic economic implications for parties whose patents are upheld and found to have been infringed, whose patents are found not to have been infringed by other parties, and many other economic actors. The difficulty and complexity of patent infringement and other intellectual property cases have increased exponentially in recent years.

Most of the patent cases now filed in the Federal Circuit Court of Appeals are highly technical and require great insight and judgment. The issues presented in these cases involve arcane breakthroughs on the frontiers of science, technology, manufacturing, engineering, mathematics and medicine. In such cases legal judgments must be made, not only about the law itself but often on the basic underlying technical innovation, with few if any precedents, analogies or objective metrics to apply to help determine the outcome.

Many such cases involve a multitude of issues, no one of which can be ignored in an effort to narrow and focus the decision-making process as so often happens on appellate review. In patent infringement cases, all issues must typically be left together

because together they frame the problem and the outcome. The practical effect is that one case takes on the nature of several, whose many issues must be understood individually and collectively before the court can integrate them into a unifying substantive decision.

Timeliness is also an issue in many of these cases because the speed of technological change can render a delayed decision essentially ineffectual in a rapidly-changing economic marketplace.

In the appeal of such cases the question is not only whether the law was correctly applied below, but also whether the science or technology was understood correctly by the trial judge or jury. The latter issue is especially important in the innovative appeals that come so often before this court, where there are few if any boundaries, signposts, or rules to guide the deciding judges. In many cases the court is required to engage in *de novo* review. This means the judges must review all elements of the decision below, in some cases retracing the actual footwork of the trial judge, if not actually embarking on entirely new lines of thought, logic and analysis.

In patent infringement and other intellectual property cases most judges and their law clerks have to master an unfamiliar field of science and draw the best conclusions they can from scarce and limited resources. Because judges are assigned to panels randomly and not by specific subject matter expertise, all judges and their law clerks on the Federal Circuit are required to engage in extensive, and fundamental scientific inquiries in every area of science and technology. The practical effect is that each judge with his or her Chambers staff is engaged simultaneously in varied and complicated exercises, as opposed to deciding a series of often less complex, single issue cases, as in other courts of appeals.

The Federal Circuit's need for additional law clerks is based on an increased caseload in highly technical and complex appeals. Having a fourth law clerk would ensure that the judges of the United States Court of Appeals for the Federal Circuit can give the Nation, practitioners and litigants and the Patent and Trademark Office timely and thoughtful deliberation on the many challenging, critical and complex issues that come before the Court.

### Part 3

Approximately twenty-five percent of the specific program requests (**\$918,000**) will fund the following:

1. Cooling equipment for the network server room (\$350,000);
2. A new Internal Controls Analyst position (\$71,000);
3. Renovations to the Circuit Library (\$200,000);
4. Enhancements to courtroom computer technology (\$255,000); and
5. Furniture and equipment for the new positions requested (\$42,000).

These items are important to the management and internal operation of the United States Court of Appeals of the Federal Circuit.

(1) **Permanent Cooling Equipment.** The Court requests **\$350,000** to provide permanent cooling equipment for the network server room. The Court's server room was jerry-built out of an internal office space. It was never properly configured, ventilated, wired or equipped. Following several instances of dangerously high temperatures, we took temporary steps to mitigate some of the immediate problems. These funds would enable us to reconfigure and cool the server room properly, thereby saving the life of expensive hardware and equipment and greatly improving the reliability of information technology for the court's judges and staff.

(2) **Internal Controls Analyst.** The Court is requesting **\$71,000** for a new Internal Controls Analyst position which was authorized and encouraged throughout the judiciary by the Judicial Conference. We have already assigned existing staff additional duties to conduct internal audits, inspections and inventories. But having a dedicated, trained professional to perform these responsibilities would fulfill the vision the Judicial Conference contemplates and materially improve the stewardship of the court's property, funds, and internal procedures.

(3) **Circuit Library Renovations.** The Court is requesting **\$200,000** to design and construct renovations to the Circuit Library, which has not been renovated since the courthouse was built in 1965. These modest renovations would improve access to and efficiency in managing the Library collection.

(4) **Courtroom Technology Enhancements.** The Court is requesting **\$255,000** to finance technological enhancements in our third courtroom, consistent with long-standing policy of the Judicial Conference. Such enhancements include digital sound recording equipment to enable uploading the audio portion of oral arguments on the court's website; laptop connectivity equipment and training to bring the courtroom into the 21<sup>st</sup> century and allow judges and their law clerks and counsel to use personal computers during arguments; under-floor cabling for safety, security and easy access; and video-conferencing infrastructure for remotely conducted oral arguments.

(5) **Furniture and Equipment.** The Court is requesting \$42,000 for furniture and equipment for the new positions described above: twelve law clerks and an internal controls analyst.

Mr. Chairman, I would be pleased to answer any questions the Committee may have or to meet with the Committee members or staff about our budget request. Thank you.

**STATEMENT OF THE UNITED STATES SENTENCING COMMISSION  
BEFORE THE SUBCOMMITTEE ON  
FINANCIAL SERVICES AND GENERAL GOVERNMENT  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES**

**March 12, 2008**

Chairman Serrano, Ranking Member Regula, and members of the subcommittee, the United States Sentencing Commission thanks you for the opportunity to submit this statement in support of its appropriations request for fiscal year 2009. The Commission's statutory mission, as set forth in the Sentencing Reform Act of 1984, continues to be both reaffirmed and significantly impacted by recent United States Supreme Court decisions regarding federal sentencing policy. Full funding of the Commission's fiscal year 2009 request will ensure that the Commission can continue to fulfill its statutory mission.

**RESOURCES REQUESTED**

The Commission is requesting \$16,257,000 for fiscal year 2009, representing a five percent increase over the fiscal year 2008 appropriation of \$15,477,000. The Commission recognizes that it must use its allotted resources carefully and that Congress expects the same. The Commission accordingly has tailored its fiscal year 2009 request narrowly and is seeking a limited increase over its fiscal year 2008 appropriation to account for inflationary increases and certain adjustments for personnel costs.

**JUSTIFICATION FOR THE COMMISSION'S APPROPRIATIONS REQUEST**

The statutory duties of the Commission include, but are not limited to: (1) developing sentencing guidelines to be determined, calculated, and considered in federal criminal cases; (2) collecting, analyzing, and reporting federal sentencing statistics and trends; (3) conducting research on sentencing issues in its capacity as the clearinghouse of federal sentencing data; and (4) providing training on sentencing issues to federal judges, probation officers, law clerks, staff attorneys, defense attorneys, prosecutors, and others.

These statutory duties and the continuing importance of the sentencing guidelines have repeatedly been reaffirmed by recent Supreme Court decisions beginning with *United States v. Booker*.<sup>1</sup> In *Booker*, the Supreme Court reemphasized the Commission's continuing role with regard to Awriting Guidelines, collecting information about district court sentencing decisions, undertaking research, and revising the Guidelines accordingly.<sup>2</sup> In *Rita v. United States*,<sup>3</sup> the Supreme Court reinforced the role of the Commission and the importance of the guidelines in holding that a court of appeals may apply a presumption of reasonableness to a sentence imposed within the properly calculated sentencing guideline range. The Court noted that A[t]he

<sup>1</sup> 543 U.S. 220 (2005).

<sup>2</sup> 543 U.S. at 264.

<sup>3</sup> 127 S. Ct. 2456 (2007).

Commission's work is ongoing. The statutes and the Guidelines themselves foresee a continuous evolution helped by the sentencing courts and courts of appeals in that process.<sup>4</sup> In *Gall v. United States*,<sup>5</sup> the Court reemphasized that "[a]s a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark in determining an appropriate sentence."<sup>6</sup>

While reaffirming the ongoing nature of the Commission's work, these decisions also have had a significant impact on that work. Consistent with *Booker* and its progeny, the Commission has continued its core mission to review and revise the guidelines, taking into account 18 U.S.C. § 3553(a) and other congressional statutes and directives and in response to information it receives from sentencing courts, Congress, the Executive Branch, federal defenders, and others. The Commission also has increased its efforts to provide training on federal sentencing issues, including application of the guidelines, to federal judges, probation officers, law clerks, staff attorneys, prosecutors, defense attorneys, and others.

Furthermore, in response to these Supreme Court cases, the Commission has continued to refine its data collection, analysis, and reporting efforts to provide real-time data about federal district court sentencing practices and trends. The Commission must continue to disseminate sentencing information in real-time and in a thorough manner so that Congress and others can be fully informed and advised on sentencing policy in the wake of the *Booker* line of cases. In addition, the Commission must continue to monitor appellate case law applying these cases, requiring the Commission to further refine its appellate court database.

Despite the impact of these cases, the Commission is not requesting program increases for fiscal year 2009. The Commission has worked diligently over the past several years to maximize its resources overall and appreciates the support and funding it has received from Congress.

#### **Sentencing Policy Development and Guideline Promulgation**

As part of its statutory duty to develop sentencing guidelines to be determined, calculated, and considered in federal criminal cases, the Commission promulgated a number of guideline amendments during the amendment cycle ending on May 1, 2007. These amendments, which absent congressional action to the contrary became effective on November 1, 2007, related to several substantive areas of the criminal law, including transportation, terrorism, intellectual property, and drug offenses. As part of this work, the Commission updated its extensive 2002 report on federal cocaine sentencing and amended the guidelines prescribing sentences for crack cocaine offenses, keeping the guideline penalties within the statutorily-prescribed mandatory minimum sentences. The Commission received voluminous public comment on this issue, including whether these changes should be applied retroactively. It held multiple public hearings on the amendment and the issue of retroactivity, receiving testimony from a cross-section of

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<sup>4</sup> *Id.* at 2464.

<sup>5</sup> 128 S. Ct. 586 (2007).

<sup>6</sup> *Id.* at 596.

witnesses. Based on this testimony and its own research, the Commission decided to give retroactive effect to its amendment for crack cocaine offenses. It now is working closely with the federal criminal justice community to ensure its efficient application.

For the amendment cycle ending May 1, 2008, the Commission is considering several guideline amendments in response to recent congressional action. The Commission has proposed amendments in response to the Animal Fighting Prohibition Enforcement Act of 2007, the Honest Leadership and Open Government Act of 2007, the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007, and the Court Security Improvement Act of 2007. The Commission also is considering amendments in the areas of immigration offenses, drug offenses, and criminal history. These proposed amendments respond to input received from the criminal justice community and reflect the Commission's ongoing work to refine the guidelines in accordance with its statutory obligations.

Consistent with the requirements of the Sentencing Reform Act of 1984, the Commission engages in a collaborative process for sentencing policy development and guideline promulgation. That process continues to include significant outreach to, and input from, representatives of the criminal justice community, as well as the review of pertinent literature, data, and case law. For example, the Commission recently held a public briefing session on disaster fraud offenses and the illegal use of human growth hormone. During this briefing session, the Commission received testimony from the Department of Justice, the Federal Defenders Service, the Department of Housing and Urban Development, the American Red Cross, and the Food and Drug Administration.

#### **Collecting, Analyzing and Reporting Sentencing Data**

In fulfillment of its statutory duties related to collecting, analyzing, and reporting federal sentencing statistics and trends, the Commission collects documentation from the district courts on over 70,000 federal felony and class A misdemeanor cases annually.<sup>7</sup> From this documentation, the Commission extracts, analyzes, and reports information on national sentencing trends and practices. As with other aspects of the Commission's statutory mission, data collection, analyzing, and reporting efforts continue to be impacted by the Supreme Court's recent sentencing-related decisions.

Immediately after the Supreme Court's 2004 decision in *Blakely v. Washington*,<sup>8</sup> the Commission recognized that one of the most critical functions it could perform was reporting timely and accurate sentencing data. The Commission refined its data collection, analysis, and

<sup>7</sup> See 28 U.S.C. § 994(w), which requires the chief judge of each district court, within 30 days of entry of judgment, to provide the Commission with: (1) the charging document; (2) the written plea agreement (if any); (3) the Presentence Report; (4) the judgment and commitment order; and (5) the statement of reasons form.

<sup>8</sup> 542 U.S. 296 (2004). *Blakely* was a precursor to the *Booker* decision, which applied to a state guideline sentencing scheme. After the *Blakely* decision, several federal courts questioned whether the federal sentencing guideline system was still viable and federal sentencing practices became uncertain. The Commission's data collection and analysis efforts assisted the criminal justice community in evaluating the impact of *Blakely*, and later *Booker*, on the federal system.

reporting requirements to such a degree that it was able to produce relevant information beyond that which it promulgated in its annual reports and sourcebooks. By the time the Supreme Court issued its *Booker* decision in January 2005, the Commission was able to provide real-time data about national sentencing trends and practices.

The Commission further refined its processes throughout fiscal years 2006 and 2007 to maximize the information it made available to the criminal justice community. The Commission now provides detailed quarterly national sentencing data similar to the format and types of data produced in its year-end annual reports. In addition, the Commission has begun to provide real-time data on the impact on federal sentencing practices of the Supreme Court's recent decisions in *Rita*, *Gall*, and *Kimbrough v. United States*.<sup>9</sup> The Commission also has expedited publication of its year-end annual reports, which are now released in February of each year. For fiscal year 2007, the Annual Report and Sourcebook contained information on 72,865 federal cases, which represents approximately 24,000 more cases than the Commission processed a decade ago. The information contained in these reports and other analyses conducted by the Commission are used by, among others, Congress, the judiciary, the Department of Justice, defense practitioners, and academics.

#### *Information Technology Issues Associated with Data Collection, Analysis and Reporting*

Over the past three fiscal years, the Commission has apprised Congress of its development of an electronic document submission system that enables courts to electronically submit the five statutorily required sentencing documents directly to the Commission. This system is now used by 91 of the 94 judicial districts, an increase from 80 districts in fiscal year 2007 and 64 districts in fiscal year 2006. The electronic document submission system has greatly alleviated the courts' need to spend judicial resources on copying, bundling, and mailing hard copies to the Commission.

During fiscal years 2008 and 2009, the Commission intends to continue to make technological advancements related to data collection, analysis, and reporting. For example, working with the courts, the Commission has begun to advance the evolution of its electronic submission system to a web-based system with the ability to accept both the statutorily required sentencing documents and data fields from the courts. Specific projects include the planning, coordination, and implementation of a pilot project for the expanded use of this web-based system.

#### *Increased Requests for Commission Work Product from Congress*

In addition to providing quarterly and annual data reports on national sentencing practices, the Commission continues to experience increased requests for particularized data analysis from Congress. The Commission is statutorily required to assist Congress in assessing the impact proposed criminal legislation will have on the federal prison population. These assessments are often complex, time-sensitive, and require highly specialized Commission

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<sup>9</sup>128 S. Ct. 558 (2007).

resources. The Commission also has experienced an increase in requests for information from Congress on issues such as drugs, gangs, fraud, immigration, and sex offenses. The Commission increasingly is providing data to assist Congress during oversight and legislative hearings on proposed changes to substantive areas of the criminal law. Informational requests from the Congressional Research Service have also increased. The Commission anticipates that congressional requests will continue to increase throughout fiscal year 2009 and looks forward to fulfilling them in a timely and thorough manner.

#### **Conducting Research**

The Sentencing Reform Act of 1984 directed the Commission to establish a research agenda as part of its role as the clearinghouse on federal sentencing statistics and policy and to assist the courts, Congress, and the Executive Branch in the development, maintenance, and coordination of sound sentencing policies. As part of this statutory mission, the Commission issued its fourth comprehensive report on federal cocaine sentencing policy in May 2007. It also released an analysis on the impact of the amendment to the guidelines for crack cocaine offenses if it were given retroactive effect. The Commission's research agenda in fiscal year 2008 includes reports associated with its policy work and other projects of interest to the criminal justice community. One of these projects is an examination of alternatives to incarceration, which will include a two-day symposium featuring leading experts in the field.

#### **Training and Outreach**

The Sentencing Reform Act of 1984 also directed the Commission to provide specialized sentencing training and guidance to the criminal justice community. In fulfillment of this statutory duty, the Commission provides training, technical assistance, and other educational programs to federal judges, probation officers, law clerks, staff attorneys, prosecutors, and defense attorneys throughout the year. The Commission's training and outreach efforts have expanded in each of the past four years, particularly in response to the Supreme Court's recent sentencing-related decisions and to the Commission's annual promulgation of guideline amendments. In fiscal years 2007 and 2008, the Commission provided training in every federal judicial circuit and a majority of the districts. It also participated in numerous symposia, conferences, and workshops. In May 2008 in Orlando, Florida, the Commission will co-host its annual national training program at which several hundred participants will receive federal sentencing guideline training. The Commission expects that the need to provide specialized training on federal sentencing issues will continue to increase throughout fiscal year 2009.

#### **SUMMARY**

The Commission remains uniquely positioned to assist all three branches of government in ensuring sound and just federal sentencing policy. Located in the judicial branch and composed of federal judges, individuals with varied experience in the federal criminal justice community, and ex-officio representatives of the Executive Branch, the Commission is an expert, bipartisan body that works collaboratively with Congress. It therefore sits at the crossroads where all three branches of government intersect to determine federal sentencing policy.

The Commission appreciates the funding it has received from Congress to meet its ever-increasing needs. Full funding of the Commission's fiscal year 2009 request will ensure that the Commission continues to fulfill its statutory mission to develop federal sentencing guidelines, collect, analyze and report federal sentencing statistics and trends, conduct research on sentencing issues, and provide training to the criminal justice community. The Commission respectfully asks that Congress fully support the Commission's fiscal year 2009 appropriation request of \$16,257,000 so that it can continue its statutory role as a leader in federal sentencing policy.

STATEMENT OF JANE A. RESTANI  
Chief Judge  
UNITED STATES COURT OF INTERNATIONAL TRADE  
Before the Subcommittee On  
Financial Services and General Government  
Committee on Appropriations  
United States House of Representatives

March 12, 2008

Mr. Chairman, Members of the Committee:

I would like to once again thank you for providing me the opportunity to submit this statement on behalf of the United States Court of International Trade, which is established under Article III of the Constitution with exclusive nationwide jurisdiction over civil actions pertaining to matters arising out of the administration and enforcement of the customs and international trade laws of the United States.

The Court's budget request for Fiscal Year 2009 is \$19,622,000. This represents an overall increase of \$2,990,000 or 18 percent over the Court's Fiscal Year 2008 enacted appropriation of \$16,632,000. The primary reason for this increase in the Fiscal Year 2009 budget request is a substantial increase in GSA rent charges. The total GSA rent estimate for Fiscal Year 2009 is \$7,527,041, which is an increase of \$2,336,000 over the Fiscal Year 2008 rent estimate. To put these charges in perspective, it is important to note that these Fiscal Year 2009 rent charges represent 78 percent of the Court's total requested increase and 38 percent of the Court's total requested budget. The rent rate increase reflects a 50 percent increase in the shell rate as a result of a new appraisal by GSA. While the shell rate is primarily responsible for the increase in GSA rent charges, those increase charges also include a new expenditure of \$803,012 for the amortized cost of the Court's Congressionally-approved security pavilion. The process for the construction of this security pavilion began in Fiscal Year 2002 when Congress authorized \$75,000 for an architectural analysis of the repairs and upgrades needed to ensure the health, security and effective operation of the Court. The results of this analysis eventually led to the construction of the security pavilion that will be completed toward the end of Fiscal Year 2008.

Despite the substantial increase in rent charges, which is outside of the Court's control, the Court continues, as it has done for the past 13 years, to budget conservatively and request only funds that will provide for mandatory increases in pay, benefits and other inflationary factors, as well as funds for the essential on-going operations and initiatives of the Court. These increases are in line and consistent with the Court's prior average budgetary requests of 4.8 percent. I note also that these modest increases include increases in costs paid to the Federal Protective Service for basic and building-specific security surcharges. The security surcharges provide for the Court's pro-rata share of installing, operating and maintaining systems for the

critical and necessary security of the Federal Complex in lower Manhattan.

Through the use of its annual appropriation and the Judiciary Information Technology Fund (JITF), the Court continues to promote and implement the objectives set forth in its Long Range Plan. These objectives promote access to the Court through the effective and efficient delivery of services and information to litigants, the bar, public, judges and staff. As a national court, this access is critical in realizing the Court's mission to resolve disputes by (1) providing cost effective, courteous and timely service, (2) providing independent, consistent, fair and impartial interpretation and application of the customs and international trade laws and (3) fostering improvements in customs and international trade law and practice and improvement in the administration of justice.

The Court continues to aggressively implement its information technology and cyclical maintenance/replacement programs. In Fiscal Year 2007, the Court: (1) purchased, configured and tested 3 new replacement servers, 2 new file servers and 1 internet server; (2) tested the new 3.1 version of the Court's customized version of the Federal Judiciary's Case Management/Electronic Case Files (CM/ECF) System; (3) cyclically upgraded, replaced and supported desktop computers and printers throughout the Court; (4) upgraded the Court's photocopiers with new digital copiers with scanning and faxing capabilities; (5) installed the new version of Word Perfect; (6) supported and maintained all technical equipment and software applications; and (7) utilized an Administrative Office contract for professional consulting services for an evaluation of the needs of the Court in the design and implementation of a new video conferencing system. Additionally, in Fiscal Year 2007, the Court continued its cyclical maintenance program by: (1) refurbishing the finance/property/procurement and the technical development support sections of the Clerk's Office; and (2) refurbishing 2 case file rooms and the confidential storage room for better space utilization.

In Fiscal Year 2008, the Court plans to expend funds to: (1) review and subsequently implement the consultant's recommendations, mentioned in the above, for the purchase of a new video conferencing system; (2) install the file and internet servers and replace the Court's voice, fax and domain name servers; (3) replace desktop computer systems and VPN laptops in accordance with the Judiciary's cyclical replacement program; (4) upgrade and support existing software applications; (5) purchase new software applications to ensure the continued operational efficiency of the Court; and (7) support Court equipment by the purchase of yearly maintenance agreements. The Court will also continue to expand its developmental and educational programs for staff in the areas of job-related skills and technology.

In Fiscal Year 2009, the Court will not only remain committed to using its carryforward balances in the Judiciary Information Technology Fund to continue its information technology initiatives and to support the Court's short-term and long-term information technology needs, but will also continue its commitment to its cyclical replacement and maintenance program for equipment and furniture for the Courthouse. This latter program not only ensures the integrity of equipment and furnishings, but maximizes the use and functionality of the internal space of the courthouse. Additionally, the Fiscal Year 2009 request includes funds for the support and

maintenance of the Court's upgraded security systems. Lastly, the Court will continue its efforts to address the educational needs of the bar and Court staff.

As I have continually stated in previous years, the Court remains committed to maintaining its security systems to ensure the protection of those who work in and visit the Courthouse. The Court is looking forward to the completion of its security pavilion in the third quarter of Fiscal Year 2008. This pavilion is expected to be fully operational in Fiscal Year 2009. The Court has worked in partnership with GSA in the design, construction and completion of this entrance pavilion and is most gratified to see that everyone's efforts and hard work will finally be realized.

I would like to again emphasize that the Court will continue to conservatively manage its financial resources through sound fiscal, procurement and personnel practices. As a matter of internal operating principles, the Court routinely has engaged in cost containment strategies in keeping with the overall administrative policies and practices of the Judicial Conference. For over five years the Court has only requested funds to maintain current services. The extraordinary increase in the Fiscal Year 2009 projected rent charges has caused concerns regarding the Court's ability to maintain current services without additional funds to support the rent increase. In an effort to lessen the projected impact of this rent increase, at the end of Fiscal Year 2007 and continuing into Fiscal Year 2008, the Court began the initial review process of the Fiscal Year 2009 rent rate. Several meetings were held with high level regional GSA personnel responsible for the review and implementation of the rent pricing rates. Additionally, the Clerk of Court met with the Administrative Office. In order to proceed with the process and at the suggestion of the Administrative Office, the Court, in Fiscal Year 2008, will issue a work order for an independent appraisal analysis. Once the new appraisal is completed and reviewed, subsequent meetings will be held with GSA's high level regional and national office personnel in an effort to reduce the high rent increase.

Lastly, I would like to personally extend my deepest thanks and appreciation to Congress for recognizing the needs of the Court by providing, in Fiscal Years 2007 and 2008, adequate funding to maintain current services. I am confident that Congress, in Fiscal Year 2009, will provide the needed funds for the increase in rent costs, thereby enabling the Court to continue to operate in a cost effective and efficient manner.

The Court's "General Statement and Information" and "Justification of Changes," which provide more detailed descriptions of each line item adjustment, were submitted previously. If the Committee requires any additional information, we will be pleased to submit it.

Statement of Honorable Barbara J. Rothstein  
Director, Federal Judicial Center  
Before the Subcommittee on  
Financial Services and General Government  
Committee on Appropriations  
United States House of Representatives

March 12, 2008

I am Barbara Rothstein. I have been the Center's director since 2003, and a district judge since 1980. I am pleased to submit the Center's 2009 budget request on behalf of the Center's Board, which the Chief Justice chairs, and which approved this request.

First, the Center is grateful for the efforts of Congress to provide in fiscal year 2008 not only full adjustments to its 2007 base (for only the second time in more than a decade) but also \$156,000 for three new positions (30% of the \$504,000 we sought in fiscal 2008 to restore 10 of the 22 Center positions vacated and frozen since 2003 because of budget shortfalls).

Our 2009 request is for \$25,759,000, a \$1,572,000 (or 6.5%) increase over 2008. The increase includes \$1,060,000 for standard adjustments to base, \$387,000 for four full-time equivalent positions (seven positions for approximately six months), and \$125,000 for critical education and training programs.

Before providing more detail on this request, let me provide you with a little background on the Center and its activities. I hope with this description to convey to you the important contribution that the Center makes to the effective and efficient functioning of the federal courts.

#### I. The Center's Contribution to the Courts

The Center's mission is to provide objective, well-grounded empirical research and balanced, effective educational programs for the courts.

The courts, and particularly the Judicial Conference of the United States, as well as Congress and the public, are regular consumers of the Center's research projects. They rely on the Center for thorough, unbiased, well-documented research. Examples include examining the impact of the Class Action Fairness Act of 2005 on the resources of the federal courts; providing information to assist judges in handling capital cases; and developing empirically sound case weights that accurately reflect judicial workload. Not only do projects such as these help judges decide cases efficiently and fairly, they also help the judiciary and Congress make better-informed decisions about policies and procedures affecting the courts.

Center education programs are vital to judges and court staff. For new judges, orientation programs enable them to assume their new responsibilities quickly. Continuing education programs bring judges up to date on topics ranging from case-management techniques to new statutes and case law. (For example, the Center quickly responded to the U.S. Sentencing Commission's de-

cision to retroactively apply changes to the sentencing guidelines on crack cocaine by providing educational programs and other resources to help judges, probation officers, and others deal carefully, efficiently, and fairly with the many issues this raised.)

Court staff, who play a critical role in supporting judges and ensuring the efficient operation of the courts, rely on the Center for educational programs and materials that help them do their jobs better (for example, integrating new technologies and executing cost-containment strategies). The Center's Professional Education Institute, which provides basic and advanced programs on leadership and management for managers and supervisors at all levels in the courts, is a key component of court staff training.

The Center uses a wide range of tools to deliver education. One reality of the information age is that people can (and expect to) receive information in many different ways. Where once the Center relied almost exclusively on in-person programs, audiotapes, and hard-copy publications to reach judges and court staff, we have expanded into satellite television broadcasting, teleconferencing, and use of the Internet and the courts' intranet, and, more recently, web-conferencing and streaming video. All these delivery means are needed to meet the diverse needs of a diverse population of judges, managers, and staff.

The importance of the Center's educational programs is reflected in their use by the courts. All Center training is voluntary; large numbers of judges and court staff choose to participate in Center programs and use its services because they know the Center's products will help them do their jobs better. In 2007, over 9,000 employees of the courts (including over 2,000 judges) attended Center programs in person—over half did so in their own districts. Over 1,000 court staff participated in Center video, audio, and web conferences, and thousands of judges and court staff watched Center television programs, accessed resources and downloaded materials from the Center's intranet site, and used Center publications.

## II. The Center Has Managed Its Appropriation Responsibly

Understanding the need for fiscal responsibility, the Center has made careful use of its appropriation each year. As I noted earlier, we use a wide variety of cost-effective delivery tools to provide education and information to judges and staff efficiently. The various delivery tools we use have enabled us to reach a larger and larger audience for less money than we could with only one or two of these media. But new technology also requires a highly professional staff with diverse skills in order to take full advantage of these tools and to identify and implement newer technologies as they emerge.

In-person programs remain a vital part of our education efforts. Here we economize in several ways. Most in-person staff training (and some judge education) is done by bringing faculty to the courts for local training. Most programs to which participants must travel are conducted in hotels in large cities where we can negotiate reasonable rates and take advantage of competitive airfares. We conduct smaller seminars in collaboration with several outstanding law schools, enabling us to avoid faculty and overhead costs.

We stretch our appropriation by working closely with our sister agencies, the Administrative Office of the U.S. Courts and the U.S. Sentencing Commission. We regularly consult with them to avoid duplicative efforts, and we often provide them an opportunity to convey their information to the courts at Center-sponsored programs.

### III. The Center's Fiscal Year 2009 Request

Our request for 2009 is modest—standard adjustments to our 2008 base, \$387,000 to enable us to fill the seven positions sought but not funded in our fiscal year 2008 request, and \$125,000 for programs that are needed but which we cannot currently afford without cutting equally important programs elsewhere. The seven positions will return the Center to approximately its fiscal year 2005 staffing level, but that level will still be more than 10% below the number of staff the Center had as recently as 2003, and over 20% below the number of staff employed by the Center in the early nineties. With these resources we can continue to help the courts prepare for and meet the many substantive, procedural, and operational challenges they face. The additional program funds would provide expanded programming for judges on sentencing, ethics, and case management (including the use of information technology). These additional funds would also provide programs for attorneys in the courts; the Center has not kept pace with the growing educational needs of these attorneys. The requested amounts represent a total increase of only 6.5% over the Center's fiscal year 2008 level. I ask you to please find the resources to fund them in full.

Thank you for your careful consideration of our request. I would be pleased to respond to any questions you may have.

Mr. SERRANO. Those statements will be included in the record.  
Mr. SERRANO. Mr. Duff.

#### DIRECTOR DUFF'S TESTIMONY

Mr. DUFF. Good morning, Chairman Serrano and Congressman Regula. Thank you for inviting us to be here this morning.

I am pleased to present the budget request for the Administrative Office of the U.S. Courts. I will make some brief remarks and also ask that my written testimony be included in the hearing record.

I join Judge Gibbons in thanking you sincerely for what you have done for the courts over the past year. We very much appreciate it. We know what it means in such a tight funding environment to be almost singled out for funding in such a beneficial way.

We deeply appreciate you recognizing the impact that enhanced border enforcement will have on the judiciary by providing emergency appropriations to address the additional workload. This funding will provide some staffing increases for courts whose workload is heavily impacted by immigration and other law enforcement initiatives.

This is my second appearance before the subcommittee. I have now had the opportunity to work with this subcommittee and its staff through one full appropriations cycle. I must say, it has been a joy to work with your staff. They are very responsive, and we have established a very good working relationship with them. We appreciated very much being able to work so closely with you, as our requirements changed and your allocation was reduced during conference on the 2008 omnibus bill.

The AO, I will mention very briefly as background, was created by Congress in 1939 to assist Federal courts in fulfilling the mission to provide equal justice under the law. It is a unique entity in the government. The AO does not operate as a headquarters for the courts. The courts' operations are decentralized. Although the AO provides administrative, legal, financial, management, security, information technology, and other support services to all the Federal courts, the court system is in essence decentralized throughout the country. The AO also provides support and staff counsel to the Judicial Conference of the United States and its 25 Committees, and it helps implement Judicial Conference policies, as well as applicable Federal statutes and regulations.

The AO has evolved over the years to meet the changing needs of the judicial branch. Service to the courts has been, and remains, our primary mission.

Last year, I reported to you that I was assembling a small advisory group of judges and court executives to assist me and our Deputy Director, Jill Sayenga, in a review of the organization and the mission of the AO. The ad hoc advisory group confirmed that the AO is an organization of dedicated service-oriented and capable professionals, but it also identified some areas where the AO's performance or ways of conducting business could be improved, as any organization needs to do.

We took a long, hard look at our operations to see where we could improve. Teams of AO managers have been assembled to plan and implement those recommendations. My goal is to ensure

that the AO is the best and most efficient service organization in the government. I think we are on a path to accomplish that, thanks to the review that we have undertaken through the advisory group.

In supporting the courts, the AO frequently finds itself responding to new developments, such as the Booker and Fanfan Supreme Court decisions, or implementing the new bankruptcy legislation. To do so, we work with court leaders to develop plans and processes for the judiciary to respond to new challenges.

Two developments on which we are currently responding are the impact of enhanced immigration enforcement on the courts, and implementing the pilot project you authorized last year, under which the U.S. Marshals Service will assume responsibility from the Federal Protective Service for perimeter security at several designated courthouses.

I want to mention briefly that last year I talked about our efforts to improve our working relationship with GSA. I think this is a very important development for the courts and for the Federal Government and for our funding in the long run. Last year, I reported we made substantial progress. Today, I am very happy to report that we have successfully concluded the effort to improve this relationship.

I shouldn't say concluded, but a manifestation of success of the efforts occurred on February 19, just last month. I signed a memorandum of agreement with the GSA, which was cosigned by the GSA Public Buildings Service Commissioner, that changes the way rent will be calculated for all federally-owned courthouses to be delivered in the future. It also applies to 32 existing courthouse facilities.

This is a very significant development because, as you may recall, there were tensions between us and GSA over its rent calculations for the courts. Both the judiciary and GSA will benefit from knowing with certainty how much rent the judiciary will pay in the future and how much rent GSA will receive. Judiciary and GSA staff time and resources for contractor support to conduct and validate market appraisals will no longer be used. There will be a return on investment arrangement, which provides stability and predictability.

I would also like to respectfully request that you consider providing assistance in solving two major courthouse construction problems in San Diego and Los Angeles, where market conditions and delays have increased the costs of these projects beyond the funding levels already provided by Congress. In addition, other projects on the judiciary's 5-year courthouse project plan, which has been provided for the record as an attachment to my written testimony, are not included in the President's 2009 budget request, yet they have been on the 5-year plan for a number of years.

Shifting to the last topic, the fiscal year 2009 appropriations request for the Administrative Office of the U.S. Courts is \$82 million. That is an increase of \$5.9 million, or 7.8 percent over last year. Although the increase we are seeking may appear significant, overall it represents a no-growth current services budget. The requested increase is exclusively to cover base adjustments to maintain current services.

I think it is significant to note that we are requesting no program increases. Over half of the increase is to fund the proposed fiscal year 2009 pay adjustments and to annualize the fiscal year 2008 pay adjustment. The balance is for inflationary adjustments.

Chairman Serrano and Representative Regula and members of the subcommittee, I recognize that fiscal year 2009 will be another difficult year for you and for your colleagues as you struggle to meet the funding needs of the agencies and programs under your purview. I look forward to working with you and your staff once again, and would be pleased to answer any questions you have this morning.

[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  
UNITED STATES HOUSE OF REPRESENTATIVES  
March 12, 2008

**Introduction**

Chairman Serrano, Congressman Regula, and members of the Subcommittee, I am pleased to appear before you this morning to present the fiscal year 2009 budget request for the Administrative Office of the United States Courts (AO) and to support the overall request for the entire Judicial Branch.

First, I would like to join Judge Gibbons in thanking you and your Committee for the support you provided the Judiciary in the fiscal year 2008 appropriations bill. In addition to the regular funding, we deeply appreciate your recognizing the impact enhanced border enforcement will have on the Judiciary by providing emergency appropriations to address the additional workload. In the aggregate, the funding will allow the Judiciary to provide some staffing increases in courts whose workload is heavily impacted by immigration and other law enforcement initiatives.

This is my second appearance before the Financial Services and General Government Subcommittee and I have now had the opportunity to work with this subcommittee and its staff through one full appropriations cycle. We recognize the very tight fiscal constraints in which you operate and appreciated being able to work closely with your staff throughout the process as our requirements changed and your allocation was reduced. I look forward to a continued productive relationship with your very able staff as we move through the year. I want to answer any questions you might have, and to describe the important needs of the federal Judiciary.

**Role of the Administrative Office**

In July 2006, I accepted the appointment of Chief Justice Roberts to become only the 7<sup>th</sup> Director of the Administrative Office of the U.S. Courts in its 69-year history. 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.

Unlike most Executive Branch agencies in Washington, the AO does not operate as a headquarters for the courts. The federal court system is decentralized, although the AO provides administrative, audit, human resources, legal, financial, management, program, security, information technology and other support services to all federal courts. It 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 it helps implement Judicial Conference policies as well as applicable federal statutes and regulations. The AO carries out a comprehensive financial audit program to ensure the Judiciary expends its resources properly. It also coordinates Judiciary-wide efforts to improve communications, information technology, program leadership, and administration of the courts, and is leading the effort to contain costs throughout the Judiciary. Our administrators, auditors, accountants, systems engineers, personnel specialists, analysts, architects, lawyers, statisticians, and other staff provide professional services to meet the needs of judges and staff working in the federal courts nationwide. The AO staff also respond to Congressional inquiries, provide information on pending legislation, and prepare Congressionally mandated reports.

#### **Administrative Office Internal Review**

Last year I reported to you that I was assembling a small advisory group of judges and court executives to assist me and our Deputy Director, Jill Sayenga, in a review of the organization and mission of the AO. I wanted to ensure that the structure and services provided by the AO are appropriate and cost-effective, and that they address the changing needs of the courts. We examined our core mission of service to the courts as defined by statute and directives from the Judicial Conference to determine if internal adjustments were needed to improve efficiency and responsiveness.

I am pleased to tell you the ad hoc advisory group confirmed that the AO is an organization of dedicated, service-oriented, capable professionals, but it did identify some areas where the AO's performance or ways of conducting business could be improved. The group provided practical and achievable recommendations on how to improve both the services of the AO to, and our working relationship with, the courts. To that end, teams of AO managers have been assembled to plan and implement the recommendations. Among other things, we will be reviewing internal operations, the deployment of our workforce, the best ways to obtain court input and advice, and improvements in communications with the courts and in working procedures. My goal is to ensure that the AO is the best service organization in the government.

Although the internal review was undertaken primarily to determine how well the AO currently fulfills its responsibilities, the ad hoc advisory group raised questions about the agency's continuing ability to deliver critical services, as well as its capacity to adapt to our court customers' future needs. Areas of concern include future budgetary constraints, the anticipated retirements of highly experienced and knowledgeable employees in senior management and technical positions, growing numbers of staff vacancies in critical areas, AO competitiveness in the labor market, the changing nature of work and required competencies, and the impact of change on employee morale.

After reviewing carefully our operations for the past year and a half, I am convinced that we require the current services level of staff and funding we request for Fiscal year 2009 to provide adequate support to the courts. The services provided by the AO are critical to the

effective operation of our federal courts, and I hope you will continue to provide the resources we require.

#### **Administrative Office Challenges**

As I indicated when I testified last year, when I became Director in July 2006, I restricted recruitment actions for filling vacant positions to give me time to evaluate the organization, its mission, and priorities. Any exceptions for external recruitment were scrutinized carefully by an executive review committee and required my approval. I am pleased to report that, having completed this review, the hiring freeze has been partially lifted and critical vacancies are being filled.

In the interim, with significant additional effort on the part of our existing staff, and at times with great difficulty, the AO continues to perform vital human resources and financial functions, implements the policymaking efforts of the Judicial Conference, monitors program performance and use of resources, develops and supports automated systems and technologies, collects and analyzes court workload statistics, coordinates construction and management of court facilities, defines court resource needs through caseload forecasts and work measurement analyses, monitors the U.S. Marshals Service's implementation of the judicial facility security program, provides program leadership and support for court unit executives, develops and conducts education and training programs, and performs cyclical court audits and other financial and system audits to ensure integrity.

In addition to striving to perform its fundamental responsibilities outlined above in the most efficient and effective manner, the AO must look 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 and other areas so that we can serve the courts effectively in the years ahead.

#### **Planning for the Future**

The AO frequently finds itself in uncharted waters. Whether it is responding to the *Booker* and *Fanfan* Supreme Court decisions or implementing the Bankruptcy Abuse Prevention and Consumer Protection Act, we are working with court leaders to develop plans and processes for the Judiciary to respond to new challenges. I highlight three of the initiatives on which we are currently working - responding to enhanced immigration enforcement, preparing to implement the retroactive application of the crack cocaine sentencing amendment, and implementing a pilot project you authorized last year under which the U.S. Marshals Service (USMS) assumes responsibility from the Federal Protective Service (FPS) for perimeter security at several designated courthouses. Judge Gibbons' testimony addresses the policy issues and impact on the Judiciary of these three initiatives. I would like to talk about the operational concerns and what the Administrative Office is doing to ensure the courts are prepared to support these efforts.

***Enhanced Immigration Enforcement***

Increased border enforcement is a priority of this Congress and the Administration. We are grateful for your recognition that the Judiciary is integral to this effort by providing significant resources to the courts in 2007 and 2008 for us to respond to the resulting apprehensions and prosecutions. In addition to having the increased funding you provided, the Judiciary must plan and coordinate the management of the new workload effectively, particularly as Operation Streamline is implemented in more locations along the Southwest border. To that end, Administrative Office staff participated in a conference of top law enforcement officials from Southwest border districts and continue to maintain contact with executive branch personnel to ensure we are aware of and can respond to their priorities. Further, we have established a task force within the AO to facilitate the Judiciary's response to enhanced immigration enforcement and to work with the Southwest border courts.

In conversations with judges, court managers, and federal defenders, particularly in the Southwest border districts, but also in districts throughout the country, we are finding that limitations beyond funding can make it difficult for courts to respond to the increased workload. Lack of space to hold court proceedings and to detain those apprehended, rising caseloads of federal defenders, finding enough panel attorneys willing to accept these cases at the current non-capital hourly rate of \$100, locating sufficient numbers of qualified interpreters, and hiring and retaining probation and pretrial services officers in the difficult work environment that exists along the Southwest border are all challenges that the AO, in coordination with the courts, is trying to address. These are difficult problems that will require creative and innovative solutions.

AO staff, in collaboration with court personnel, are systematically developing an inventory of areas where we do not have all of the resources to address the existing and potential new workload. Initially we are focusing on the Southwest border districts, but these issues are not necessarily limited to the Southwest border. Many districts throughout the country are affected by enhanced immigration efforts, resulting in increased numbers of legal and illegal alien defendants in locations such as the Middle District of North Carolina, the Western District of Arkansas, Nebraska, Idaho, the Northern District of Georgia, Oregon, Colorado, and the Southern District of Iowa. This leads, for example, to a need for more interpreters in some districts where the availability is quite limited and the demand and supply have not existed previously. To resolve these issues, we will have to look beyond the traditional ways we have addressed these needs and develop innovative, creative solutions.

***Perimeter Security Pilot Program***

Another new endeavor for the AO is implementation of a pilot project whereby the USMS will assume FPS perimeter security responsibilities in selected court facilities. As Judge Gibbons stated in her testimony, we are very grateful that you have given us the opportunity to pursue this project and to ensure that the Judiciary has comprehensive and effective security in place.

We are particularly troubled by the February 8, 2008, Government Accountability Office's (GAO) *Preliminary Observations on the Federal Protective Service's Efforts to Protect Federal Property* which found that FPS has not always maintained the security countermeasures and equipment it was responsible for, such as perimeter cameras, which may expose federal facilities to a greater risk of crime or terrorist attack. This GAO report verifies the situation that Judge Gibbons described in testimony before this subcommittee last Spring regarding perimeter security equipment for which FPS was responsible, but which was not maintained, fixed or replaced, despite FPS being paid by the Judiciary for that service. Please be assured that courthouses do not have these problems because of the security provided the Judiciary by the USMS. It is specifically for the reasons identified in the GAO report, however, as well as the need to have one entity responsible for security, that we raised concerns about FPS perimeter security last year. We are grateful that you responded by authorizing the pilot project. The test-site courts will be provided with a consistent level of perimeter security as is the case in the interior of courthouses, and will allow those courts to rely on the Marshals Service as its single provider of security services, rather than FPS.

I would point out that GAO identified funding shortfalls as a primary cause of the FPS security deficiencies. This concerns us because, as you know, FPS is funded fully from the fees it charges other government agencies for its security services. While we have suggested on several occasions that FPS receive a direct appropriation at a funding level Congress deems appropriate to secure federal buildings, this proposal has not been pursued. Consequently, under the current funding scheme, any budgetary shortfall is borne by all federal agencies in the form of increased fees, thus increasing the Judiciary's funding requirements, as well as those of the Executive Branch agencies under your jurisdiction.

With regard to the pilot project, I assure you that AO staff are involved in every aspect of implementation and will be monitoring the project carefully. We have been on site at every pilot location to assess the level of security provided by FPS and to participate in determining the appropriate level of security to be provided by USMS. We are cognizant of the need to control costs during this pilot and for the future if it is determined that nationwide implementation is appropriate.

#### ***Crack Cocaine Sentencing Retroactivity***

The last new area I would like to address is implementation of the retroactive application of the federal sentencing guidelines amendment for crack cocaine offenses. This effort is similar to our response to enhanced immigration enforcement in that it involves many components of the Judiciary as well as Executive Branch entities, as Judge Gibbons mentioned in her testimony. The AO's role in this endeavor began in November, when we hosted a contingency planning meeting prior to the decision of the Sentencing Commission to apply the amendment retroactively. We invited chief probation officers from the districts with the largest number of crack cocaine cases to meet at the AO, and we invited officials of the Sentencing Commission, the Department of Justice, and the Bureau of Prisons to join us. The discussion centered around identifying offenders in prison who may be eligible for immediate release, and planning for the

successful reentry into the community of those qualified for release. At the planning meeting, two chief probation officers volunteered to host large conferences in Charlotte, North Carolina and St. Louis, Missouri that would gather judges, probation officers, prosecutors, and federal defenders from districts with a significant number of crack cocaine cases, and provide a forum to develop practical plans for dealing with the workload at the district level. The two-day conferences included presentations by the Sentencing Commission, the Bureau of Prisons, the U.S. Marshals Service, and also panel discussions with judges, prosecutors, and defenders. There was widespread agreement at the conferences that the courts involved are capable of meeting the challenges posed by the additional workload. To ensure that the valuable information discussed during these conferences was available to all judges and court staff, AO staff recorded the sessions and posted the video on the Judiciary's intranet site.

In addition to the conferences, AO staff have worked to make implementation of the amendment easier for all of the courts. In coordination with the Sentencing Commission and the Judicial Conference's Committee on Criminal Law, AO staff developed a model order that can be used by the courts when resentencing inmates. This one-page form captures all of the information needed by the Commission and the Bureau of Prisons, and will allow judges and court staff to process the orders quickly. Also, databases used in the clerks offices, probation and pretrial services offices, and federal public defenders offices to capture statistics and workload data related to crack cocaine resentencings have been updated. Additionally, AO staff have disseminated important information about Bureau of Prisons procedures to the courts. I am pleased to report that all of these efforts were in place prior to the March 3, 2008, effective date.

#### **Partnership with the General Services Administration**

Last year when I testified before you I talked about my efforts to improve our working relationship with the General Services Administration (GSA). At that time I reported that substantial progress was being made and that we were working on significant changes in how GSA determines or calculates courthouse rents. Today, I am pleased to report that we have successfully concluded that effort. On February 19, 2008, I signed a Memorandum of Agreement (MOA), co-signed by the GSA Public Buildings Service Commissioner, that changes the way rent will be calculated for all federally owned courthouses to be delivered in the future. This new methodology will also be applied to a limited number of courthouses that the Judiciary already occupies.

The conventional approach that had been used to determine rent for most of our buildings, as well as those buildings occupied by other federal tenants of GSA space, is based on appraisals of commercial space in the same rental market as the federally owned building. Every five years a new appraisal of the market was done and rental rates paid to GSA were adjusted accordingly. I would note that using this former fair market value method, in fiscal year 2009, the rent for the Court of International Trade, a GSA-owned building in Manhattan that is over 40 years old, will increase by \$1.5 million or 30 percent, based on the 5-year cyclical reappraisal done by GSA.

The MOA outlines a new process for determining rental rates based on a return on investment (ROI) methodology. Under the MOA, the rent will be fixed for the first 20 years of occupancy and will be set to return to GSA approximately 7 percent per year of its capital costs; operating costs will be adjusted annually to reflect GSA's actual operating expenses.

We are pleased that this MOA has been signed for several reasons. First and foremost, it ushers in a new era of collaboration and cooperation between the Judiciary and GSA and demonstrates that by working together, we can resolve problems in a way that is mutually beneficial to both parties. Second, it provides the Judiciary with certainty about the amount of rent it will pay for a 20-year time period, rather than being subject to changes every five years as a result of changing commercial market conditions. Third, the amount of rent will be based directly on the capital resources the Judiciary consumes, i.e., how much it costs to construct the building, rather than on periodic assessments of market rents in nearby commercial office buildings. Finally, with GSA agreeing to an open-book accounting of costs, the Judiciary will not have to hire consultants and expend considerable staff time reviewing appraisals based on subjective opinions of market value.

I have just outlined the many benefits that the Judiciary will enjoy under this MOA. Because this subcommittee also has jurisdiction over the General Services Administration, I assure you that GSA will also benefit from the provisions of the MOA. Specifically, GSA will have a guaranteed return on investment at a set rate with no market risk or vacancy risk. As mentioned above, under appraisal pricing, every five years the rate is reset. These reappraisals result in rent decreases as well as increases, so should market conditions be lower than the previous appraisal, GSA would get less rent. Also, under the MOA, the Judiciary is assuming the vacancy risk in the ROI buildings. That is, the Judiciary will pay the same rent over the 20-year time period even if space becomes vacant in the building. Consequently, GSA will not lose rental income until such time that it could backfill the space with another tenant. Finally, GSA will no longer have to respond to challenges to the fairness and validity of the rent determination process, which has led to criticism, tension, and unexpected reductions in the Federal Buildings Fund when GSA refunded overcharges to the Judiciary.

#### **Courthouse Construction**

I next will discuss another facility-related issue -- the status of our courthouse construction needs. We appreciated your willingness to fund new courthouse construction projects requested by the Judicial Conference in fiscal year 2008 even though the Administration did not include them in the President's Budget. We find ourselves in a similar situation this year with the President's Budget only requesting the additional funds needed for the San Diego courthouse. Despite reductions in the scope of the San Diego project, costs have increased significantly over the original GSA projections because of changing market conditions and the construction boom in California. The project has been delayed several years and is critically needed in this California Southwest border district because the existing courthouse is out of space.

As you know, we have another courthouse problem in Los Angeles. California (Central) is the largest district in the country and current facilities are seriously inadequate. Because of market conditions and delays, the cost of the Los Angeles project far exceeds GSA's original estimates. Despite the sizable reductions in scope made by the court, the cost of this project continues to grow and will only get more expensive as time passes. The AO, the court, and GSA have been working together to find a solution. While we recognize how costly this project is, especially in a time of constrained resources for non-security discretionary programs, we believe the final project design must address long-term needs and provide an environment in which the judicial process can function safely and effectively. We also want to ensure that when alternatives are considered, all costs associated with the options are included in the analysis. Consequently, we are pleased that GAO has been asked to conduct a review of this project and trust that it will address all aspects of the issue. We also look forward to collaborating with GSA on the report this subcommittee asked it to provide and trust that our views will be reflected fully. I have stated on numerous occasions that the situation in Los Angeles is an extraordinary problem that may ultimately warrant an extraordinary solution.

Finally, we respectfully request that you consider the new courthouse construction projects included on the Judicial Conference approved Five-Year Courthouse Project Plan for fiscal years 2009-2013, a copy of which is attached to this Statement. As I mentioned, none of these projects is included in the President's 2009 Budget Request, yet they have been on the Five-Year Plan for a number of years. Most of the projects have sites, have been or soon will be designed, and are awaiting construction funding. Every year a project is not funded its cost increases by about 10% based solely on inflation. We appreciate your consideration of these needs.

#### **Administrative Office Fiscal Year 2009 Budget Request**

Last I will address the fiscal year 2009 appropriations request for the Administrative Office of the U.S. Courts which is \$81,959,000. This represents an increase of \$5,923,000, or 7.8 percent, over fiscal year 2008 enacted appropriations. Although the percentage increase in appropriations we are seeking may appear significant, overall it represents a no-growth, current services budget request. I note this request funds 6 percent fewer staff than were funded in 1995 even though court staffing has increased almost 14 percent over the same time period.

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. In addition to the appropriation provided by this Committee, as approved by the Judicial Conference and the Congress, the AO receives non-appropriated funds from sources such as fee collections and carryover balances to offset appropriation requirements. 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 programs, and defender services.

The requested increase of \$5.9 million is exclusively to cover base adjustments to maintain current services; the AO requests no program increases. Over half of the increase is to fund the proposed fiscal year 2009 pay adjustment and to annualize the fiscal year 2008 pay adjustment. The balance is for inflationary adjustments and to replace *non-appropriated* funds (carryover) that were used to finance the fiscal year 2008 financial plan, but which at this time are expected to decline in fiscal year 2009. If carryover is not replaced with direct appropriated funds, we would be forced to reduce current

on-board staffing. This would, in turn, adversely affect our ability to carry out the AO's statutory responsibilities and serve the courts. We will keep you apprised of actual carryover estimates as the year progresses. Should carryover surpass our estimates, the amount of appropriations we are requesting could be reduced.

**Conclusion**

Chairman Serrano, Mr. Regula, members of the Subcommittee, I have shared with you only a few examples of the diverse issues we handle and the type of services and support the Administrative Office provides the federal Judiciary. In addition to our service to the courts, the AO works closely with the Congress, in particular, the Appropriations Committee and its staff, to provide accurate and responsive information about the federal Judiciary. I recognize that fiscal year 2009 will be another 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. Our budget request is one that does not seek new resources for additional staff or programs. I hope you will support it.

Thank you again for the opportunity to be here today. I would be pleased to answer your questions.

**Five-Year Courthouse Project Plan for FYs 2009 – 2013**  
**As Approved by the Judicial Conference of the United States on March 11, 2008**  
 (estimated dollars in millions)

FY 2009			Cost	Score	Est. Net Annual Rent
1	Austin, TX	Add'l. S&D / C	\$114.0	82.0	\$6.5
2	Salt Lake City, UT	C	\$168.5	67.9	\$11.4
3	Savannah, GA	Add'l. D	\$2.0	61.3	\$3.5
4	San Antonio, TX	S	\$18.0	61.3	\$9.2
5	Mobile, AL	Add'l. S / C	\$181.5	59.8	\$4.7
			<b>\$484.0</b>		<b>\$35.4</b>

FY 2010			Cost	Score	Est. Net Annual Rent
1	Nashville, TN	Add'l. D / C	\$164.6	67.3	\$7.0
2	Cedar Rapids, IA	Add'l. D / C	\$136.8	61.9	\$6.1
3	Savannah, GA	C	\$52.4	61.3	\$3.5
4	San Jose, CA	Add'l. S	\$32.0	54.5	\$9.4
5	Greenbelt, MD	S&D	\$10.5	53.8	\$1.6
			<b>\$396.3</b>		<b>\$27.5</b>

FY 2011			Cost	Score	Est. Net Annual Rent
1	San Antonio, TX	C	\$160.8	61.3	\$9.2
2	Charlotte, NC	C	\$106.1	58.5	\$7.1
3	Greenville, SC	C	\$66.4	58.1	\$4.1
4	Harrisburg, PA	C	\$48.1	56.8	\$5.4
5	San Jose, CA	D	\$14.4	54.5	\$9.4
			<b>\$395.8</b>		<b>\$35.2</b>

FY 2012			Cost	Score	Est. Net Annual Rent
1	Norfolk, VA	C	\$87.8	57.4	\$5.1
2	Anniston, AL	C	\$17.1	57.1	\$1.1
3	Toledo, OH	C	\$91.8	54.4	\$5.9
4	Greenbelt, MD	C	\$59.0	53.8	\$1.6
			<b>\$255.7</b>		<b>\$13.8</b>

FY 2013			Cost	Score	Est. Net Annual Rent
1	San Jose, CA	C	\$188.0	54.5	\$9.4
			<b>\$188.0</b>		<b>\$9.4</b>

*S = Site; D = Design; C = Construction; Add'l. = Additional*  
*In FY 2004, GSA requested only design funds for San Antonio, TX, which was planned to be built on a federally owned site. GSA advises that a privately owned site will be needed, which, therefore, requires funding to acquire a site. All cost estimates subject to final verification with GSA.*

Mr. SERRANO. Thank you so much. I notice that all representatives of the Federal judiciary call me Serrano, rather than Serrano. That is okay. But I just hope it is not an alias that you guys think I am working under.

Mr. REGULA. Don't feel bad; they call me Regula.

RETROACTIVITY OF CRACK COCAINE SENTENCING AMENDMENT

Mr. SERRANO. In the Bronx, we would just say a regular guy.

We have an issue here. We have a motion to adjourn on the floor now, then we are being asked, both sides, to stay on the floor. That can only mean we are getting angry at each other again. We were angry last night until very late. Every even number year we get angry. And so we may have to leave.

A lot of these decisions that are made that seem like policy decisions do have a budget impact. One of the big issues being discussed now is the whole issue of the crack and powder cocaine sentences, which we understand up to 20,000 people could be leaving prison as a result of retroactive application of recent changes to the federal sentencing guidelines.

So very briefly, if you could tell us, just give your views on this whole issue, and secondly, what impact would it have on the budget? Is there funding already being thought of to handle the case-load, the workload?

Judge GIBBONS. We are not asking for any new resources to handle that workload, and that might seem surprising when you hear that, 20,000 or so defendants are subject to resentencing. But if you look a little more carefully at what is likely to be involved, I think you will understand why we are not asking for additional resources.

These individuals will be resentenced pursuant to a request that they make, a court makes, or the Bureau of Prisons makes pursuant to a statutory provision that allows the court to consider a number of factors, including public safety and conduct subsequent to conviction. But a full resentencing is not necessarily required, although there is plenty of room for the exercise of court discretion and room for courts to deny the motions if appropriate and if considerations counsel in favor of doing that.

It is expected that at least initially the first wave of individuals will be people whose sentences are very, very close to termination, and there may be little disagreement about whether a person serves is released a month or two early, or even slightly more.

I understand that as of Monday of this week, a mere week after the retroactivity provision became applicable, over 800 of these individuals had already been processed, suggesting that at least in the first instance, there will not be that much burden associated with them. Down the road, certainly there will be litigation, but it will be spread over time, and we are hopeful we can handle this within existing resources.

Mr. SERRANO. Now it would seem to the public or to a person who is not working in the court system that if you speak of 20,000, it just has to be a burden, the workload. Yet, you tell us you feel it can be handled within existing funding sources and somehow fit into the existing workload. I hope you are right, because otherwise we are going to have a major issue.

Judge GIBBONS. I hope I am.

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

While the U.S. Sentencing Commission estimates that approximately 19,000 inmates sentenced under the previous crack cocaine sentencing guidelines may be eligible for a reduced sentence as a result of retroactive application of the revised sentencing guidelines, it is important to note that these 19,000 would potentially be released over the course of 30 years. The Commission estimates that 3,804 of the 19,000 offenders would be eligible for a reduced sentence and early release within the first year of the effective date for retroactivity (March 3, 2008). In year two another 2,118 would be eligible, 1,967 more in year three, 1,773 more in year four and 1,353 more in year five. The remaining offenders would be eligible in year six and after. These filings will be handled by various district court components, including district judges, clerks offices, probation offices, and federal defender offices. the Judiciary believes retroactivity will have the greatest impact on its probation offices, which will supervise any crack cocaine offenders that may be granted early release, including overseeing any drug testing and treatment needs that may be imposed by a court as a condition of release.

It is generally agreed that a large number of motions for a reduction in sentence will not involve court hearings and will be decided on written filings, so the courts' workload associated with processing those cases should not be unduly burdensome. The cases that require hearings will require more court resources. At present, no extraordinary measures have been necessary to address the increased workload due to retroactivity, although additional resources will be available if needed for smaller districts that may be disproportionately impacted by the number of federal offenders seeking a reduction in sentence based on retroactivity. Given all of these factors, and the staggered nature of offenders becoming eligible for a reduced sentence, the Judiciary believes it can absorb the additional workload within existing resource levels by shifting funds as necessary to meet workload demands, including ensuring that released offenders receive close supervision by a probation officer.

Mr. SERRANO. We are going to have to break and go take this vote, then I understand there is a privileged resolution that may be presented by the minority leader. Maybe we can come back, because we will have the debate and probably a 15-minute vote.

Mr. REGULA. I don't have that many questions. We can submit ours for the record.

Mr. SERRANO. Why don't we just break and come back. Sorry about that. We will be back.

[Recess.]

Mr. SERRANO. We will resume. We apologize. We are going to try, with all due respect to all your preparation, to wrap up the hearing, only because we are getting happy with each other on the House floor. The love that you see is incredible. God bless democracy. It is, I am serious, it is part of it, because there is going to be a privileged resolution on the floor, there will be some debate, then there will be a vote which we both have to be at.

Let me just ask you another question, and then I will turn it over to Mr. Regula.

#### COST CONTAINMENT

Director Duff, now that you have held your position for nearly 2 years, you are probably in a better position than when you testified last year to assess the cost containment and other management strategies that you put in place within the judiciary. Would you comment on what you believe to be your biggest successes and your biggest challenges thus far?

Mr. DUFF. Thank you for the question, Mr. Chairman. I think one of our greatest successes is the recent agreement with GSA. I think that is going to result in a great savings to the judiciary.

Mr. SERRANO. I think any agreement with GSA may be huge.

Mr. DUFF. It is a benefit to GSA, too. I think it provides some predictability with the costs that we will incur with regard to rent going forward.

We have also taken some other steps that I am proud of. One of the things that Chief Justice Roberts and I have been most interested in doing is, rather than responding to Congress and Congress' pressures, is getting out ahead of this a little bit.

The pressures we have received from Congress have resulted in very good developments for the judiciary. Sometimes there is initial resentment. But in many instances, it has been good and healthy for the judiciary.

Here is an example, however, where I think we got ahead of the Congress in the last year. We took a look at the projected costs of career law clerks in judges' chambers and saw a trend that we didn't like. More judges were hiring more and more career law clerks rather than term law clerks, which are there for 1 year. Career law clerks are more expensive over time, they have higher salaries, and so forth. The Judicial Conference took action this past year and put some limitations in place on the number of career law clerks each judge could hire. We limited those to one per chamber. Over time, that may not sound like much, but it will save a lot of money.

We are taking a very close look at all of our expenditures, seeing where we can cut costs, where we can save, and we have been working with your staff very closely on these sorts of measures, too. I am encouraged as to what the judiciary is doing not only in response to congressional inquiries and pressures, but also on its own initiative.

#### PANEL ATTORNEY RATES

Mr. SERRANO. Thanks.

In last year's bill we included an increase in the hourly rates paid to panel attorneys for non-capital work to \$100 per hour. Why is the judiciary requesting \$17.5 million, for an 18 percent increase in the rate to \$118 per hour for fiscal year 2009? Is the current \$100 rate inadequate to attract qualified panel attorneys?

Judge GIBBONS. Certainly we are very grateful for the increase to \$100 an hour. But we believe that is still inadequate in some circumstances to attract qualified attorneys. We have done surveys, and they support this point. I would also note that even with the rate increase, after deduction of overhead, the private panel attorney is making on average \$36 an hour before taxes. By contrast, a privately retained attorney in a criminal case could expect, after overhead, to net about \$148 an hour.

The government pays lawyers \$200 an hour to represent Federal employees in civil and criminal matters. So we believe that the additional two-stage increase we are requesting to \$118 in 2009, then hoping to go to \$140 in 2010, which would bring us to the point contemplated when the adjustment procedures in the Criminal Justice Act were initially enacted. We believe that that would really

enhance our ability to make sure that defendants receive the quality representation that the Constitution requires.

Mr. SERRANO. Before I turn it over to Mr. Regula, let me just clarify the overhead part. You said after overhead, it was \$36 an hour. But if you were assigning \$118, what overhead are we talking about?

Judge GIBBONS. The \$36 relates to the amount remaining after overhead at the \$100 an hour rate. In other words, almost two-thirds of the lawyer's expenses don't end up in the lawyer's pocket, it goes towards overhead expenses, such as rent, utilities, those kinds of things.

Mr. SERRANO. Mr. Regula.

#### JUDGES LEAVING THE FEDERAL BENCH

Mr. REGULA. Thank you. I have to congratulate you in the sense that anybody in public life is fair game. But I do not get criticism from my constituents on the judiciary. They are critical of course of the executive branch and the legislative branch. But I have never had any of the judicial branch. I think people respect it, and generally perceive that the judicial branch is operating on a very unbiased, fair basis. We have had some great judges from my area, as you well know.

A couple of questions. What percent of Federal judges leave the bench to go back to private practice? Because that would reflect a little bit the conditions and the amount of money and so on.

Mr. DUFF. It is a growing percentage. I don't have the exact percentage, but what we have seen in the last few years is an increase in the number of judges leaving the bench, a slight increase. There is a growing increase in the number of judges leaving the bench entirely, retiring.

But the significant change that we have seen over the course of the last 5, 10 years, and it is going up, up, up, is that the number of judges who do leave the bench, retire, do not take senior status, and are going into private practice or corporations or other lines of work, such as arbitration services and so forth.

That is of great concern to us, because that number is increasing. Life tenure has its purposes, and is ensured in the Constitution for very good reason. We like to see our judges stay as long as they are capable of judging on the bench, and we are very grateful to our senior judges who could retire but stay on the bench and provide services to the judiciary.

That has concerned us and we are very grateful to both the House and the Senate for considering actively this year the need to increase the salaries of judges to ensure that they stay on the bench and provide life service or life tenure to the country.

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

Resignations from the federal bench once were rare. Now such resignations are increasingly frequent. Twenty-seven Article III judges have resigned or retired from the federal bench since January 1, 2005. It appears that 22 of these judges sought other employment. Of these 22:

6 of these judges "retired" to join JAMS, a private firm comprised of former federal and state judges that provides dispute resolution services, where they have the potential to earn the equivalent of the district judge salary in a matter of months.

7 judges entered the private practice of law (presumably at much higher salaries).

2 judges resigned to become corporate in-house counsels.

3 judges resigned to accept other, higher paying governmental positions (two in state government and one in the federal government).

2 judges resigned to accept appointments in higher education.

1 judge accepted an executive branch appointment at the same salary.

1 judge retired to accept an appointment to a quasi-governmental position.

The table below shows the number of departures that has grown in tandem with the financial pressure of being an Article III judge:

Time period	Number of departures
1958 to 1969 .....	3
1970 to 1979 .....	22
1980 to 1989 .....	41
1990 to 1999 .....	55
2000 to March 18, 2008 .....	<sup>1</sup> 55

<sup>1</sup>This figure includes two judges who have announced their intention to resign from the federal bench later in 2008 without any right to an annuity.

Of the 110 judges who have left the federal bench since 1990, 82 retired from the judicial office and 28 departed before reaching retirement age (without any right to an annuity). To the Judiciary's knowledge, 65 of the aforementioned 110 judges (60 percent) stepped down from the bench to enter the private practice of law (including private dispute resolution firms). Twenty-three judges sought other employment (e.g., government and quasi-government agencies, academia, and the non-profit sector). This means that 80 percent of judges who left the federal bench did so for other employment and, in most cases, for significantly higher compensation.

While the absolute numbers of judges leaving the federal bench may not seem large, it is significant that a substantial proportion of these separations appear to be related to compensation. That the numbers seem to be on the rise, and that a number of the departing judges were eligible for (or were in) senior status (when judges traditionally continue to give their energies to judicial service long after they retire from active service) or were younger, active judges without entitlement to an immediate or deferred annuity should give rise to particular concern. For judges to use the position as a mere stepping-stone to reentry into the private sector and law firm practice is inconsistent with the traditional lifetime calling of federal judicial service.

Mr. REGULA. Most of them serve by assignment even after retiring. Is that not often a common practice?

Mr. DUFF. Yes, sir. It is called senior status. Well, there are two levels of retirement, if you will. It is confusing to refer to judges who elect to take senior status as retired. There is some statutory language that confuses the two. But judges who reach the age of 65 and have 15 years of service, it is called the Rule of 80, can stay on the bench in senior status.

Senior judges provide a lot of service to the judiciary. Rather than just leaving and going and sitting on the front porch in a rocking chair, they are providing services to the judiciary. They retain chambers, space and staff, provided they are doing a certain amount of work and so forth. That is different from retiring entirely, giving up their commission, and going into retirement, or, as we are seeing more and more, going into the private sector.

Mr. REGULA. Many of them do take senior status as sort of a transition.

Mr. DUFF. Many do, and we are grateful that they do rather than retiring entirely.

## WORKLOAD OF JUDGES

Mr. REGULA. What is your observation on the workload of judges? Has it increased as we have become a more litigious society?

Mr. DUFF. I think the statistics over time have gone up. The types of cases have varied. The immigration and drug cases are adding certainly to the workload. There are some regional differences in workload, as we have pointed out to your committee and others.

The slight decline in the last year or two in workload could give the wrong impression over a longer period of time as to what has happened to the workload within the judiciary. Even though there might be a slight decline in certain kinds of cases in the past year, if you look at the trend over the past 5, 10 years, the workload has increased.

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

Although the Judiciary's workload has begun to level off, workload in the federal courts has increased considerably in nearly all workload categories when viewed over a 10-year perspective. As summarized in the table below, from 1997 to 2007, criminal filings increased 37 percent, the number of criminal defendants grew 27 percent, offenders under supervision of a federal probation officer increased 27 percent, the number of cases activated in the pretrial services program increased 37 percent, and appellate filings grew 13 percent. Civil filings follow a more up-and-down filing pattern from year to year and grew 3 percent overall in the last decade. Bankruptcy filings are down nearly 566,000 filings from the 1997 level due in large part to the sharp decline in filings after the Bankruptcy Abuse Prevention and Consumer Protection Act took effect in October 2005.

Workload factor	1997 Actual <sup>1</sup>	2007 Actual <sup>1</sup>	Change 2007 vs. 1997	Percent change 2007 vs. 1997
Criminal Filings .....	49,376	67,503	18,127	37
Criminal Defendants Filed .....	69,052	88,006	18,954	27
Probation: Persons Under Supervision .....	91,423	115,930	24,507	27
Pretrial Services: Cases Activated .....	69,959	95,955	25,996	37
Appellate Filings .....	52,271	58,809	6,538	13
Civil Filings .....	265,151	272,067	6,916	3
Bankruptcy Filings .....	1,316,999	751,056	(565,943)	-43

<sup>1</sup> Data reflects the 12-month period ending June of each year.

## FEDERAL PROTECTIVE SERVICE

Mr. REGULA. I was interested in the Federal Protective Service. I assume that providing security for the courts and the judges is quite a challenge.

Mr. DUFF. Yes, sir.

Judge GIBBONS. Yes. Of course the U.S. Marshals Service statutorily has the authority, the responsibility for providing for our security. But we have gotten into this relationship with the Federal Protective Service through its provision of perimeter security in the buildings we occupy.

Mr. REGULA. I was interested; the Washington Post said Secretary Chertoff says he expects the FPS to raise their fees to help cover rising costs. Raise their fees to whom? Who pays their fees?

Judge GIBBONS. We do, as do all Federal agencies that are recipients of their services.

Mr. REGULA. So your budget would have the necessary funds to respond to any fee increase by FPS, is that correct?

Judge GIBBONS. Well, we just became aware of the letter to which you are referring, and we have some preliminary figures. The increase was not known to us prior to the receipt of that information yesterday. It is not in our budget because we were unaware of it.

Mr. REGULA. So Secretary Chertoff kind of threw you a curve in left field?

Judge GIBBONS. We estimate the additional cost would be \$2 million for all of fiscal year 2008. The fiscal year 2009 cost would be \$3.2 million, which is not in our 2009 budget request. I think it is \$2 million for 2008 because it is my understanding that Secretary Chertoff announced an increase for the fiscal year in progress and we are assuming the rate increase is retroactive to October 1, 2007, regardless of when the new personnel are hired.

Mr. REGULA. Well, you have done a great job on your testimony. Unfortunately, we have another vote and we have got time problems. So I have a number of questions I will submit for the record.

Thank you, Mr. Chairman.

Mr. SERRANO. We certainly do have a vote pending and probably more to follow. So we will try to wrap it up. But we will recognize Mr. Schiff, who I know is not going to speak about a courthouse.

#### CONSTRUCTION OF NEW COURTHOUSE IN LOS ANGELES

Mr. SCHIFF. Well, thank you, Mr. Chairman, for the recognition. But I have to differ with you on the subject matter.

I am only going to raise this because the chairman did and because Mr. Duff raised it in his testimony. I appreciate your discussing that in your testimony. As I know you are aware, the Central District of California has a population of 18 million. It is made up of seven counties. It is the largest, most populous judicial district in the Nation, with twice as large a population as the next largest district.

In 2004, the Central District Court in Los Angeles was processing more than 16,000 cases a year. Currently, as you know, the district court is housed in two separate buildings, about a 5-minute walk from each other. One was built in 1938, and while it has eight beautiful historic courtrooms, it doesn't meet modern security requirements for judges, prisoners or the public.

Discussions began as far back as 1984 to determine how to accommodate the additional courtrooms and judgeships to the court. Ten years later, the GSA determined that neither building could accommodate the long-term needs of the court, and the decision that a stand-alone building to house the entire district court was made.

Here we are 24 years since the process began. The need has been growing. Construction has still not begun. You can imagine how concerned the judges are and the litigants and the public that serves their jury duty there about the situation. I spent 6 years as a Federal prosecutor in and out of the courts there, so I am intimately familiar with the constraint of the current situation.

While I understand that the funding for courthouse construction is not funded by the Administrative Office of the Courts, or the judiciary, but rather through GSA, I would ask you to explain a little further detail beyond your written testimony about the need for a new building in Los Angeles and why it is such a high priority of the Administrative Office.

Mr. DUFF. Well, it is a very high priority, and you are exactly right in the way you have described what has evolved. It is a problem because the cost estimates have gone up before construction was able to be started. It is a problem that GSA is working on with us to try to resolve, to figure out, what to do to get more funding.

It is a question of funding right now, the additional funding that is going to be needed to meet increased construction costs, which are a factor of the market in Southern California. Finding available construction companies to do the work at the initial funding level proved to be impossible. So additional funds have been sought.

It is something we are working very actively on with GSA to try to resolve and with the executive branch generally because the problem hasn't gone away, and it won't go away. This isn't something that is going to solve itself. So we are working with GSA.

As I mentioned earlier, I think our relations with GSA have improved over the last year or two. The Los Angeles courthouse project is an area where we continue to have a conflict with GSA. But I have to say we have at least engaged in what is a more productive dialogue in trying to resolve a very difficult problem. You are right in saying these are funds that don't come out of our budget, but rather out of GSA's budget.

Mr. SCHIFF. The concern I have is that while the cost of the project has gone up because we keep delaying construction, we actually have continued to reduce the scope of the project to bring costs down. I don't want to get to the point where what we build is already outdated and too small for what we need.

While I value GSA's input on this, I don't want to have a long delay while GSA does another endless analysis of a problem we all recognize exists and then have to start over from scratch. The reality is a significant amount of money has been authorized and appropriated for this, but we need more. The same kind of cost increases we have seen because of the delays are going to continue, and may even get worse. This is consistently ranking at the top of the Administrative Office's priorities, the L.A. Courthouse.

I assume that that criteria is still the same, and we are still at the top of the list. It just has to get done.

Mr. DUFF. You are correct. Our priority list changes from year to year based on new courthouse construction. The Los Angeles courthouse project remains a top priority for us. It doesn't appear on our current 5-year courthouse project plan because only construction projects that have not previously received funding for that purpose appear on the list. When additional funding is required for a project that was on an earlier priority list, it certainly remains a top priority, but you may see the identification of specific courthouses change from year to year based on which projects need new construction funding.

Mr. SCHIFF. We look forward to beginning new construction and appearing on the top of every list.

Mr. DUFF. We do, too. Yes, sir.

Mr. SCHIFF. We are going to really push to get that started now, and see if there is a way that can be funded through the supplemental.

Mr. DUFF. We appreciate any and all help we can get on it because it is a severe problem.

Mr. SCHIFF. All of us in the Los Angeles region recognize this just has to get done. We don't want to wait for something bad to happen. So I appreciate your priority on this, and we will work with you to push the GSA along and see if we can find the money to finally get this started.

Mr. DUFF. Thank you very much, Congressman Schiff, and thank you for all your efforts on behalf of the judiciary. You have been an enormous supporter of ours this past year. We appreciate it.

Mr. SCHIFF. Mr. Chairman, thank you for working me in before the votes, notwithstanding the topic.

Mr. SERRANO. I think the José Serrano Courthouse in L.A. will be fine.

Mr. SCHIFF. Mr. Chairman, if that is what it will take. It has a nice ring to it.

Mr. SERRANO. I apologize for the fact that we didn't spend as much time with you as we would have wanted. I appreciate the work you do. We will continue to work together on this budget.

I just leave you with one totally unrelated thought. About 2 years ago, the members of the New York delegation were during a vote on the House floor saying why would David Paterson leave the Senate in New York, a safe seat, to go and become Lieutenant Governor, where nobody will notice him. At 11:30 he will be sworn in as Governor of New York in what started as a tragedy and is a tragedy. But it is a strange life that we are all living in and a strange profession we are in, all of us.

I thank you, Mr. Regula, and I thank you. We will continue to work to make sure that you get the resources necessary to do your work.

Judge GIBBONS. Chairman Serrano, and I wanted to make sure I said that, we are appreciative of the opportunity to be heard.

Mr. SERRANO. Just get me the ability to run for President.

Thank you so much. Meeting adjourned.

**Questions for the Record****The Judiciary**

**The Honorable José E. Serrano, Chairman  
Subcommittee on Financial Services and General Government  
March 12, 2008**

- 1. In the hearing last year, Judge Gibbons discussed the Judiciary's concern regarding courts with FPS-maintained security equipment that was not functioning and that FPS did not have the resources to repair or replace it. How has the Judiciary addressed these problems? Are there continuing vulnerabilities in this area?**

The Judiciary is acutely aware of the vulnerabilities created by malfunctioning or inoperable FPS-provided security equipment. This has become a nationwide problem for the courts. The FPS equipment provides protection at the perimeter of a court facility where the building is most vulnerable. The Judiciary has made FPS aware of its concerns, but realistically little or no relief is expected due to FPS's funding shortage. In some instances the U.S. Marshals Service (USMS) has been able to assume responsibility for this equipment using funding provided to them by the Judiciary. This stop-gap solution, although effective, raises both funding and programmatic concerns. The perimeter security pilot project will assess the merits of the USMS assuming total responsibility for the provision of physical security services at all facilities where the court is the major occupant.

- 2. What is the status of the Judiciary's pilot project, approved in the FY 2008 omnibus appropriation, to have the U.S. Marshals Service assume perimeter security responsibilities from FPS at selected primary courthouses?**

Following Congressional approval of the proposed perimeter security pilot project, the Committee on Judicial Security and the U.S. Marshals Service (USMS) have been working on the development of an implementation plan for the pilot program. The plan will ensure that the pilot program is implemented in a way that will minimize disruption in the delivery of security services at the seven pilot sites and will ensure that the end result provides the Committee and the USMS with meaningful information which can be used as a basis for determining how security will be provided to judicial facilities in the future.

The current plan is to initiate contracting actions for both security systems and court security officers at all sites during FY 2008. Due to contractual timelines, however, most sites will probably not be fully transitioned and ready for implementation until the first quarter of FY 2009. A pilot site will only be implemented when it can be accomplished in a manner that is satisfactory to the local court, the USMS, and the Committee on Judicial Security. The actual implementation at each site will also need to take into consideration the length of time necessary for the USMS to: medically screen court security officer applicants; conduct background investigations; provide the necessary notification to the security companies that provide the FPS

contract guards to stop service; and to assume control of the FPS security systems and equipment, which can vary by location.

The Moynihan Courthouse pilot was implemented in March 2008 although that site, unlike the other six sites, had no FPS contract guards and already had a sufficient number of court security officers onboard to move forward with the pilot. Of the six remaining sites – each of which will require the hiring of additional court security officers that can take several months to accomplish – the Dirksen Courthouse will be the next brought online. The USMS and the Committee on Judicial Security will conduct formal evaluations periodically throughout the pilot period to assess whether the program's goals are being met and to identify areas for improvement. Congress will be kept apprised of the program's status. The seven sites selected for the pilot and their planned implementation date are detailed in the table below.

Pilot Site	Planned Implementation Date
Daniel Patrick Moynihan U.S. Courthouse, New York, NY	Implemented March 2008
Everett McKinley Dirksen U.S. Courthouse, Chicago, IL	September/October 2008
Sandra Day O'Connor U.S. Courthouse, Phoenix, AZ	October/November 2008
Evo A. DeConcini U.S. Courthouse, Tucson, AZ	October/November 2008
Russell B. Long Federal Building/U.S. Courthouse, Baton Rouge, LA	October/November 2008
Old Federal Building and Courthouse, Baton Rouge, LA	October/November 2008
Theodore Levin U.S. Courthouse, Detroit, MI	November/December 2008

3. **The Judiciary, as well as Chief Justice Roberts, has been vocal in support of raising the pay for Federal judges. The House and Senate have both passed bills out of Committee which provide pay increases, which I am sure you both support. Part of the Senate bill includes the addition of provisions which seek to limit outside sources of income for judges. Could you explain the Judicial Conference's concerns with the idea of limiting outside pay for Federal judges?**

The Judicial Conference of the United States opposed an amendment offered by Senator Russell Feingold to S.1638, the Federal Judicial Salary Restoration Act of 2007. The Feingold amendment would severely curtail and skew judicial participation in law school teaching and similar professional activities that contribute to the improvement and development of the law and the legal profession. These activities are actually encouraged in our Code of Conduct. The amendment would limit travel expense reimbursement *and* outside earned income, *combined*, to \$2,000 per trip and no more than \$20,000 per year. It would apply these limits to any "trip or event" – a potentially all-encompassing category that appears to include judges' law teaching activities that are a hallmark of legal education. Air fare and related travel expenses can easily approach or exceed the \$2,000 per trip limit (especially when air travel includes non-hub cities or long distances or lodging in major metropolitan cities). As a result, only independently-wealthy judges who could afford to bear excess costs personally would participate. Consequently, many law schools would be unable to bring in judges from across the country, meaningful

remuneration for teaching that involved travel would be impossible, and students would be denied exposure to judges who see the real life effects of legal theories. Moreover, under the Ethics Reform Act, Members of Congress, executive branch officials, and judges are all permitted to earn the same limited amount of outside income for teaching, and some sitting Representatives and Senators currently do. That limit is currently \$25,830. All three branches of government should be subject to the same statutory limitations on outside earned income in accordance with the Ethics Reform Act. The Feingold amendment in effect would reduce the outside earned income limitation for only the Judiciary. The Judicial Conference has adopted regulations consistent with the statute, and judges' outside earned income is already limited and publicly disclosed in accordance with the statute and the attendant ethics regulations.

**4. What sort of progress are the courts making in the outreach and hiring of qualified minority clerks and other professional staff? Do you keep statistics on these issues, and if so, would you be willing to submit them for the record?**

The Judiciary believes that the interests of justice are well served when the courts reflect the racial and ethnic diversity of the communities they serve. No one in the Judiciary doubts the value of diversity throughout the federal court system, but the numbers in the tables below for law clerks, general professional staff, and executive staff suggest that there is room for improvement. 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 workplace 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 the subcommittee's education and outreach initiative, judges are developing minority pipelines for recruiting law clerks by: (1) working in tandem with minority organizations and bar associations; (2) educating law school deans on the benefits to their students of clerking; and (3) encouraging partners in top law firms to identify and encourage their minority rising "stars" to consider clerking for the Judiciary.

The Judiciary is working to diversify its general professional and executive ranks as well. Because minorities and females are not as well represented in the professional and executive workforce as are non-minority and male employees, the JRC has directed its efforts toward creating effective recruitment and outreach tools. Pursuant to that effort, a new Judiciary employment website is being developed, as well as extensive training programs to assist the courts in their recruitment and outreach efforts.

**Chambers Law Clerks (Appellate) by Ethnicity/Race, FY 2002 - FY 2006**

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2002	93.8%	0.9%	0.0%	5.4%	0.0%	0.0%
FY 2003	86.8%	3.5%	1.5%	7.9%	0.5%	0.0%
FY 2004	87.3%	2.8%	1.6%	8.1%	0.2%	0.0%
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%

**Chambers Law Clerks (District) by Ethnicity/Race, FY 2002 - FY 2006**

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2002	92.0%	2.6%	2.2%	2.9%	0.3%	0.0%
FY 2003	88.8%	3.4%	3.0%	4.6%	0.2%	0.0%
FY 2004	86.7%	4.3%	3.3%	5.4%	0.2%	0.2%
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%

**General Professional Staff by Ethnicity/Race, FY 2002 - FY 2006**

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2002	72.3%	11.5%	12.7%	2.6%	0.5%	0.4%
FY 2003	70.9%	12.5%	12.9%	2.8%	0.5%	0.4%
FY 2004	70.6%	12.4%	13.1%	2.9%	0.6%	0.4%
FY 2005	70.1%	12.5%	13.6%	2.8%	0.6%	0.4%
FY 2006	70.3%	12.3%	13.6%	2.7%	0.5%	0.4%

## Executive Staff by Ethnicity/Race, FY 2002 - FY 2006

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
FY 2002	89.8%	5.7%	2.3%	0.2%	1.4%	0.7%
FY 2003	89.0%	5.9%	2.2%	0.4%	1.6%	0.8%
FY 2004	86.1%	7.6%	3.8%	0.8%	0.9%	0.9%
FY 2005	86.8%	7.2%	3.8%	0.6%	0.9%	0.8%
FY 2006	86.1%	7.3%	4.2%	0.7%	1.0%	0.6%

5. **On a similar subject, the Ninth Circuit has the distinction of being the first all-Latino panel on the court of appeals, as of July 2007. What is being done to encourage an increased diversity among Federal judges?**

As stated in the previous answer, the Judiciary values workforce diversity and is working to foster diversity throughout its law clerk, professional, and executive ranks. Regarding the appointment of Article III judges (Supreme Court justices, court of appeals judges, and district court judges) to the federal bench, it is the Executive Branch that nominates judges and the Senate that confirms them. The Judiciary plays no role in the selection or nomination of Article III judges.

6. **Please update the information beginning on page 140 of last year's hearing volume and provide the level of fees collected for FY 2007. Additionally, updating the information on pages 144 through 158, please detail any changes in the sources of fees, amount of fee charged, or purpose of fees.**

Congress has authorized the Judiciary to collect fees for civil and bankruptcy filings as well as fees for a variety of case services, including registry account administration and miscellaneous court case administration costs. A portion of the fees collected by the courts are deposited into a special fund maintained by the Department of Treasury and may be used to reimburse any of the four appropriations within the *Courts of Appeals, District Courts, and Other Judicial Services* heading, as well as the Administrative Office of the U.S. Courts, for expenses incurred. These fees are available without fiscal year limitation.

In FY 2007 collections in the courts totaled \$330.7 million. Of that total, \$197.2 million was deposited into the Judiciary's fee account, \$51.6 million was deposited into Department of Justice accounts, and \$81.8 million was deposited into the General Fund of the Treasury. The table below displays the actual collections for FY 2007.

Collections	FY 2007 Actual Collections (\$000)
Total to Judiciary	\$197,245
Total to Dept. of Justice*	\$51,643
Total to Dept. of Treasury	\$81,837
<b>Grand Total</b>	<b>\$330,725</b>

\*Fees only, excluding crime victim fines collected. Amount collected in FY07 includes \$22.2 million for a Deferred Prosecution Agreement.

The table below itemizes the fees that were deposited into the Judiciary's fee account:

**Summary of FY 2007 Judiciary Fee Collections**

Type of Collection and Source	FY 2007 Actual Collections (\$000)
Bankruptcy Filing and Misc. Fees <sup>1</sup>	134,643
Civil Filing and Misc. Fees <sup>2</sup>	40,376
Central Violations Bureau Fees	5,686
Immigration Adjudication and Naturalization Fees	5,949
Registry Administration Fees	10,591
<b>Judiciary Total</b>	<b>197,245</b>

<sup>1</sup> Includes statutory bankruptcy filing fees and bankruptcy court miscellaneous fees.

<sup>2</sup> Includes statutory civil filing fees and appellate court and district court miscellaneous fees.

*Statutory Bankruptcy Filing and Miscellaneous Fees*

Actual collections for Bankruptcy Filing and Miscellaneous Fees in FY 2007 were \$134.6 million.

Statutory Bankruptcy Filing Fees - As mandated by 28 U.S.C. §1930(a), bankruptcy petitioners are required to pay case filing fees. Several fee changes were recently enacted into law as part of both the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109-8) and the Deficit Reduction Act of 2005 (Public Law 109-171). Public Law 109-8 changed how the fees are apportioned between the General Fund of the Treasury, the U.S. Trustee Program, and the Judiciary. The legislation also institutes an *in forma pauperis* filing category, by which debtors may request that the court waive the filing fees. The table below details the filing fee for each chapter and how the funds are apportioned among the Judiciary, case trustee, Treasury's general fund, and United States Trustee Program.

**Apportionment of Statutory Bankruptcy Filing Fees**

Chapter	Judiciary	Case Trustee	Treasury	U.S. Trustee	Total
7	\$ 63.51	\$ 45.00	\$ 47.48	\$ 89.01	\$ 245.00
9	-	-	\$ 300.00	\$ 700.00	\$1,000.00
11 (NRR)	\$ 250.00	-	\$ 200.00	\$ 550.00	\$1,000.00
11(RR)	-	-	\$ 500.00	\$ 500.00	\$1,000.00
12	-	-	\$ 100.00	\$ 100.00	\$ 200.00
13	\$ 52.50	-	\$ 140.00	\$ 42.50	\$ 235.00

NRR=Non-Railroad, RR=Railroad

Bankruptcy Court Miscellaneous Fees - In accordance with 28 U.S.C. §1930(b), the Judiciary is authorized to establish fees for a number of services related to bankruptcy court case administration. As approved by the Judicial Conference, and as specified in the Bankruptcy Court Miscellaneous Fee Schedule, there are a total of 21 miscellaneous fees. As with the statutory filing fees, the receipts from a number of these fees are split between the Treasury's general fund and the special fund for the Judiciary. A few fees are deposited exclusively in the Treasury's general fund, while some others are deposited in the Judiciary's special fund to offset federal court operations.

*Appellate and District Court Filing and Miscellaneous Fees*

Actual collections for Appellate and District Court Filing and Miscellaneous Fees in FY 2007 were \$40.4 million.

Appellate Court Miscellaneous Fees - As authorized by 28 U.S.C. §1913, the Judiciary has been authorized to establish fees for a number of services related to appellate court case administration. As approved by the Judicial Conference, and as specified in the Court of Appeals Miscellaneous Fee Schedule, there are a total of 15 miscellaneous fees. In addition to nominal charges for document reproduction, document certification, record searches, etc., these miscellaneous fees include a filing/docketing fee of \$450, of which \$100 is credited to the Treasury's general fund and \$150 is credited to the Judiciary's special fund, and in accordance with P.L. 109-171, \$200 is credited to a special Treasury fund for deficit reduction purposes.

District Court Civil Filing Fee - 28 U.S.C. §1914(a) was amended by Public Law 109-171 to increase the civil filing fee for non-federal government parties to \$350 (up from \$250), except for applications for habeas corpus where the filing fee remains \$5. Of the \$350 filing fee, \$190 will be credited to the Judiciary's special fund to offset operation and maintenance expenses (28 U.S.C. §1931(a)). In addition, pursuant to the Federal Courts Administration Act of 1992, Public Law 102-572 (1992), of the amounts paid to the clerk of court as a fee or a judgment for costs, when awarded in favor of the United States in an action brought by the United States, may include an amount equal to the filing fee, of which \$60 shall be deposited into the Judiciary's

special fund, and \$100 is credited to a special Treasury fund for deficit reduction purposes, as required by Public Law 109-171.

District Court Miscellaneous Fees - As authorized by 28 U.S.C. §1914(b), the Judiciary has been authorized to establish fees for a number of services related to district court case administration. As approved by the Judicial Conference, and as specified in the District Miscellaneous Fee Schedule, there are a total of 13 miscellaneous fees. These fees consist of charges for document reproduction, document certification, record searches, etc, as well as attorney admission fees and charges for appealing a misdemeanor conviction from a magistrate judge to a district judge. A portion of each of these fees are deposited in the Treasury's general fund, and the balance is deposited in the Judiciary's special fund to offset court operations.

#### *Central Violations Bureau Fees*

A \$25 processing fee for cases processed through the Central Violation Bureau (such as petty offense fines) was established under Public Law 108-447, with the proceeds to be retained by the Judiciary. Actual collections of this fee in FY 2007 were \$5.7 million.

#### *Immigration Adjudication and Naturalization Fees*

As authorized by 8 U.S.C.1356(m), deposits in excess of \$50 million in the Department of Justice "Immigration Examinations Fee Account" are available to reimburse any appropriation for expenses arising from the provision of immigration adjudication and naturalization services and collections, safeguarding, and accounting of fee deposits. Reimbursement is based on the cost of personnel, automation services and miscellaneous expenses incurred in the processing of naturalization certifications and collection of fees by the courts. In FY 2007, the Judiciary received \$5.9 million in reimbursement from the Department of Justice.

#### *Registry Administration Fees*

The Judiciary Appropriations Act of 1989 (Public Law No. 100-459) authorized the establishment of a "Registry Administration Account" in the Treasury. This is a special fund for the deposit of monies collected by the Judiciary as a charge for services rendered in administering accounts held in the courts' registry related to non-criminal and bankruptcy cases. The current fee structure provides for a variable rate based on the size of the deposit and the length of time held in the courts' registry. The rate charged is reduced on investments greater than \$100 million. Collections from registry account administration in FY 2007 was \$10.6 million.

United States Court of Appeals Miscellaneous Fee Schedule  
Receipt Account Classification Effective January 1, 2007

(Note: Changes from last year's hearing volume are in *italics*)

Fee Item	Amount		Fee setting and Disposition authorities	Receipt Account(s) credited	Description of Account
Case Docketing Fee <sup>1,2</sup>	\$ 450.00	\$ 150.00	28 USC 1913 (1) PL 106-518	510000	Judiciary
		\$ 100.00	31 USC 3302 (b)	086900	Treasury
		\$ 200.00	PL 109-171 <sup>3</sup>	086400	Treasury
Record Search	\$ 26.00	\$ 11.00	28 USC 1913 (2) PL 106-518	510000	Judiciary
		\$ 15.00	31 USC 3302 (b)	322360	Treasury
Certification	\$ 9.00	\$ 4.00	28 USC 1913 (3) PL 106-518	510000	Judiciary
		\$ 5.00	31 USC 3302 (b)	322360	Treasury
Photocopies & Reproductions	\$ 0.50	\$ 0.50	28 USC 1913 (4) 31 USC 3302 (b)	322350	Treasury
Tape Duplication	\$ 26.00	\$ 11.00	28 USC 1913 (5) PL 106-518	510000	Judiciary
		\$ 15.00	31 USC 3302 (b)	322350	Treasury
Appeal Record Reproduction	\$ 71.00	\$ 46.00	28 USC 1913 (6) PL 106-518	510000	Judiciary
		\$ 25.00	31 USC 3302 (b)	322350	Treasury
Microfilm/Microfiche	\$ 5.00	\$ 2.00	28 USC 1913 (7) PL 106-518	510000	Judiciary
		\$ 3.00	31 USC 3302 (b)	322350	Treasury
Record Retrieval	\$ 45.00	\$ 20.00	28 USC 1913 (8) PL 106-518	510000	Judiciary
		\$ 25.00	31 USC 3302 (b)	322360	Treasury
NSF Check Charge	\$ 45.00	\$ 20.00	28 USC 1913 (9) PL 106-518	510000	Judiciary
		\$ 25.00	31 USC 3302 (b)	322360	Treasury
Sale of Opinions	\$ -		28 USC 1913 (10) 31 USC 3302 (b)	322340	Treasury
Sale of Local Rules	\$ -		28 USC 1913 (11) 31 USC 3302 (b)	322340	Treasury
Registry Fee	\$ -		28 USC 1913 (12) 28 USC 2041 Int	510100	Judiciary
Notice of Appeal from BAP	\$ 5.00	\$ 5.00	28 USC 1913 (13) 31 USC 3302 (b)	086900	Treasury

United States Court of Appeals Miscellaneous Fee Schedule  
 Receipt Account Classification Effective January 1, 2007  
 (Note: Changes from last year's hearing volume are in *italics*)

Fee Item	Amount		Fee setting and Disposition authorities	Receipt Account(s) credited	Description of Account
Video Conferencing of Oral Arguments	\$ 200.00	\$ 200.00	28 USC 1913 (14) PL 106-518	510000	Judiciary
For admission of attorney	\$ 150.00		28 USC 1913 (15)	510000	Judiciary
Duplicate cert. and Cert. of good Standing	\$ 15.00		28 USC 1913 (15)	510000	Judiciary
Circuit attorney admission fee	\$15-\$50		Local Rule	6855AP	Judiciary

<sup>1</sup> Fee Normally collected by district court together with the notice to appeal fee schedule under the District Court fee schedule pursuant to FRAP Rule 3 (e).

<sup>2</sup> A docketing fee shall not be charged for the docketing of a direct bankruptcy appeal or a direct bankruptcy cross appeal, when the fee has been collected by the bankruptcy court in accordance with Item 15 or Item 21 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>3</sup> This is the new 'special fund' included in the Reconciliation Bill (P.L. 109-171).

**United States Bankruptcy Court Miscellaneous Fee Schedule**  
**Receipt Account Classification for Bankruptcy Administrator Districts Effective April 1, 2007**  
 (Note: Changes from last year's hearing volume are in *italics*)

Fee Item	Fee Setting and Disposition Authorities	Statutory Fee	Misc. Fee	TOTAL FEE	Receipt Account(s) Credited	Description of Account
Chapter 7 - Liquidation Filing Fee 28 USC 1930(a)(1)	11 USC 330(b)(1)	\$ 45.00	\$ 15.00	\$ 60.00	6855TT	Case Trustee
	28 USC 1931 notes	\$ 63.51	\$ 39.00	\$ 102.51	510000	Judiciary
	31 USC 3302(b)	\$ 111.49	\$ -	\$ 111.49	086900	Treasury
	PL 109-171 <sup>1</sup>	\$ 25.00	\$ -	\$ 25.00	086400	Treasury
	<b>Total</b>	<b>\$ 245.00</b>	<b>\$ 54.00</b>	<b>\$ 299.00</b>		
Chapter 13 - Wage Earner Filing Fee 28 USC 1930 (a)(1)	28 USC 1931 notes	\$ 52.50	\$ 39.00	\$ 91.50	510000	Judiciary
	31 USC 3302(b)	\$ 97.50	\$ -	\$ 97.50	086900	Treasury
	PL 109-171 <sup>1</sup>	\$ 85.00	\$ -	\$ 85.00	086400	Treasury
	<b>Total</b>	<b>\$ 235.00</b>	<b>\$ 39.00</b>	<b>\$ 274.00</b>		
Chapter 11 Filing Fee (Non-Railroad) 28 USC 1930(a)(3)	28 USC 1931 notes	\$ 250.00	\$ 39.00	\$ 289.00	510000	Judiciary
	31 USC 3302(b)	\$ 750.00	\$ -	\$ 750.00	086900	Treasury
	<b>Total</b>	<b>\$ 1,000.00</b>	<b>\$ 39.00</b>	<b>\$ 1,039.00</b>		
Chapter 11 Filing Fee (Railroad) 28 USC 1930(a)(4)		\$ -	\$ 39.00	\$ 39.00	510000	Judiciary
	31 USC 3302(b)	\$ 1,000.00	\$ -	\$ 1,000.00	086900	Treasury
	<b>Total</b>	<b>\$ 1,000.00</b>	<b>\$ 39.00</b>	<b>\$ 1,039.00</b>		
Chapter 12 Family Farmer 28 USC 1930(a)(5)	31 USC 3302(b)	\$ 200.00	\$ -	\$ 200.00	086900	Treasury
		\$ -	\$ 39.00	\$ 39.00	510000	Judiciary
	<b>Total</b>	<b>\$ 200.00</b>	<b>\$ 39.00</b>	<b>\$ 239.00</b>		
Chapter 9 Municipal Debt Filing Fee	28 USC 1930(a)(2)	\$ 300.00	\$ -	\$ 300.00	086900	Treasury
	29 USC 1930(a)(2)	\$ 700.00	\$ 39.00	\$ 739.00	510000	Judiciary
	<b>Total</b>	<b>\$ 1,000.00</b>	<b>\$ 39.00</b>	<b>\$ 1,039.00</b>		
Conversion Fee Chapter 7 to 11 28 USC 1930(a)	31 USC 3302(b)	\$ 755.00	\$ -	\$ 755.00	086900	Treasury
	<b>Total</b>	<b>\$ 755.00</b>	<b>\$ -</b>	<b>\$ 755.00</b>		
Conversion Fee Chapter 13 to 11	31 USC 3302(b)	\$ 765.00	\$ -	\$ 765.00	086900	Treasury
	<b>Total</b>	<b>\$ 765.00</b>	<b>\$ -</b>	<b>\$ 765.00</b>		
Conversion Fee Chapter 12 to 11 28 USC 1930(a)	31 USC 3302(b)	\$ 800.00	\$ -	\$ 800.00	086900	Treasury
	<b>Total</b>	<b>\$ 800.00</b>	<b>\$ -</b>	<b>\$ 800.00</b>		
Conversion Fee Chapter 12 to 13		\$ -	\$ 35.00	\$ 35.00	510000	Judiciary
	<b>Total</b>	<b>\$ -</b>	<b>\$ 35.00</b>	<b>\$ 35.00</b>		
Conversion Fee to Chapter 7, from 9 or 11* 28 USC 1930(b)(10)	11 USC 330 (b)(2)	\$ -	\$ 15.00	\$ 15.00	6855BK	Case Trustee
	<b>Total</b>	<b>\$ -</b>	<b>\$ 15.00</b>	<b>\$ 15.00</b>		
Conversion Fee to Chapter 7, from 12*		\$ -	\$ 15.00	\$ 15.00	6855BK	Case Trustee
		\$ -	\$ 45.00	\$ 45.00	6855TT	Case Trustee
	<b>Total</b>	<b>\$ -</b>	<b>\$ 60.00</b>	<b>\$ 60.00</b>		
Conversion Fee to Chapter 7, from 13*		\$ -	\$ 15.00	\$ 15.00	6855BK	Case Trustee
		\$ -	\$ 10.00	\$ 10.00	6855TT	Case Trustee
	<b>Total</b>	<b>\$ -</b>	<b>\$ 25.00</b>	<b>\$ 25.00</b>		

\*fees are allocated, i.e., recasted to the appropriate funds as required for a Ch.7 filing

**United States Bankruptcy Court Miscellaneous Fee Schedule**  
**Receipt Account Classification for Bankruptcy Administrator Districts Effective April 1, 2007**  
 (Note: Changes from last year's hearing volume are in *italics*)

Fee Item	Fee Setting and Disposition Authorities	Statutory Fee	Misc. Fee	TOTAL FEE	Receipt Account(s) Credited	Description of Account
Reopening Fee - Chapter 7 28 USC 1930(b)(11)	11 USC 330(b)(1)	\$ 45.00	\$ 15.00	\$ 60.00	6855BK	Case Trustee
	28 USC 1931 notes	\$ 63.51	\$ -	\$ 63.51	510000	Judiciary
	31 USC 3302(b)	\$ 111.49	\$ -	\$ 111.49	086900	Treasury
		\$ 25.00	\$ -	\$ 25.00	086400	Treasury
	<b>Total</b>	<b>\$ 245.00</b>	<b>\$ 15.00</b>	<b>\$ 260.00</b>		
Reopening Fee - Chapter 13	28 USC 1931 notes	\$ 52.50	\$ -	\$ 52.50	510000	Judiciary
	31 USC 3302(b)	\$ 97.50	\$ -	\$ 97.50	086900	Treasury
		\$ 85.00	\$ -	\$ 85.00	086400	Treasury
	<b>Total</b>	<b>\$ 235.00</b>	<b>\$ -</b>	<b>\$ 235.00</b>		
Reopening Fee - Chapter 11 (Non-Railroad)	28 USC 1931 notes	\$ 250.00	\$ -	\$ 250.00	510000	Judiciary
	31 USC 3302(b)	\$ 750.00	\$ -	\$ 750.00	086900	Treasury
	<b>Total</b>	<b>\$ 1,000.00</b>	<b>\$ -</b>	<b>\$ 1,000.00</b>		
Reopening Fee - Chapter 11 (Railroad)	31 USC 3302(b)	\$ 1,000.00	\$ -	\$ 1,000.00	086900	Treasury
	<b>Total</b>	<b>\$ 1,000.00</b>	<b>\$ -</b>	<b>\$ 1,000.00</b>		
Reopening Fee - Chapter 12	31 USC 3302(b)	\$ 200.00	\$ -	\$ 200.00	086900	Treasury
	<b>Total</b>	<b>\$ 200.00</b>	<b>\$ -</b>	<b>\$ 200.00</b>		
Reopening Fee - Chapter 15			\$ 500.00	\$ 500.00	510000	Judiciary
			\$ 500.00	\$ 500.00	086900	Treasury
	<b>Total</b>		<b>\$ 1,000.00</b>	<b>\$ 1,000.00</b>		
Joint Case/Split - Chapter 7	11 USC 330(b)(1)	\$ 45.00	\$ 15.00	\$ 60.00	6855TT	Case Trustee
	28 USC 1931 notes	\$ 200.00	\$ -	\$ 200.00	510000	Judiciary
	<b>Total</b>	<b>\$ 245.00</b>	<b>\$ 15.00</b>	<b>\$ 260.00</b>		
Joint Case/Split - Chapter 11	PL 101-162,103-121	\$ -	\$ 1,000.00	\$ 1,000.00	510000	Judiciary
Joint Case/Split - Chapter 12	PL 101-162,103-121	\$ -	\$ 200.00	\$ 200.00	510000	Judiciary
Joint Case/Split - Chapter 13	PL 101-162,103-121	\$ -	\$ 235.00	\$ 235.00	510000	Judiciary
Bankruptcy Adversary Filing Fee	PL 101-162,103-121	\$ -	\$ 130.00	\$ 130.00	510000	Judiciary
		\$ -	\$ 120.00	\$ 120.00	086900	Treasury
	<b>Total</b>	<b>\$ -</b>	<b>\$ 250.00</b>	<b>\$ 250.00</b>		
Amended Bankruptcy Schedules	P L. 106-518	\$ -	\$ 6.00	\$ 6.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 20.00	\$ 20.00	086900	Treasury
	<b>Total</b>	<b>\$ -</b>	<b>\$ 26.00</b>	<b>\$ 26.00</b>		
Notice of Appeal from BAP	28 USC 1930c 31 USC 3302(b)	\$ -	\$ 5.00	\$ 5.00	086900	Treasury
Docket on Appeal	PL 106-518	\$ -	\$ 150.00	\$ 150.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 100.00	\$ 100.00	086900	Treasury
	<b>Total</b>	<b>\$ -</b>	<b>\$ 250.00</b>	<b>\$ 250.00</b>		
Notice of Appeal	<b>Total</b>	<b>\$ -</b>	<b>\$ 5.00</b>	<b>\$ 5.00</b>	086900	Treasury
Bankruptcy Direct Appeal Fee (requesting) Notice of Appeal		\$ -	\$ 250.00	\$ 250.00	510000	Judiciary
	28 USC 1930(c)	\$ -	\$ 5.00	\$ 5.00	086900	Treasury
	<b>Total</b>	<b>\$ -</b>	<b>\$ 255.00</b>	<b>\$ 255.00</b>		
Bankruptcy Direct Appeal Fee (authorized)		\$ -	\$ 200.00	\$ 200.00	510000	Judiciary
Cross Appeal Docket Fee	PL 101-162,103-121	\$ -	\$ 250.00	\$ 250.00	510000	Judiciary
Bankruptcy Cross Appeal Fee (requesting) Notice of Appeal		\$ -	\$ 250.00	\$ 250.00	510000	Judiciary
	28 USC 1930(c)	\$ -	\$ 5.00	\$ 5.00	086900	Treasury
	<b>Total</b>	<b>\$ -</b>	<b>\$ 255.00</b>	<b>\$ 255.00</b>		

**United States Bankruptcy Court Miscellaneous Fee Schedule**  
**Receipt Account Classification for Bankruptcy Administrator Districts Effective April 1, 2007**  
 (Note: Changes from last year's hearing volume are in *italics*)

Fee Item	Fee Setting and Disposition Authorities	Statutory Fee	Misc. Fee	TOTAL FEE	Receipt Account(s) Credited	Description of Account
Bankruptcy Cross Appeal Fee (authorized)		\$ -	\$200.00	\$ 200.00	510000	Judiciary
Motion to Lift the Automatic Stay	PL 101-162,103-121	\$ -	\$ 150.00	\$ 150.00	510000	Judiciary
Motion to compel abandonment	PL 101-162,103-121	\$ -	\$ 150.00	\$ 150.00	510000	Judiciary
Withdrawal of reference of a case	PL 101-162,103-121	\$ -	\$ 150.00	\$ 150.00	510000	Judiciary
Document Certification	PL 106-518	\$ -	\$ 4.00	\$ 4.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 5.00	\$ 5.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 9.00	\$ 9.00		
Document Exemplification	PL 106-518	\$ -	\$ 8.00	\$ 8.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 10.00	\$ 10.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 18.00	\$ 18.00		
Record Search	PL 106-518	\$ -	\$ 11.00	\$ 11.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 15.00	\$ 15.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 26.00	\$ 26.00		
Misc. papers not in a case	PL 106-518	\$ -	\$ 19.00	\$ 19.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 20.00	\$ 20.00	086900	Treasury
	<b>Total</b>	\$ -	\$ 39.00	\$ 39.00		
Registration of a foreign judgment	PL 106-518	\$ -	\$ 19.00	\$ 19.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 20.00	\$ 20.00	086900	Treasury
	<b>Total</b>	\$ -	\$ 39.00	\$ 39.00		
Chapter 15	PL 106-518	\$ -	\$ 539.00	\$ 539.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 500.00	\$ 500.00	086900	Treasury
	<b>Total</b>	\$ -	\$ 1,039.00	\$ 1,039.00		
Record Retrieval	PL 106-518	\$ -	\$ 20.00	\$ 20.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 25.00	\$ 25.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 45.00	\$ 45.00		
Tape Duplication	PL 106-518	\$ -	\$ 11.00	\$ 11.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 15.00	\$ 15.00	322350	Treasury
	<b>Total</b>	\$ -	\$ 26.00	\$ 26.00		
Sale of Local Rules	30 USC 3302(b)				322340	Treasury
	<b>Total</b>	\$ -	\$ -	\$ -		
Photocopies (per page charge)	30 USC 3302(b)				322350	Treasury
	<b>Total</b>	\$ -	\$ 0.50	\$ 0.50		
Microfilm/Microfiche	PL 106-518	\$ -	\$ 2.00	\$ 2.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 3.00	\$ 3.00	322350	Treasury
	<b>Total</b>	\$ -	\$ 5.00	\$ 5.00		
NSF Check Charge	PL 106-518	\$ -	\$ 20.00	\$ 20.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 25.00	\$ 25.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 45.00	\$ 45.00		

<sup>1</sup>NOTE: This is the new 'special fund' included in the Reconciliation Bill (P.L. 109-171)

**United States Bankruptcy Court Miscellaneous Fee Schedule**  
**Receipt Account Classification for United States Trustee Districts Effective April 1, 2007**  
 (Note: Changes from last year's hearing volume are in *italics*)

Fee Item	Fee Setting and Disposition Authorities	Statutory Fee	Misc. Fee	TOTAL FEE	Receipt Account(s) Credited	Description of Account	
<b>Chapter 7 - Liquidation Filing Fee</b> 28 USC 1930(a)(1)	11 USC 330(b)(2)	\$ 45.00	\$ 15.00	\$ 60.00	6855TT	Case Trustee	
	28 USC 589a	\$ 89.01	\$ -	\$ 89.01	5073XX	U.S. Trustee	
	28 USC 1931 notes	\$ 63.51	\$ 39.00	\$ 102.51	510000	Judiciary	
	31 USC 3302(b)	\$ 22.48	\$ -	\$ 22.48	086900	Treasury	
	PL 109-171 <sup>1</sup>	\$ 25.00	\$ -	\$ 25.00	086400	Treasury	
	<b>Total</b>		\$ 245.00	\$ 54.00	\$ 299.00		
<b>Chapter 13 - Wage Earner Filing Fee</b> 28 USC 1930 (a)(1)	28 USC 589a	\$ 42.50	\$ -	\$ 42.50	5073XX	U.S. Trustee	
	28 USC 1931 notes	\$ 52.50	\$ 39.00	\$ 91.50	510000	Judiciary	
	31 USC 3302(b)	\$ 55.00	\$ -	\$ 55.00	086900	Treasury	
	PL 109-171 <sup>1</sup>	\$ 85.00	\$ -	\$ 85.00	086400	Treasury	
	<b>Total</b>		\$ 235.00	\$ 39.00	\$ 274.00		
	<b>Chapter 11 Filing Fee (Non-Railroad)</b> 28 USC 1930(a)(3)	28 USC 589a	\$ 550.00	\$ -	\$ 550.00	5073XX	U.S. Trustee
28 USC 1931 notes		\$ 250.00	\$ 39.00	\$ 289.00	510000	Judiciary	
31 USC 3302(b)		\$ 200.00	\$ -	\$ 200.00	086900	Treasury	
<b>Total</b>			\$ 1,000.00	\$ 39.00	\$ 1,039.00		
<b>Chapter 11 Filing Fee (Railroad)</b> 28 USC 1930(a)(4)		28 USC 589a	\$ 500.00	\$ -	\$ 500.00	5073XX	U.S. Trustee
	31 USC 3302(b)	\$ 500.00	\$ -	\$ 500.00	510000	Judiciary	
	PL 109-171 <sup>1</sup>	\$ 39.00	\$ -	\$ 39.00	086900	Treasury	
	<b>Total</b>		\$ 1,000.00	\$ 39.00	\$ 1,039.00		
	<b>Chapter 12 Family Farmer</b> 28 USC 1930(a)(5)	28 USC 589a	\$ 100.00	\$ -	\$ 100.00	5073XX	U.S. Trustee
31 USC 3302(b)		\$ 100.00	\$ -	\$ 100.00	086900	Treasury	
PL 109-171 <sup>1</sup>		\$ 39.00	\$ -	\$ 39.00	510000	Judiciary	
<b>Total</b>			\$ 200.00	\$ 39.00	\$ 239.00		
<b>Chapter 9 Municipal Debt Filing Fee</b>		28 USC 1930(a)(2)	\$ 300.00	\$ -	\$ 300.00	086900	Treasury
	29 USC 1930(a)(2)	\$ 700.00	\$ 39.00	\$ 739.00	510000	Judiciary	
	<b>Total</b>		\$ 1,000.00	\$ 39.00	\$ 1,039.00		
<b>Conversion Fee Chapter 7 to 11</b> 28 USC 1930(a)	28 USC 589a	\$ 566.25	\$ -	\$ 566.25	5073XX	U.S. Trustee	
	31 USC 3302(b)	\$ 188.75	\$ -	\$ 188.75	086900	Treasury	
	<b>Total</b>		\$ 755.00	\$ -	\$ 755.00		
<b>Conversion Fee Chapter 13 to 11</b>	28 USC 589a	\$ 573.75	\$ -	\$ 573.75	5073XX	U.S. Trustee	
	31 USC 3302(b)	\$ 191.25	\$ -	\$ 191.25	086900	Treasury	
	<b>Total</b>		\$ 765.00	\$ -	\$ 765.00		
<b>Conversion Fee Chapter 12 to 11</b> 28 USC 1930(a)	28 USC 589a	\$ 600.00	\$ -	\$ 600.00	5073XX	U.S. Trustee	
	31 USC 3302(b)	\$ 200.00	\$ -	\$ 200.00	086900	Treasury	
	<b>Total</b>		\$ 800.00	\$ -	\$ 800.00		
<b>Conversion Fee Chapter 12 to 13</b>		\$ -	\$ 35.00	\$ 35.00	510000	Judiciary	
	<b>Total</b>		\$ -	\$ 35.00	\$ 35.00		
<b>Conversion Fee to Chapter 7, from 9 or 11*</b> 28 USC 1930(b)(10)	11 USC 330 (b)(2)	\$ -	\$ 15.00	\$ 15.00	6855BK	Case Trustee	
	<b>Total</b>		\$ -	\$ 15.00	\$ 15.00		
<b>Conversion Fee to Chapter 7, from 12*</b>		\$ -	\$ 15.00	\$ 15.00	6855BK	Case Trustee	
		\$ -	\$ 45.00	\$ 45.00	6855TT	Case Trustee	
	<b>Total</b>		\$ -	\$ 60.00	\$ 60.00		

**United States Bankruptcy Court Miscellaneous Fee Schedule**  
**Receipt Account Classification for United States Trustee Districts Effective April 1, 2007**  
 (Note: Changes from last year's hearing volume are in *italics*)

Fee Item	Fee Setting and Disposition Authorities	Statutory Fee	Misc. Fee	TOTAL FEE	Receipt Account(s) Credited	Description of Account
<b>Conversion Fee to Chapter 7, from 13*</b>		\$ -	\$ 15.00	\$ 15.00	6855BK 6855TT	Case Trustee Case Trustee
		\$ -	\$ 10.00	\$ 10.00		
	<b>Total</b>	\$ -	\$ 25.00	\$ 25.00		
<i>* fees are allocated, i.e., recasted to the appropriate funds as required for a Ch 7 filing</i>						
<b>Reopening Fee - Chapter 7</b> 28 USC 1930(b)(11)	11 USC 330(b)(1) 28 USC 589a 28 USC 1931 notes 31 USC 3302(b) PL 109-171 <b>Total</b>	\$ 45.00 \$ 89.01 \$ 63.51 \$ 22.48 \$ 25.00 \$ 245.00	\$ 15.00 \$ - \$ - \$ - \$ - \$ 15.00	\$ 60.00 \$ 89.01 \$ 63.51 \$ 22.48 \$ 25.00 \$ 260.00	6855BK 5073XX 510000 086900 086400	Case Trustee U.S. Trustee Judiciary Treasury Treasury
<b>Reopening Fee - Chapter 13</b>	28 USC 589a 28 USC 1931 notes 31 USC 3302(b) PL 109-171 <b>Total</b>	\$ 42.50 \$ 52.50 \$ 55.00 \$ 85.00 \$ 235.00	\$ - \$ - \$ - \$ - \$ -	\$ 42.50 \$ 52.50 \$ 55.00 \$ 85.00 \$ 235.00	5073XX 510000 086900 086400	U.S. Trustee Judiciary Treasury Treasury
<b>Reopening Fee - Chapter 11 (Non-railroad)</b>	28 USC 589a 28 USC 1931 notes 31 USC 3302(b) <b>Total</b>	\$ 550.00 \$ 250.00 \$ 200.00 \$ 1,000.00	\$ - \$ - \$ - \$ -	\$ 550.00 \$ 250.00 \$ 200.00 \$ 1,000.00	5073XX 510000 086900	U.S. Trustee Judiciary Treasury
<b>Reopening Fee - Chapter 11 (Railroad)</b>	28 USC 589a 31 USC 3302(b) <b>Total</b>	\$ 500.00 \$ 500.00 \$ 1,000.00	\$ - \$ - \$ -	\$ 500.00 \$ 500.00 \$ 1,000.00	5073XX 086900	U.S. Trustee Treasury
<b>Reopening Fee - Chapter 12</b>	28 USC 589a 31 USC 3302(b) <b>Total</b>	\$ 100.00 \$ 100.00 \$ 200.00	\$ - \$ - \$ -	\$ 100.00 \$ 100.00 \$ 200.00	5073XX 086900	U.S. Trustee Treasury
<b>Reopening Fee - Chapter 15</b>			\$ 500.00 \$ 500.00 \$ 1,000.00	\$ 500.00 \$ 500.00 \$ 1,000.00	510000 086900	Judiciary Treasury
<b>Joint Case/Split - Chapter 7</b>	11 USC 330(b)(1) 28 USC 1931 notes <b>Total</b>	\$ 45.00 \$ 200.00 \$ 245.00	\$ 15.00 \$ - \$ 15.00	\$ 60.00 \$ 200.00 \$ 260.00	6855TT 510000	Case Trustee Judiciary
<b>Joint Case/Split - Chapter 11</b>	PL 101-162,103-121	\$ -	\$ 1,000.00	\$ 1,000.00	510000	Judiciary
<b>Joint Case/Split - Chapter 12</b>	PL 101-162,103-121	\$ -	\$ 200.00	\$ 200.00	510000	Judiciary
<b>Joint Case/Split - Chapter 13</b>	PL 101-162,103-121	\$ -	\$ 235.00	\$ 235.00	510000	Judiciary
<b>Bankruptcy Adversary Filing Fee</b>	PL 101-162,103-121 <b>Total</b>	\$ - \$ - \$ -	\$ 130.00 \$ 120.00 \$ 250.00	\$ 130.00 \$ 120.00 \$ 250.00	510000 086900	Judiciary Treasury
<b>Amended Bankruptcy Schedules</b>	PL 106-518 31 USC 3302(b) <b>Total</b>	\$ - \$ - \$ -	\$ 6.00 \$ 20.00 \$ 26.00	\$ 6.00 \$ 20.00 \$ 26.00	510000 086900	Judiciary Treasury
<b>Notice of Appeal from BAP</b>	28 USC 1930 <b>Total</b>	\$ -	\$ 5.00	\$ 5.00	086900	Treasury

**United States Bankruptcy Court Miscellaneous Fee Schedule**  
**Receipt Account Classification for United States Trustee Districts Effective April 1, 2007**  
 (Note: Changes from last year's hearing volume are in *italics*)

Fee Item	Fee Setting and Disposition Authorities	Statutory Fee	Misc. Fee	TOTAL FEE	Receipt Account(s) Credited	Description of Account
Docket on Appeal	PL 106-518	\$ -	\$ 150.00	\$ 150.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 100.00	\$ 100.00	086900	Treasury
	<b>Total</b>	\$ -	\$ 250.00	\$ 250.00		
Notice of Appeal	<b>Total</b>	\$ -	\$ 5.00	\$ 5.00	086900	Treasury
Bankruptcy Direct Appeal Fee (requesting) Notice of Appeal	28 USC 1930(c)	\$ -	\$ 250.00	\$ 250.00	510000	Judiciary
		\$ -	\$ 5.00	\$ 5.00	086900	Treasury
	<b>Total</b>	\$ -	\$ 255.00	\$ 255.00		
Bankruptcy Direct Appeal Fee (authorized)		\$ -	\$ 200.00	\$ 200.00	510000	Judiciary
Cross Appeal Docket Fee	PL 101-162,103-121	\$ -	\$ 250.00	\$ 250.00	510000	Judiciary
Bankruptcy Cross Appeal Fee (requesting) Notice of Appeal	28 USC 1930(c)	\$ -	\$ 250.00	\$ 250.00	510000	Judiciary
		\$ -	\$ 5.00	\$ 5.00	086900	Treasury
	<b>Total</b>	\$ -	\$ 255.00	\$ 255.00		
Bankruptcy Cross Appeal Fee (authorized)		\$ -	\$ 200.00	\$ 200.00	510000	Judiciary
Motion to Lift Automatic Stay	PL 101-162,103-121	\$ -	\$ 150.00	\$ 150.00	510000	Judiciary
Motion to compel abandonment	PL 101-162,103-121	\$ -	\$ 150.00	\$ 150.00	510000	Judiciary
Withdrawal of reference of a case	PL 101-162,103-121	\$ -	\$ 150.00	\$ 150.00	510000	Judiciary
Document Certification	PL 106-518	\$ -	\$ 4.00	\$ 4.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 5.00	\$ 5.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 9.00	\$ 9.00		
Document Exemplification	PL 106-518	\$ -	\$ 8.00	\$ 8.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 10.00	\$ 10.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 18.00	\$ 18.00		
Record Search	PL 106-518	\$ -	\$ 11.00	\$ 11.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 15.00	\$ 15.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 26.00	\$ 26.00		
Misc. papers not in a case	PL 106-518	\$ -	\$ 19.00	\$ 19.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 20.00	\$ 20.00	086900	Treasury
	<b>Total</b>	\$ -	\$ 39.00	\$ 39.00		
Registration of a foreign judgment	PL 106-518	\$ -	\$ 19.00	\$ 19.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 20.00	\$ 20.00	086900	Treasury
	<b>Total</b>	\$ -	\$ 39.00	\$ 39.00		
Chapter 15	PL 106-518	\$ -	\$ 539.00	\$ 539.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 500.00	\$ 500.00	086900	Treasury
	<b>Total</b>	\$ -	\$ 1,039.00	\$ 1,039.00		
Record Retrieval	PL 106-518	\$ -	\$ 20.00	\$ 20.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 25.00	\$ 25.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 45.00	\$ 45.00		
Tape Duplication	PL 106-518	\$ -	\$ 11.00	\$ 11.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 15.00	\$ 15.00	322350	Treasury
	<b>Total</b>	\$ -	\$ 26.00	\$ 26.00		
Sale of Local Rules	31 USC 3302(b)	\$ -	\$ -	\$ -	322340	Treasury

United States Bankruptcy Court Miscellaneous Fee Schedule  
 Receipt Account Classification for United States Trustee Districts Effective April 1, 2007  
 (Note: Changes from last year's hearing volume are in *italics*)

Fee Item	Fee Setting and Disposition Authorities	Statutory Fee	Misc. Fee	TOTAL FEE	Receipt Account(s) Credited	Description of Account
Photocopies (charge per page)	31 USC 3302(b)	\$ 0.50	\$ 0.50	\$ 1.00	322350	Treasury
Microfilm/Microfiche	PL 106-518	\$ -	\$ 2.00	\$ 2.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 3.00	\$ 3.00	322350	Treasury
	<b>Total</b>	\$ -	\$ 5.00	\$ 5.00		
NSF Check Charge	PL 106-518	\$ -	\$ 20.00	\$ 20.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 25.00	\$ 25.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 45.00	\$ 45.00		

<sup>1</sup>NOTE: This is the new 'special fund' included in the Reconciliation Bill (P.L. 109-171).

United States District Court Miscellaneous Fee Schedule  
 Receipt Account Classification Effective April 9, 2006  
 (Note: Changes from last year's hearing volume are in *italics*)

Fee Item	Fee Setting and Disposition Authorities	Statutory Fee	Misc. Fee	TOTAL FEE	Receipt Account(s) Credited	Description of Account
Civil Filing Fee (non-prisoner filings)	28 USC 1914(a)	\$ 190.00	\$ -	\$ 190.00	510000	Judiciary
	31 USC 3302(b)	\$ 60.00	\$ -	\$ 60.00	086900	Treasury
	PL 109-171 <sup>1</sup>	\$ 100.00	\$ -	\$ 100.00	086400	Treasury
	<b>Total</b>	<b>\$ 350.00</b>	<b>\$ -</b>	<b>\$ 350.00</b>		
Civil Filing Fee (prisoner filings)	28 USC 1914(a)	\$ 190.00	\$ -	\$ 190.00	5100PL	Judiciary
	28 USC 1931(a)	\$ 60.00	\$ -	\$ 60.00	0869PL	Treasury
	31 USC 3302(b)	\$ 60.00	\$ -	\$ 60.00	0869PL	Treasury
	PL 109-171 <sup>1</sup>	\$ 100.00	\$ -	\$ 100.00	086400	Treasury
<b>Total</b>	<b>\$ 350.00</b>	<b>\$ -</b>	<b>\$ 350.00</b>			
Writ of Habeas Corpus (non-prisoner filings)	28 USC 1914(a) 31 USC 3302(b)	\$ 5.00	\$ -	\$ 5.00	086900	Treasury
Writ of Habeas Corpus (prisoner filings)	28 USC 1914(a) 31 USC 3302(b)	\$ 5.00	\$ -	\$ 5.00	086900	Treasury
Case Docketing Fee (non-prisoner filings)	PL 105-518	\$ 150.00	\$ -	\$ 150.00	510000	Judiciary
	31 USC 3302(b)	\$ 100.00	\$ -	\$ 100.00	086900	Treasury
	PL 109-171 <sup>1</sup>	\$ 200.00	\$ -	\$ 200.00	086400	Treasury
	<b>Total</b>	<b>\$ 450.00</b>	<b>\$ -</b>	<b>\$ 450.00</b>		
Case Docketing Fee (prisoner filings)	PL 105-518	\$ 150.00	\$ -	\$ 150.00	5100PL	Judiciary
	31 USC 3302(b)	\$ 100.00	\$ -	\$ 100.00	0869PL	Treasury
	PL 109-171 <sup>1</sup>	\$ 200.00	\$ -	\$ 200.00	086400	Treasury
	<b>Total</b>	<b>\$ 450.00</b>	<b>\$ -</b>	<b>\$ 450.00</b>		
Notice of Appeal (non-prisoner filings)	28 USC 1917 31 USC 3302(b)	\$ 5.00	\$ -	\$ 5.00	086900	Treasury
Notice of Appeal (prisoner filings)	28 USC 1917 31 USC 3302(b)	\$ 5.00	\$ -	\$ 5.00	0869PL	Treasury
Misdemeanor Appeal	PL 106-518	\$ 7.00	\$ -	\$ 7.00	510000	Judiciary
	31 USC 3302(b)	\$ 25.00	\$ -	\$ 25.00	086900	Treasury
	<b>Total</b>	<b>\$ 32.00</b>	<b>\$ -</b>	<b>\$ 32.00</b>		
Attorney Admission Fee	PL 106-518	\$ 130.00	\$ -	\$ 130.00	510000	Judiciary
	31 USC 3302(b)	\$ 20.00	\$ -	\$ 20.00	085000	Treasury
	Local Rule/Order				Library Fund	Judiciary
	<b>Total</b>	<b>\$ 150.00</b>	<b>\$ -</b>	<b>\$ 150.00</b>		

United States District Court Miscellaneous Fee Schedule  
 Receipt Account Classification Effective April 9, 2006  
 (Note: Changes from last year's hearing volume are in *italics*)

Fee Item	Fee Setting and Disposition Authorities	Statutory Fee	Misc. Fee	TOTAL FEE	Receipt Account(s) Credited	Description of Account
Attorney Admission Fee Renew	Local Rule/Order				6855XX	Escrow
Pro Hoc Vice Admission Fee	Local Rule/Order				6855XX	Escrow
CVB Processing Fee	PL 108-447 Sec.308	\$ 25.00	\$ -	\$ 25.00	5100CV	Judiciary
Cuban Libertad Civil Filing Fee	PL 106-518	\$ 1,251.00	\$ -	\$ 1,251.00	510000	Judiciary
	31 USC 3302(b)	\$ 4,180.00	\$ -	\$ 4,180.00	086900	Treasury
	<b>Total</b>	\$ 5,431.00	\$ -	\$ 5,431.00		
<b>OTHER FEES:</b>						
Document Certification	PL 106-518	\$ -	\$ 4.00	\$ 4.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 5.00	\$ 5.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 9.00	\$ 9.00		
Document Exemplification	PL 106-518	\$ -	\$ 8.00	\$ 8.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 10.00	\$ 10.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 18.00	\$ 18.00		
Record Search	PL 106-518	\$ -	\$ 11.00	\$ 11.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 15.00	\$ 15.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 26.00	\$ 26.00		
Misc. papers not in a case	PL 106-518	\$ -	\$ 19.00	\$ 19.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 20.00	\$ 20.00	086900	Treasury
	<b>Total</b>	\$ -	\$ 39.00	\$ 39.00		
Registration of a foreign judgment	PL 106-518	\$ -	\$ 19.00	\$ 19.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 20.00	\$ 20.00	086900	Treasury
	<b>Total</b>	\$ -	\$ 39.00	\$ 39.00		
Record Retrieval	PL 106-518	\$ -	\$ 20.00	\$ 20.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 25.00	\$ 25.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 45.00	\$ 45.00		
Proceedings Duplication	PL 106-518	\$ -	\$ 11.00	\$ 11.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 15.00	\$ 15.00	322350	Treasury
	<b>Total</b>	\$ -	\$ 26.00	\$ 26.00		
Sale of Local Rules 28 USC 1914(b)(11)	31 USC 3302(b)	\$ -	\$ -	\$ -	322340	Treasury

**United States District Court Miscellaneous Fee Schedule**  
**Receipt Account Classification Effective April 9, 2006**  
 (Note: Changes from last year's hearing volume are in *italics*)

<b>Fee Item</b>	<b>Fee Setting and Disposition Authorities</b>	<b>Statutory Fee</b>	<b>Misc. Fee</b>	<b>TOTAL FEE</b>	<b>Receipt Account(s) Credited</b>	<b>Description of Account</b>
<b>Photocopies</b>	31 USC 3302(b)	\$ -	\$ 0.50	\$ 0.50	322350	Treasury
<b>Microfilm/Microfiche</b>	PL 106-518	\$ -	\$ 2.00	\$ 2.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 3.00	\$ 3.00	322350	Treasury
	<b>Total</b>	\$ -	\$ 5.00	\$ 5.00		
<b>NSF Check Charge</b>	PL 106-518	\$ -	\$ 20.00	\$ 20.00	510000	Judiciary
	31 USC 3302(b)	\$ -	\$ 25.00	\$ 25.00	322360	Treasury
	<b>Total</b>	\$ -	\$ 45.00	\$ 45.00		

<sup>1</sup>This is the new "special fund" included in the Reconciliation Bill (P.L. 109-171)

**Electronic Access Fee Schedule**  
**Receipt Account Classification Effective March 11, 2008**  
**For all courts defined under 28 USC 1913, 1914, 1926, 1930, and 1932**  
**(Note: Changes from last year's hearing volume are in italics)**

Fee Item	Amount	Fee Setting and Disposition Authorities	Receipt Accounts Credited	Description of Account
<i>II(a) Electronic access to court data via dial-up service</i>	<i>\$0.60 per minute</i>	<i>PL 102-140, Sec 303</i>	<i>5114PF</i>	<i>Judiciary</i>
<b>I. Obtaining info. thru a judiciary internet website</b>  Note: 1st \$10 per calendar year free	\$0.08 per page NTE \$2.40 (30 pg max for case specific information)	PL 102-140, Sec 303	5114PF	Judiciary
<b>II. Printed copies of any record or doc accessed electronically at a public terminal in the courthouse</b>	\$0.10 per page	PL 102-140, Sec 303	5114CR	Judiciary
<b>PACER serv. Center</b>				
<b>III. Search of court records</b>	\$26.00 per name or item searched	PL 102-140, Sec 303	5114PF	Judiciary
<b>IV. Reproduction</b>	\$0.50 per page	PL 102-140, Sec 303	5114PF	Judiciary
<b>V. NSF Check</b>	\$20.00	PL 106-518	510000	Judiciary
	<u>\$25.00</u>	31 USC 3302(b)	322360	Treasury
<b>Total</b>	<b>\$45.00</b>			

United States Court of International Trade  
 Receipt Account Classification Effective January 1, 2007  
 (Note: Changes from last year's hearing volume are in italics)

Fee Item	Amount	Fee setting and Disposition authorities	Receipt Account(s) credited	Description of Account
Filing action other than one commenced under 28 USC 1581(a) or (d)(1)	\$ 350.00	CIT Rule 3(b)-(1)	086900	Treasury
Filing a summons in an action commenced under 28 USC 1581(a)	\$ 150.00	CIT Rule 3(b)-(2)	086900	Treasury
Filing an action commenced under 28 USC 1581(d)(1)	\$ 25.00	CIT Rule 3(b)-(3)	086900	Treasury
Filing a complaint in an action commenced under 28 USC 1581(a) on or after November 1,1997	\$ 200.00	CIT Rule 3(b)-(4)	086900	Treasury
Filing an appeal in the CIT to Ct of Appeals Fed Cir.	\$ 455.00	CIT Rule 3(b)-(5)	086900	Treasury
Attorney Admission fee	\$ 50.00	CIT Rule 74(b)(3)	Library fund	Judiciary
Filing a paper not in a case for which a filing fee has been paid (eg. Petition to perpetuate testimony pursuant to Rule 27 the filing of letters rogatory or letters of request, and registering a judgment pursuant to 28 USC 1963)	\$ 39.00	CIT Rule 80(g)(1)	086900	Treasury
Record search	\$ 26.00	CIT Rule 80(g)(2)	322360	Treasury
Document Certification whether directly on document or separate instrument	\$ 9.00	CIT Rule 80(g)(3)	322360	Treasury
Document or paper Exemplification	\$ 18.00	CIT Rule 80(g)(4)	322360	Treasury
Record Reproduction (per page)	\$ 0.50	CIT Rule 80(g)(5)	322350	Treasury
Tape Duplication either cassette, disk, or reel	\$ 26.00	CIT Rule 80(g)(6)	322350	Treasury
Microfiche or Microfilm	\$ 5.00	CIT Rule 80(g)(7)	322350	Treasury
Record Retrieval (from Record Center or Nat'l Archives)	\$ 45.00	CIT Rule 80(g)(8)	322360	Treasury
NSF Check Charge	\$ 45.00	CIT Rule 80(g)(9)	322360	Treasury
Duplicate Admission Certificate / cert. of good standing	\$ 15.00	CIT Rule 80(g)(10)	Library	Judiciary
Registry fee charge	\$ -	CIT Rule 80(g)(11)	510100	Judiciary

7. **Please provide the level of carryover balances for all Judiciary accounts from any discretionary no-year or multi-year appropriations, including emergency supplemental appropriations, from appropriations made prior to FY 2008. Please provide a level of detail including fiscal year and public law in which funds were provided, emergency vs. non-emergency designation, and purpose of original appropriation.**

The table on the following pages displays the carryover balances of appropriated funds as of October 1, 2007.

**JUDICIARY CARRYOVER BALANCES OF APPROPRIATED FUNDS  
(As of October 1, 2007)**

2/19/2008

Appropriation	Public Law	Fiscal Year of Appropriation	Designation	Purpose of Original Appropriation	Available Appropriations 1/ Multiple Years	Carryover Balance as of October 1, 2007
<b>Court of International Trade (CIT)</b> No-Year Automation Fund 51140X	N/A	JTF Deposits Over Multiple Years	Non-Emergency	Salaries and Expenses		\$ 662,956
<b>Subtotal: CIT</b>						<b>\$ 662,956</b>
<b>Salaries and Expenses</b>						
- High-Threat Trials Supplemental Carryforward No-Year S&E Fund 09203X	P.L. 107-206	2002	Emergency Supplemental	Provide for Extraordinary Costs Related to Terrorist Trials	\$ 3,143,000	\$ 547,056
- Mail Handling Supplemental Carryforward No-Year S&E Fund 09203X	P.L. 107-117	2002	Emergency Supplemental	To be used as needed for anthrax and other biological or chemical testing and for renovations to existing mailrooms to provide biosafe environments.	\$ 10,000,000	\$ 569,301
- Emergency Communications Supplemental Carryforward No-Year Automation Fund 51140X	P.L. 107-117	2002	Emergency Supplemental	For purchase of equipment for the Emergency Communications Center (ECC) at the Court Operations Support Center (COSC) to provide redundant communications capabilities.	\$ 5,000,000	\$ 119,079
- Fiscal Year 2007 Appropriations Carryforward No-Year S&E Fund 09203X for space alterations projects and furniture and furnishings related to new space alteration and construction projects.	P.L. 110-5	2007	Non-Emergency	To finance fiscal year 2007 Salaries and Expenses of the Courts.	\$ 4,480,521,000	\$ 5,700,422
- Fiscal Year 2006 Hurricane Supplemental Carryforward No-Year S&E Fund 09203X	P.L. 109-148	2006	Emergency Supplemental	To remain available until expended, for necessary expenses related to consequences of hurricanes in the Gulf of Mexico during calendar year 2006.	\$ 18,000,000	\$ 1,699,467 2/
- Fiscal Year 2007 Appropriations Carryforward No-Year Automation Fund 51140X Information technology project development, operations and maintenance, and courtroom technology proj.	P.L. 110-5	2007	Non-Emergency	To finance fiscal year 2007 Salaries and Expenses of the Courts	\$ 4,480,521,000	\$ 60,305,189 3/
<b>Subtotal: Salaries and Expenses</b>						<b>\$ 68,940,514</b>

1/ FY 2007 appropriations include transfers from the Courts' S&E account, pursuant to P.L. 110-5, section 21054(b) and section 111(c).

2/ Carryover balance excludes \$1.6 million allocated but not yet obligated - a total of \$3.3 million is unobligated.

3/ Includes \$33.0 million in encumbered carryforward from fiscal year 2006, \$14.0 million in fiscal year 2007 savings, and \$13.3 million in encumbered carryforward from fiscal year 2007.

**JUDICIARY CARRYOVER BALANCES OF APPROPRIATED FUNDS  
(As of October 1, 2007)**

2/19/2008

Appropriation	Public Law	Fiscal Year of Appropriation	Designation	Purpose of Original Appropriation	Available Appropriations 1/	Carryover Balance as of October 1, 2007
Defender Services No-Year Appropriations Carryforward	P.L. 110-5	2007	Non-Emergency	To finance fiscal year 2007 Defender Services program requirements.	\$ 776,283,000	\$ 12,302,000 4/
<b>Subtotal: Defender Services</b>						<b>\$ 12,302,000</b>
Fees of Jurors No-Year Appropriations Carryforward	P.L. 110-5	2007	Non-Emergency	To finance fiscal year 2007 Fees of Jurors program requirements.	\$ 60,945,000	\$ 45,000
<b>Subtotal: Fees of Jurors</b>						<b>\$ 43,000</b>
Court Security No-Year Appropriations Carryforward	P.L. 110-5	2007	Non-Emergency	To finance fiscal year 2007 Court Security program requirements.	\$ 378,663,000	\$ 9,502,000
<b>Subtotal: Court Security</b>						<b>\$ 9,502,000</b>
<b>Administrative Office</b>						
- No-Year Automation Fund 51140X	N/A	JITF Deposits Over Multiple Years	Non-Emergency	To finance Salaries and Expenses of the Administrative Office.	Multiple Years	\$ 1,380,000
<b>Total: Administrative Office</b>						<b>\$ 1,380,000</b>
<b>U.S. Sentencing Commission</b>						
- Supplemental Carryforward	P.L. 101-302	1990	Non-Emergency	To be used for contract work related to data collection/research area.	\$ 700,000	\$ 585,000
- No-Year Automation Fund 51140X For use on an electronic file transfer system that will allow the 94 federal judicial districts to submit court documents to the Commission in a paperless manner.	N/A	JITF Deposits Over Multiple Years	Non-Emergency	To finance Salaries and Expenses of the U.S. Sentencing Commission.	Multiple Years	\$ 2,151,000
<b>TOTAL: U.S. Sentencing Commission</b>						<b>\$ 2,736,000</b>

4/ includes \$1.0 million of encumbered carryover and \$11.3 million of unencumbered carryover.

**Questions Submitted for the Record by Rep. Ralph Regula**

**1. Workload Trends at the Court of Appeals for the Federal Circuit**

**Your FY 2009 budget request includes a 20% increase for the “Court of Appeals for the Federal Circuit” account including a request for 12 additional law clerks, yet the budget justification does not include any data about the Court’s workload. Please describe the trends at the Court that require such a sizeable funding increase.**

[Clerk’s Note: The Court of Appeals for the Federal Circuit’s budget request does not fall under the jurisdiction of the Judicial Conference of the United States and its Budget Committee. Accordingly, this response was prepared by the Federal Circuit and its Chief Judge Paul R. Michel.]

Twenty-five percent of the Federal Circuit’s specific program requests (\$932,000) will fund 12 additional law clerk positions.

The Court is requesting \$932,000 to cover the cost of hiring an additional law clerk for each of the court’s active judges for six months of FY 2009. The court’s increased workload now justifies funding a fourth law clerk for each active judge. Four law clerks are the norm at every federal appeals court in the nation except the Federal Circuit. In the FY 2008 appropriation, Congress authorized three additional law clerks for the Federal Circuit but provided no funding. The Federal Circuit is now requesting funding for all 12 additional law clerks: the three approved but unfunded in FY 2008, and the remaining nine, for a total of twelve, or one per judge.

Patent infringement cases make up one-third or more of the Federal Circuit’s docket. The number of patent infringement cases has grown by more than 25 percent in the 15 years since the third clerk was first provided. Patent infringement cases are critical to the nation’s economy, and the decisions of the Federal Circuit in these cases often have significant and sometimes dramatic economic implications for parties whose patents are upheld and found to have been infringed, whose patents are found not to have been infringed by other parties, and many other economic actors. The difficulty and complexity of patent infringement and other intellectual property cases have increased exponentially in recent years.

Most of the patent cases now filed in the Federal Circuit Court of Appeals are highly technical and require great insight and judgment. The issues presented in these cases involve arcane breakthroughs on the frontiers of science, technology, manufacturing, engineering, mathematics and medicine. In such cases legal judgments must be made, not only about the law itself but often on the basic underlying technical innovation, with few if any precedents, analogies or objective metrics to apply to help determine the outcome.

Many such cases involve a multitude of issues, no one of which can be ignored in an effort to narrow and focus the decision-making process as so often happens on appellate review. In patent infringement cases, all issues must typically be left together because together they frame the

problem and the outcome. The practical effect is that one case takes on the nature of several, whose many issues must be understood individually and collectively before the court can integrate them into a unifying substantive decision.

Timeliness is also an issue in many of these cases because the speed of technological change can render a delayed decision essentially ineffectual in a rapidly-changing economic marketplace. In the appeal of such cases the question is not only whether the law was correctly applied below, but also whether the science or technology was understood correctly by the trial judge or jury. The latter issue is especially important in the innovative appeals that come so often before the Court, where there are few if any boundaries, signposts, or rules to guide the deciding judges. In many cases the court is required to engage in *de novo* review. This means the judges must review all elements of the decision below, in some cases retracing the actual footwork of the trial judge, if not actually embarking on entirely new lines of thought, logic and analysis.

In patent infringement and other intellectual property cases most judges and their law clerks have to master an unfamiliar field of science and draw the best conclusions they can from scarce and limited resources. Because judges are assigned to panels randomly and not by specific subject matter expertise, all judges and their law clerks on the Federal Circuit are required to engage in extensive and fundamental scientific inquiries in every area of science and technology. The practical effect is that each judge with his or her Chambers staff is engaged simultaneously in varied and complicated exercises, as opposed to deciding a series of often less complex, single issue cases, as in other courts of appeals.

The Federal Circuit's need for additional law clerks is based on an increased caseload in highly technical and complex appeals. Having a fourth law clerk would ensure that the judges of the United States Court of Appeals for the Federal Circuit can give the nation, practitioners and litigants and the Patent and Trademark Office timely and thoughtful deliberation on the many challenging, critical and complex issues that come before the Court.

## 2. Workload Trends in the Courts of Appeals, District Courts, and Other Judicial Services

- a) **According to the Judiciary's year end report, the number of appeals filed in the regional courts of appeals in 2007 decreased by 12% to 58,410. All categories of appeals, except bankruptcy appeals, fell. Could you explain the reasons for this trend and the budgetary impact? Do you think staffing should be reduced if workload is declining?**

This decline in appellate filings follows significant workload growth from 2002 to 2006 during which filings increased 20 percent initially due to a surge in challenges to Board of Immigration Appeals (BIA) decisions in the appellate courts and later due to the large number of criminal appeals and habeas corpus petitions filed by state and federal prisoners from 2004 to 2006 challenging their sentences pursuant to the Supreme Court's decisions in *Blakely v. Washington* (2004), and in the consolidated cases, *United States v. Booker* and *United States v. Fanfan* (2005). After the initial surge of sentence-related filings associated with these decisions, the

Judiciary is now seeing appellate filings for criminal and habeas corpus petitions approach pre-*Blakely* and *Booker/Fanfan* levels, although these cases continue to demand extensive resources and are a far greater share of total caseload than in recent years.

On its own, the decline in appellate filings in 2007 misrepresents caseload of the appeals courts. This is because since June 2004, appellate courts have experienced disproportionate growth in their filed, terminated, and pending caseloads. In 2007, despite an unexpected decline in BIA cases, appeals courts received just 4 percent fewer filings, processed (terminated) 14 percent more appeals, yet had 8 percent more pending cases than they did in 2004. In addition, cases made more complex by the *Blakely* and *Booker/Fanfan* decisions took longer to process and the median disposition time from filing to termination in appellate courts rose from 10.5 months in 2004 to 12.2 months in 2007.

The budgetary and staffing impact of changing caseload are interrelated. The Judiciary uses complex staffing formulas to determine the number of staff needed in clerks and probation and pretrial services offices around the country. The staffing formulas are unique for each program area: appellate courts, district courts, bankruptcy courts, and probation and pretrial services offices. To accurately capture the courts staffing needs, the formulas use actual caseload data that the courts are currently experiencing instead of projected workload. Staffing formula outputs are priced out and used to develop funding allotments for the courts to manage at the local level. Courts that are experiencing an increasing workload will receive additional staff and associated funding (resources permitting). Likewise, courts with declining workload will receive fewer staff and associated funding. Through the use of workload-based staffing formulas the Judiciary is able to ensure that sufficient staffing and funding resources are provided based on a circuit's or district's specific workload needs.

- b) **The projected non-capital representations for defender services are estimated to drop by 3,100, a 2% drop according to your FY 2009 budget, however the Defender Services budget requests an additional \$14 million in FY 2009 and an additional 58 FTE. Please comment on this seemingly contradictory trend?**

The decline in representations is the result of a large spike in very low-cost cases in FY 2007 that is not projected to re-occur. These cases have very little cost impact on the Defender Services program overall.

Changes in the total *number* of representations should not be confused with changes in the *workload* required to complete those representations. The workload is dependent on the types and nature of cases pursued by the Department of Justice. Even if there are fewer immigration cases, relatively small changes in the number of other types of cases can have a large impact on the workload, and thus the cost. The addition of just 120 additional fraud cases, for example, would add about \$800,000 to panel attorney expenditures. Between FY 2006 and FY 2007 fraud cases increased by 371.

In addition, the cost per representation for several case categories has been increasing. Drug representations by panel attorneys are a prime example: between FY 2006 and FY 2007 the number of Criminal Justice Act panel attorney drug representations increased by just 18, from 21,656 to 21,674. However, total expenditures for drug representations rose by \$8.3 million, from \$97.9 million to \$106.2 million. Over the same period, the average time required for a drug representation increased from approximately 44 hours per case to 47 hours per case. Anecdotal evidence from federal defenders suggests that, overall, U.S. Attorneys are choosing to prosecute fewer cases of a more severe nature, which increases the amount of time and other resources necessary for a proper defense. The requested amount assumes that complexity increases of this type will continue.

### 3. **Judicial Branch Relationship with Legislative Branch**

**According to the Chief Justice's year end report in December, he states that he asked the Administrative Office of the U.S. Courts to consider opportunities for improving communication and cooperation between the Judicial and Legislative Branches.**

#### a) **Please describe what opportunities being considered?**

The Administrative Office is coordinating with the Judicial Conference's Committee on the Judicial Branch and judges nationwide to, among other things, organize a two-branch (legislative and judicial) conference (patterned after similar interbranch conferences held in the 1990's) to be held possibly later during this session of Congress.

The Judiciary has also encouraged chief judges to extend invitations to the Senators and Representatives of their circuit or district to visit the courthouses in their home states. This would allow the members, and any staff they want to bring along, to meet and exchange views directly with judges and court staff on a variety of subjects and to gain an increased familiarity with the federal courts.

Tours of courthouses and other court facilities have been organized for congressional staff, both in the D.C. area and in various locations of interest, such as the Southwest Border courts, so they gain a better appreciation of the entire federal judicial process and can experience the actual everyday impact of legislation.

#### b) **I was pleased to see this recommendation by Chief Justice Roberts, however it raises the question, what cooperation do you believe is currently lacking and needs improvement?**

It is important to say first that the relationship between the Judiciary and the Appropriations Committee has been extraordinary and beneficial to both branches. It is a model for building and improving on relations between the branches in other areas which, over the last few years, deteriorated. The Judiciary believes there has been a lack of good communication between the two branches and misunderstandings or misperceptions of the differences between the two

branches and how each actually works. The Judiciary believes this lack of familiarity has led to some unfortunate and partisan criticisms of the Judiciary, which has the potential to erode public confidence and weaken the administration of justice.

It is important to improve Congress's understanding of the federal court system, and to provide the judges with a deeper comprehension and appreciation of the difficulties of the legislative process and the substantial demands placed upon your institution. By taking steps such as the two branch conference, the Judiciary believes it can strengthen the public trust in both the courts and Congress, and solidify the constitutional relationships between the branches.

#### 4. **Judicial Ethics and Conduct**

**Last year, a study committee commissioned by the former Chief Justice and chaired by Associate Justice Stephen Breyer issued a Report on the Implementation of the Judicial Conduct and Disability Act of 1980. It found that overall, the Judiciary does an excellent job of handling complaints about judges, but it also found the need for some improvements.**

- a) **First, please discuss the recommendations of the Report and what the Judiciary has done to implement these recommendations.**

The Breyer Committee made 12 recommendations regarding conduct and disability complaints against federal judges. The recommendations cover such topics as complaint initiation and review, venue, confidentiality and publication, remedies, the conduct of investigations and the rights and roles of participants.

With the actions taken by the Judicial Conference in March 2008, all 12 recommendations have been acted upon. Specifically, the Conference approved the first-ever binding, nationwide set of rules for handling conduct and disability complaints against federal judges. Unlike the Illustrative Rules they replace, these 29 new rules bring consistency and rigor to the process.

The new rules seek to promote greater public awareness of the complaint process, for example, by requiring final orders on complaints against judges to be made public by placing those orders on the court's public website. All courts of appeals have now posted complaint-filing instructions on their web sites. The rules also clarify the authority, and the obligation in some circumstances, of a circuit chief judge to identify a complaint and inquire into certain judicial conduct even when no formal complaint has been filed. The rules also enable the Conference's Committee on Judicial Conduct and Disability to review complaint dismissals by judicial councils to determine whether special investigating committees should be appointed.

- b) **A bill approved by the Senate Judiciary Committee several weeks ago would tie a 29 percent salary increase for judges to new limits on the amount judges could be reimbursed for attending most seminars and events. Additionally, like Members of Congress, judges would have to itemize travel and lodging reimbursements for public review. Could you comment on the Senate bill's provisions?**

It helps to put some of the Senate bill provisions in context with what the Judiciary does currently. The Judiciary currently has several disclosure policies relating to judicial travel for meetings and events. Often, the purpose of judicial travel to professional events is to engage in educational activities – for law students, judges, and the public – that improve the law, the legal system, and the administration of justice. These educational activities are encouraged by our Code of Conduct. Judges already file annual financial disclosure reports in which they report many financial details, including the financial details of travel expense reimbursements for non-official travel, in accordance with statute. One of the Senate provisions would expand the travel disclosure. Judges also already file separate, additional reports in which they provide financial details of travel expense reimbursements in accordance with statute for attending judicial education events. This is part of a seminar disclosure system established by the Judicial Conference that also requires seminar providers reimbursing at certain levels to disclose their program sponsorship and content.

One of the Senate provisions would go beyond disclosure to limit the amount a judge could accept in transportation, lodging, meals, and income *combined* for traveling to law schools to judge moot court competitions or to teach courses. This limit would make it difficult for many law schools across the country to bring judges to campus, which would deprive their students of the opportunity to engage with judges in educational activities that have been a hallmark of legal teaching for centuries. Law schools, such as the University of Arizona College of Law, where the late Chief Justice William H. Rehnquist taught, are very concerned about this issue.

#### 5. GSA Rental Payments

**As you may be aware, GSA is also under the jurisdiction of this subcommittee. According to your budget justification, the Judiciary's payments to GSA will increase by \$36.2 million to pay for new space delivered next year.**

- a) **Given that the Judiciary's payments to GSA are around \$1 billion a year, can you explain the cause for this increase and what the Judiciary is doing to control these costs?**

The Judiciary's payments to GSA will increase by \$36.2 million in FY 2009, a 3.6 percent increase over the FY 2008 financial plan. The increase is due to the following:

- \$30.2 million is in the courts' Salaries and Expenses account. Most of the increase is associated with annualizing new space expected to be occupied during FY 2008 (+\$13.2 million) and new space to be delivered by GSA in FY 2009 (+\$16.8 million). The

remainder is for an increase in cyclical maintenance for court occupied space (+\$2.4 million), an increase in furniture associated with new GSA space (+\$1.4 million), and a decrease for tenant alterations and other space-related adjustments (-\$3.6 million).

- \$2.3 million for the Court of International Trade is due to a 50 percent increase in the shell rent as a result of a FY 2007 appraisal and a new expenditure for the amortized cost of the Court's congressionally-approved security pavilion.
- \$2.3 million for the Courts of Appeals for the Federal Circuit is primarily for additional leased office space and build-out for the three judges eligible to take senior status.
- \$1.0 million for the Defender Services account is needed for inflationary increases for current space.
- \$366,000 for the Court Security account is for nine additional court security officers for new or existing court occupied space.

The FY 2009 Judiciary budget request reflects lower requirements as a result of measures incorporated since the cost-containment strategy was initiated in FY 2004. Specific examples of planned or ongoing initiatives that are helping the Judiciary manage costs, or will help in the future include:

- establishing an annual budget cap for GSA space rental costs for FYs 2009 through 2016, which limits annual growth by an average of 4.9 percent per year;
- revising the *U.S. Courts Design Guide* to lower future rental costs of space for chambers, attorneys, and court staff;
- validating GSA rent bills for each court facility and examining the GSA appraisal methodology to ensure rent charged is comparable to commercial rates;
- establishing "asset management planning" which is a methodology that will identify the most cost-effective strategy for meeting the court's operational needs, while controlling and containing costs, especially rent to GSA; and
- negotiating a return on investment pricing structure with GSA for all new space acquisitions, which replaces a market pricing approach.

**b) Could you give us an update on the status of the Judiciary's plans to close non-resident and underutilized courthouses?**

In March 2006, the Judicial Conference adopted revised criteria that included a cost-benefit analysis for circuit judicial councils to use when determining whether to close non-resident facilities. Since that time, non-resident facilities in Thomasville, Georgia and Ft. Dodge, Iowa have been closed. Circuit judicial councils may continue to examine the non-resident facilities in

their respective circuits to determine their necessity and recommend closure of the facilities as appropriate.

## 6. Judicial Confirmations

**Last week in the Senate, Senator Specter raised the issue of stalled Judiciary nominees in a Senate floor speech. He stated that President Clinton had 15 circuit court nominees and 57 district court nominees confirmed in his final two years in office, while Bush, with less than a year left, has seen 6 circuit court and 34 district court nominees confirmed.**

### a) Could you comment on the effect this inaction has on the Federal Judiciary?

The effect of judicial vacancies is an increased workload for remaining judges. When existing judgeships are vacant, the caseload that would ordinarily be handled by a full complement of judges on a court must be shared by remaining judges on the court or visiting judges from other courts who must be brought in to assist.

The effect of vacancies is exacerbated in those courts where the Judicial Conference is requesting additional judgeships, because those courts must make do with fewer judges even though their caseload indicates the need for more judges.

Judges do a great job of stepping up to fill the void that results when caseload demands exceed the number of judges needed to complete cases in a timely and efficient manner. But with caseloads in some districts at very high levels, it is difficult to sustain the vacancies long term.

### b) What long term budgetary costs does such inaction generate?

There are no long term budgetary costs associated with stalled judicial nominations (judges not being confirmed). The Judiciary makes projections regarding the number of judges that will be confirmed in a given fiscal year. If fewer confirmations occur than were projected, the associated compensation costs for the judges and their chambers staff are considered surplus in that fiscal year and are used to help offset appropriation requirements for the upcoming fiscal year.

### c) **There are several temporary judgeships that expire at the end of this year, including one in northern Ohio. Could you describe the overall picture in the U.S. with respect to how many temporary judgeships will expire this year without legislative action and the budgetary costs of re-creating the positions?**

Two temporary judgeships will lapse later this year without legislative action. Those judgeships are in the Northern District of Ohio, as noted in the question, and the District of Kansas. In more precise terms, temporary judgeships are structured to expire with the first vacancy that occurs after a given date, to preserve the constitutional requirement of life tenure for federal judges. That date is September 30, 2008, for the two judgeships just named.

Other judgeships have already expired, making it harder and harder for those courts to ensure timely and efficient resolution of cases for litigants in those districts. Temporary judgeships in the District of Nebraska and the Eastern District of California expired in 2004. With vacancies having already occurred in those districts, caseload per judge skyrocketed. We hope that Ohio, Kansas, and Hawaii do not reach this point. The judgeship in Hawaii has lapsed so absent a statutory extension, the judgeship will expire with the next vacancy that occurs in the district.

The Judicial Conference has made a comprehensive request for judgeships that accounts for each of these judgeships, as well as other urgently-needed judgeships throughout the country. The Judicial Conference supports passage of a comprehensive judgeship bill. Comprehensive action reduces the Congressional burden in the judgeship creation process by minimizing the need for constant review of judgeships on a district-by-district basis.

The Conference is grateful for Congressional efforts and especially this Subcommittee for extending temporary judgeships to address the most pressing needs when comprehensive action is elusive. The Conference supports passage of S. 1327, which passed the Senate by unanimous consent last year. S. 1327 would:

- extend for 10 years the temporary judgeship in the Northern District of Ohio;
- extend for 10 years the temporary judgeship in the District of Kansas;
- extend for 10 years the temporary judgeship in the District of Hawaii; and
- re-create the expired temporary judgeships in the Eastern District of California and the District of Nebraska.

The budgetary impact of temporary judgeships that have expired (and do not require space build-out) in the initial year is approximately \$1.2 million per judgeship. In the event that tenant alterations are necessary, the budgetary impact will vary, depending on the location of the facility, market conditions at the time of the build-out, and information technology costs, etc.

#### 7. Assumptions in FY 2009 budget request

**The discretionary request in FY 2009 for the Federal Judiciary is \$6.3 billion, a \$498 million increase over the FY 2008 level or 8.6%. Of this increase, \$107.2 million is requested to cover the projected loss of non-appropriated sources of funding.**

- a) **Please explain in more detail the Judiciary's estimates of non-appropriated sources of funding and the accuracy of such estimates in the past?**

#### FY 2009 Request

In addition to appropriated funds, the Judiciary uses non-appropriated funds to offset its appropriation requirements. These funds come primarily from court filing fees (1) collected but not spent in an earlier year and carried forward, and (2) collected in the current year (or projected for the budget year). The bulk of the \$107.2 million requested in FY 2009 is in the courts' Salaries and Expenses account – \$95.1 million – so this response focuses on that account.

The Judiciary's FY 2009 request assumes that non-appropriated sources of funding in the Salaries and Expenses account will total \$369.7 million, a net decrease of \$95.1 million from the level available in the FY 2008 plan. The Judiciary requests appropriated funds for FY 2009 to replace these non-appropriated funds in order to maintain the same level of services as provided in FY 2008.

The Administrative Office closely monitors both fee collections and potential unobligated balances throughout the fiscal year and updates the Appropriations Subcommittees on projected changes in these balances through the Judiciary's budget re-estimates in the Spring, before House and Senate mark-up, and in the Fall, before conference on a final bill. As in past years, the Administrative Office will keep the Subcommittee apprised of any changes to estimates of non-appropriated funds that will affect the Judiciary's FY 2009 appropriations needs.

#### Accuracy of Estimates

The table below summarizes the non-appropriated funding amounts for the courts' Salaries and Expenses account projected in the budget request and Spring and Fall re-estimates, and assumed in the financial plan for FYs 2005 - 2008. It is important to reiterate that during the year the Judiciary identifies to the Appropriations Subcommittees any changes in its projections for non-appropriated sources of financing and the resulting impact on appropriation needs. A narrative description of the change in non-appropriated sources of funding from the amounts assumed in the budget request to the financial plan is also provided below.

#### **Courts' Salaries and Expenses: Non-Appropriated Sources of Financing (\$000)**

Fiscal Year	Budget Request (Feb.)	Spring Re-Estimate (May)	Fall Re-Estimate (Sept.)	Financial Plan (Dec. or later)	Change: Fin. Plan vs. Request
2005	\$317,132	\$297,369	\$310,300	\$339,583	\$22,451
2006	\$310,494	\$311,788	\$348,978	\$400,974	\$90,480
2007	\$285,892	\$325,892	\$306,957	\$309,336	\$23,444
2008	\$261,846	\$319,688	\$416,714 <sup>1</sup>	\$431,849	\$170,003

<sup>1</sup>The Judiciary identified \$366.7 million in the Fall re-estimate and in Dec. 2007 subsequently identified to the Appropriations Subcommittees another \$50 million in non-appropriated financing for a total of \$416.7 million.

In FY 2005, non-appropriated funding in the financial plan was \$339.6 million, \$22.5 million above the \$317.1 million estimated in the FY 2005 budget request. The additional funding became available from:

- \$17.6 million in additional savings including \$5.6 from judges and chambers due to fewer judge confirmations, \$1.8 million from balances in background investigations, and \$1.2 million from savings in the bankruptcy noticing center printing and mailing.
- \$17.8 million in Judiciary Information Technology Fund savings including \$10.1 million from centrally managed operations and maintenance (e.g. from contract renegotiations

that came in lower), \$3.0 million from lower telecommunications costs, and \$4.7 million from project development savings.

- \$11.8 million due to changes in case management/electronic case files costs and receipts, some of which resulted from an increase in the cost per page charged for on-line public access to court records.
- -\$24.7 million due to the change in new fee collections assumed in the request versus what was actually built into the financial plan.

In FY 2006, non-appropriated funding in the financial plan was \$401.0 million, \$90.5 million, above the \$310.5 million estimated in the FY 2006 budget request. The additional funding became available from:

- -\$10.0 million in fee collections due to projected filing declines associated with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 which took effect in October 2005.
- \$99.5 million in additional savings including \$28.1 million from space rental costs due to occupancy slippage and lower than anticipated monthly billings; \$18.7 million in Judiciary Information Technology Fund savings including \$6.3 million from domestic long distance phone service charges, and \$12.4 million from lower project development costs; \$35.9 million in higher than anticipated court returns from the nearly 400 court units nationwide; \$6.1 million from court staff benefits due to lower than anticipated staffing levels; \$4.8 million from judges and chambers due to fewer judge confirmations; and \$5.9 million in miscellaneous plan savings.
- \$1.0 million due to refinements in case management/electronic case files costs and receipts.

In FY 2007, non-appropriated funding in the financial plan was \$309.3 million, \$23.4 million above the \$285.9 million estimated in the FY 2007 budget request. The additional funding became available from:

- -\$46.0 million in planned bankruptcy filing fee collections due to lower projected bankruptcy filings.
- \$62.9 million in additional savings including \$30 million in space rental rebates from FYs 2004-2006 that were recovered in FY 2006; \$28.7 million in judges and chambers due to fewer than anticipated confirmations; and \$4.2 million in miscellaneous plan savings.
- \$6.5 million increase in use of Electronic Public Access funding for cyclical replacement of courtroom technology in the courts.

In FY 2008, non-appropriated funding in the financial plan is \$170.0 million above the \$261.8 million estimated in the FY 2008 budget request. While the narrative below will describe the change in non-appropriated funding from the budget request to the financial plan, it is important to emphasize that in September 2007 the Judiciary's FY 2008 Fall re-estimate identified to the Appropriations Subcommittees non-appropriated funding of \$366.7 million, and increased that level by \$50.0 million to \$416.7 million in December 2007, just prior to conference on the FY 2008 omnibus bill. The Subcommittees were able to take this additional financing into account in determining FY 2008 funding levels for the Judiciary.

The additional \$170.0 million became available from:

- \$24.4 million in higher than anticipated fee collections compared to the request.
  - \$33.1 million in expanded utilization of Electronic Public Access (EPA) receipts as FY 2008 is the first year that full funding for courtroom technology allotments are funded.
  - \$30.0 million due to space rental billings that were significantly lower than anticipated (related to the rent validation efforts).
  - \$82.5 million in additional savings including \$22.8 million in judges and chambers due to fewer judge confirmations than anticipated and from a FY 2007 judges' employment cost index (ECI) pay adjustment that was not approved; \$4.4 million in the Bankruptcy Noticing Center; \$13.4 million from court staff benefits due to lower than anticipated staffing levels; \$14.0 million in project savings from the Judiciary Information Technology Fund; \$6.3 million in furniture and alterations; \$8.9 million in prior year recoveries; and \$12.7 million in miscellaneous plan savings.
- b) **How have fee collections changed from the actual fees collected in FY 2007 to estimates in 2008 and 2009? Please explain in as much detail as possible.**

**Table of Offsetting Receipts from Collections**

Type of Collection and Source	FY 2007 Actual Collections (\$000)	FY 2008 Estimated Collections (\$000)	FY 2009 Estimated Collections (\$000)
<i>Fees</i>			
Registry Administration Fees	10,591	8,400	8,400
Bankruptcy Filing and Misc. Fees <sup>1</sup>	134,643	138,528	138,799
Civil Filing and Misc. Fees <sup>2</sup>	40,376	42,100	43,622
Central Violations Bureau Fees	5,686	5,775	6,250
Immigration Adjudication and Naturalization Fees	5,949	7,000	5,000
<b>Total Judiciary</b>	<b>197,245</b>	<b>201,803</b>	<b>202,071</b>

<sup>1</sup> Includes statutory bankruptcy filing fees and bankruptcy court miscellaneous fees.

<sup>2</sup> Includes statutory civil filing fees and appellate court and district court miscellaneous fees.

As reflected in the above table, projected fee collections for FYs 2008 and 2009 are essentially flat from FY 2007 actual collections. Bankruptcy fees comprise the largest single component of the Judiciary's fee collections – about two-thirds of all fee revenue. Though overall fee collections by category and fiscal year in the above table are relatively stable, fee collections in the bankruptcy area are down considerably due to the decline in bankruptcy filings in the aftermath of the bankruptcy reform legislation in 2005. For example, FY 2004 bankruptcy fee collections were \$221 million, \$86 million above the \$135 million collected in FY 2007.

Factors such as the downward turn in the economy; the rising cost of gas, food, and other essential items; the sub-prime lending crisis; and the loss of jobs; may result in an increase in bankruptcy filings which could increase associated fee collections above current projections for FYs 2008 and 2009. Any changes in bankruptcy filings that may lead to a change in bankruptcy fee collections will be identified to the Subcommittee in the Judiciary's FY 2009 re-estimates in the Spring and Fall of 2008.

#### 8. Costs of courthouses

**GAO issued a report over a year ago regarding the challenges the Judiciary faces in managing its rental obligations. It specifically mentioned a lack of incentives for efficient space use, and a lack of space allocation criteria for appeals and senior judges. GAO stated that building enhancements make courthouses among the most expensive Federal facilities to construct leading to higher rent payments.**

**a) How has the Judicial Conference and the Administrative Office addressed the lack of incentives for efficient space management at the circuit and district levels.**

At its September 2007 session, the Judicial Conference approved creation of the Circuit Rent Budget (CRB) program as part of the Judiciary's overall cost containment efforts. CRB is designed to promote greater fiscal discipline in the management of the Judiciary's use of space by aligning, at the circuit judicial council level, the budget responsibility for rent, with the authority to determine space need. The chief purpose of CRB is to enable the Judiciary to hold space cost growth to no more than 4.9 percent, on average, over the next eight years. The 4.9 percent cap on rent growth was approved by the Judicial Conference in September 2006. In essence, CRB allocates rent funds to circuits to cover both existing space assignments as well as space growth, with space growth carefully limited through centralized approval of large projects, and by a formulaic distribution to individual circuits of authority to add to the rental base.

Since its approval by the Judicial Conference, the CRB program has been one of the Judiciary's top priorities in its space program. This initiative constitutes a dramatic change in the Judiciary's management of space and rent costs and its implementation affects virtually every work process and system currently in place. Now in its pilot year, CRB is transforming the way the Judiciary plans for and approves new space acquisitions. There are numerous initiatives in progress to make the CRB program fully functional and successful. Some of the initiatives include, but are not limited to: a major communications and training plan; and implementation and testing of

updated procedures, forms, and processes. The automated system, the Judiciary's Facilities Asset and Construction System, is also being redesigned to support the re-engineering of the Judiciary's space and rent program.

**b) What criteria does the Judiciary use for assigning courtrooms for appeals and senior judges?**

Prior to and since the issuance of the GAO report in June 2006, the Judiciary has taken steps to address these space planning matters. In fact, on March 11, 2008, the Judicial Conference approved new space planning assumptions for circuit (appellate) court courtrooms. At circuit headquarters locations, there will be allocated a maximum of one en banc and two panel courtrooms, while no courtrooms for the court of appeals will be allocated at non-headquarters locations, unless a very strong justification is provided and approvals are obtained.

With regard to senior judges, in July 2006, the House Transportation and Infrastructure Committee passed a resolution as part of the authorization of the San Diego courthouse construction project that directed the Judicial Conference to, among other things, revise the *U.S. Courts Design Guide* to provide one courtroom for every two senior judges in all new courthouse construction projects, unless an exception is requested by the Judiciary. In every new courthouse project the Judiciary is planning one courtroom for every two senior judges. The Judiciary also uses this criterion to evaluate all courtroom requests for senior judges in existing buildings. The Judiciary believes that these changes in the way space is allocated will not only address the GAO's concerns, but aid the Judiciary in controlling its overall rent costs.



THURSDAY, MARCH 13, 2008.

**SUPREME COURT**

**WITNESSES**

**HON. ANTHONY M. KENNEDY, ASSOCIATE JUSTICE, UNITED STATES  
SUPREME COURT**

**HON. CLARENCE THOMAS, ASSOCIATE JUSTICE, UNITED STATES SU-  
PREME COURT**

**CHAIRMAN SERRANO'S OPENING STATEMENT**

Mr. SERRANO. This hearing will come to order. Good morning to all. The subcommittee will hear testimony today on the subject of the fiscal year 2009 request of the United States Supreme Court. We are all well aware of the important role that the Supreme Court plays in our constitutional system and the subcommittee takes its role as the appropriators of the Supreme Court's budgetary resources very seriously. Joining us today to testify on the importance of the Supreme Court's budget request are Justice Anthony Kennedy and Justice Clarence Thomas. And we welcome you. Both justices have testified here several times before this committee. And I know that, as ranking member of another committee, this may be our 10th year together, or something like that, in support of the Court's budget request. We welcome you back and we appreciate you taking the time to come and testify. We very much look forward to hearing your testimony about the needs of the Supreme Court, as well as any thoughts you may have on the federal judiciary as a whole.

For fiscal year 2009, the Supreme Court has submitted a request for just over \$88 million. Nearly \$10 million more than fiscal year 2008. A substantial part of the increase for the Supreme Court is for the ongoing building modernization project. I look forward to hearing how the project is progressing.

I probably will get staff—they are a little upset at me, but I say what I say every year. I still feel somewhat uncomfortable about having the Supreme Court Justices come before us. We hold you in high regard, and we hold the Court in high regard. It is the way the system is set up. Maybe it can change in the future. I understand it is the only time you appear before Congress during the year, certainly to discuss a budget. But we do welcome you.

And for those of you who were trying to figure out what we were discussing for a few minutes, we did not make any major decisions on anything. Although I must say, on a personal level, that for about 10 years, I have been trying to get out of you an unofficial comment on whether or not someone born in Puerto Rico can serve as President. And from what I understand from a California case, you may have to decide on Senator McCain. So if you do, I will try to get myself included in the same thing.

It is nice to have you here. And speaking about a man who has no problems with being President in terms of where was he was born, our ranking member and my buddy, Mr. Regula.

#### MR. REGULA'S OPENING STATEMENT

Mr. REGULA. Thank you, Mr. Chairman.

Yes, the State of Ohio competes with Virginia for being the mother of Presidents. We have some dispute as to which has eight Presidents, and I come from the home of William McKinley, the 25th President of the United States.

We are happy to welcome you. I was thinking as we were sitting here that the judiciary and the judicial system to some extent is the conscience of the Nation because you have to look at the laws and determine what the impact will be, what they mean. And having the courts available to the people is a very important part of our Nation and the rights of each of us. So we salute what you do. We appreciate having you here this morning.

As the chairman said, it is one of the few places where the judiciary intersects with the legislative branch in the separation of powers. But the Founding Fathers had found in their wisdom that the power of the purse should remain in the legislative branch. So that brings us together this morning, and we look forward to your testimony. Thank you for being here.

Mr. SERRANO. Thank you, Mr. Regula.

I would like to remind you that your full testimony will be inserted into the record. So we would appreciate, to allow for questions during these difficult voting times, if you could keep your remarks down to 5 minutes. However, I am not about to gavel a member of the Supreme Court, especially before the ruling on my Presidency. So, with that in mind, please welcome and start your testimony, please.

#### JUSTICE KENNEDY'S TESTIMONY

Justice KENNEDY. Thank you, Mr. Chairman, Mr. Vice Chairman. Justice Thomas joins me in thanking you for the opportunity to appear before the committee.

As is our custom and our pleasure, we have with us the officers of the Supreme Court sitting, beginning with our Clerk, General Suter. And then there is Connie Phillip, of budget and personnel; our administrative assistant to the Chief Justice, Jeff Minear; Pam Talkin, the Marshal of the Court; and Kathy Arberg, the Public Information Officer.

Mr. Chairman, oh, incidentally, I can give you a ruling right now. You are eligible to come to the Supreme Court.

Mr. SERRANO. I am eligible to serve on the Supreme Court? Is that what you just said?

Justice KENNEDY. No problem with that. So if your Presidential ambitions subside, you can always come—

Mr. SERRANO. But President is kind of cool.

Justice KENNEDY. Mr. Chairman, you are correct that this is one of the few times that the Court, the judiciary, interacts with the legislature. But that is because checks and balances presume that

there will not be complete separation, that there will be some interaction.

The fact that we do come before you is really important for us because it gives us a discipline, structure, a rule. We know that we must justify our budget, and that makes us as an institution careful about adopting a new program, careful about the expenditures of public funds. And so this serves that very important purpose. I might say that it has perhaps been your experience, and I certainly heard about it, that in some instances, there is a certain amount of tension or lack of a good working relationship between the committee staff and the agency that it oversees. That has not been our experience with your staff. In fact, quite the opposite. The working relationship between your staff and between our staff is simply excellent. If we find what we think might be a problem that your committee would be interested in, we immediately notify the staff. They are always very perceptive and responsive.

Mr. SERRANO. Justice Kennedy, the TV people would like you to move the microphone a little closer. And you know, that is the real power in this society.

Justice KENNEDY. Is that working better for you? All right. Thank you very much.

Mr. SERRANO. Thank you.

Justice KENNEDY. As you indicated, Mr. Chairman, the budget request for the Court part of the budget, leaving aside the building and grounds, is \$69,776,000, just under \$70 million. We are very proud of the fact that there is a zero increase in the request—zero request for new programs. One hundred percent of the increase, and it is an increase of under 5 percent, is for adjustments to base. We worked hard to do that.

I might say that when we talk about new programs, in a sense, that is important for budgetary and appropriations requests language, but we have within the Court resources to make new programs—within—or we have new endeavors, new projects within the budgetary authority that you have given us already. Let me just explain one of these, and that is the development of the docket that we have on the internet.

There are about 175 appellate courts in the United States, and I get this information from our Clerk, General Suter, who is so conversant on this and who really was in charge of Docket 21, which is our Web site docket. These appellate courts are different; they number one hundred seventy-five. This is probably too small for us to go to an outside contractor and say develop a program, and in all events each of the appellate courts is different. And if we had an outside contractor, we would have to pay that contractor to learn about how the Court works.

So we did it ourselves over a period of 4 years. It is the best Web site of any court in the world. We had an increase of over 2 million visits in the last 2 years, that is an increase of a million a year. For January we had over 1,700,000 visits, and had over 9 million hits. We checked just in the last 24 hours or so and found out that about 10 percent of those visits are from foreign countries. Japan, Pakistan, Western Europe, and India. It is a marvelous education tool.

It also means that it is of substantial assistance to the bench and to the bar. What happens is formal, written, printed, hard copy briefs are filed with the court. But the parties also must file an electronic copy. We immediately send that copy to the American Bar Association, and at no expense to the government, the American Bar Association puts online the text of all the briefs and all the amicus briefs. And the hits I have given you, incidentally, do not include the hits on the ABA site to read the briefs.

I think we should do a better job, at least I should do a better job, when I visit with high school students or university students to tell them to visit the Web. It is the Supreme Court of the United States, just abbreviated slightly, [supremecourtus.gov](http://supremecourtus.gov). It has the history of the Court. It has pictures of the Court and, of course, detailed information about the cases.

In an age when so many young people do not write well, the amicus briefs are a treasure trove for writing instruction. You could get a young person, even in high school, interested in a case and show them a very good example or a very bad example of writing. This is just the tip of the iceberg. And this was developed, as I have indicated, all inhouse, all with our Court staff without any outside contractors. And it was done with your budgetary authority, and we are extremely proud of it.

This is what a court ought to do, as Mr. Regula indicated. We have a duty to let the public know what we are doing and why we are doing it. So we are very, pleased that you have given us the authority to do that.

You mentioned the building project. I sometimes think it is like pyramids; it just seems never to end. We are, even by the contractor's own estimate, 16 months behind schedule. Our inhouse people think that it is going to be longer than that. It means that the court is not really presentable for visitors. We think it turns away some visitors because we have temporary walkways, people do not know that the cafeteria is open, et cetera. Plus, it is a building of which the People of the United States and, of course, the justice system and the Members of the Congress are very proud.

So I just can not tell you that I am pleased with the progress. It is true that they are working around the Court, and the contractor has not disrupted our operations in any substantial degree. There have been occasions where this has happened. But we will continue to work with the Architect of the Capitol. And I probably should pay more attention to this, and I hope I can give you a more optimistic report the next time. Thank you very much, Mr. Chairman.

[The information follows:]

**Justice Anthony M. Kennedy**  
**Supreme Court of the United States**  
**March 13, 2008**

To the House Appropriations Subcommittee:

Mr. Chairman and Members of the Committee. Justice Thomas and I appreciate this opportunity to appear before your Committee to address the budget requirements and requests of the Supreme Court for the fiscal year 2009. We bring you greetings from the Chief Justice and our colleagues at the Court.

We have with us today Jeffrey Minear, Administrative Assistant to the Chief Justice; Pamela Talkin, Marshal of the Court; William Suter, Clerk of the Court; Kathy Arberg, our Public Information Officer, and Connie Phillip, our Budget Manager.

As is customary, the Supreme Court's budget request is in two parts. The first is for Salaries and Expenses of the Court. The second is for Care of the Building and Grounds. The Acting Architect of the Capitol, Stephen Ayers, will present a statement to the Subcommittee concerning the request for the Care of the Building and Grounds.

We are pleased to report that the modernization of the Supreme Court building remains within the budget. We are disappointed,

however, that the project is behind schedule. The contractor's projected completion date for the modernization project is September 2009, or sixteen months beyond the original completion date of May 2008. We are concerned about those delays, and Supreme Court personnel continue to meet regularly with the staff of the Architect of the Capitol and the construction contractors to ensure that the project does not fall farther behind schedule.

Let me turn to the budget request. The Court is not requesting additional funding for program increases in fiscal year 2009.

With regard to the Salaries and Expenses portion of the request, our total fiscal year 2009 budget estimate is \$69,776,849. This is an increase of \$3,250,849, or 4.9 percent, over our fiscal year 2008 appropriation.

The Court's practice of limiting its funding request to maintain present operations continues in fiscal year 2009. The Court's fiscal year 2008 approved appropriation provided funding for ten new positions originally requested in fiscal years 2007 and 2008. The Court will concentrate on filling these positions during fiscal year 2008. Then we will reassess the need for additional increases as the year progresses.

With that said the Court's FY 2009 request represents base adjustments — that is, required increases in salary and benefit costs and

inflationary increases in fixed costs. Specifically, \$2,849,749 of the adjustment represents required increases in salary and benefit costs. In addition, \$401,100 is requested for inflationary increases in fixed costs, allowing us to keep up with rising costs in all our operations. This results in a \$3,250,849 increase to the budget base.

In addition to explaining the fiscal year 2009 request, we want to express our appreciation to the Chairman and members of the Subcommittee for acting favorably in addressing the Court's needs in the Fiscal Year 2008 Consolidated Appropriations Act.

Before concluding, we want to stress that we understand the severe budget constraints faced by the entire federal government. We know that your Committee must balance the needs of all of the agencies under your jurisdiction and make difficult decisions about where to make cuts. Before we submit our request to you, we trim back what the Court staff thinks is optimal to what we think is necessary. The Supreme Court's budget is but a small fraction of the overall federal budget, and we appreciate your attention to our request. We also hope that your Committee will work to assure favorable approval of the budget request of the federal judiciary as a whole.

This concludes a brief summary of our request. We will be

pleased to respond to any questions that the Members of the Committee may have.

**STATEMENT OF STEPHEN T. AYERS, AIA  
ACTING ARCHITECT OF THE CAPITOL**

**Fiscal Year 2009 Appropriation Request**

**SUPREME COURT, CARE OF THE BUILDING AND GROUNDS**

**U. S. House of Representatives  
Committee on Appropriations  
Subcommittee on Financial Services and General Government**

**March 13, 2008**

Mr. Chairman, I am pleased to submit this formal statement to present the Office of the Architect of the Capitol's (AOC's) FY 2009 budget request for the care of the building and grounds of the United States Supreme Court (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. This office 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. 13a-13b, dated May 7, 1934, is responsible for the structural and mechanical care of the United States Supreme Court building and grounds, to include design and construction of new facilities and renovation of existing buildings.

**Operations and Maintenance**

The AOC's priority continues to be the care and maintenance of the SCUS to ensure the safety and security of personnel and visitors, as well as to make improvements

to the building and grounds. Our FY 2009 budget request continues these efforts. I have formally requested \$18,447,000 to meet the requirements of the Court for the care of the building and grounds. This request is \$6,246,000 more than the Fiscal Year 2008 enacted amount of \$12,201,000. This increase assures the continuation of the Roof System Repair and the Exterior Property Renovation Landscape projects (\$8,400,000); and a reduction for several non-recurring projects (\$3,150,000). Costs have increased from last year by \$139,000 for mandated pay-related items, agency contributions, and benefits adjustments. In addition, costs for current operations and maintenance services, core competency training requirements, miscellaneous improvements, and utilities increased by \$857,000.

It should be noted that in Fiscal Year 2007, several important improvements were made to the building systems. They include installing CATV in two quadrants of the building; repairing brick walkways; continued pointing and grouting of marble joints for the main entrance terrace walls and second floor interior walls; replacing condensate return pumps; installing electrical circuits to support office moves, and making miscellaneous repairs to and restoring the northwest grounds.

Building and perimeter security projects have continued with the installation of raceways, barricades, and the commissioning of touch screens. In addition, numerous minor repairs and improvements were made to the building's plumbing, HVAC, and electrical systems.

#### **Exterior Property Renovation Landscape**

The requested increase of \$6,300,000 includes the full, estimated cost to complete for construction required to renovate the exterior landscape of the Supreme Court. This project involves replacing the historic brick driveways and walkways with a product that meets approved design criteria, and alleviates the potential tripping hazards that currently exist. The project also includes replacing walkway and landscape lighting, sprinkler systems, as well as certain shrubs, trees, and plants on the grounds. In Fiscal Year 2008, \$1,200,000 was funded for the first phase of this effort. The exterior renovation landscaping project is separate and distinct from the Modernization Project, and therefore requires separate funding.

**Roof System Repairs**

The requested increase of \$2,100,000 funds Phase 2 of five phases required to completely repair deteriorated roof components, and fully restore the highly decorative and original historical building roof to optimum condition. In Fiscal Year 2008, \$1,100,000 was funded for a part of the first phase of this project. Repair work begun in Fiscal Year 2007 will continue through 2011. Project funding will be requested over the next several years to complete the project.

**Building Modernization Project Status Update**

I am pleased to report that the cost estimate for the United States Supreme Court Building Modernization Project remains within budget. This construction project began in summer 2004, and the general contractor estimates project completion in fall 2009. In Fiscal Year 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. Currently, project work is completed in the northwest quadrant. Work is ongoing in the northeast quadrant and the remaining three mechanical rooms. The northeast quadrant is scheduled for completion in summer 2008. At that time, work will begin on the southeast quadrant, and respectively, work will continue in a clockwise rotation to complete the southwest quadrant.

**Conclusion**

Mr. Chairman, while we recognize that this is a significant request at a time when fiscal restraint is necessary, we believe that without important investment in the Supreme Court Building, it will continue to deteriorate. Therefore, it is fiscally responsible to request the funding needed now rather than waiting until the facility is in crisis and beyond repair, thereby costing millions more to restore, renovate, and renew. If not addressed, facility requirements will only grow more serious and expensive over time.

Our request for funds for Fiscal Year 2009 is in direct response to our responsibility as stewards to maintain and preserve the facilities and national treasures under our care.

We will continue to work closely with you, the Subcommittee, and the Court on these important matters, and we appreciate your support of our continued efforts.

Mr. SERRANO. Thank you.  
Mr. Thomas.

#### JUSTICE THOMAS' TESTIMONY

Justice THOMAS. Thank you, Mr. Chairman, Mr. Regula.

I agree with Justice Kennedy's assessment of where we are and the sentiments toward the committee. I have been involved in budget processes now for over 25 years at the Federal level. And I can attest to the fact that the Court's budgets have been more parsimonious than any budget I have ever participated in. In fact, if anything, the Court has been overly parsimonious in its budget requests.

With respect to the automation projects that are now yielding immense results, I don't think any of us could have dreamed or dreamt that it would have been this successful. I don't think that any of it could have been accomplished without the constant support of this committee and sometimes because of the prodding of this committee. So, again, I think that the working relationship between the Court and the staffs, both at the Court and on this committee, is beginning to bear fruit.

So, once again, I appreciate being here, and I know over the past decade you have expressed your concerns about us appearing. But I might say that, despite your expression of those concerns, it has been a deep honor for me to be here. So we thank you once again. We thank you on behalf of the Court as well as the country that we all serve.

Mr. SERRANO. All right. Thank you. And I appreciate your comments.

#### BUILDING MODERNIZATION

You say that we are 16 months behind in the building modernization project and the inside folks think it is longer than in the plan. But is that 16 months still to end this fall?

Justice KENNEDY. They are 16 months behind the projected completion date.

Mr. SERRANO. Which was?

Justice KENNEDY. Which was 2008, 2008.

Mr. SERRANO. So it won't end this fall?

Justice KENNEDY. So we are 16 months beyond the projected completion date and the contracted completion date.

And part of the problem is—I wanted to go to double shifts in the summer, and they told me that that would not help—the work does have to be done at night because we are in the building. I originally floated the idea of our moving out of the building to get it done faster. We were told it would not save any money, and it would not be any faster. So we stayed in the building. And the contractor has been very good about working around—we do it in quadrants. There are four different segments, and we are now on the second segment.

Mr. SERRANO. What reasons do they give for the delay? Because you are in the building during the day? They knew that ahead of time, right?

Justice KENNEDY. It is standard construction stuff. This person didn't measure the windows right. But if you look at our Court, it is a magnificent court and the windows look rectangular. They are not. They are hexagonal. That is not right.

Justice THOMAS. Trapezoids.

Justice KENNEDY. Trapezoidal. They are slightly narrower at the top than the bottom to give an aesthetic appearance. Well, they measured the bottom, and they measured the height. But they did not measure the tops, so all the windows had to go back. And there is a big argument as to who will pay for it. Please, do I have to talk about this?

Mr. SERRANO. You see, I do make my point. And we spare you talking about paper clips and legal pads, you know. And just one last question on that, without making it difficult for you, but have they told you what remains to be done other than just—

Justice KENNEDY. Well, we know. The work is very substantial. On the interior, they have to go down to the original brick. They have to basically take away all the interior walls to put in new windows. It is very substantial. The inside of the Court at each point is completely stripped down to the outside layer of bricks. And so it is quite substantial. All of the plumbing, all of the wiring, all of the heating, all of the ducts have to be changed. The infrastructure equipment, the air conditioning equipment and so forth, has been fully installed.

Mr. SERRANO. Now that has all been paid for already?

Justice KENNEDY. That has all been budgeted, and we are within, the good news is, we are within budget.

Mr. SERRANO. That is the accomplishment.

As far as the building and grounds, what types of maintenance issues do you anticipate, if any, will be problematic in future years? Have you looked at that?

Justice KENNEDY. Well, I was amazed that we have \$122 million to do the building, and then we came in for a supplemental appropriation for the roof. Hello? I mean, I thought we were refurbishing the building. So we find new things. But my understanding is that the Architect of the Capitol now has identified all of the work that will be done. We are in three phases. And the outside walkways, the roof and the lighting, I think, will be the end of it.

#### JUDICIAL SALARIES AND ETHICS

Mr. SERRANO. Okay. Let me move onto the whole issue of, the very serious issue, of judges' pay and ethics. I know that Chief Justice Roberts has been very vocal in support of raising the pay for federal judges. The House and Senate have both passed bills out of committee which provide pay increases, which I am sure you both support. I would like to discuss part of the Senate bill, which I believe the Judicial Conference does not support, which is the addition of provisions which seek to limit outside sources of income for judges. Do you also oppose the idea of limiting outside sources of pay for federal judges, and if so, why?

Justice KENNEDY. I have not looked at the text of the bill. Let me tell you what my understanding of the present law is: We cannot take outside income from any services at all other than teaching, and as to that, we are limited. It is 15 percent of a certain sal-

ary grade. And that amounts to about \$25,000 a year for teaching, and this has to be at an academic institution and teaching in a formal course, in the conventional sense. I have done this myself since 1975 at least in Europe, and that is permitted with this limit.

Other than that, we obviously can not take consulting fees or fees for services. And that is, to me, as it ought to be. There is a long tradition of judges teaching. We think it is helpful for the judge. I have taught since 1965. And the day I do not learn something, that is the day I will quit. The teacher learns as much as the students. That is why it is encouraged. And it is of tremendous, tremendous benefit. One of my former students is on the supreme court of Hungary. I have students in the Czech justice ministry. I have students on the courts around the country.

The American law school system is not unique, but very rare. We have, with American law schools, a formal structure for the transmission of our whole legal tradition. My son went to law school. He learned everything that I had to learn, *Marbury vs. Madison*, *McCulloch vs. Maryland*, plus everything that was decided since. And this gives us a language. It is the language of the law. It is a great national resource. I can pick up a telephone and talk to a young person who is a couple of generations removed and a continent away. And I never met him; I have never been introduced to her, but I know them because we talk this common language. And this is what we preserve in the legal academy and in our law schools. And I assure you this language of the law which allows transactions to be negotiated without any intervention of the government, which allows the economy to move, is the envy of the world, and we participate in that by teaching.

Mr. SERRANO. Are you allowed to make appearances other than for purposes of teaching?

Justice KENNEDY. Not for pay.

Mr. SERRANO. Not for pay. Such as, I mean, every so often I will see you on—

Justice KENNEDY. Well, I talk to law school alumni groups. I talk to bar associations. I talk to associations of judges.

Mr. SERRANO. Okay.

Justice Thomas, any thoughts on this issue of judicial pay and ethics?

Justice THOMAS. Well, I promise you I won't comment much on it. I just think it doesn't make much sense for people with that responsibility to be paid at the level of first-year associates. But with that said, I think there is great effort both in the House and the Senate to resolve that.

With respect to the outside income issues, I agree with Justice Kennedy that teaching—and again, I did not come from a teaching background. But teaching has just been a wonderful way to think about the law in a different way with young minds that are inquisitive. And I think it is a win-win because the students are used to full-time professors. But then they have an opportunity to see people whose approach to the law is not academic; it is one of deciding the cases. They are the ones who put it together and write the opinions, and that exchange is enormously beneficial.

That is the only context, other than writing books or inheriting money, that you can have outside income. It is very limited now as it is, and then it is a small percentage of your salary.

It is my personal view. I don't speak on behalf of the Federal judges. I don't think it is helpful to propose a lot of additional limitations. There are already severe constraints, and I have found the Federal judges with whom I have worked to be just tremendous people. They are hard working. They enjoy what they do. I think they do it in the right way, disagree in the right way, criticize in the right way. And I just simply don't think that to give the impression that they are somehow doing something inappropriate is really a good message to send.

I do think that it is a time, particularly at the income levels and with the workloads that the district judges have, it is time to encourage people to come into the judging profession, not to discourage them with more or further constraints or oversight.

Mr. SERRANO. Thank you.

Justice THOMAS. Again, I say that is a personal view.

Justice KENNEDY. I confined my answers simply to the outside income part.

As to the salary issue, we have testified about this in the other committees. Just let me say, I think we are at a crisis point. It is my view that the Congress of the United States has a constitutional duty—at least in the small “c” sense—not an enforceable duty where we can sue, but a constitutional duty as a matter of loyalty to our heritage and to our constitutional traditions to insist on excellence in the Federal judiciary. The reason the judiciary of the United States was successful and influential in the most important civil rights decisions in the history of the Court was because it had gained respect, experience, credibility by trying civil cases and deciding civil cases.

And, Mr. Chairman, we are losing our best judges. We can not attract them to begin with, and we can not retain them. You do not need to go to a management search firm to find qualified arbitrators. You look in the roster of Federal judges, and you tell the Federal judge in Albuquerque or Wichita or Duluth or New York: Now you are on the bench. How would you like to triple your income? You can do what you like the best. You can do arbitration. You can set your own schedule. You will have wonderful attorneys, fascinating cases, and you will earn triple the money.

And if we do not get relief on the salary, there will be an exodus of judges, and they are our best judges. And the Congress simply has the urgent duty to correct this in order to save the excellence of the judiciary. The judiciary to which I have devoted my life is in danger of losing its best people. And it is critical.

Mr. SERRANO. I would agree. I would agree.

Mr. Regula.

#### TEACHING THE ROLE OF THE JUDICIARY

Mr. REGULA. Thank you, Mr. Chairman.

I am interested, you mentioned about going into the schools. Do you think the education system gives students an appreciation of the role of the judiciary in protecting the rights of citizens? When I look around, what happens in many countries where the people

don't have that access to justice, do you think we do in our education system enough to apprise young people of the important role of the judiciary?

Justice KENNEDY. No, I do not think we do enough to explain to our young people the meaning of our history, our tradition, of our heritage of freedom. You do not take a DNA test to see if you believe in freedom. It is taught, and teaching is a conscious act. And we are in danger of having a generation that is simply ignorant of the principles that this country stands for and its history. You cannot preserve what you do not understand. You cannot defend what you do not know.

Mr. REGULA. We allocate funding here to the Treasury Department to do education programs for young people to deal with their finances. Should we be doing something like that for the judiciary?

Justice KENNEDY. Well, I think there is a systemic problem in the teaching of civics. Civics is generally taught by the person that teaches drivers ed, with a similar result, in my view. And I think we have to give quite careful attention to the way and the substance in which history is taught. The best teaching is sometimes lateral. It is by indirection. The way to reach a student is to make him think you are teaching about something else. And suddenly he or she learns it. And that is the right way in my view to teach civics. Washington surrendering his sword at Annapolis is the classic example of separation of powers. It is brilliant. The students do not understand that.

#### POLITICIZATION OF THE JUDICIARY

Mr. REGULA. Well, it is no doubt a challenge. Former Justice O'Connor had a recent article on politicization—it was in *Parade Magazine*—a politicization of the judiciary because in many jurisdictions, judges have to run for election. Therefore, they have to raise money. They have to respond to policy questions in the process. Do you have that same concern about the way in which our—it is not Federal—but State judges and State judiciary systems are created and maintained?

Justice KENNEDY. The Court, I do not think, has a monolithic or a unified view on this. I am just not sure where my colleagues stand. It is very difficult to keep up with Justice O'Connor in retirement. I have not read her latest article. But, look it, there is nothing more important than the independence of the judiciary.

Mr. REGULA. I agree.

Justice KENNEDY. And 90 percent of the caseload is in the State courts, and almost all State Court judges, and justices, are subject to some form of election. This dates from Andrew Jackson. And when you have a society where judges have the power that they do, I do not think you are going to change it. I think State judges are going to be elected. In California, the State judicial system is bigger than the Federal system. If you suddenly said they all had to be appointed for a long term of years or for life, you would have to have a whole new selection process that just would have to be made from scratch. And if you have Federal courts that are not elected, you at least have a judicial body that can decide constitutional issues without election.

Now, as you know far better than I, elections cost money. And the idea that judges have to raise money is a matter of great, great concern. In California, where the ballot is very large, people tend to vote "no" on things they do not understand. And if you have a good judge that is under attack, he or she knows that going in, because people do not pay any attention to it, he or she is going to get about a 35 or 40 percent vote going in. And so I am not quite sure what the answer is.

When I was growing up in California in the 1950s and the 1960s, if there was a good judge that was under attack, the bar association would defend that judge. Now we have plaintiffs' bar, defense bar. We do not have a built-in defense mechanism for really good judges.

I think we have to recognize that it is not going to change. So we have to take the existing system and try to make it work. And we have to use it as a way to educate the public on the qualifications for a judge, what it means to have a judicial temperament, what it means to have judicial character. And we can use these elections for a very, very important purpose, and that is to explain the meaning of the judicial function. And it seems to me that private organizations, the bar association, and civic groups should get together and have codes that are not State imposed but to rank candidates and to monitor them, their campaigns. And I think this could be a learning opportunity. I think it is visionary to think we are going to eliminate elected judges. And I have never talked to Justice Thomas about this subject. Maybe he completely disagrees with me.

Mr. REGULA. Justice Thomas, do you want to comment?

Justice THOMAS. Just briefly. Obviously, it is a problem. But I think that when people have an opportunity to express themselves about what we do, much of it has to do with their particular interests and outcomes in cases or in particular issues. And the judging is actually more of a process. Sometimes the outcome is for a person. It might be against a person. One judge may be more apt to have a more constrained view of statutory construction, and the other may have a more expansive approach. But it is usually more about the process, not an outcome in a particular case. You don't reach an outcome and work backwards.

I think, unfortunately, when people look at judging and much of the commentary is based on outcomes, interests and outcomes, and people work backwards. So it is not surprising that the process of electing judges tends to be somewhat politicized. It would be as though we got to, for those of us who are big sports fans, got to elect the referees for, say, the Oklahoma-Nebraska game. Of course, I would elect a referee who would be partial to Nebraska, and those who would like a different outcome would elect one who has made good calls for Oklahoma. Well, neither of those approaches is consistent with good refereeing, because you just simply want the referee to be fair, and I think that is what judging is about. You want a judge to be fair and conscientious and ethical; not to give me the outcome I want.

I think that is hard when you try to translate that into sort of a political campaign of some sort. And it may be expecting too much. I don't know.

Mr. REGULA. Well, it certainly buttresses the wisdom of the Founding Fathers and the lifetime appointments.

Justice THOMAS. Well, I think so, too.

#### SUPREME COURT WORKLOAD

Mr. REGULA. One other question. I notice your caseload is a little bit lower this year. Is there any particular thing you attribute that to?

Mr. SERRANO. They need to take up my Presidential case.

Mr. REGULA. They might have time for that one. We keep reading that society has become more litigious, and yet your caseload would seem to reflect there is certainly not an increase and maybe some decrease. Would you care to comment on that?

Justice KENNEDY. We ask ourselves this question and cannot find an answer. We have control over our docket. But we do not take cases just in order to look busy. There are some possibilities that should be considered. One, as I have just indicated, is some of the major civil cases are disappearing from the docket. They are going to arbitration. And it is disappointing to me that Federal courts are not seen as one of the purest, most efficient, most neutral, most fair fora for the adjudication of disputes that we can possibly devise, but it is not perceived that way. House counsel will tell me that they will advise their client, or outside counsel, that they will advise their client: You are right on the law, and you should win. And there will be a 20 percent chance that there will be an error that we can't correct, and you add that to the chances of a runaway verdict, do not go to Court.

And that is not a happy state of affairs. But because so many of those cases are going to arbitration, the civil docket has shrunk somewhat. The nature of the cases in the system are changing. The tort cases, other than employment related, have almost disappeared from the Federal docket. Civil rights cases have taken their place. The criminal load remains very high.

But the good news is that, in part because the courts are responsive to the decisions of the Supreme Court, we have been very efficient. The law is fairly well settled.

Another source of work for the Court are new Federal statutes, a Bankruptcy Reform Act, the Glass-Steagall Banking Act. You have in this room a portrait of Representative Steagall, who sponsored the Glass-Steagall Banking Act. A new statute requires Federal decisions to clarify and to implement. And there have been no major new Federal enactments, I guess, since the Bankruptcy Reform Act, that have given the courts a lot of business. Also that takes around 2 to 3 years to get to us.

Mr. SERRANO. Thank you.

You know, as you were speaking, I sort of did a 34-year review of my career as an elected official; 16 in the State assembly and 18 here. I remember when I started out, the issue was that the panels that appointed judges didn't seem to appoint any minority judges. So we felt at the time that the best shot we had was to register people to vote and then elect judges. And we did that. We were successful.

And then as the years go on, the idea of a judge coming to me or a person coming to me and asking for political support to run

just doesn't sit well with me. And then you see them at re-election time years later being at an event that they really can only be at as a private citizen attending the event and not as a judge, because the rules—I mean, it gets so complicated. To use a bad pun, in my mind, the jury is still out on selection versus election because there is something that was missing when the bosses were appointing, and then there was something missing when folks have to come to me and ask for political support for something that is as important as the judiciary.

Mr. Schiff.

#### JUDICIAL PAY

Mr. SCHIFF. Thank you, Mr. Chairman.

Thank you, Justices, for being here. We appreciate your time and your testimony. I wanted to ask one question of each of you if I could.

On the issue of judicial salary, as you know, I have been for a long time an advocate of delinking our salaries from the judges and also improving judicial salaries so we can continue to track the best and the brightest in the legal profession, on the bench, and keep them there. And I am glad we have legislation that is moving. I wanted to ask Justice Kennedy, though, about some of the provisions. We made some compromises in the bill. While we delinked the salary, increased salaries by 31 percent, we also revised some of the retirement provisions. And in particular, I think they may be hardest on some of the magistrate judges who are in a different position than other members of the bench who don't have life tenure, can't go on the senior status and may have a bigger impact by changing the rule of 80 than other judges. So I wanted to ask if you had gotten feedback from magistrate judges or other judges about whether what we have done has a disproportionate impact on them as well as what feedback you might have or you received from your colleagues on lower courts about some of the proposed retirement changes.

One of the things that we wanted to do as part of the compromise was incentivize judges to stay on the bench longer. And we had kind of a skewed system where we pay judges very little on the front end but gave them pretty good retirement on the back end which had the reverse incentive, in some respects, of encouraging judges to leave the bench early. But if you could, Justice Kennedy, share your thoughts on that.

And Justice Thomas, I wonder if you could give us your thoughts, a few years ago, one of my colleagues, Judy Biggert, and I formed a bipartisan caucus on the judiciary to try to improve relations between the courts and the Congress. Justice Rehnquist at that time in his year-end report stated that he thought that the relationship between the two branches had reached a historic low. And what I wanted to get your sense of is, have things gotten a little better over the last couple of years? They seem to me to be a little better than at the time Justice Rehnquist wrote his report. But I don't know whether I am just fooling myself. So I would be interested to know the perception on the bench of how things are in terms of the relationship between the two branches of government.

Justice KENNEDY. Congressman, I have not studied the provisions of the bill affecting magistrates and retired judges. And in any event, our Judicial Conference of U.S. would have better insights about that than I, and I have not had much feedback from them.

And as you recognize, and I think the way you phrased the statement was quite correct, we have senior judges and retired judges. The senior judges keep us afloat. A senior judge who is eligible for seniority, roughly the rule of 80, is required to take a one-third workload, and he or she has just one clerk and one secretary. They handle 18 percent of the Nation's judicial business. Most senior judges take almost a full load.

I succeeded Charles Merrill, United States Circuit Judge from Nevada, on the Ninth Circuit. He told me when he left, the senior workload was greater than the regular workload when he got to the Court. And that has happened again since I left the Court of Appeals. A senior workload is now equivalent to what an ordinary workload was when I came. So our senior justices, senior judges are heroes and are very necessary. And that is why we can not lose them. That is why we can not have them wait until the day of retirement eligibility and then go out.

Retired judges, this is a different context, and there is some concern about a retired judge receiving his or her full vested salary and making a lot of money, and there are some adjustments that are being considered there, and I think that is something that is fair for the Congress to look at.

Mr. SCHIFF. Thank you.

And, Justice, I had a chance, both as an Assistant U.S. Attorney and as well as a law clerk for the Federal District Court in L.A. For Judge Matt Byrne, to see what kind of work the judges and senior staff were doing. So I am well aware of how much of a load they are carrying.

Justice THOMAS.

Justice THOMAS. Congressman Schiff, I agree with what Justice Kennedy said with respect to the senior judges. I did not clerk or spend much time with the Federal judiciary until I went on the bench in 1990. And it is a wonderful group. Many of the senior judges carry tremendous workloads. Some travel around the country to help with the workload imbalances in other parts of the country, whether it is in California or central Florida, where they have just an overwhelming and difficult workload.

With respect to your question about relationships between the judiciary and the other branches, particularly the legislative branch, I didn't have a strong sense before that the relationships were that strained. Chief Justice Rehnquist would have had a better sense than I did. One of the things that I do know is that our current Chief Justice is very optimistic about rebuilding and actually enhancing that relationship or those relationships. He has made it a priority. I think in his year-end report he reflected on that. And I think, quite frankly, he will be successful. He has the energy, intelligence, the demeanor, the attitude and the disposition to do that. And I think his efforts will benefit not only our Court but the entire country. And that includes the relationships with the other

branches. So I am very optimistic, to the extent that there was a problem, that it will cease to be one in the future.

Mr. SCHIFF. Thank you both.

And, Mr. Chairman, if I could just comment very quickly, on the salary issue and on the retirement issue and, in particular, on the magistrate judge issue, if I could ask through you of the administrative office, you know, I would like to know feedback about whether they think perhaps we didn't fully consider the impact on the magistrate judges but also, you know, what feedback you are getting or they are getting from judges around the country in terms of the potential offsets if they leave the bench and earn a great income on their pension. And I would appreciate getting that feedback. And I thank you both for your testimony.

Thank you, Mr. Chairman.

#### MOMENT OF SILENCE FOR THE TROOPS

Mr. SERRANO. Thank you.

Let me just inform the subcommittee and the public that a few minutes ago on the House floor, we held a moment of silence as a part of a memorial that was held this morning for our troops. Notwithstanding how anyone feels about the war in Iraq, we honor their service. And we will now take a very short moment to bring our thoughts in honor, as a memorial to them and let the shortness of that moment not be any indication of the immense respect and admiration and love we feel for those who serve and those who we have lost.

[Moment of silence.]

Mr. SERRANO. Mr. Bonner.

#### ELECTRONIC COURTROOMS

Mr. BONNER. Thank you, Mr. Chairman. And thank you for that observation.

If I could have just a personal moment of privilege here. My dad died when I was 13. He was very proud to be an attorney. He was proud to graduate from Georgetown Law School after World War II. And one of his most proud moments is when he passed the bar to practice before the United States Supreme Court, although he never had that opportunity. So I think if he were alive today, he would think that this is pretty special, that his son is allowed to question, not appear before the Supreme Court, but question two of its distinguished members. So thank you for appearing before us and giving us this opportunity.

Just a quick question and then an invitation that you probably have never received before a panel such as this. But I will save that for later. The Court's fiscal year 2009 request includes \$255,000, if I understand it, to equip one of its three courtrooms as an electronic courtroom. Could you describe in some detail how this electronic courtroom would be used and in as much as C-SPAN is covering today's hearing and I know this is a question that has come before different members of the Supreme Court before, what challenges would C-SPAN type coverage of the Court bring?

Justice KENNEDY. The electronic courtroom is something that I am not familiar with insofar as our Court is concerned. And I don't

know if the Congressman is referring to a trial court in our general budget. Is it our Court we are turning into an electronic courtroom?

Mr. BONNER. It may well be, not in the Supreme Court building. My understanding is it was in one of the Federal courtrooms. And I was just really—the broader question is, what unique challenges would C-SPAN coverage bring to the Supreme Court given that most Americans can watch with great comfort the legislative proceedings of the day and see the executive branch before the camera? But the Court remains somewhat of a mystery to most Americans.

Justice KENNEDY. Well, electronic courtrooms. I was involved in California in creating what was modestly called the courtroom of the future. But there are many things you can do. If jurors have pop-up TV screens, then they can all see the exhibit at the same time, and this speeds things along. Plus, we are in—and I tried, as a lawyer, I tried a couple of cases to see how it would work. At one key point, I asked the witness, did you see the victim at 10:00 that night? It was a key point of the trial. And everybody looked at the TV screen, not the witness himself, as if that validated the reality of it. I was amazed at that.

#### CAMERAS IN THE COURTROOM

Switching over to cameras in the courtroom, I think that almost all of my colleagues—I can not ever speak with assurance of 100 percent—are very concerned that the legislature, that the Congress, would mandate televised coverage of our proceedings. There are a number of reasons for that. We teach something by not having televised hearings. We teach that we are judged by what we write and by what we decide. That is a very important lesson. Furthermore, I do not know any Congressman or Member of the legislative branch who has seen particular arguments that he or she thinks are flawed and that could be improved if we were under the scrutiny of national television. The attorneys and perhaps even the justices would feel at least the temptation to have that little bon mot or that little last word. And I do not want an insidious dynamic introduced into my Court that would affect the relations that I have with my colleagues. I do not want to think that one of my colleagues asked a question because he or she was on TV. I do not want that temptation to exist, and I do not want them to think that about me.

The oral arguments are wonderful. A good oral argument is really like a discussion of a doctoral thesis rather than some big deal debate. We think that the dynamic is very sound, and we do not want to risk changing it by the introduction of the television.

I am a teacher. I recognize that if you had an Oxford debate on this and you drew the affirmative, you could make a lot of points. We could reach the whole public. They could see the Court in action. But I think it would be unhelpful for the collegial relations that are so very important during that 1 hour of argument. We think we should be entitled to at least a presumption of correctness and to some deference in determining how best to preserve the dynamic of the wonderful proceeding that we know as oral argument. We think that TV endangers that.

Mr. BONNER. Justice Thomas, do you have a view on the televised Court?

Justice THOMAS. I have not been one of the champions for that. I just don't see how it would improve our processes. I think there is already too much activity in oral arguments, and I don't see where this would temper it in any way. One of the cases, and I think this is just sort of illustrative of some of the concerns, one of the cases that drew the most attention or considerable attention in the last few years was a case involving the probate exception to our jurisdiction. Now that doesn't immediately grab your attention; does it? Well, it grabbed quite a few people's attention, including the press, because it involved Anna Nicole Smith, precisely the wrong reason for being concerned or being interested in what we do. The issue itself was of substance, the probate exception; not the personalities. And I think the concern is that you begin to have a sort of a tabloid effect because of the personalities involved as opposed to the substance of the case. And that doesn't seem to help our processes.

There are other concerns and other arguments, both for and against. But I think the additional concern is, who gets to make that decision? We look at our institution, and we have our own personal intimacy with the issues, with the processes, with the day-to-day activities. We understand it. And to the extent that that decision should be made, I think it is felt that the judiciary should make the call. But I don't think it would help our processes, and I think it raises some other concerns that I have that are not really worth going into now. But I come down on the side of thinking that it is not a good idea.

Justice KENNEDY. The Court has a time line, a chronology, an etiquette, a grammar, a language, a tradition that are different from the legislative branch. We are not better. We are not worse. We are different. And it seems to me that we should be entitled to the presumption of correctness in determining how best to preserve that dynamic and that distinction.

Mr. BONNER. I appreciate both of your answers, and I think there are probably many people in Congress who would agree with you, especially, Justice Kennedy, about the point of trying to get the last word in. We don't do that here in the legislative branch. At the risk of my chairman and ranking member scolding me later and saying this is inappropriate, I can't pass up this opportunity. Some 45 years ago, a lady in my district, Harper Lee, penned a novel, "To Kill a Mockingbird," that I think many law professors and judges around the country view as one of the great stories, although fiction, about a man named Atticus Finch each spring in Monroeville, Alabama, where Harper Lee was born and still resides. The people in that community put a play on for 2 weeks. So, Justice Thomas, I believe you and your wife like to travel by RV. We would welcome you and the entire Court to come to Monroeville and to see the men and women of that community. This was done at the Kennedy Center a decade ago by my predecessor. Justice O'Connor and I believe some other members of the Court came. It really is a special story to see local townspeople, not trained actors and actresses, show their hearts, emotions, by re-enacting that

play. So at the risk of being chastised by the chairman and ranking member, let me extend an invitation to the Court.

Thank you, Mr. Chairman.

Mr. SERRANO. As I hold the gavel in my hand, let me tell you that Mr. Bonner's invitation is one of the finer things that has happened in the committee this year. We are talking here about an American classic, and besides, I have other places I am inviting the Justices to soon.

You know, one of the problems with labels in politics—liberal, conservative, I am labeled a liberal—is that when you don't fall in line with what some people have labeled you as, they criticize you for that. Some of my colleagues for years, both here and in the State assembly, have not understood why I do not favor cameras in the courtroom. At first I said in the State assembly that in the poorest assembly district in the State—I now represent the poorest congressional district in the Nation, situated within the richest city on the Earth—some kids would see their moment on TV as the only way to be famous in that neighborhood. They would see the guy being accused of a crime on TV as some sort of a hero, and I opposed it then.

Now that the world has changed and you no longer get your news from the newscast but from the talking heads on TV—I know that I am probably kidding myself in that enough information already goes out there, more than I know. But the whole idea of being able to have tonight's CNN, CNBC, FOX, you call it—left, right, center—be able to take a videotape of a 4-hour session of the Supreme Court and begin to attack members of the court for their questioning—"he is a liberal, he is a conservative, look where he is going"—I don't think that would serve us well. Maybe it is a train that has already left the station. Maybe it is something that even at this moment I know little about, and that there is already more being broadcast than I know. The whole idea that the kinds of issues that the Supreme Court deals with would be publicly scrutinized every night, with some of the language that is used on TV regarding the issues you have discussed, worries me and at moments it could scare me.

And just for the record, I will get 15 calls from my open government friends this afternoon who say I have switched.

#### MINORITY HIRING

To prove to them I have not switched, let me ask you my next question. An issue I have asked about every year you have come before me, and I think it is now about 10 years either as Ranking Member or Chairman of this subcommittee, and that is the issue of hiring of minority law clerks and other professional staff. What sort of progress is the Court making in hiring qualified minority clerks and other professional staff? Are there efforts to reach out to minority students in law schools to make them more open to serving as law clerks in the Federal court system. Do you keep statistics on these issues and, if so, would you be willing to submit them for the record?

Lastly, in the last part of the discussion as I directed it, we were told that at times the problem with getting minority law clerks and minority staff is that the schools that we went to do not have that

large a minority student body. And my suggestion was, well, like the old joke, "Doc, it hurts when I do this," and the doctor says, "Well, don't do that." So you know, go to other schools.

What are your thoughts, have we made some changes? Because you talk about teaching and that is a powerful tool, but to be able to be within the judiciary as law clerks and be members of a minority community, that could have an impact on future societies like nothing we could ever think of. Your thoughts.

Justice KENNEDY. I think minority hiring is something that the Court keeps in mind. It wants to be very sure that it is open, it is receptive to minorities, that it knows the value that they can bring to the Court. Insofar as law schools, I think some of the top-ranking law schools that we often use as a pool for the selection of our clerks, although not exclusively, they do a very good job of getting minority candidates. A very good job. I have not looked lately at the completion rates, but minorities have a lower law school matriculation rate than other groups, than nonminorities. And so that somewhat diminishes the pool, but we are conscious about it.

Mr. SERRANO. Well, Justice Kennedy, with all due respect, that is what an effort is.

Justice KENNEDY. And that is why we make an effort.

Mr. SERRANO. Right. The fact of life is that there are less of some folks in law school, but that should not stop us from trying to recruit some of them. Although there is less of a black and a Hispanic population in the United States, it may not be soon, but that still doesn't mean someday we should not have a Hispanic member of the Supreme Court, notwithstanding the numbers.

So I disagree with the argument that we are not producing enough folks while there are some highly qualified folks; there are Jackie Robinsons everywhere, ready to play and to play well and to produce, and Hall of Famers in every profession. And I think that the judiciary, because I take it so seriously and respect it so much, I want my community to share in it as much as anyone else. It is not always, as I said before, getting someone from my community elected a judge or someday someone being appointed to the Supreme Court; it is also having folks in the system, even if they don't stay there, that they leave and go back to private practice or whatever, but they have been there, they have that understanding and were part of that group.

Justice KENNEDY. Well, of course, a clerkship with us is a good ticket to private practice.

Mr. SERRANO. Yes, I would say.

Justice KENNEDY. There is no doubt about that. And we are quite aware of what this means to minorities. And sometimes the justices, in hiring, are competing with the same pool; and when there is an exciting minority candidate, you sometimes have to act very quickly to get him or her because the justices take them.

Mr. SERRANO. Any thoughts, Justice Thomas?

Justice THOMAS. Well, just one point. When you said Hispanic law clerks who happen to be Jackie Robinsons, I think Justice Kennedy is being rather modest. He did have a Hispanic law clerk who was a Jackie Robinson. His name was Miguel Estrada, who was extraordinary, and who is extraordinary by any measure.

Mr. SERRANO. He should have bragged about that. That is totally proper.

Justice THOMAS. Well, I will brag for him. He is more modest.

I take a different approach to hiring law clerks. I said that a law school, for example, that I don't hire female law clerks. I continue to just hire the best law clerks. But about half turn out to be, or 30 percent or 40 percent, turn out to be women. I wind up with minority law clerks.

I continue to think that you don't have to look at one prescribed pool, it could be broader. I still think that there are wonderful kids in the non-elite schools—not all of them, it may not be very deep—but there is a lot of talent out there. But we don't have an NFL combine-type situation to sort out all that talent.

My clerks next year will come from Rutgers, from Creighton, GW and George Mason. And I think it will be as outstanding a class of law clerks as I have ever had. Mostly it is safer to go with the Ivys and the elite law schools, but there is talent out there.

I think when we say "minorities" we should be a little bit more precise. I think it is basically Hispanic and black. There are tons of Asian law clerks. If you look at percentage population, there is fluctuation with female law clerks, but I think there is always a fairly substantial number and they are a lot easier to find. And they are outstanding performers, so you do not have to dig very deep. But the point is simply that some burden should be on the law schools, too.

Mr. SERRANO. Right.

Justice THOMAS. Because we take the products that they produce. And if they don't produce the product, then it is just like anything else. The availability simply isn't there. We don't recruit the law students. We don't educate the law students. We don't determine who is on Law Review. We don't teach them in a way that they can become the elite in their class. We don't do any of that. We take the end products—I think much of the burden goes there, not to the judges who consume the product of the law schools.

#### RELEASING AUDIO TAPES AND OTHER INFORMATION

Mr. SERRANO. Thank you. I just have one more question for the Justices. I would like to tell the committee that we will be having votes soon. It is not my intent to keep the Justices here much longer.

This follow-up issue of the TV cameras, there are also the issues of releasing audio tapes on the same day. Do you see that as an alternative to televising? Is that something we could tell folks, well, you are going to get this or you could get this instead of the televising?

Justice KENNEDY. We do that. We release the audio I think within—immediately when the argument concludes, and in important cases where not everyone can get into the courtroom. I think that is 10 a year; only 3 a year.

Mr. SERRANO. And by the way, I would like to agree with Mr. Bonner that we never grandstand or anything because we are on TV. In fact, the fact that I will be in the Speaker's chair from 2:00 to 4:00 today, and I am wearing a green shirt and green tie, has

nothing to do—there is no relationship to Monday being St. Patrick’s Day, I assure you of that.

Mr. Regula.

Mr. REGULA. Well, my question is, is all the information put on the Web—the briefs, the arguments, everything? We talk about having TV in the courtroom, but isn’t there complete availability of information for the public through the Internet?

Justice KENNEDY. Yes.

Mr. REGULA. Including the briefs that are filed.

Justice KENNEDY. And all the amicus briefs.

Mr. REGULA. So it is all out there for anyone who is interested. I think that is an important point as part of our open government, and that a person who really is interested has access is the important point I would make.

#### COURT SECURITY

The other question we haven’t talked about, security at the Court. Are you comfortable with the way that—the security programs established at Court buildings and so on?

Justice THOMAS. That is an excellent question. Again, when I first went on the Court—which seems to be forever now—almost 17 years ago, we had very little focus on security issues. I can say that now; that time is long gone. But I think the Court does an excellent job. Our officers are well trained, we are well staffed, there is quite a bit of concern about the Justices when they are away from the Court, the U.S. Marshals have done a fabulous job as we have traveled around the country.

So I think at present, the security concerns that I had in the past are a part of the past and that they are doing an excellent job. And the Court is in a good position to make sure that we are secure and that we are safe.

Mr. REGULA. So you are comfortable with the arrangements that are there and way in which it is delivered in security services?

Justice THOMAS. I am very much so. And should there be any concern, we would be back to address those. But I think in the past, with this committee’s assistance and staffing and training in security issues for us personally, you have been enormously responsive. Even in the outside, much of the maintenance we are talking about outside the building, there are security issues there; there are barriers around the Court, the building, there are blast-proof materials, all sorts of things that you have made possible through the budget process here and in our discussions.

So there may be concerns in the future, but presently I think things are as they should be. The Marshal and her staff have done a very good job.

#### SUPREME COURT VISITORS

Mr. REGULA. One of the unique things, of course, of our society is the openness for visitors at the Capitol. The halls are jammed; many days people are visiting. I don’t find that to be the case when I visit capitols of other countries. Do you get much in the way of public visitation at the Court, people who just come in to look around and to see or maybe sit in the audience before a hearing?

Justice THOMAS. I think there is a steady stream. I think our highest year was 1999 when there were over 800,000 people—

Mr. REGULA. Really.

Justice THOMAS [continuing]. Who came to the Court. There are all sorts of public events and there are still up around 70,000 who come to the Court each year. There is no shortage of visitors. I think there is some tempering of that and some cooling of that because the building is under construction.

Mr. REGULA. I understand.

Justice THOMAS. As soon as that is over and you have the Visitor Center here opened—and right after 9/11, of course, things went down, but I think it will all come back. That building is very accessible, you have an enormous amount of traffic. And the thing that is wonderful about it for most people, I know for me, that is the Supreme Court that I have always known. It is a monument to our Federal judicial system. I think a lot of people, even if they do nothing more than take pictures in front of it, want to be there. I do believe that that traffic will continue. There are lots of visitors. I think our staff does a great job, a wonderful job of securing the building in spite of the open access of the building.

Mr. REGULA. I would be curious: If you were a civics teacher in high school, could you write to the Court and ask for material on how the Court works, how the system works, to be used with your students?

Justice THOMAS. Oh, I even—we have all sorts of brochures and material. There is material on the Internet. I know I get regular requests for Constitutions and for materials on the members of the Court, and I send those brochures out.

I think, again, going to your point about the accessibility of information, whether you want to know about cases, decisions, history of the Court, it is all there. Yes, quite frankly, there is—

Mr. REGULA. Is that part of the education process?

Justice THOMAS. Yes, that is right.

Mr. REGULA. Mr. Chairman.

Mr. SERRANO. Thank you. As I suspected, the votes are coming so our last set of questions will come from Mr. Schiff.

#### SUPREME COURT JURISPRUDENCE

Mr. SCHIFF. Thank you, Mr. Chairman. I have just two questions, one very narrow that probably only a lawyer could ask or be interested in the answer. But I am interested so I will ask it anyway.

Mr. SERRANO. Are you a lawyer?

Mr. SCHIFF. Guilty.

The other, I hope we have little more broad interest.

First narrow question is just curiosity in terms of Supreme Court jurisprudence. And that is, over the years the opinions seem to have gotten longer and longer. And some of the greatest Justices that have ever sat on the bench often wrote short opinions with great effect. I am curious, is the quality of the opinions going up with the length of the opinions? Or is the length necessary? Does it add? Is it that the issues are more complicated than they used to be, or we are just more talkative than we used to be?

And then the other question I have is I know that you are very active in terms of conferring with judiciaries around the world, which I think is an extraordinarily important part of your job. I wonder if you could share any thoughts you might have on anything that we can do in the Congress to further that work. I think it is an important element of democracy building. If you don't have the rule of law, it is hard to have anything else follow from that.

So I would be interested in your thoughts on both those questions.

Justice KENNEDY. On the length of opinions, it might have something to do with the length of the statutes.

Mr. SCHIFF. Oh, it is our fault?

Justice KENNEDY. I am not sure the opinions are that much longer. I do think that the dissents and the majority seem to meet each other better. And that is an anecdotal, not statistical impression, because our reduced caseload enables us to adjust the opinions so that we are responding back and forth. I think they are better. I think they are more focused.

Mr. SCHIFF. The problem is you have too small a caseload. You have to fit all those words in nonetheless, so you have to lengthen the opinions.

Justice KENNEDY. I will hit the button. I am not sure that they are longer.

Mr. SCHIFF. Well, perhaps not from 10 years ago. But it seems like when you compare it to 30 years ago or 40 years ago the opinions were quite a bit shorter, maybe literary in tone and less technical, certainly a lot less footnotes. I am speaking on behalf of law students everywhere who are suffering—

Justice KENNEDY. I have not used footnotes in years.

Mr. SCHIFF. What is that.

Justice THOMAS. He doesn't use footnotes.

#### INTERNATIONAL JUDICIAL VISITS

Mr. SCHIFF. Okay. In terms of the international question?

Justice KENNEDY. International visits work two ways. We go there, they come here; both are very good. If you go to the Continental courts, typically there are, as you know, three Supreme Courts, the Supreme Administrative court, Supreme Constitutional Court and Supreme Court of General Jurisdiction, which means you have three dinners, three lunches, three speeches to give. But this is an era in which democracies worldwide are trying to establish an independent judiciary on our model.

I was visited not long ago by the Chief Justice of Nepal, a country we do not think about very often. They had just undergone the tragedy where the Crown Prince committed a murder and then shot himself. There was a civil insurgency. This wonderful Justice came to visit, and he was basically trying to hold that country together.

Judges check each other out. This was a learned, erudite, quiet, thoughtful, wonderful man. I said, "Thank you for visiting the Court," and I took him out, down the steps. I said, "What can we do, Justice, to help your country?" And he said, "You have to keep doing what you do. You are a model to the rest of the world."

Well, that was a gracious remark to make me feel good as the host and to recount for my colleagues, which I did. But it occurred to me that we are not doing enough. There are some real judicial heroes out there; in the State court system, including the elected judges, and in the international realm. And the verdict is out on whether some new countries, particularly in Eastern Europe, are going to be able to be successful with an independent judiciary, particularly in Russia. And we have much more work to do. It is very important.

Mr. SCHIFF. Thank you. Thank you, Mr. Chairman.

Mr. SERRANO. Thank you.

Well, as an Appropriations Committee it is our role to suggest and put together the budgets for different agencies, and you know that this committee always respects the work that you do, and your budget request is always taken seriously. In fact, some would say that you get what you ask for. And it is our intent to make sure that you have what you need. It is always an honor for us, notwithstanding my uncertainty at times with the idea of you coming before us. You alleviated some of that concern, Justice Kennedy, by saying that the separation doesn't mean we can't talk to each other. Separation of power. So we respect that.

And once again on behalf of the committee and all members of the Appropriations Committee in the Congress, we thank you for your service to our country. We thank you for your work. And all I can personally say is if you have to rule on McCain, make sure you include me. Thank you so much.



WEDNESDAY, APRIL 30, 2008.

**DISTRICT OF COLUMBIA**

**WITNESSES**

**ADRIAN M. FENTY, MAYOR, DISTRICT OF COLUMBIA**

**NATWAR M. GANDHI, CHIEF FINANCIAL OFFICER, DISTRICT OF COLUMBIA**

**VINCENT C. GRAY, CHAIRMAN, COUNCIL OF THE DISTRICT OF COLUMBIA**

**CHAIRMAN SERRANO'S OPENING STATEMENT**

Mr. SERRANO. The subcommittee will come to order. Good afternoon.

Today the subcommittee will hear testimony on the fiscal year 2009 budget for the District of Columbia. I would like to welcome Mayor Adrian Fenty back to testify before this subcommittee. The subcommittee also welcomes back the Chairman of the District City Council, Vincent Gray, and the Chief Financial Officer of the District, Dr. Natwar Gandhi.

With the new leadership in the District of Columbia, this past year and a half has brought much excitement and anticipation for the residents of this city. Issues such as school reform and a slowing economy continue to make headlines in this region. I myself have been able to visit so many of the places here in Washington, D.C., but most exciting of its new attractions for someone like me is the new Nationals baseball stadium.

I am aware that the fiscal year 2009 budget is currently under review by the City Council and will not be received by Congress for at least another month. The Mayor's request is for a total of \$9.9 billion, including \$6.1 billion in local funds, nearly a \$141 million increase over 2008 levels.

For fiscal year 2009, the District requested \$155 million in direct federal payments. Notable increases over the fiscal year 2008 enacted levels are for the Water and Sewer Authority, emergency planning and security, and for the D.C. schools. The increase for D.C. schools includes a one-time payment of \$20 million to jumpstart public school reform.

I look forward to hearing more today about your plans in this area. As I have stated on previous occasions, I am honored to have the opportunity to work with the D.C. government to help it achieve its objectives. Since assuming chairmanship of this subcommittee, it has been my goal to ensure that Congress, specifically the Appropriations Committee, plays a supportive role in the District rather than an intrusive role as has been the case in years past.

As a person who was born in Puerto Rico, a territory which shares the District's condition of undefined political status, I sym-

pathize with your plight and offer my support for full representation in Congress for D.C. residents.

It is nice to see all three of you again, Mayor Fenty, Dr. Gandhi and Chairman Gray. I thank you for your hard work and dedication to the city. It truly seems that there is a new energy in this city, and I credit your combined leadership. I know that my staff finds your staff members very open and easy to work with. I hope that relationship continues until the day when I achieve my goal, which is putting myself out of business when it comes to overseeing the District of Columbia.

At this time I would also like to recognize the man that we already paid tribute to and who is such an important ally in this cause, and who shares totally my concern, my respect and my desire for the best possible immediate and long-term future for the District of Columbia, our Ranking Member, Mr. Regula. We were speaking about this being his last hearing on this committee.

All your other committees finish their hearings, too?

Mr. REGULA. Uh-huh.

Mr. SERRANO. So how many years, 30—

Mr. REGULA. Six.

Mr. SERRANO. Thirty-six years in Congress. I think he had a little bit more than a couple thousand hearings; don't you think? And here he is ready for this final one.

Mr. Regula.

#### MR. REGULA'S OPENING STATEMENT

Mr. REGULA. Thank you, Mr. Chairman. It is, of course, with regret that I leave some of these assignments. I have had a great interest in this city. I even volunteered for the subcommittee years ago when no one wanted to take the D.C. Subcommittee. I went to Silvio Conte and said, Silvio, I will take it if I don't have to give up something else. And I did. And I worked with—who was from California? It was chairman—I can't think of his name.

Mr. SERRANO. Dixon.

Mr. REGULA. Yeah, Julian Dixon, who had the same dedication to this city that this Chairman and I share. And I think we want to make it the shining city on the hill that all of America can be proud of. And, Mayor, I think you and your team are working in that direction.

I have said over and over again the most important thing to the future of the Nation is education because we have to build on that to achieve all the other desirable goals. And you have taken on the responsibility with your team for the education system. And with Michelle Rhee's enthusiasm and your great support, I think you can really make a difference in the lives of these children. And the greatest legacy that all of you will leave is to improve the education system of this city, and we will all take pride in it.

So I look forward to your testimony. I congratulate you for all you and your team have already accomplished on behalf of the people of Washington.

Mayor FENTY. Thank you.

Mr. SERRANO. Before we begin testimony, I would just like to make two lighter comments that are very important to me. First of all, Mayor Fenty, I don't think it was smart of you on the day

when you come for your budget here to run faster than me this morning in that race. You could have, you know—but my communications secretary came in ahead of you, so we are even. But that wasn't fair.

And secondly, on a real light note, but important to me, I have to be one of the luckiest men on earth, not only because I serve here and because I have health, but because my residence is two city blocks from Yankee Stadium and 17 walking minutes from Nationals stadium. Life is good.

I now recognize Mayor Fenty, followed by Chairman Gray and Dr. Gandhi. I would like to remind you to keep your testimony down to 5 minutes. Your full written statements will go in the record, but the ability to have you speak only for 5 minutes will allow us to grill you and put you through all kinds of problems later.

#### MAYOR FENTY'S TESTIMONY

Mayor FENTY. Thank you very much, Mr. Chairman, Ranking Member Regula, and distinguished committee members. It is a pleasure and honor to be here today to speak to you on behalf of almost 600,000 residents of the District of Columbia about the proposed fiscal year 2009 budget, which is entitled Getting the Job Done.

As you mentioned, I have provided written testimony that describes our local and Federal funding priorities in more detail, but in the interest of brevity, I will offer some highlights here today and then would be happy to answer any questions.

The District's budget represents \$5.7 billion in local funds and about \$3.7 billion in Federal grants for Medicaid, education, transportation and other initiatives. This is our thirteenth consecutive balanced budget and it limits the growth of local fund expenditures to less than 1 percent at a time when the national economy calls for fiscal restraint.

More than ever my administration will economize the way the District government works. Typically, the starting point for a proposed budget is the previous year's funding level for services, plus increases for salaries, for fixed costs and for financing. This alone, however, would have reflected a 5.7 percent growth in the District's budget.

Instead, by building our budget from the ground up, by scrubbing out every unnecessary position and finding ways to serve our citizens more efficiently across the government, again the fiscal year 2009 budget limits local funds growth to less than 1 percent, specifically .07 percent, the smallest amount of growth in approximately a decade as proposed.

At the same time we continue to propose tax relief for low-income residents and for small businesses. For example, this year's budget proposal includes changes to the District's earned income tax credit, which would effectively eliminate income taxes for families making \$25,000 a year or less.

Education is the key to the District's future, as both the Chairman and Ranking Member mentioned. No single priority of this government is more important than education. I am extremely grateful for this subcommittee's work with us to make radical im-

provements in our public schools. I particularly want to acknowledge you, Mr. Chairman, and also Ranking Member Regula, for your interest and support. I know you are aware of the dramatic changes since Chancellor Rhee took over the system last June in 2007. Today we come to you to ask for your support for \$38 million in Federal funds that are part of the President's budget request, which we believe will significantly enhance our reform efforts.

In addition to education funding, this subcommittee has made many investments in other key programs in the past. At our request, the President's fiscal year 2009 budget contains funding for several of the same items, specifically reimbursement for emergency planning and security costs, continued support for our new local forensics evidence laboratory, more funds to renovate public libraries, and improvements to the combined sewer system to help protect the Potomac and Anacostia Rivers from pollution. Mr. Chairman, you are right, we both got a bird's-eye view of how much the Anacostia River needs that protection during the otherwise very successful Capital Challenge this morning. I hope you will continue to support these important projects, and I am happy to discuss any of them further with you.

In conclusion, as the District's Mayor, and as a lifelong resident of this great city, I view Congress as a critical partner in our work to improve the lives of District residents and the experience of visitors to the Nation's Capital. I look forward as Mayor to continuing to work with all of you on our mutual goal of making Washington, D.C., not only a Capital City, but a world-class city without equal anywhere throughout the world.

This concludes my prepared remarks, and I am happy to answer any questions.

Mr. SERRANO. Thank you.  
[The information follows:]

**THE MAYOR'S FISCAL YEAR 2009  
BUDGET AND FINANCIAL PLAN:  
"GETTING THE JOB DONE"**

**UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEE ON FINANCIAL SERVICES  
AND GENERAL GOVERNMENT**

**THE HONORABLE REP. JOSÉ SERRANO, CHAIRMAN  
THE HONORABLE REP. RALPH REGULA, RANKING MEMBER**



**TESTIMONY OF ADRIAN M. FENTY  
MAYOR  
DISTRICT OF COLUMBIA**

**WEDNESDAY, APRIL 30, 2008**

### Introduction

Mr. Chairman, Ranking Member Regula and distinguished subcommittee members, it is my pleasure to be here today to speak to you about my proposed Fiscal Year 2008 Budget, entitled "Getting the Job Done."

Last year at this time, I told you about my first budget proposal as Mayor. While I'm here today to talk about my second, I want to note that this is the first full budget cycle of my Administration. By going through the planning process from start to finish this year, we were able to achieve a much deeper sense of how this government should spend the funds with which the public entrusts it.

What you have before you is a lean, fiscally-responsible budget proposal. Other local, county and state governments in our region and across the country are contemplating tax increases, new funding schemes or dramatic cuts in services. Yet agency by agency, line by line, we have consistently found ways to deliver what our constituents need from us while remaining mindful of economic realities.

### Budget Summary

As we did last year, my Administration has worked closely with Chief Financial Officer Natwar Gandhi to develop this budget proposal, which outlines our expenditure plan for \$5.7 billion in local funds, as well as about \$3.7 billion in federal grants (for Medicaid, the federal education programs, etc.). The budget is balanced and fulfills promises in my "Opportunities for All" 2008 goals plan - with a particular focus on making improvements to education, health care, human services, public safety, and access to affordable housing.

More than ever, my Administration will economize the way the District Government works. Typically, the starting point for a proposed budget is the previous year's funding level for services plus increases for salaries, fixed costs and financing. This alone would have reflected a 5.7% growth. But, by building our budget from the ground up, scrubbing out every unnecessary position, and finding ways to serve our citizens more efficiently across the government, our FY 2009 budget limits local funds growth to less than 1%.

To achieve this, we will eliminate vacancies for non-critical positions, curb fixed costs and reduce the cost of our financing obligations. At the same time, we continue to propose tax relief for low-income residents and small businesses. For example, this year's budget proposal includes changes to the District's Earned Income Tax Credit, which would effectively eliminate income taxes for families making \$25,000 a year or less.

The budget also includes recommendations for a 6-year capital program representing long-term local fund investments in the city's infrastructure worth more than \$3.2 billion, including \$717 million in capital expenditures in FY 2009 for school facilities improvements, investments

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in new neighborhoods, libraries, parks, and recreation facilities, and a new consolidated forensics lab. Some of the highlights for each area are described below.

**Education: Key to the District's Future**

The key to Washington, DC's future -- as a healthier city, as a competitive city, and as a dynamic and thriving city -- is the education of our children. As I have said repeatedly, no single priority of this government is more important.

I am extremely grateful for this Subcommittee's commitment to working with me to make radical improvements in public education in the District. I particularly want to acknowledge you, Mr. Chairman, and also Ranking Member Regula, for your interest in and support for our efforts in this regard. It is my hope that this support will be continued in the FY 09 appropriations bill.

June 12, 2007 was the first day of mayoral authority over public education in the District of Columbia. I know you are aware of the dramatic changes Chancellor Michelle Rhee has already begun making in our schools. I want to thank the Subcommittee again for supporting my education reform bill last year -- and for the additional funding that you provided last year to help Chancellor Rhee implement her plan for recruiting the very best principals from across the nation to the District's schools.

Today, I am asking for your support for \$38 million in federal funds that are part of the President's budget request to further our reform efforts at DCPS.

These critical funds will supplement a local schools budget of \$773 million for the District of Columbia Public Schools, \$532 million of which will go directly to the schools themselves -- a \$40 million increase over the current year level. In my mind, the most exciting part of our local schools budget for FY09 is our commitment to providing richer academic programs to every school. By making tough decisions like closing underutilized schools and streamlining our central office, we will be able to fund critical resources in the classroom. Specifically, we're adding:

- Art teachers (89% increase)
- Full-time music teachers (72% increase)
- Physical education teachers (18% increase)
- Pre-K and Head Start teachers (98% increase)
- Social workers (419% increase)
- School psychologists (180% increase)
- Literacy and math coaches (increased to 180; none budgeted in FY 08)



In addition, we will expand programs for 3- and 4-year-olds, with a goal of ensuring over 5 years that every DCPS elementary school has a high-quality early childhood program. Also in 2009, DCPS will continue to expand its extended learning opportunities for older children. The Saturday Scholars program, which we launched this year in elementary schools, will include middle- and high-school students. Our Extended Day after-school learning program will grow from 88 schools to all schools. And we expect the number of students taking part in summer school to increase this summer and next. We are creating new middle school programs focused on science, technology and math ("STEM programs") and the fine arts that we think will be more attractive to and effective with some of our middle school students. Finally, we are bringing in nationally recognized organizations to restructure ten of our high schools.

#### **Other Key Federal Funding Priorities**

Getting the job done for all of District's residents would not be possible without our partnership with the federal government. In addition to the critical education funding provided over the past several years, this subcommittee has made strong investments in other programs that make a major difference in the lives of the constituents I serve, and also have a major impact on the health and well-being of visitors to the Nation's Capital. I am grateful for these investments and for the growth of this partnership during my Administration under the leadership of Chairman Serrano and Ranking Member Regula.

I would like to take a moment now to discuss several of the federal funding items that were included in the President's FY09 budget at our request, and to express my hope that you will include them in your bill as well.

#### **Emergency Planning and Security**

As the nation's capital and an intended target on September 11, 2001, the District of Columbia faces security risks uncommon to most major cities. Local agencies also provide public safety support for visiting dignitaries and political demonstrations that come to the seat of government on a regular basis. The President's budget request includes \$15 million for public safety and response to terrorist threats or attacks.

#### **Forensic Evidence Laboratory**

The President's request includes \$5 million, to be matched 100% with local funds, toward the cost of building a consolidated lab facility dedicated to the District's needs. Historically, the FBI has provided laboratory support for criminal prosecutions in the District. While this arrangement has been useful, it is less than ideal. Criminal investigations in the District are often delayed for forensic analysis, and yet the FBI postpones some of its own lab work so that the District's can go forward. Accordingly, with the funds requested, we intend to phase out the FBI's involvement and move forward with construction of our own laboratory facility. This

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payment was reduced from the President's proposed amount in the FY08 appropriations bill and we look forward to working with you to help identify additional Federal support for this project to ensure that the lab construction remains on schedule.

**Public Libraries**

The President's budget request also includes \$7 million for renovation and rehabilitation of public libraries in the District. With these funds, my administration is committed to reopening three long-shuttered neighborhood branch libraries. The proposed Federal Payment to Libraries would complement \$33.8 million of the District's own capital funds included in the proposed FY09 local budget to modernize neighborhood libraries.

**Water and Sewer Upgrades**

Finally, the President's budget request includes \$14 million in federal funds for the DC Water and Sewer Authority (WASA). Of the proposed Federal Payment, WASA will provide a 100% match in funds. WASA will use the funds to make much-needed improvements to its combined-sewer system to limit overflows that currently result in the release of untreated waste into the Potomac and Anacostia Rivers during heavy storms.

**Conclusion**

The District of Columbia's relationship with Congress is unique. Both as the District's mayor and as a lifelong resident of this great city, I view Congress, and particularly the members of this Subcommittee and the other subcommittees in which oversight of the District Government has been vested, as critical partners in my effort to improve the lives of District residents and the experiences of District visitors, whether they come here daily for work or on vacation with their families. I look forward to working with you to continue to expand this already fruitful partnership, to achieve our mutual goal of making Washington a capital city without equal anywhere in the world.

This concludes my prepared remarks, and I'm happy to answer any questions.



Mr. SERRANO. Chairman Gray.

CHAIRMAN GRAY'S TESTIMONY

Mr. GRAY. Good afternoon, Chairman Serrano, and Ranking Member Regula and other members of the Committee on Appropriations Subcommittee on Financial Services and General Government. I am pleased to speak to you today about the District's appropriations and other operational items.

As the Mayor has indicated, he has proposed an overall budget for fiscal year 2009 of nearly \$10 billion, which represents an increase of \$200 million, or 2.1 percent, above the fiscal year 2008 approved budget of \$9.2 billion, or nearly \$10 billion also.

The proposed local budget is \$5.7 billion compared to last year's or the current year's \$5.62 billion, and, as the Mayor has indicated, a very small  $\frac{7}{10}$  of 1 percent increase. Again, as the Mayor has indicated, it reflects our efforts to try to control costs.

The Council has enthusiastically joined with the Mayor and is completely committed to improving our educational system in the District of Columbia and, of course, the performance of our students. The Council also has heartily supported education reform and is at the threshold of finalizing legislation that will make pre-kindergarten available to every 3- and 4-year-old in the city whose families want them to be in such a program.

The District also is focused on improving its library system. We have committed \$75.6 million in local funds through fiscal year 2009 toward the improvement of seven branch libraries and \$22.3 million in fiscal year 2009 to restore and modernize the historic Georgetown branch library. I ask that you support the President's proposal for a payment of \$7 million.

The Council supports the continuation of the Federal payment for school improvement. Because of the success of this education strategy, the President has increased the three-sector funding for fiscal year 2009 to \$54 million. Next year the President has proposed an additional \$20 million to help jump-start public school reform. I ask that the committee include both of these funding proposals in its bill.

The Tuition Assistance Grant Program has been very successful since its inception 7 years ago. I want to thank the President for including full funding for the program in the fiscal year 2009 budget, and I ask the committee to approve the \$35.1 million included in the President's budget.

Last year this committee helped us to enhance our attack on HIV/AIDS in the city by removing the prohibition on the expenditure of our local funds for needle exchange programs. I want to thank you, Chairman Serrano, and the committee for this and ask that you continue to exclude this former general provision from our appropriations bill.

The District of Columbia is seeking an increase in the match rate for our foster care and adoption programs to make it equivalent to the Medicaid program. The match rate for foster care and adoptions in other jurisdictions across the country is at the Medicaid match rate. The President's fiscal year 2009 Federal Department of Health and Human Services budget references the proposal for this

increase. I ask you for your help in obtaining inclusion of this increase in the fiscal year 2009 HHS budget.

The President has allocated \$5 million in his 2009 budget for the Consolidated Forensic Laboratory and \$5 million for reimbursement to the FBI for laboratory work. The overall costs for the laboratory is \$219 million. The District continues to seek a 27 percent match of the total cost by the Federal Government.

The fiscal year 2009 request for protection and security for the Federal enclave includes costs for planning and security related to the Presidential inauguration. I ask that the committee fully fund the planning and security costs associated with the Federal presence and provide assistance in obtaining reimbursement for the executive transport/escort service the city provides for the President, Vice President, First Lady, as well as the frequent deployments of fire and emergency medical services equipment to helicopter arrivals.

I also request the support for two bills currently pending in the House, H.R. 733, the District of Columbia Budget Autonomy Act of 2007, introduced by Congresswoman Norton and Representative Tom Davis; and H.R. 1054, District of Columbia Legislative Autonomy Act of 2007, introduced by Congresswoman Norton. Passage of these two bills will avoid the delays the current congressional process creates and will assist the District in operating more efficiently and effectively.

I also would like to end my testimony by thanking you and the other Members of the House for your support of and passage of H.R. 1905, District of Columbia House Voting Rights Act of 2007. I ask your continued support by helping the District gain approval of this bill in the Senate. This is vitally important to the District of Columbia citizens, both Republican and Democrat. As leader of the free world, America should be an example by providing all citizens the right to full citizenship.

In closing, I would like to ask you to pass this year's budget request in time for the start of our new fiscal year without riders.

I thank you, Mr. Chairman and the other members of the committee for this opportunity to share our thoughts, and I will be happy to answer any questions you may have.

[The information follows:]

**Council of the District of Columbia**



**Testimony of Vincent C. Gray**

**Chairman**

**The Council of the District of Columbia**

**Before the**

**Committee on Appropriations**

**Subcommittee on Financial Services and General Government**

**On the**

**District of Columbia**

**FY 2009 Budget Request**

**April 30, 2008**



Introduction

Good morning, Chairman Serrano, Ranking Member Regula and members of the Committee on Appropriations' Subcommittee on Financial Services and General Government. I am pleased to speak to you today about the District's appropriations and other operational items.

Budget Proposal

The Mayor has proposed an overall budget of \$9.4 billion. This represents an increase of \$.2 billion or 2.1 percent increase above the FY 2008 approved budget of \$9.2 billion. The proposed local budget is \$5.66 billion compared to last year's \$5.62 billion, a 0.66 percent increase. This budget reflects the District's efforts to control costs.

The Mayor's budget represents a continued focus of attention and resources in the areas of public education and affordable housing. As the District of Columbia continues to prosper, we need to be certain that we are improving the lives of our residents who are most in need.

Education

The Council is committed to improving the educational system in the District and the performance of our students. The Council continues to back the Mayor's efforts to improve and restructure our school system. The Council supports the continuing efforts to consolidate schools to cut costs, enhance teacher training and aid student learning through a revised and improved curriculum. This will

allow for additional teachers in the areas of the arts, music and physical education, along with additional social workers and school psychologists.

The Council will be looking to take our commitment to education one step further in next year's budget, by ensuring that all 3 and 4 year olds have access to a high-quality, Pre-K learning environment. We cannot afford to allow our children, to fall behind and not realize their full potential, and that is why the Council will be looking to expand upon the District's existing Pre-K efforts to include universal access to Pre-K.

A major part of improving our school system is the improvement to our facilities. The Mayor's FY 2009 budget allocates \$54 million in operating funds and \$194 million in capital funds to school modernization and maintenance. As the Council works through the budget we hope that additional funds can be identified to increase the amount available for school modernization and maintenance.

Part of a student's overall educational experience is the access to full service libraries. The District is focused on improving its library system. The District has committed \$75.6 million in local funds through FY 2009 toward the improvement of seven branch libraries including the three for which federal funds have been provided. In addition, the District has allocated \$22.3 million in local funds in FY 2009 to restore and modernize the historic Georgetown Branch Library which was severely damaged by fire last year. The provision of federal funds enables

the District to continue its efforts to improve our libraries. Therefore, I ask that you support the President's proposal for a federal payment of \$7 million.

The Council supports the continuation of the federal payment for school improvement. The payment has been an important source of funds for improvements in curriculum, educational systems and training. The payment is essential to continuing the enhancements that both the District and Federal Governments want to see in the District schools. Due to the success of this education strategy the President has increased the three sector funding for FY 2009 to \$54 million. Congress has long been supportive of the efforts to improve the DC Public School system; therefore, I ask that this Committee include the President's proposed funding for school improvement in its budget proposal.

For FY 2009 the President has proposed an additional \$20 million to help "Jump Start Public School Reform." The proposed funding would provide Chancellor Rhee with additional funds to assist in the recruitment, training and development of principals and teachers, development of optimal school programs, improved data reporting, increased parent and community outreach and training. These funds would go a long way in assisting the Chancellor in achieving her objectives for school reform.

The Tuition Assistance Grant Program has been very successful since its inception seven years ago. Through school year 2005-2006, 20,462 students

have participated in the program. Many of the students who participate are the first in their family to attend college. I want to thank the President for including full funding for the program in his FY 2009 budget. I ask this Committee to approve the \$35.1 million included in the President's budget.

Health

The objective of this government is to move toward universal health coverage for the residents of the District of Columbia. The government has taken steps to improve its management of federal Medicare and other federal health related payments by establishing a Department of Health Care Finance. This new agency will also provide medical case management. Other improvements have been made to the primary care rates for the DC HealthCare Alliance which provides medical care to low income or those without access to medical care.

Last year this Committee helped us greatly in enhancing the treatment of persons with HIV/AIDS in the city by removing the prohibition on the expenditure of our local funds for needle exchange programs. I want to thank you Chairman Serrano and the Committee for this and ask that you continue to exclude from our appropriations bill this former General Provision.

Another area where this Committee may be able to help is to support an increase in the match rate for foster care and adoption for the District of Columbia to the match rate used in the Medicaid program. The match rate for foster care and

adoption in other jurisdictions across the country is at the Medicaid match rate. The District has been attempting to correct this error in our match rate for a number of years. The failure to increase this match rate has cost the District millions of dollars. The President's FY 2009 Federal Department of Health and Human Services budget references the proposal for this increase.

#### Public Safety

The FY 2009 budget continues the city's efforts to combat crime and to improve our law enforcement efforts. The proposed budget would provide additional funds for salaries, benefits and equipment for the Metropolitan Police Department. This includes funds to hire 12 new evidence technicians. These technicians would be part of the professional staff for the proposed Consolidated Forensic Laboratory, scheduled to begin construction in 2009. The President has allocated \$5 million in his FY 2009 budget for the laboratory and \$5 million for reimbursement to the FBI for laboratory work. The overall cost for this project is \$219 million to which the District Government has already committed \$35 million with an additional \$75 million committed for FY 2009. The District continues to seek a 27% match of the total cost by the Federal Government.

Continued federal support of this laboratory would allow the District to eventually operate its own facility for conducting forensic testing from crime scenes. It would also provide a facility for analyzing evidence associated with bioterrorism activities and public health concerns. The District has used the FBI's laboratory

for a number of years. However, when there is a high level of usage of the laboratory by the federal authorities, the District's work is delayed. This has a direct impact on the resolution of crimes in the District, including the identification of the criminal. The ability to complete forensic analysis in a timely manner would aid the city in resolving crimes and putting criminals behind bars.

As the nation's capital, the District is a prime target for terrorist activities. With the continuing threat of these activities, the need for a forensic laboratory in the District, that is readily available, becomes more and more important. Therefore, I would like to ask this committee to support the District's request for funding of the laboratory.

As the nation's capital, the District is also the center for demonstrations against the Federal Government. Therefore, the city police, fire, emergency management and other city services must expend time and manpower to provide protection and security for the federal enclave during these demonstrations. The FY 2009 request includes costs for planning and security related to the presidential inauguration. The FY 2009 request also reflects a significant reduction in our prior year carry-over (due to increased protest costs). In addition, the District has spent nearly \$5 million on executive support since 2003 deemed by OMB to be "unreimbursable" for daily transport/escort service for the President, Vice President, First Lady, as well as frequent deployments of fire and emergency medical services equipment to helicopter arrivals. These factors

along with the current process of drawing down the funds provided by Congress require us to spend local funds first and then seek reimbursement from OMB. It forces the District to support the federal presence without a guarantee of full reimbursement. This severely impacts our ability to deploy local public safety resources to our neighborhoods. I ask that this Committee fully fund the planning and security costs associated with the federal presence.

#### Autonomy for the District of Columbia

I would like to request support for two bills currently pending in the House: H.R. 733, "District of Columbia Budget Autonomy Act of 2007," introduced by Congresswoman Norton and Representative Tom Davis, and H.R. 1054, "District of Columbia Legislative Autonomy Act of 2007," introduced by Congresswoman Norton. Because the District's budget must be approved through the congressional appropriations process, the District must formulate a budget nearly a year in advance of a fiscal year. This formulation therefore cannot include revised revenue estimates and newly identified expenditure needs that would affect decision-making. If the Congress were to determine that the District's request to modify its own local budget could not be included in subsequent supplemental appropriations, service delivery could be disrupted in several troublesome ways. It should be noted that notwithstanding the fact that the District has been included in the congressional supplemental appropriations in prior years, the District still suffers the impact of the delays in the appropriation process.

Allowing the District to implement its local budget without the current congressional review can prevent delays in service funding and therefore, service delivery. The local budget is based on revenues raised by the city. Therefore, the District Government should have the ability to develop and implement its budget based on its local revenues. It is worth recalling that when the 1997 Revitalization Act was passed, one recommendation was that Congress would not need to review or approve the District's budget because the city would no longer receive any federal payments. However, under the budget autonomy proposal the Mayor would notify the Committees on Appropriations of the House of Representatives and Senate in writing 30 days in advance of any obligation or expenditure, thus maintaining Congress' oversight authority as provided in the Constitution.

H.R. 1054, "District of Columbia Legislative Autonomy Act of 2007," would remove the requirement for a 30 and 60 day review for civil and criminal legislative acts of the District Government, respectively. Currently, the review period causes several months of delay in implementing laws that impact both the services and operation of the District Government. Congress no longer uses the layover process. The current congressional review of District acts requires the Council of the District of Columbia to operate using a cumbersome and complicated process of emergency, temporary and permanent legislation so that there will be no gap in its laws. A review of the Council's legislation

demonstrates that approximately two-thirds of the bills the Council adopts could be eliminated if there was no congressional review requirement. To give some degree of predictability to our process, we must pass emergency acts that remain in effect while our legislation is pending congressional review. These acts are known at the Council as gap-fillers, or more specifically as congressional review emergency acts, congressional recess emergencies, congressional adjournment emergencies, and legislative review emergencies.

While removing the review period under the proposed legislation the Congress would still have its oversight authority as provided in Article I, Section 8 of the Constitution. This bill however, would allow the city to operate more efficiently and to apply its laws to current problems in a timely manner.

#### Voting Representation

I would like to end my testimony by thanking you and the other members of the House for your support of and passage of H.R. 1905 "District of Columbia House Voting Rights Act of 2007." I ask that you continue your support by helping the District gain approval of this bill in the Senate. This is important to the citizens of the United States who reside in the District, both Republican and Democrat. They want their voices heard via a vote in the House of Representatives. As a leader of the free world we should set an example for providing all citizens the rights of citizenship.

Closing

In closing I would like to ask that you pass this year's budget request in time for the start of the new fiscal year and that no extraneous riders be placed on the bill.

I thank you Chairman Serrano for this opportunity to share my thoughts on the District's budget and other issues important to the city. I look forward to working with you on the city's appropriations legislation. I am available for any questions you may have.

## DR. GANDHI'S TESTIMONY

Mr. GANDHI. Thank, you Mr. Chairman, Chairman Serrano, Mr. Regula, and members of the committee. I am Natwar Gandhi, Chief Financial Officer for the District of Columbia government.

This has been an exceptionally challenging budgeting and planning cycle for the Mayor. This February our revenue projections indicated a decline from the December revenue estimate of about \$62½ million for fiscal year 2009. For the Mayor the greatest challenge was to control spending in light of a drop in projected revenue. The resulting proposed budget is, for the 13th consecutive year, a balanced budget.

Since the budget was submitted on March 20th, the Council and Chairman Gray have already been hard at work. We will continue to work diligently with everyone in this collaborative process.

Our strong financial standing, with the \$281 million surplus in 2007, is a testament to the steadfast commitment of the District's elected leaders to sound fiscal management. This steadfast commitment has resulted in a \$2 billion turnaround, from \$518 billion deficit to a billion and a half positive fund balance.

As you can see here in this chart, Sir, it is important to note that of that \$2 billion increase in fund balance, nearly half was accumulated since the end of the Control Period. Indeed our turnaround from junk bond status was faster than any other city that has undergone a similar period in financial crisis, including New York, Philadelphia, Cleveland and Detroit. We have had a fund balance that is still among the highest in the Nation, substantially improved bond ratings, and a well-deserved respect in the financial market.

This time last year the economic outlook for the District was similar to that generally forecast for the Nation as a whole; no major disruptions and steady growth in employment, wages and income, but at rates slightly below those experienced in 2006.

This year, however, the outlook is far less positive. It reflects the downturn in the Nation's economy and the far-reaching effects of the troubled mortgage and housing market. In the past 3 months the national and the District economies have slowed down. Indeed, some financial observers, including the Federal Reserve Chairman, are concerned about possible recession in the near term.

We have observed the slowing in District home sales activity as well as the stock market and the overall base of economic activity. This slowdown, in combination with recent legislative changes, has resulted in an estimate of total revenue less than we expected as of last December. Similarly for our May revenue estimate, we are closely monitoring April tax collections and the evolving economic picture for any signs that the revenues are growing even more slowly.

There are two issues that I do need to raise before I conclude, and those relate to our debt burden and tax burden. The District faces a wide variety of infrastructure needs facing great demands on its Capital Improvements Plan and the resulting borrowing. It is difficult to compare the District to other jurisdictions, because it is responsible for the multiple functions that normally are associated with those of a city, a county, a school district and a State.

Using the ratio of total tax-supported debt to population, the District is dramatically out of step with other large cities. Compared to the District's \$10,000 per capita debt to New York City's less than 7,000, Chicago's 4,000; Boston is 1,800, and Baltimore is around 1,200. This leads to the broader issue of the challenge of addressing the District's comparatively high spending needs with a restricted tax base.

The District, as the urban center of a large metropolitan area, houses a disproportionately large share of very poor and needy people. The District's overall poverty rate of 19 percent and child poverty rate of 33 percent are among the highest in the Nation, and more than three times the comparable rates across the neighboring counties. Unlike other urban jurisdictions, the District cannot pool resources across the areas from the same State to serve its urban poor.

In this environment of high expenditure needs, the revenue challenge is equally great. Now, here is where the U.S. Congress plays an important role. Kindly permit me to briefly note two areas that merit continuous attention. Both go to the unfunded mandates that restrict the District's own taxing power. One, the prohibition on taxing the income earned by nonresidents including those who commute into the city on a daily basis. That 66 percent of the income is earned by nonresidents makes the simple point.

The District has an especially high concentration of nontaxable real property, much of it off the tax rolls due to the presence of the Federal establishment. Because of this unfunded congressional mandate, our residents must shoulder a disproportionate share of the cost of the public services, while the benefits generated by this city are shared by a much larger community.

Our thirteenth consecutively balanced budget attests to the fact that we have not allowed these mandates to become an excuse for fiscal irresponsibility. District residents, through higher taxes, pay for these mandates. The looming danger, given the economic conditions in the Nation combined with the District's high expenditure needs, is that should our revenue growth slow down, District services would be severely impacted.

Mr. Chairman, that briefly concludes my oral comments. I would like to take this opportunity to stress the particular challenges the District faced in preparing this budget in an environment of declining revenues. The leadership provided by the Mayor and the council allowed the District to produce this balanced budget for the proposed 2009 year. As a result we certify that the 2009 budget and financial plan as proposed is balanced for 2009 and beyond.

I would like to thank you, Mr. Chairman and Mr. Regula, for your leadership and this committee for its diligent and continuous oversight work on the District's finances during the sustained recovery period. We look forward to continuing to work with you and this subcommittee during the forthcoming budget deliberations. Thank you, sir.

Mr. SERRANO. Thank you.  
[The information follows:]

**HEARING ON**  
**THE MAYOR'S FY 2009**  
**PROPOSED BUDGET AND FINANCIAL PLAN**

Before the  
Subcommittee on Financial Services and General Government  
Committee on Appropriations  
U.S. House of Representatives

The Honorable José Serrano, Chairman

April 30, 2008; 2:30 p.m.  
2359 Rayburn House Office Building



Testimony of  
Natwar M. Gandhi  
Chief Financial Officer  
Government of the District of Columbia

Good afternoon, Chairman Serrano and members of the subcommittee. I am Natwar M. Gandhi, Chief Financial Officer for the District of Columbia, and I am here to offer brief remarks about the fiscal year 2009 proposed budget and financial plan for the District.

This has been an exceptionally challenging budgeting and planning cycle. Unlike past years in which revenue re-estimates have provided higher revenue projections that could be included in the proposed budget, this year has been very different. This February, our revenue projections indicated a decline from the December revenue estimates of \$62.5 million for Fiscal Year 2009. For Mayor Fenty's second budget since being sworn in as Mayor last year, the greatest challenge was to control spending in light of the drop in projected revenue, which resulted in revenues insufficient to support agencies' current funding levels. The resulting proposed budget is, for the 13<sup>th</sup> consecutive year, a balanced budget. Since the budget was submitted on March 20, the Council under Chairman Gray has already been hard at work. We will continue to work diligently with everyone in this collaborative process.

Our strong financial standing as evidenced by the FY 2007 Comprehensive Annual Financial Report ("CAFR") results, which showed a \$281 million budgetary surplus, is testimony to the steadfast commitment of the District's elected leaders to sound fiscal management. This steadfast commitment has resulted in a nearly \$2 billion turnaround in the cumulative General Fund balance since 1996, from a \$518 million deficit to a \$1.5 billion positive balance. (See Attachment A) It is important to note that of that \$2 billion increase in fund balance, nearly half was accumulated in the post-Control period.

Indeed, our turnaround from “junk bond” status was faster than any other major city that has undergone a similar period of financial crisis, including New York, Philadelphia, Cleveland and Detroit. We have a fund balance that is still among the highest in the nation – a far cry from a decade ago – substantially improved bond ratings, including upgrades in FY 2007 from both Moody’s Investors Service and Fitch Ratings, and a well-deserved respect in the financial markets. The charts in Attachments B and C show the components of the General Fund Balance and the history of our Congressionally mandated rainy day funds.

It is important to note here that bond rating analysts have stated that economic downturns are the true test of financial management. This balanced budget is testimony to the commitment our elected leaders have to demonstrating that the District can manage effectively in both good times, and bad.

In my testimony that follows, I will first summarize the fiscal recovery over the past decade and discuss only the highlights of the FY 2009 Budget Request and the 5-year plan. I will also address our capital spending needs and the challenge of addressing the District’s comparatively high spending needs with a restricted tax base. Finally, I will address our ongoing commitment to fiscal balance and excellent financial management.

#### **Revenue Outlook**

This time last year, the economic outlook for the District of Columbia was similar to that generally forecast for the nation as a whole; no major disruptions and steady growth in employment, wages and income, but at rates slightly below those experienced in FY 2006.

Indeed, much of that positive forecast was realized in 2007 as the District's economy showed considerable strength. Employment in D.C. grew by 6,300 (0.9 percent) and resident employment increased by 7,000 (2.3 percent).<sup>1</sup> The Census Bureau also reported that the District's July 2007 population of 588,292 was 2,833 (0.5 percent) more than a year earlier, the 4<sup>th</sup> year in a row of comparable population growth.<sup>2</sup>

However, the real property market changed in FY 2007. On the residential side, sales of single family houses declined by 9.4 percent while average sale prices rose by 7 percent. Condominium sales increased by 4.9 percent, by contrast, but average prices fell by 3.0 percent. All told, in FY 2007 the combined value of sales of both single family and condominium units declined by 1.2 percent.<sup>3</sup> In FY 2007 the amount of commercial office space increased by 4.0 percent and the vacancy rate declined — from 6.2 percent in FY 2006 to 5.8 percent in FY 2007.<sup>4</sup> The District's deed transaction records show that the value of all real property that changed hands increased by 10.5 percent in FY 2007.<sup>5</sup> This year, the outlook for the period covered by the FY 2009 – FY 2012 Proposed Budget and Financial Plan is far less positive. It reflects the downturn in the national economy, and the far-reaching effects of the troubled mortgage and housing markets.

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<sup>1</sup> U.S. Bureau of Labor Statistics, employment and labor force data as of March 2008.

<sup>2</sup> U.S. Bureau of the Census population estimate for the District of Columbia and all States as of July 1, 2007.

<sup>3</sup> Sales data for single family and condominium units are from the Metropolitan Regional Information System (MRIS), accessed through the Greater Capital Area Association of Realtors (GCAAR).

<sup>4</sup> Delta Associates, December 2007.

<sup>5</sup> Office of Tax and Revenue, calculated from collections of the Deed Transfer Tax and the Economic Interest Tax.

The February 2008 revenue estimates illustrate the nature of this uncertainty. In just the past three months, the national and the District of Columbia economy have slowed down. Indeed, some financial observers including Federal Reserve Chairman Bernanke are concerned about a possible recession in the near term.

We have observed the slowing in District home sales activity as well as the stock market and the overall pace of economic activity. This slow down, in combination with recent legislative changes, has resulted in an estimate of total revenues less than we expected as of last December. Similarly, for our May revenue estimate we are closely monitoring April tax collections and the evolving economic picture for any signs that the revenues are growing even more slowly. The District's unique mix of revenue sources and the resulting volatility calls for realistically conservative revenue estimates to ensure a balanced budget throughout each fiscal year. (See Attachment D.)

**Highlights of FY 2009 Proposed Budget & FY 2009-FY2012 Financial Plan**

The Mayor's FY 2009 proposed budget includes \$5.659 billion in local-funds spending supported by \$5.663 billion of local revenues, with an operating margin of \$3.5 million. The details of our Local and Gross Budgets are provided in Attachments E and F.

The FY 2009 – FY 2012 Financial Plan appears as Attachment G. Each of the four years is balanced. Tax revenues are projected to increase an average 5.3 percent per year, total local fund recurring revenues an average 5.0 percent, and recurring local operating expenditures an average 3.5 percent.

**Capital Spending, Contemplated Borrowing, and Debt Burden**

The District faces a wide variety of infrastructure needs, placing great demands on its Capital Improvements Plan (CIP) and the resultant borrowing. Attachment H provides details of infrastructure spending and funding sources, including general obligation debt. The total proposed appropriation request for the FY 2009 - FY 2014 CIP is \$607 million for all sources (excluding the Highway Trust Fund), which consists of \$2.180 billion of new budget authority offset by \$1.574 billion of rescissions.

It is difficult to compare the District of Columbia to other jurisdictions because it is responsible for the multiple functions that normally are associated with those of a city, a county, a school district and a state. Using a ratio of total tax supported debt to population, the District is dramatically out of step with other large cities.

Compared to the District's \$10,000 per capita for all tax supported debt, New York City's is less than \$7,000, Chicago's is \$4,400, Boston's is \$1,800 and Baltimore's is \$1,200.

From the broader viewpoint – that D.C., unlike a Baltimore, Boston, Chicago or New York, functions as a city, a county, a school district and a state. However, it is valid to weigh more heavily the use of a ratio of debt service to expenditures as the measure for judging debt burden.

Our debt service at the beginning of the current fiscal year was around 9.1 percent of expenditures, and with currently planned amounts of future borrowing, that percentage is projected to rise to 12.1 percent by the end of FY 2010, just above the firm cap of 12 percent recommended by the OCFO and above the Moody's median of 11.5 percent for large cities. (See Attachment I.) This leads to the

broader issue of the challenge of addressing the District's comparatively high spending needs with a restricted tax base.

### **High Needs and Restricted Tax Base**

The District, as the urban center of a large metropolitan area, houses a disproportionately large share of very poor and needy people. The District's overall poverty rate of 19 percent and child poverty rate of 33 percent are among the highest in the nation and more than three times the comparable rates across neighboring counties.<sup>6</sup> Unlike other urban jurisdictions, the District cannot pool resources across the wealthier suburban areas from the same state to serve its urban poor.

Higher costs of service delivery further threaten the District's fiscal health. Labor costs for public services in the District are 123 percent of the national levels, and capital costs (primarily buildings) are 1.65 times the national average. Because of this combination of a needy population and high service costs, our expenditure needs are very high. If the District were to offer a basket of public services similar to what is offered across all states and localities in the nation, for each of its residents, it would have had to spend 130 percent more than what other states and localities spend on average.

In this environment of high expenditure needs, the revenue challenge is equally great. Whereas the District has access to a wide range of state and local revenues, it also has, again unlike other central cities, the responsibilities of a state, a municipality, and various special districts (for example, schools).

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<sup>6</sup> The U.S. averages are 13 percent for poverty and 18 percent for child poverty. The average poverty rate across Arlington, Fairfax, Montgomery and Prince George's counties is 6 percent. The average child poverty rate is 7 percent.

Now, here is where the U.S. Congress plays an important role. Kindly permit me to briefly note two areas that merit continuous attention. Both go to the unfunded mandates that restrict the District's own taxing power.<sup>7</sup>

- The prohibition on taxing the income earned by non-residents, including those who commute into the city on a daily basis. That 66 percent of the income is earned by non-residents makes the simple point.
- The District has an especially high concentration of non-taxable real property, much of it off the tax rolls due to the presence of the federal establishment. The value of property held by the federal government is 32 percent of [non-residential] property values.

Because of these unfunded Congressional mandates, our residents must shoulder a disproportionate share of the costs of public services, while the benefits generated by the city are shared by a much larger community. Our 13<sup>th</sup> consecutively balanced budget attests to the fact that we have not allowed these mandates to become an excuse for fiscal irresponsibility. Yet, District residents, through higher taxes, pay for these mandates. The looming danger, given the economic conditions in the nation combined with the District's high expenditure needs is that, should our revenue growth slow down, District services could be severely impaired.

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<sup>7</sup> In 2003, the General Accounting Office (now Government Accountability Office) calculated this preemption to be between \$470 million and \$1.1 billion annually. (GAO, District of Columbia Structural Imbalance and Management Issues, May 2003.)

**INTERNAL CONTROLS STRUCTURE****Yellow Book Report**

At the time of the release of the District's CAFR, the independent auditors provide a separate report titled "Independent Auditors Report on Compliance and on Internal Control over Financial Reporting and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards". This document, commonly called the "yellow book" report, lists three material weaknesses and six reportable conditions for Fiscal Year 2007. Material weaknesses and, to a lesser degree, reportable conditions are significant deficiencies in the design or operation of internal control over financial reporting.

Mr. Chairman and Members of the Committee, I want to stress that these findings should in no way diminish the remarkable accomplishments that the District has achieved since the end of the control period. Rather, they should be viewed as an opportunity for all of us in the District to focus on the areas that most need improvement. The findings will be a valuable tool for managers throughout the District to improve financial management. It is imperative that we correct the problems cited by the auditors, and I give you my personal pledge to eliminate or reduce the severity of the findings over the next year.

The table below shows a history of the yellow book findings since FY 2001. Please note that Medicaid and Disability Compensation have appeared in the yellow book in five of the past seven years. Human Resources and Unemployment Compensation have appeared in four of the past seven years, and DCPS has appeared three times in that period.

YELLOW BOOK FINDINGS FY 2001 - FY 2007		
	Material Weaknesses	Reportable Conditions
FY 2001	DCPS Accounting & Fin Reporting UDC Accounting & Fin Reporting Medicaid Provider Accounting	Cash/Bank Reconciliation Human Resource/Payroll Process Mgmt Accounting - Non-Routine Transactions Monitoring of Exp Against Open Procurements Disability Comp Claims Mgmt Reporting of Budgetary Revisions
FY 2002	Health Care Safety Net Contract Mgmt Medicaid Provider Accounting	Human Resource/Payroll Process Mgmt Monitoring of Exp Against Open Procurements Disability Comp Claims Mgmt
FY 2003	Health Care Safety Net Contract Mgmt Medicaid Provider Accounting	Human Resource/Payroll Process Mgmt Unemployment Comp Claimant File Mgmt
FY 2004	<b>NONE</b>	Unemployment Comp Claimant File Mgmt Management of Disability Comp Program
FY 2005	<b>NONE</b>	Management of Disability Comp Program Management of Unemployment Comp Trust Fund
FY 2006	District of Columbia Public Schools	Management of the Medicaid Program
FY 2007	Office of Tax and Revenue - Refund Process Management of the Medicaid Program District of Columbia Public Schools	Investment Reconciliations and Activities NCRC and the AWC Management of Grants Compensation Management of Disability Compensation Program Management of Unemployment Comp. Program

I want to address each of the three material weaknesses and summarize steps already taken and planned to remediate the problems outlined. A detailed management response to the auditors' findings is included in the yellow book report, and I am happy to answer questions about those responses.

I. Office of Tax and Revenue – Refund Process

As I testified before the DC Council last month, the Yellow Book finds that the refund process in the Office of Tax and Revenue is a material weakness. This was, of course, the area where the alleged fraud occurred, in manual property tax refunds. Last fall, the tax refund process, specifically manual tax refunds, was identified as an area of particular concern. Since November, we have overhauled that process by establishing and enforcing procedures for preparation and review of refund requests. We have a new head of OTR, Stephen Cordi, who is a highly accomplished professional with an established record of sound tax management. We are also currently reevaluating and strengthening our anti-fraud programs, not just in OTR but throughout the OCFO.

Following the discovery of the alleged fraud in the Office of Tax and Revenue, I established an independent Audit Committee to Review Financial Management and Internal Controls to advise the OCFO on how to swiftly and effectively address the problems that led to the alleged fraud. This group, chaired by Sheldon Cohen, former Commissioner of the U.S. Internal Revenue Service, has provided invaluable advice and direction, and the OCFO is grateful for the time and effort contributed by this group.

Indeed, we have already made great headway in improving the way the OCFO does business, but much remains to be done. The Committee will report quarterly. Attachment J provides details on the Committee's mission and membership. Judge Stanley Sporkin, former U.S. District Judge for the District of Columbia, has also provided his expertise and guidance to the OCFO, for which we are also very grateful.

#### II. Management of the Medicaid Program

This finding reflects the ongoing problems in the Medicaid program. Indeed, it has been elevated from a reportable condition in the FY 2006 CAFR to a material weakness, an indication that we have not made enough progress in improving this area. While the District no longer has the kind of write-offs we experienced in previous years due to poor billing practices, we still have a way to go. The Inspector General has also publicly pointed out for years the problems in Medicaid administration. The new Department of Health Care Finance, combined with a competent and effective contractor, is key to solving this issue once and for all. Again, it is essential that we make the resources available to correct this situation and remove this from the list of weaknesses.

#### III. District of Columbia Public Schools (DCPS)

The last material weakness is the DC Public Schools. Following last year's CAFR citing DCPS as a material weakness, we established a team, working with DCPS officials, to remedy the personnel, procurement and Medicaid issues that led to the "material weakness" finding.

Through the development of policies and procedures, employee training programs and the imaging of documents, significant progress was made to improve the performance in these areas. Indeed, this year's finding reflects that hard work, as the bases for the finding no longer includes the personnel, procurement and Medicaid issues. The District is at a disadvantage, of course, because of the "high-risk" designation by the U.S. Dept of Education that represents the most significant basis for the finding.

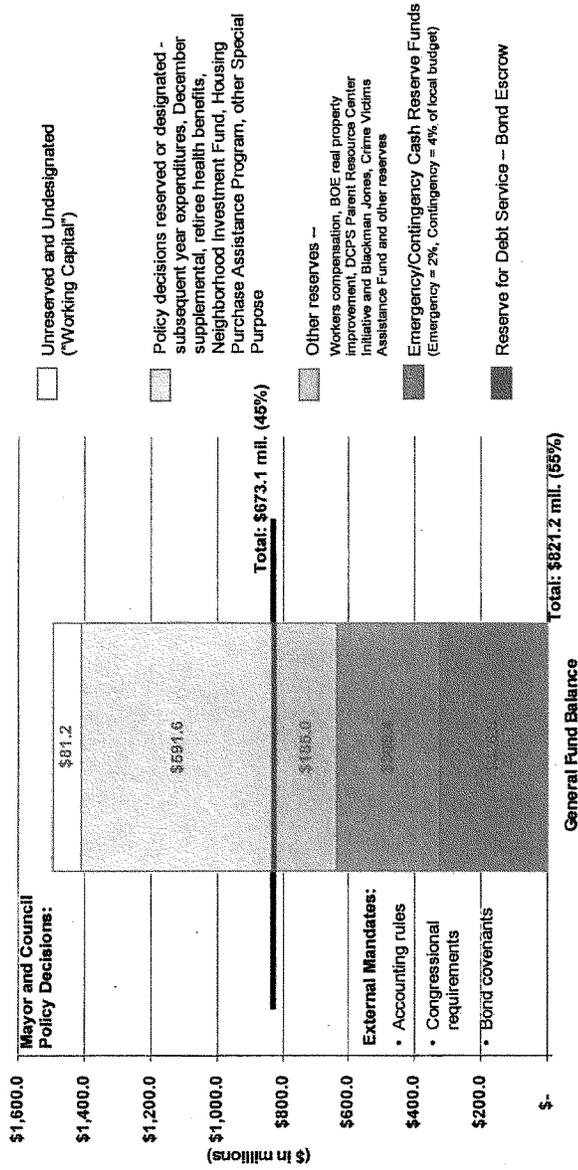
**Conclusion**

Mr. Chairman, I would again like to take this opportunity to stress the particular challenges the District faced in preparing this budget in an environment of declining revenues. The leadership provided by the Mayor and the Council allowed the District to produce this balanced budget proposal for FY 2009. As a result, we certified that the FY 2009 budget and financial plan, as proposed, is balanced for FY 2009 and beyond. I would like to thank you, Mr. Chairman, for your leadership and this committee for its diligent and continuous oversight work on the District's finances during this sustained recovery period. We look forward to continuing to work with you and the subcommittee during the forthcoming budget deliberations.



# FY 2007 General Fund Balance

Total as of September 30, 2007: \$1,494 million\*



Government of the District of Columbia  
Office of the Chief Financial Officer  
Natwar M. Gandhi, Chief Financial Officer

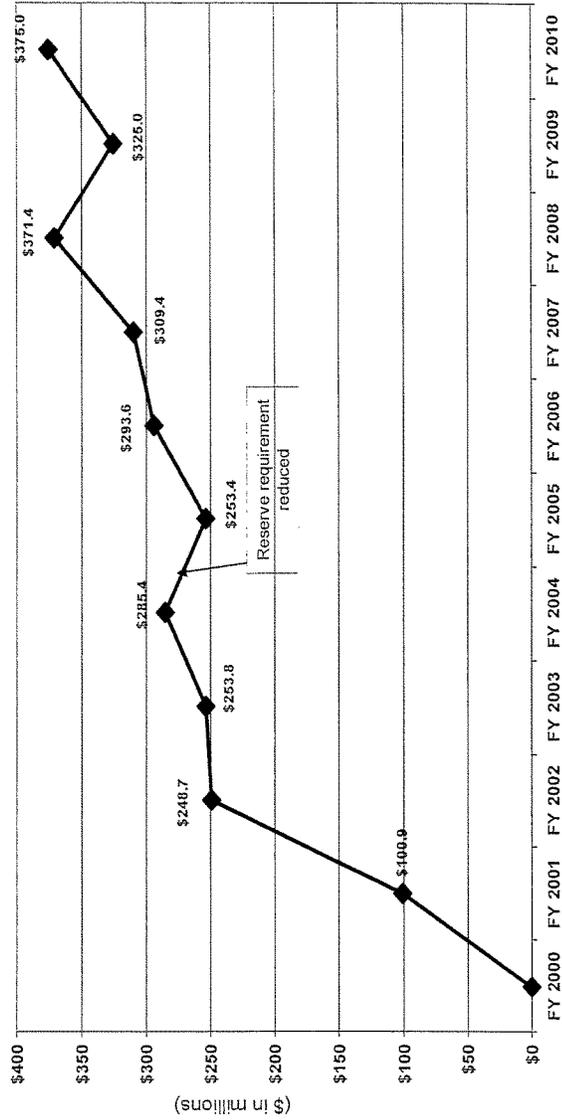
\*In addition, as of September 30, 2007 \$100 million was in a Separate Revenue Fund for the Housing Production Trust Fund, formerly part of the General Fund



Attachment C

# Rainy Day Fund

(FY 2007 Actual, FY 2008-2010 Projected)  
 Congressionally Mandated Emergency (2%)/Contingency (4%) Cash Reserves

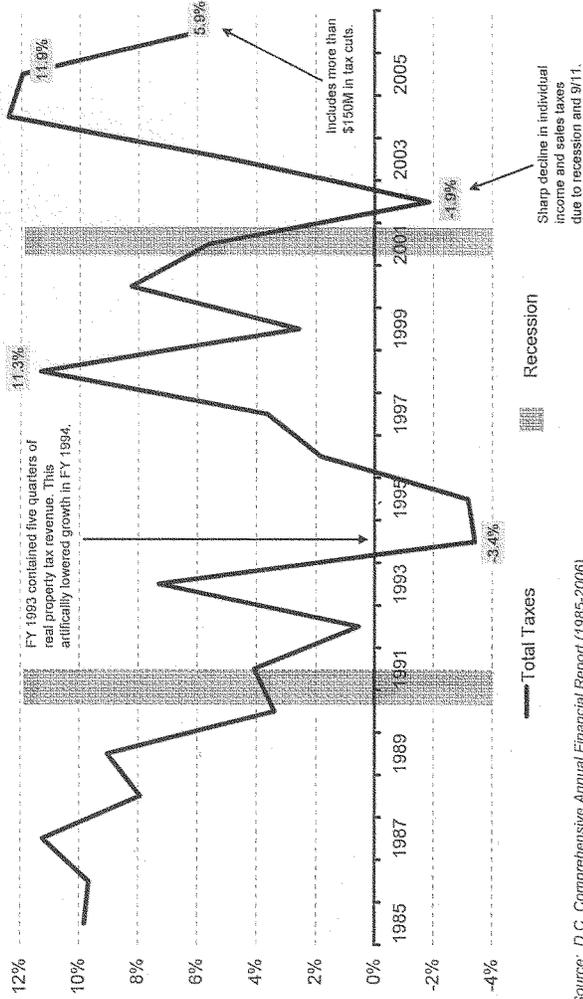


Government of the District of Columbia  
 Office of the Chief Financial Officer  
 Natwar M. Gandhi, Chief Financial Officer



# Volatile Tax Revenues

## Annual Percent Change in Tax Revenue: FY 1985 - 2006



Source: D.C. Comprehensive Annual Financial Report (1985-2006)

**Government of the District of Columbia**  
Office of the Chief Financial Officer  
Natwar M. Gandhi, Chief Financial Officer



## Proposed FY 2009 Budget Summary Local Fund

(\$ in thousands)

	<u>FY 2008</u>	<u>FY 2009</u>	<u>Change</u>	<u>%</u>
	<u>Approved</u>	<u>Proposed</u>	<u>Change</u>	<u>Change</u>
Total Non Dedicated Taxes	\$4,783,509	\$5,030,764	\$247,255	5.2%
Non-Tax Revenue	326,111	307,844	(18,267)	-5.6%
Transfer from Lottery	72,100	71,000	(1,100)	-1.5%
<b>Sub-total Local Fund Revenues</b>	<b>\$5,181,720</b>	<b>\$5,409,608</b>	<b>\$227,888</b>	<b>4.4%</b>
Adjusted revenue for School Modernization	100,000	0	(100,000)	100.0%
Miscellaneous Revenue (including revenue proposals)	64,549	159,477	94,928	147.1%
Appropriated Fund Balance	276,139	93,500	(182,639)	-66.1%
<b>Total Local Fund Resources</b>	<b>\$5,622,408</b>	<b>\$5,662,585</b>	<b>\$40,177</b>	<b>0.7%</b>
Operating Expenditures	\$5,402,890	\$5,548,757	\$145,867	2.7%
School Modernization Fund	100,000	0	(100,000)	100.0%
PAYGO Capital and Transfer to OPEB	119,059	110,337	(8,722)	-7.3%
<b>Total Expenditures</b>	<b>\$5,621,949</b>	<b>\$5,659,094</b>	<b>\$37,145</b>	<b>0.7%</b>
<b>Proposed Operating Margin</b>	<b>\$459</b>	<b>\$3,491</b>	<b>\$3,032</b>	<b>660.6%</b>

**FY 2009 Gross Funds Budget by Fund Type**  
 (\$ in thousands)

<b>Fund Type</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>%</b>
	<b><u>Approved</u></b>	<b><u>Proposed</u></b>	<b><u>Change</u></b>
Local	\$5,621,948	\$5,659,094	\$ 37,146 0.66%
Dedicated Taxes	145,893	223,541	77,648 53.22%
Special Purpose	555,814	557,282	1,468 0.26%
<b>Subtotal General Fund</b>	<b>\$6,323,655</b>	<b>\$6,439,917</b>	<b>\$116,262 1.84%</b>
Federal	2,068,978	2,228,806	159,828 7.72%
Private Grants	7,875	5,418	(2,457) -31.20%
<b>Total Gross Funds</b>	<b>\$8,400,508</b>	<b>\$8,674,141</b>	<b>\$273,633 3.26%</b>

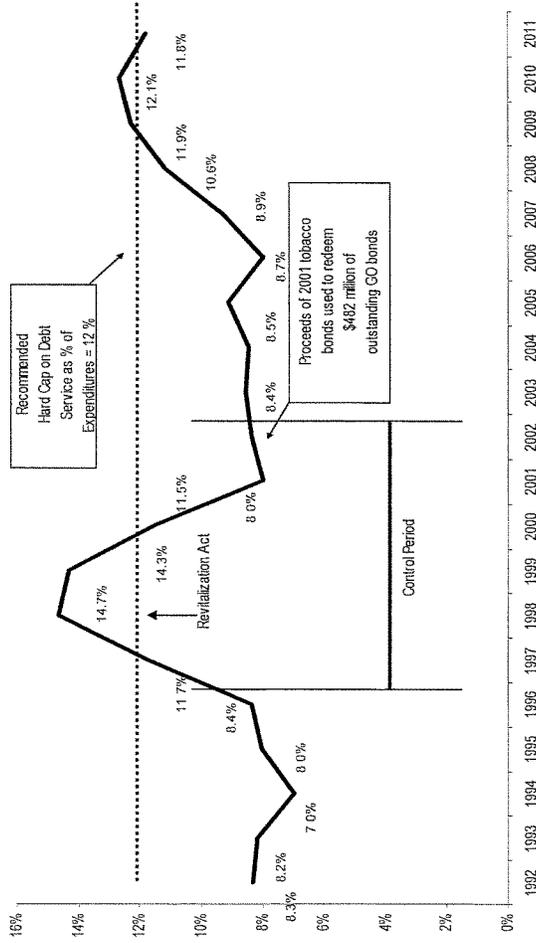
Table 3-1  
**FY 2009 - 2012 Proposed Budget and Financial Plan: GENERAL FUND**  
 (\$ thousands)

	FY 2007 Unaudited Actual	FY 2008 Approved	FY 2008 Adjusted	FY 2009 Proposed	FY 2010 Projected	FY 2011 Projected	FY 2012 Projected
1 Revenues							
2 Taxes	4,729,040	4,883,509	4,946,037	5,030,704	5,313,545	5,581,462	5,877,999
3 Dedicated Taxes	58,731	142,052	133,308	229,899	236,314	245,410	255,166
4 General Purpose Non-Tax Revenues	423,075	326,111	326,207	309,247	304,386	309,784	305,247
5 Special Purpose (O-type) Revenues	366,511	357,784	449,620	483,460	479,368	471,706	477,475
6 Transfer from Lottery	65,375	72,192	70,000	71,000	71,000	71,000	71,000
7 Sub-total General Fund Revenues	5,643,533	5,781,556	5,925,262	6,122,987	6,404,613	6,678,342	6,986,589
8 Bond Proceeds for Insurance Costs	6,335	60,000	60,000	15,000	15,000	15,000	15,000
9 Bond Proceeds for Capital Resources	0	0	0	3,987	3,987	3,987	3,987
10 Transfer from Enterprise Fund (HPTF) for Debt Services	0	12,000	12,000	0	0	0	0
11 Transfer from Enterprise Fund Baseball Project	14,871	9,714	0	0	0	0	0
12 Transfer from Capital Funds (Bus Shelter Revenue) for Debt Svc	0	9,714	0	0	0	0	0
13 Transfer in from AWC and NCRC for Economic Development Authority	0	55,646	55,646	161,692	0	0	0
14 Fund Balance Use	122,412	339,989	473,791	141,250	150,733	196,114	156,225
15 Revenue Proportions	0	59,584	0	0	0	0	0
16 Total General Fund Resources	6,787,181	6,325,116	6,639,900	6,444,406	6,673,843	6,863,953	7,161,613
17 Expenditures (by Appropriation Title)							
18 Administration	305,259	387,642	422,092	440,569	420,736	432,855	446,410
19 Economic Development and Regulation	321,892	384,808	487,931	336,769	303,897	306,346	311,429
20 Public Safety and Justice	961,429	1,036,665	1,045,933	1,036,650	1,064,441	1,099,537	1,137,464
21 Public Education System	1,240,676	1,305,621	1,302,331	1,451,708	1,502,340	1,546,438	1,592,765
22 Human Support Services	1,512,702	1,573,805	1,643,167	1,603,301	1,672,833	1,754,428	1,841,790
23 Public Works	429,971	573,070	586,295	612,973	614,910	633,495	656,593
24 Financing and Other	489,194	645,501	664,956	670,093	710,186	691,814	722,575
25 Cash Reserve (Budgeted Contingency)	0	50,000	50,000	0	0	0	0
26 Budgeted Reserve	0	0	0	60,000	60,000	60,000	60,000
27 Lease Purchase Costs	21,052	43,755	43,755	51,405	53,138	59,827	51,084
28 Sub-total Operating Expenditures	6,324,096	6,811,157	6,282,665	6,293,665	6,397,371	6,583,789	6,826,110
29 Capitalization Fund	0	108,152	88,102	0	0	0	0
30 Paygo Capital	118,901	110,907	0	28,237	0	0	0
31 Transfer to Trust Fund for Post-Employment Benefits	4,700	110,907	110,907	81,100	86,700	92,700	99,000
32 Transfer to Enterprise Funds - HPTF and Baseball Revenue Fund	56,731	92,930	83,852	75,913	65,059	62,481	64,066
33 Total General Fund Expenditures and Transfers	5,505,257	5,223,655	6,619,351	6,439,130	6,549,130	6,736,970	6,886,175
34 Operating Margin, Budget Basis	280,954	1,459	20,539	4,491	24,713	114,983	173,635
35 Beginning General Fund Balance	1,435,142	1,494,000	1,494,000	1,020,748	843,567	645,270	943,253
36 Operating Margin, Budget Basis	280,954	1,459	20,539	4,491	24,713	114,983	173,635
37 Projected GAAP Adjustments (Net)	(99,564)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)
38 Deposits into Reserve Funds (from Fund Balance)	0	0	0	0	0	0	0
39 Withdrawals from Reserve Funds (to Cash Reserves)	0	0	0	0	0	0	0
40 Fund Balance Use	(122,412)	(339,989)	(473,791)	(141,250)	(150,733)	(196,114)	(156,225)
41 Ending General Fund Balance	1,494,000	1,335,470	1,020,748	843,567	840,270	943,263	1,096,888
42 Composition of Fund Balance							
43 Emergency Cash Reserve Balance (2%, formerly 4%)	87,932	100,024	100,024	103,591	125,004	125,004	125,004
44 Contingency Cash Reserve Balance (4%, formerly 3%)	221,451	221,451	221,451	221,451	250,009	250,009	250,009
45 Fund Balance not in Emergency & Contingency Reserves	1,184,617	1,013,995	719,273	518,515	473,257	567,990	721,975
46 Ending General Fund Balance (Line 44)	1,494,000	1,335,470	1,020,748	843,567	840,270	943,263	1,096,888
47 Total cash reserves - operating, emergency & contingency	309,383	371,475	371,475	325,042	375,013	375,013	375,013

Attachment H									
FY 2009 - FY 2014 Capital Budget									
(Dollars in thousands, excludes Highway Trust and Local Streets Maintenance Funds)									
	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	Total, FY 2009- FY 2014	Percent of FY 2009	
<b>Sources:</b>									
G.O. Bonds	399,178	397,189	394,495	396,049	397,408	396,996	2,381,315		
PAYGO	100,785	76,873	82,552	92,632	110,671	118,474	591,986		
Master Lease	60,822	39,261	33,902	39,685	36,953	30,918	241,541		
Sale of Assets	6,000	0	0	0	0	0	6,000		
<b>Subtotal, Sources</b>	<b>566,784</b>	<b>513,324</b>	<b>510,949</b>	<b>520,365</b>	<b>545,032</b>	<b>546,388</b>	<b>3,210,842</b>		
Additional G.O. Bonds - Large-Scale	150,000	50,000	0	0	0	0	200,000		
Financings	716,784	563,324	510,949	528,365	545,032	546,388	3,410,842		
<b>Total, Sources</b>									
<b>Uses:</b>									
District of Columbia Public Schools	193,998	200,948	213,952	231,178	250,111	260,258	1,356,145		34.2%
Mass Transit Subsidies	65,500	77,700	83,700	84,800	88,800	91,200	491,700		11.6%
Department of Parks and Recreation	55,000	51,500	42,520	41,520	38,520	40,000	269,860		9.8%
Department of Mental Health	27,800	5,000	0	0	0	0	32,800		4.9%
Fire and Emergency Medical Services	27,714	29,290	26,506	22,376	29,516	17,076	152,478		4.9%
Office of Property Management	26,890	25,260	25,260	27,980	38,050	62,620	206,060		4.7%
DC Public Library	23,163	22,475	36,000	42,277	26,002	18,662	169,179		4.1%
Office of the Chief Technology Officer	16,184	11,649	8,914	14,508	18,077	12,565	82,907		2.9%
Department of Public Works	15,920	9,075	8,635	8,000	8,800	7,800	59,030		2.8%
Office of the Chief Financial Officer	15,200	6,200	6,200	3,200	0	0	30,800		2.7%
Metropolitan Police Department	14,950	10,200	11,558	10,200	10,200	5,200	62,308		2.6%
University of the District of Columbia	14,130	8,540	8,015	5,520	4,150	2,700	43,055		2.5%
Office of the State Superintendent of Education	13,583	8,500	3,000	3,000	0	0	28,083		2.4%
Deputy Mayor For Economic Development	12,760	0	0	0	0	0	12,760		2.3%
Dept. of Housing and Comm. Development	8,450	7,750	6,550	5,950	10,500	5,000	44,200		1.5%
Dept. of Consumer and Regulatory Affairs	7,750	7,750	7,750	7,750	5,000	0	36,000		1.4%
Department of Transportation	6,700	9,100	7,700	7,500	7,500	7,500	46,000		1.2%
Office of Unified Communications	6,700	7,000	5,000	5,000	5,000	5,000	33,700		1.2%
Department of Human Services	4,500	5,500	0	0	0	0	10,000		0.8%
Office of Planning	2,706	3,436	2,106	2,106	2,106	2,106	14,569		0.5%
Commission on Arts & Humanities	2,500	2,700	2,700	2,700	2,700	2,700	16,000		0.4%
Office on Aging	1,950	0	0	0	0	0	1,950		0.3%
Department of Health	990	0	0	0	0	0	990		0.2%
Department of Corrections	579	3,750	3,582	2,000	0	0	9,911		0.1%
Office of Zoning	357	0	0	0	0	0	357		0.1%
<b>Subtotal, Uses:</b>	<b>566,784</b>	<b>513,324</b>	<b>510,949</b>	<b>528,365</b>	<b>545,032</b>	<b>546,388</b>	<b>3,210,842</b>		<b>100.0%</b>
Large-Scale Financings (Office of Property Management):									
Consolidated Laboratory Facility	75,000	50,000	0	0	0	0	125,000		
Government Centers	75,000	0	0	0	0	0	75,000		
<b>Total, Uses:</b>	<b>716,784</b>	<b>563,324</b>	<b>510,949</b>	<b>528,365</b>	<b>545,032</b>	<b>546,388</b>	<b>3,410,842</b>		

# Growing Debt Burden

## Debt Service as % of Expenditures (as of September 30 of each fiscal year)



Fiscal Year

**Government of the District of Columbia**  
 Office of the Chief Financial Officer  
 Natwar M. Gandhi, Chief Financial Officer



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE CHIEF FINANCIAL OFFICER

Attachment J

**AUDIT COMMITTEE APPOINTEES  
BRIEF BIOGRAPHIES****Sheldon Cohen, Chairman**

The Honorable Sheldon S. Cohen, Esq. is currently a Director at Farr, Miller & Washington, LLP and a professional lecturer at the George Washington Law School. Mr. Cohen retired as a partner in the law firm of Morgan, Lewis & Bockius in 2005. Mr. Cohen served in the Internal Revenue Service on several different occasions. During the period 1952-1956, he served as a legislative draftsman during the drafting of the 1954 Code and Regulations. In the period from January 1964 through January 1969, Mr. Cohen served as Chief Counsel for one year and then as Commissioner of the Internal Revenue Service for four years. He was the youngest person to ever serve in that position. He has also served as an officer and Trustee of the National Academy of Public Administration and has served as a panel member of several studies dealing with the administrative aspects of the Internal Revenue Service. He served as a consultant to the United Nations Development Program assisting developing countries with tax administration. He is the Chair of the Audit Advisory Committee of the GAO.

**Donald H. Chapin**

Mr. Chapin has been a consultant on accounting, auditing, and financial management issues from 1997 to date. He is a member of the Audit and Review Committee of the Smithsonian. He has advised the New York City District Attorney on Tyco related auditing issues and law firms on Enron related accounting issues, auditor independence issues and the application of accounting standards in a dispute. He evaluated the external and internal audit functions of a major telecommunications company and advised on related financial management issues. He also aided a law firm to evaluate an audit failure by a major accounting firm. He is a recent former member of the Standing Advisory Group (SAG) of the Public Company Accounting Oversight Board (PCAOB) and prior to his appointment consulted with the PCAOB staff. He served on the NASDAQ Listing and Hearing Review Council where he was Chairman of its committee on Accounting and Audit Committees. He also served on the Federal Accounting Standards Advisory Board, the Government Auditing Standards Advisory Council, the Loan Loss Accounting Task Force of the AICPA and the Public Sector Committee of the International Federation of Accountants. From 1989 to September 30, 1996, Mr. Chapin was employed by the GAO, ending his service as the Assistant Comptroller General for Accounting and Information Management responsible for GAO's financial and systems audits of federal agencies and corporations and for its reports and Congressional testimonies on financial management issues.

**John Hill**

Mr. Hill is Chief Executive Officer of the Federal City Council, with more than 28 years of experience in federal, state, local, and private sector entities. He formerly served as director of state and local government consulting services for Arthur Andersen, LLP, and was the founding executive director of the Washington, D.C. Financial Control Board. Mr. Hill has also served as a director in the U.S. General Accounting Office, director of audits with the Marriott Corporation, and audit manager for Coopers and Lybrand and Price Waterhouse.

**James L. Hudson**

Mr. Hudson served as the Vice-Chair of the National Capitol Revitalization Corporation and is currently involved in real estate and venture capital development. He was the Special Legislative Counsel for the cities of Detroit, New Orleans, Oakland and Kansas City where he provided legal and executive department support on city finance and economic development plans. In addition, he served as principal liaison with the U.S. Congress and the U.S. Departments of Housing and Urban Development, Labor and Transportation. Mr. Hudson also served as Finance Counsel for the District of Columbia government from 1974 to 1982.

**Irving Pollack**

Mr. Pollack was a former Commissioner and Director of the Divisions of Enforcement and Market Regulation for the U.S. Securities and Exchange Commission, Mr. Pollack is serving as Of Counsel to Fulbright & Jaworski L.L.P. He has consulted for numerous governmental and private institutions, including the World Bank, the International Finance Corporation (World Bank affiliate), the International Organization of Securities Commissions (IOSCO), the National Association of Securities Dealers, the Ontario and Quebec Securities Commissions and Merrill Lynch Pierce Fenner & Smith, Inc., Edward Jones, and the U.S. Synthetic Fuels Corporation. Mr. Pollack has rendered expert services for Dow Jones, the New York Stock Exchange, and other organizations. He recently served as a Director of ML Life Insurance Co. of New York and a member of its Audit & Compensation Committee.

## QUARTERS PROGRAM

Mr. SERRANO. Thank you to all three of you for your testimony. Before we get on to these very difficult questions we have for you, we deal with a lot of serious issues in Congress, but every so often we deal with something that makes us feel good. I feel good we were able to include D.C. and the territories in the quarters program. As you know, a quarters program putting a State on every quarter was to end this year, and D.C. was not included, and neither were the territories. I represent the Bronx, but I was born in Puerto Rico, so I am looking out for both places, and D.C. goes first, for obvious reasons. I am trying to convince them that Puerto Rico should go second, but that is another issue.

My question is, is the design ready? Has it been approved for the quarter?

Mayor FENTY. We have it down to three designs, and the decision will be made very fast.

Mr. SERRANO. Okay.

Mayor FENTY. We can get you a copy of all three. All three are excellent. And we just want to thank the committee, and also Congresswoman Norton, for your support on this issue..

Mr. SERRANO. I think it will do two things. It will give the respect in this way, some respect that the District and the territories deserve. But my point is that wherever Americans live under the American flag, they should be treated equally in every way possible. And some child somewhere is going to ask his Mom, how come D.C. is on the back of a quarter; and Mom will either say, wait until your father comes home, or will give the answer, or say, we will go to the library tonight or we will Google it and find out.

I think it is an important thing, and I am looking forward to the design. No need to put my picture on the back of the quarter. That would be totally improper

## D.C. PUBLIC SCHOOL REFORM.

Mayor Fenty, some would say the most public battle you have taken on during the last year is the overhaul of the D.C. public school system. We hear about many initiatives including buyouts and school closings. This also happens to be the item for which you are asking for the largest increase from this subcommittee.

Could you discuss your vision for transformation of the school system? Also please discuss how your budget request for \$20 million to jump-start the public school system as well as the \$54 million requested for school improvement fits into your plan.

Mayor FENTY. Thank you very much, Mr. Chairman.

The general vision is that at the end of the day, the District of Columbia's public schools will have the same level of excellence as any particular public school system you could pick anywhere in this country or any private school or public charter school or anything else. The citizens of the Nation's Capital deserve it, and just like a lot of other cities, we have been behind for so long.

What we have tried to do in the past 10 or 11 months since we took over this school system is to give Chancellor Rhee all of the flexibility, independence and autonomy to run the system as if there weren't all of the bureaucracies and cumbersome regulations

of government, because, to be quite candid with you, with 25 to 30 years of just heading in the wrong direction of a school system, she needs to move fast. So what we have done with the support of the Council and Chairman Gray, is allow her to hold administration officials accountable, to be able to consolidate schools where necessary, and to have the revenue that she needs.

So she has laid a lot of people off; she has scrubbed some programs. We are putting about 40 million new local dollars into the classrooms without increasing the size of the school's budget. What she expects to do with the additional money that is before your committee is to use it for new programs.

One of the highest-profile things that Chancellor Rhee wants to do is have a new agreement with the Washington Teachers' Union, an agreement that would be very equitable where she would have more opportunity to hold teachers accountable, but where she would be able to provide them more resources, including bonuses, and merit pay along the way. We think it will be a model agreement, but we will need additional funds to be able to pay for it. This is a great start.

Mr. SERRANO. And obviously it has support in the community and in the local press also, from what I understand.

Chairman Gray, I know you and other members of the City Council have voiced concerns during the past year of or about the school reform measures. Could you comment on the Mayor's plan to transform the schools? And are you hearing concerns from the constituents to the City Council?

Mr. GRAY. Well, first of all, let me underscore that we enthusiastically and heartily support education reform, and we were delighted to join with the Mayor in embarking on this journey. One of the things we did at the very outset last January was to make education a committee of the whole issue so that every council member was a part of education reform. The Council voted overwhelmingly to support education reform. And then we made several other crucial votes. One was to give the Chancellor the ability to have more flexibility in how she addresses nonperformers in administrative positions in the school system.

I think at every step of the way, the Council has done two things. One is it tried to be a good steward on behalf of the citizens that we represent, to ask the difficult questions. But at the end of the day, we have been convinced that what has been proposed to us was the direction that should be pursued, and we have supported that enthusiastically.

#### HIV/AIDS PREVENTION PROGRAMS

Mr. SERRANO. Mayor Fenty, at this time last year we discussed my belief that Congress should remove the controls it has placed on the city throughout the years, on the District. We were not as successful as I would have wished for last year's bill. One item which I am most pleased about is the removal of the ban on the needle exchange program in the District. Can you discuss how you have implemented a city-supported needle exchange program? What other measures is the city taking to try to stop the spread of HIV/AIDS?

Mayor FENTY. Thank you, Mr. Chairman, Congresswoman Norton and Ranking Member Regula. This is a measure that you have undertaken to remove this as a rider from our budget, which has had, without any hyperbole, life-and-death consequences and positive ramifications on the city.

There has been a group called Prevention Works that has worked in the city for years now. They have all privately fund-raised and have similar groups in other jurisdictions, most notably Chicago and I am sure New York as well, who provide clean needles. We would like for everyone to be substance-free, but in this day and time it is just not a reality. So while we know people may be using unclean needles, it is great to have these organizations that are working to provide people with clean needles, which we know prevents the spread of HIV/AIDS.

Within days of the legislation becoming effective, the city wrote a \$300,000 grant to Prevention Works for needle exchange. We are now working with our HIV/AIDS Administration to develop the capacity of many other local organizations to do the same thing.

Some of the other things that our new HIV/AIDS Administrator Shannon Hader and my new Health Director Pierre Vigilance are doing includes marketing, working with the schools, including grants that have been set up by the City Council to put resources to nonprofits that are working east of the river, where there is the greatest prevalence and growth of HIV/AIDS.

We have one of the most renowned experts in the country, Dr. Shannon Hader and a lot of people are recognizing our results. Independent groups like Appleseed have increased our scores and grades for what we are doing on HIV/AIDS. We are glad to supplement the testimony and get you more information.

[The information follows:]

## **The District of Columbia Response to the HIV/AIDS Epidemic**

### ***Introduction***

The HIV/AIDS epidemic in the District of Columbia continues to present a major public health challenge. Although significant strides in the diagnosis, treatment and survival of those living with HIV and AIDS have occurred both nationally and locally, the District remains a city with one of the highest burdens of the disease in the United States. The District's epidemic is one-third higher than Baltimore, twice as high as New York City and four times that of Detroit. HIV/AIDS in the District has become a modern epidemic due to its sheer size and complexity. Anticipating the new trends in HIV, the District is experiencing an epidemic with heterosexual contact leading its new transmissions, severe health disparities with 80 percent of the disease impacting African Americans though they comprise 56 percent of the city's population, a high rate of late diagnosis that increases mortality and a troubling mother-to-child transmission of HIV that has nearly been eliminated in other parts of the country.

Equipped with the best new data on HIV of any jurisdiction in the country, the District is building on its exceptionally strong network of health care coverage, medical care, prevention and testing, and support services, while retooling its strategies to strengthen the response to meet the current state of the epidemic and its new trends. The federal government has and continues to be a crucial partner in the District's effective response.

### ***Administration***

The DC Department of Health (DOH) is the lead District Government agency for policy and programs on HIV/AIDS. Within DOH, the HIV/AIDS Administration (HAA) partners with health and community-based organizations to provide HIV/AIDS prevention and care services to District and Washington area eligible residents. Services include medical support, HIV counseling and testing, data and information on HIV/AIDS programs and services as well as on the impact of HIV/AIDS on the community, education, information, referrals, and intervention services. A drug assistance program (ADAP) provides drugs at no cost to eligible District residents who are HIV positive or have AIDS. The HAA administers the District's budget for HIV/AIDS programs, provides grants to service providers, monitors programs, supports community participation through planning councils and tracks the incidence of HIV and AIDS in the District of Columbia.

DOH/HAA is becoming a data-driven agency, utilizing the full benefit of epidemiology (including HIV/AIDS case data and population-based studies) to improve the scope, quality and distribution of care and treatment and prevention services in the District. DOH/HAA also seeks to build new capacity among current community providers and engage new partners by mainstreaming HIV/AIDS into their existing activities and also initiating new programs. With significantly improved data, DOH/HAA is examining its prevention and intervention portfolio (including both locally and federally funded programs) for revision to meet the scale of the District's epidemic and its diversity of population.

DOH/HAA is reinvigorating its federally-required community planning panels with new members, expertise and support to most effectively allocate federal care and prevention resources. With support from the Mayor, DOH/HAA is strengthening its partnerships within the District Government to engage more agencies in the response. DOH/HAA also has integrated its Sexually Transmitted Diseases (STD), Tuberculosis (TB) and adult Hepatitis programs with HIV/AIDS to better coordinate the co-morbidities of these diseases. Lastly, we know that heightening awareness and reducing stigma are crucial elements to controlling HIV/AIDS in our community, and, therefore, the District has undertaken a large scale promotion campaign to fully implement routine HIV testing as a standard of health care and increase public awareness about ways to reduce risky behavior leading to infections.

### ***Recent Accomplishments***

Here are a few of the District's recent achievements the District has made in responding to the HIV/AIDS epidemic:

- Launched the first-ever, citywide initiative to implement routine testing.
- Expanded the availability of free HIV testing by tripling locations.
- Developed new partnerships with local hospitals (Howard University Hospital, George Washington University Hospital) and health clinics (Unity Health Care) to start routine testing in medical settings.
- National model partnership with DC Jail, routine voluntary testing of more than 15,000 individuals entering the correction system.
- Improved surveillance division, eliminated backlog of over 2,000 cases, released first report in five years on AIDS cases and first ever data on HIV cases.
- Instituted new rule on confidential HIV name-based reporting.
- Became one of first cities in the country with free condom distribution program; in first year, more than 1 million condoms were distributed through over 50 community partners.
- Provided \$60 million to over 60 DC community partners to provide primary medical care, support services, housing, testing and prevention interventions.
- Provided free medications to over 1,300 people through DC AIDS Drugs Assistance Program (ADAP) with no waiting list for help; model demonstration programs to assist people living with HIV to work and receive health insurance coverage.
- Launched new capacity building and testing initiatives in East of the River areas of the city where HIV cases are increasing.

### ***Challenges and Goals***

From the new data, DOH/HAA has identified major findings and developed an action plan with goals to respond to the specific challenges in the District's epidemic. The following table contains a summary of those major findings and the District's planned responses to each.

Annual Report Major Finding	Action Plan
<p><b>Late testing, faster progression of disease, missed opportunities for prevention and treatment:</b> Late testers: 70% of all AIDS cases progressed from HIV to AIDS in less than 12 months after the initial HIV diagnosis, primarily due to late testing. Nationally, only 39% of AIDS cases are late testers.</p>	<p>Get more HIV-infected people into continuing care earlier to prevent development of AIDS</p> <ul style="list-style-type: none"> <li>• Take routine HIV testing in medical settings from ‘policy’ and pilots to ‘full implementation’ during 2008 <ul style="list-style-type: none"> <li>○ 100% of emergency rooms offering routine rapid testing by 2009</li> <li>○ All inpatient facilities with routine testing policy and implementation plan by 2009</li> <li>○ Promote, among both health care workers and clients, routine HIV testing as the expected norm for general primary care</li> <li>○ Ongoing trainings of medical staff on routine testing and reporting</li> </ul> </li> <li>• Provider packet, December 2007: information packet sent to more than 4,000 DC medical providers on routine HIV testing and confidential name-based reporting</li> <li>• Double the proportion of persons receiving community-based rapid testing who enroll in care within 3 months of rapid testing</li> <li>• “Open up” ADAP (funded antiretroviral) slots by appropriately moving qualifying individuals to Medicaid waiver and ticket to work programs, and ensure that community is aware that ARV treatment is available regardless of insurance status</li> </ul>
<p><b>More children are being born with HIV or AIDS when medical treatment can completely prevent mother-to-child transmission</b> The district accounts for six percent of all mother-to-child (perinatal) HIV infections in the u.s. during the last five years. Between 2001 and 2006, there were 56 children ages 13 or younger diagnosed with either HIV or AIDS in the District of Columbia. Many states reported no new cases among children during this same time period.</p>	<ul style="list-style-type: none"> <li>• Goal to eliminate mother-to-child transmission by 2009 (no babies to be born with HIV/AIDS)</li> <li>• Hire dedicated mother-to-child transmission coordinator</li> <li>• Work with DC’s seven birthing centers to implement CDC and ACOG guidelines of routine testing, to provide rapid testing at delivery for women without test results, to ensure appropriate ARV treatment of pregnant women</li> <li>• Work with obstetric providers to implement ACOG and CDC guidelines for routine screening, and implement CDC-recommended 3<sup>rd</sup> trimester repeat screening for high prevalence areas such as dc</li> <li>• Develop primary prevention tools for pregnant and breast-feeding women, and develop innovative delivery through “healthy start” and other programs already reaching pre &amp; post-natal mothers</li> </ul>
<p><b>Heterosexual contact leads new transmissions; dc has a multi-faceted epidemic heterosexuals, MSM, and drug users all at high risk for HIV.</b> Heterosexual: leading mode of transmission with roughly 37% of newly reported HIV cases in the district; followed by 27% through men having sex with men (MSM);</p>	<ul style="list-style-type: none"> <li>• Increase awareness and risk-perception among heterosexuals: new social marketing program for heterosexual youth</li> <li>• Recognize and respond to the overall scope and scale of our epidemic and our prevention needs: <ul style="list-style-type: none"> <li>○ Revamp prevention strategies to new evidence based programs appropriate to larger scale interventions</li> <li>○ Ensure a combination of general prevention (general population) and targeted prevention</li> </ul> </li> </ul>

14% through intravenous drug use; and 22% from an unknown mode of transmission. Nationally, MSM remains the leading mode of transmission for new HIV cases.	(highest risk population) strategies <ul style="list-style-type: none"> <li>• Continue and expand current cutting-edge efforts with incarcerated/transitional persons, to ensure a safety net of prevention and care services for persons re-entering residency in dc</li> <li>• Expand and improve free condom distribution program to distribute at least 3,000,000 condoms per year by 2009</li> </ul>
<b>Women are a growing proportion of the district's epidemic.</b> The number of women living with AIDS has increased by more than 76% over the past six years. The district has a larger number of newly reported HIV cases among females (47 cases per 100,000 residents) than in other jurisdictions.	<ul style="list-style-type: none"> <li>• Increase risk perception among women through social marketing, community-based awareness and service activities</li> </ul>
<b>Black community is hardest hit by the epidemic.</b> Although black residents account for only 57% of the district's population, they account for 81% of new reports of HIV cases and approximately 86% of living AIDS cases.	<ul style="list-style-type: none"> <li>• New \$3.5 million federal grants primarily for district African-American residents that will expand HIV testing and linkages to care and treatment with goal to test more than 35,000 people in year 2008</li> <li>• Community mobilization through mass media, community-based organizations, and faith-based organizations to increase risk awareness and response at community-level</li> <li>• Engage civic leaders in promoting a visible local response to HIV</li> </ul>
<b>Mitigating the impact of substance use on transmission and survival.</b> One out of five infections from IDU. Also, substantial sexually-transmitted infections result from alcohol use, crystal meth use, and other illicit drug use.	<ul style="list-style-type: none"> <li>• Launch new comprehensive substance abuse (injection and other drugs) initiative to reduce transmission and improve survival, in collaboration with APRA and DMH</li> <li>• Implementing local funding of needle exchange since congressional ban lifted, including expansion of current service provider and new national model of integrating needle exchange into current HIV/AIDS, primary medical care and homeless services</li> </ul>
<b>Owning the epidemic: coming together for a district-wide response.</b> Epidemic covers all populations and areas of the district, including men who have sex with men, older adults, east of the river and other wards.	<ul style="list-style-type: none"> <li>• Launch new public awareness program with display advertising, multi-media, and spokespeople to achieve measurable results in behavior change to routine HIV testing, reduce risky behavior, and access to treatment and support services</li> <li>• Expand capacity building of new community based providers for HIV related services</li> <li>• Increase condom distribution and other strategies</li> </ul>

The next sections provide additional information on the District's efforts in the major categories of prevention and testing, care and treatment, and targeted populations.

#### **Prevention and Testing**

In 2007, HAA sub-granted CDC funding to 10 community-based programs to provide a number of science-based prevention models such as Safety Counts, Popular Opinion Leader, Sista and

Healthy Relationships. Additionally, most of the funded programs were also expected to offer Comprehensive Risk Counseling Services (CRCS) to individual clients in order to ensure that prevention services are as comprehensive as possible. Funded providers were supported by HAA staff by keeping them informed of where and when trainings became available for any Effective Behavioral Interventions (EBI). In addition, at HAA's request, the Rochester STD/HIV Prevention Training Center (funded by CDC) provided training at HAA on Stage-based Comprehensive Risk Counseling and Services and on Stage-based Behavioral Counseling for STD/HIV Prevention.

Also, HAA received funding from the City Council for 13 community providers to reach non-traditional, at risk populations. Of those providers, 10 are providing testing and counseling services. For FY08, HAA plans to issue a new RFA for prevention programs. Special effort will be made to engage non-traditional community partners that have experience with high risk populations identified in the epidemiology report. Careful consideration will be placed in the RFA process to ensure that HAA recruits a broad number of service providers.

For FY08, HAA is developing a Community of Practice group of HAA-funded community providers to focus on lessons learned for service implementation. Specifically, the group will focus on sharing knowledge, solving problems and discussing innovation to achieve a higher impact in their Ward (community) with evidence-based prevention as one of the core elements. The Community of Practice is intended to support providers to find solutions to their most common barriers to service delivery as well as new ideas for innovative programming.

During FY08, HAA in collaboration with the Community Planning Group will be reviewing the portfolio of prevention activities in context of the new HIV surveillance data in order to support an appropriate balance of individual-level and group-level interventions, geographic distribution, and target population distribution. Also, to facilitate a better understanding of the District response over time, HAA will be seeking to better understand how HAA funding relates to the overall portfolio of HIV activities delivered by partners, in order to assess opportunities for maximum synergies with and leveraging of non-HAA supports.

During FY07, outreach and health education remained an important activity of the HAA's prevention programs. Several programs delivered outreach based interventions such as Community Education Group's social networks program and the Women's Collective mobile unit. Many of the programs funded by the HAA have identified locations where high risk behavior is prevalent and distribute information or perform HIV testing and referrals. In addition, most funded providers at one point or another are engaged by HAA to participate in a number of community events where the outreach to district residents is high and prevention tools, such as condoms and prevention messages, are well received. Note that for FY08 and FY09, HAA will be increasingly focused on how to support local ward-based organizations to play a critical role in local outreach and education activities. HAA is also implementing a scaled-up mass media/social marketing campaign on a series of topics intended to directly increase the use of available prevention and care services.

HAA compiles HIV test data both through its CDC-funded and locally-funded Counseling, Testing and Referral (CTR) sub-grantees and from non-funded participants in the routine HIV testing program. HAA sub-grantees performed 29,853 HIV tests during 2007 and 4,645 tests

have been reported in 2008. In addition, the 2007 Routine Screening Campaign allowed HAA and partners to perform nearly 39,000 rapid tests. Note that as of 2008, information on partner counseling and testing has been further standardized and will be collected into a single data management system, allowing improved combined reporting.

During FY07, HAA secured a CDC HIV Testing Grant (PS07-768) Expanded and Integrated HIV Testing for Populations Disproportionately Affected by HIV, Primarily African Americans, for \$1,461,874. During FY08, HAA will provide funding to Howard University Hospital and George Washington University Hospital to expand their efforts to develop best-practices of routine HIV-screening and linkage to care, while developing a sustainable (reimbursable model) HIV testing program in their hospital settings.

HAA plans a new approach to condom distribution modeled on New York City that will increase the number of locations (both traditional and non-traditional, such as bars, restaurants, convenience stores, etc.) and quantity of condoms distributed. HAA has set a goal of 3 million condoms to be distributed by 2009.

#### ***Care and Treatment***

The new surveillance data underscores grim realities for people with HIV in the District of Columbia: there is a shorter average time between detection and AIDS diagnosis, and a shorter average time between AIDS diagnosis and death when comparing cases in the District with cases nation-wide. This strongly indicates that people with HIV are not receiving effective primary care and treatment services in a timely way. The District's key focus has become an overarching effort to increase awareness of HIV disease, promote early enrollment into care for those with HIV and enhance efforts to retain individuals in care once enrolled.

The District offers an extensive medical insurance coverage for eligible residents through federally-funded Medicaid and locally-funded DC Health Care Alliance for non-Medicaid eligible residents. For persons living with HIV not covered by those health insurance programs or Medicare, the District utilizes federal Ryan White CARE Act funding for a full range of comprehensive primary medical care and support services. The District is also the designated fiscal agent for metropolitan jurisdictions – Suburban Maryland, Northern Virginia, Suburban West Virginia counties. Approximately 60 percent of the CARE Act Part A funds are allocated to the District, with the remaining portion to the jurisdictions. The Part B funds the District receives are dedicated to District programs. The District serves a similar role for housing funding from the Housing Opportunities for People living with AIDS (HOPWA) program, with the same percentages to the District and jurisdictions. AIDS Drug Assistance Program (ADAP) funds under Part B are solely for the District.

In May, 2007 the federal Health Resources and Services Administration released guidance implementing provisions in the reauthorized CARE Act. This guidance permits the use of CARE Act Part A and Part B (formerly called Title I and Title II, respectively) for a set of twenty-seven service categories.

The service categories support two set of services. Thirteen categories comprise the "core medical services," including HIV primary care, oral health, mental health, substance abuse

counseling and medical case management. The remaining service categories are characterizes as “support services,” and are meant to have demonstrable links to enrolling or maintaining clients in clinical care.

The District has been maximizing the support it provides to people living with HIV to provide free medications through the AIDS Drug Assistance Program (ADAP). Average monthly enrollment in the program has increased significantly: in the current grant year, there is an average of 1,313 clients enrolled in the program. In the prior grant year, average monthly enrollment was 1,002. DC ADAP has been aggressively seeking to increase its enrollment through broad marketing campaigns as well as an increased focus on adherence.

HAA also has obtained federal waivers to expand coverage of persons living with HIV ineligible for Medicaid through two programs – Ticket to Work and 1115 Waiver. These programs are nearly fully utilized.

Two key priorities for the DC ADAP program in 2008 are to increase enrollment in all programs and to develop a drug pipeline. HAA is in the process of establishing targets for each referring

community-based organization in order to encourage providers to actively identify and enroll potential DC ADAP clients. Simultaneously, HAA is working in collaboration with MAA to maximize client enrollment in the Medicaid HIV waiver programs. This will require a city-wide effort to recognize potential clients and bring them into care.



HAA is also exploring methods of developing a drug pipeline in order to ensure adequate supplies of pharmaceuticals to accommodate the anticipated influx of clients into DC ADAP and the Medicaid waiver programs.

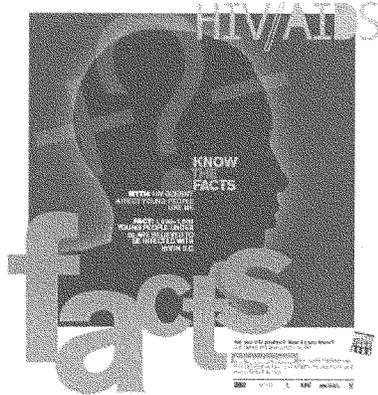
HAA has been conducting a public awareness program on ADAP entitled “It’s Free to Treat Your HIV”. The program consists of public transit, newspaper, broadcast (radio and television) and Internet advertising, and

outreach materials, including posters, brochures (in six languages) and incentive items. An example is included on this page.

HAA administers the HOPWA program, which provides short-term and long-term rental assistance, facility-based housing, supportive services for individuals in housing (including case management, job readiness, and day programs). Through HOPWA, the District is providing long-term assistance to 350 individuals living with HIV and short-term assistance to 450 persons. There is a waiting list of 200 individuals because of the shortage of affordable housing in the District. HAA recognizes that the program needs some re-design and re-structuring. Key elements to be re-considered are the relationship between housing and health care services, the extent to which services can be delivered in better coordination with the housing programs in the neighbor jurisdictions, and the extent to which housing services can be improved by closer

collaboration within the District between HAA and the Districts' Department of Housing and Community Development. To that end, HAA has sought technical assistance from the Department of Housing and Urban Development.

#### *Youth and HIV*



In FY07, HAA prepared and released a new plan *District of Columbia 2007-2010 Youth and HIV/AIDS Prevention Initiative* to address the prevention and care of young people and HIV. HIV is having a growing disproportionate impact on young people nationally and in the District of Columbia. HIV infection rates among District young people tripled for the period 2000 to 2005 compared to the previous five years. A health survey also shows that only half of young people have been tested for HIV. The plan's goal is to effectively reduce transmission of HIV among young people and ensure proper services and treatment available to them. The Initiative will strengthen collaborations inside DC government and with community partners, raise capacity to

test and serve young people, enhance education and awareness efforts to reach more DC youth, expand science based interventions, equip more parents to assist prevention, and increase by 25 percent the number of young people who know their HIV status.

HAA funded, with CDC funding, a community partner Metro TeenAIDS to develop and conduct a social marketing program targeting heterosexual youth. Metro TeenAIDS did focus groups with young people, hired a creative consultant, and is completing work on the marketing materials that will be advertised on public transit and in outreach brochures, resource directories and posters. The program, entitled REALtalk, integrates a locally funded initiative to use text messaging to obtain information on HIV and STD testing and other sexual health resources. The program will be launched at the end of May. An example of the material is included here. The goal is to challenge 50,000 young people to get tested for HIV. HAA also uses CDC funding to support another community provider for HIV testing and outreach to young people.

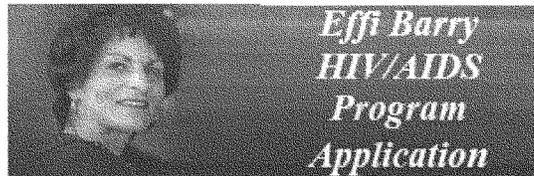
#### *Leveraging Local Dollars to Enhance Federal Support*

HAA sought systematic ways to leverage local dollars to maximize both cost efficiencies and increase service delivery. The use of local dollars has enabled HAA to increase service capacity in program funded primarily with federal dollars. Specifically, local funds are prioritized to fill gaps that cannot be filled with federal dollars either due to policy limitations or funding shortages. Below are some examples of HAA productivity with local dollars with respect to care and housing services, testing and prevention services.

- HAA manages the “Bridges Fund,” a program designed to serve low income people with HIV whose circumstances do not qualify them for federal assistance. This program has primarily been used to assist persons with critical mortgage payments to avoid foreclosure and to maintain stable housing. This program is funded to one provider at an annual amount of \$200,000.
- HAA supports burial assistance with local funds, a service area not allowed for federal program. This program is funded to one provider at an annual amount of \$250,000.
- In testing, HAA has received local dollars through the City Council Budget Support Act allocations to support 10 organizations in counseling, testing and referral services. The community providers target non-traditional, high risk populations. The community organizations also provide confirmatory testing that enables other CTR providers to increase rapid testing. One community organization, Steppin’ Up Movin’ On, provides testing to young people.
- HAA has used local dollars to purchase test kits for both HAA-funded and non-funded community providers. The bulk purchase of test kits at a more cost effective price enables the District Government to save dollars and save the a much higher expense to an individual community provider.
- HAA established a national model partnership with the DC Department of Corrections to institute inmate voluntary/opt-out entry HIV screening. HAA has both funded the community provider Family and Medical Counseling Services and supplied rapid test kits with local dollars. With this high risk population, the routine screening upon entry in the DC Jail has efficiently identified HIV positive individuals.
- HAA has used local dollars to purchase male condoms, female condoms, dental dams, and lubricant units and provided them to funded and non-funded community organizations. The bulk purchase of these safe sex products has relieved community providers of using federal dollars and buying the items in smaller quantities at higher prices.
- HAA is using local dollars to expand needle exchange services in the District. When Congress lifted the ban on District dollars for needle exchange, Mayor Fenty committed \$650,000 to increase services provided by the District’s sole needle exchange organization Prevention Works and issue a RFA to fund current service providers to integrate needle exchange into their existing program activity.
- HAA will be using local dollars to launch a comprehensive social marketing program for public information and awareness in order to leverage increased utilization and impact of federally-supported activities including: HIV testing, access to treatment and care, and participation in prevention interventions to reduce risky behavior. In addition, HAA has enhanced a federal-fund supported Metro TeenAIDS social marketing program targeting young people by using the local funds to add an innovative text messaging component. The text messaging service will be a critical communication tool to engage young people and provide information on testing and reducing risky behavior.
- HAA also will be using local dollars provided by the City Council to train school-based nurses and other District agency staff on HIV/AIDS interventions. Metro TeenAIDS is working closely with DOH to select a training curriculum that will build capacity among school nurses to do brief risk assessments and comprehensive interventions. Also, Metro

TeenAIDS will be training Parks and Recreation youth workers, Summer Youth Employment Program youth and staff, and other District agencies to be identified on HIV and general health prevention skills.

- Local funds that support the Effi Barry HIV/AIDS Program will serve a critical role in increasing the number of small, ward-based organizations to mainstream HIV/AIDS programming to more effectively respond to the epidemic in their communities. The funds will provide extensive capacity building skills and consultation services that would prohibitively expensive for a small organization to acquire. The mini-grants will help support participation, as well as initiate HIV planning.



*Government of the District of Columbia  
Department of Health, HIV/AIDS Administration  
Capacity Building and Community Outreach Bureau*

**Deadline: Friday February 29, 2008 at 5:00 PM**

★ ★ ★ Government of the  
District of Columbia  
Adrian M. Fenty, Mayor

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
**DOH**  
DEPARTMENT OF HEALTH

Mr. SERRANO. That is wonderful.

The subcommittee is proud to welcome a special guest, Congresswoman Eleanor Holmes Norton, to the committee. In Yiddish there is a phrase that we Puerto Ricans know well; it is "nudge." A nudge is a person who pushes and pushes and pushes. And this person, on behalf of D.C., pushes and pushes and pushes, and we are very proud to have you on the panel today.

Mr. Regula.

#### SCHOOL DROPOUT PREVENTION

Mr. REGULA. Thank you, Mr. Chairman.

Just a couple of questions. I put most of my questions in the record in the interest of time.

Mr. REGULA. One of the problems that confronts the school system is dropouts, as you well know. What success have you had? Do you have programs to try to address that? And do you get some of the institutions in the area of higher learning to bring in some people, maybe offer courses in the high school so that young people have an idea that maybe they can go to college? If they haven't thought about it, but if they get some exposure, that could be one of the ways of addressing it. But I would be interested in your comments on the dropout rate generally.

Mayor FENTY. A huge issue, as you know, Congressman. What the Chancellor envisions is having middle schools and high schools that challenge the young people, and stimulate them, and excite them so they won't want to drop out. That is why the \$40 million additional going to the classrooms is for arts, language, music and either vocational education on one side or AP classes on another, and enhanced sports as well. These things are a big part of keeping kids engaged so you will see a lot of that, you will see a lot of the encouragement.

Ms. Rhee also believes, and I support her 100 percent on this, that after-school activities are extremely important, because we only have the kids from 9:00 to 3:00 in the schools. So by next year she will have a comprehensive after-school program in every school, where we make sure that we are keeping the kids engaged, they are learning something, and they are excited. No matter what is happening in their own community or at home, we don't want that to detract from their educational experience.

I think that is the general vision of the Chancellor, and we have made great strides, and this budget which is before you will allow us to make even more.

#### THREE-SECTOR EDUCATION FUNDING

Mr. REGULA. Do you support the three-sector education funding that the President has requested? I assume you worked out the details with the White House.

Mayor FENTY. That is exactly correct. The Chancellor has been engaged in discussions, as has the City Administrator, going well back into the winter. While there are a lot of details, the essence of it is that by strengthening the entire education system in the District of Columbia and putting more money into the public schools, we think we are going to have a world-class education system.

And I agree with the Chancellor 100 percent, that in the District of Columbia we have to be supportive of education in as many different arenas as humanly possible, and we have tried to do that.

Mr. REGULA. Chairman Gray, I assume, speaking for the council, you would take the same position?

Mr. GRAY. We do. We certainly support the three-sector funding and look forward to those additional resources. Focusing as the Mayor has on public education, we need every resource available to us now to quickly jump-start our system.

Mr. REGULA. Mayor, would you support an increase in the stipend for the high school students—in the scholarship program so they would have greater choices?

Mayor FENTY. Well, the Chancellor worked very hard on what was submitted by the White House through OMB, and so before we would make any changes, any additions or decreases, I would want to go back to her point people in the Federal executive.

What I can say is that the package before you, the quote/unquote package, of three-sector funding has been worked on by all three different sides, and I think it is the right compromise for right now. Whether there should be adjustments in the future I can't say, but I can say you have the support of this administration to work with you. We would like to have everybody at the table before we would say yea or nay to any additional changes.

Mr. REGULA. Certainly I congratulate you, and the council, and the administration on putting an emphasis on education, because that is the future of the young people in this community and the community in general.

Mr. Chairman, I will put the rest of my questions in the record.

Mr. SERRANO. Thank you, Mr. Chairman.

Ms. Kilpatrick.

#### D.C. STATEHOOD

Ms. KILPATRICK. Thank you, Mr. Chairman.

Good to see you all this year.

It is my understanding that there are about 600,000 residents in the city—the State of D.C., and of that 600,000 in the State, you generate among them \$5.7 billion—was that the number that I heard this morning?

Mayor FENTY. Yes.

Ms. KILPATRICK. Of your own money, \$5.7 billion comes from the residents who live here.

Mayor FENTY. Correct.

Ms. KILPATRICK. And \$3.7 billion is what the Federal Government gives you on Medicaid and other categories.

Mayor FENTY. Yes, ma'am.

Ms. KILPATRICK. I am hopeful that as we have a new administration in November, we will be able to move forward with D.C. statehood. It is time.

Mayor FENTY. Thank you very much.

Ms. KILPATRICK. There are many other States, three or four other States, and it is just time. You deserve two Senators and a Congressperson, and we hope that we can move forward on that next year.

## CAP ON ATTORNEY FEES FOR SPECIAL EDUCATION CASES

As we discussed, there were caps on your attorneys' fees for disabled children. Something was worked out. I never heard the final—my staff is kind of keeping me up. How does that work now? We didn't need legislation. Was the cap removed, and are the children being represented adequately?

Mayor FENTY. My understanding, as I recall it, the cap is still in place. The cap is still in place, but what the Chancellor has tried to do is—for some reason, prior to us taking over the system, DCPS would fight everything. We would just fight all of the legal cases, no matter whether or not we knew that we weren't providing the services required by Federal law. So what you will see the Chancellor do is to say, "listen, we know that the system is broken." In some cases, instead of fighting and driving up exorbitant legal fees and not serving the child, we will just serve the child and just stipulate with the attorneys that things are not as they should be.

We think that is going to do two things. It is going to allow the cases where there is really some disagreement to go through, and hopefully the attorneys will get what they need and will fight for the kids. In cases where we just know we have done wrong, we are going to provide the service for the kids. In the Chancellor's budget there is a lot of improvement on special education, most notably in creating lab schools in the public school system in the District of Columbia.

Ms. KILPATRICK. So the cap itself maintains itself.

Mayor FENTY. Correct.

Ms. KILPATRICK. It is not a detriment to getting the representation it needs to have for the children.

Mayor FENTY. I think by ending the automatic dispute, by saying we know we have done wrong in some cases, and saying, listen, we know we need to fix this, I think you will see a lot quicker results for the children. We are working very closely with anyone who is advocating for children, especially those who may need special services.

Ms. KILPATRICK. That is good.

## FEDERAL FUNDING OF D.C.

In the Federal request for 2009, I notice the Executive Office of the Mayor is zeroed out, as is the chief financial officer zeroed out for Federal funds. Does that mean the general fund of D.C. will be used to compensate that, or you don't need any dollars there?

Mayor FENTY. Well, I don't know if there was a special provision last year. What I am being told is that there were some grants that went through the EOM.

Let me actually yield to the CFO. He probably knows this chapter and verse.

Mr. GANDHI. That is true that this is basically the flow-through grants that go through our offices.

Ms. KILPATRICK. We don't have any for you at this time?

Mr. GANDHI. I am sure you will, but later as the budget process goes through the Hill.

Ms. KILPATRICK. Right. You didn't as the budget was being prepared, but we are hopeful that we will have more grants for D.C. as we go forward.

Mr. GANDHI. Right.

Ms. KILPATRICK. I, too, want to commend you as an educator and a grandmother. Education is the key. You get a good education, you have some options; if you don't, then unfortunately you have other kinds of problems.

In China and India they spend 70 percent of their Federal dollars on education.

Mayor FENTY. Wow.

Ms. KILPATRICK. In our country we spend 2 percent of this \$3 trillion budget on education and then leave it to the States. There is something very wrong with that. So we need people like yourselves, Mr. Chairman, and others who have that vision. When we shortchange the children now, we pay for it later. So I want to commend you for what you are doing.

Mayor FENTY. Thank you.

Ms. KILPATRICK. And I look forward to continuing working with you.

Mr. SERRANO. Thank you.

You are a grandmother?

Ms. KILPATRICK. Absolutely. Five, I know I don't look like it. It is great.

Mr. SERRANO. It is good to score points with the Vice Chairwoman.

Mr. Alexander.

#### FEDERAL FUNDING FOR D.C. EDUCATION

Mr. ALEXANDER. Thank you, Mr. Chairman, Mr. Mayor, members of the table, thank you for being here.

Mr. Mayor, the administration's budget has provided \$74 million to improve K-12 education in the District, which you have identified as a top priority. And it expands upon the successful three-sector education strategy, an effort to help all sectors of education in the Nation's Capital. The budget provides \$20 million to jump-start reform initiatives for the District's traditional public school system, where your office has assumed more responsibility and is committed to building on key principles of the No Child Left Behind Act.

Eighteen million dollars is provided to support public charter school development and quality. D.C. has a particularly high percentage of students enrolled in charter schools. Ensuring the schools are high quality is, of course, extremely important. This \$18 million will enable the continuation of the D.C. Opportunity Scholarship Program that provides low-income District parents more options for obtaining a quality education for their children.

Under the three-sector approach, funding has flowed to these three branches. Each year the charter schools are receiving \$13 million each more than they would have otherwise. Do you feel that this has been an effective funding strategy?

Mayor FENTY. I am sorry, did you ask if I feel that it has been effective?

Mr. ALEXANDER. Effective.

Mayor FENTY. I do. But more importantly, I think the people I have appointed to be subject matter experts in education feel that it has.

One of the things that is important in the District of Columbia, because we are so far behind on education, is that we educate the children and give them excellence by any means necessary, and as quickly as humanly possible. It would almost be hypocritical for me, with the type of shakeups that we have been pushing for in the school system, to not recognize there are other ideas and other people outside the traditional public school system who bring ideas and creativity, and energy to educating our children in the District of Columbia.

And so, again, I will repeat what either Chancellor Rhee or Chancellor Joel Klein in New York, who Congressman Serrano knows very well, has said before: If someone is providing an excellent education to a young person in the District of Columbia, they are going to have the support of this administration; and those who do not will not have our support, and that could be in the public, private or public charter schools.

#### COURT-APPOINTED SPECIAL ADVOCATE PROGRAM

Mr. ALEXANDER. I would like to talk to you about the court-appointed special advocate organization. As you know, CASA, as it is called, are trained volunteers who represent children in cases of abuse and neglect in the District of Columbia family court system. Approximately 4,000 cases of abuse and neglect are currently in the D.C. Court system, and 1,500 new abuse and neglect cases are brought before the D.C. family court every year.

The CASA for Children of D.C.'s goal is to recruit and train an advocate to serve every one of the abused and neglected children in D.C., all toward the goal of matching each child with a permanent and loving family. It is my understanding that the CASA has actually saved the District money. I wonder where CASA fits into the D.C. budget and priority list given its enormous impact on the District and whether you plan to fund it or not.

Mayor FENTY. We do, Congressman. They were funded in this year's 2008 budget, and they will be funded in the 2009 budget as well. Like you, we recognize the enormous amount of great work they have done for young kids in our child welfare system.

Mr. ALEXANDER. Thank you, sir.

That is all, Mr. Chairman.

Mr. SERRANO. Mr. Cramer.

Mr. CRAMER. Thank you, Mr. Chairman.

#### NATIONAL CHILDREN'S ALLIANCE

Mr. Mayor, welcome before this subcommittee.

I have been in the U.S. Congress since the early 1990s, and, as my colleagues, we live here in the District of Columbia almost as much as we live back in our home districts. Unfortunately we don't get to enjoy the District as much as we would like, because we are constantly going back home as soon as our session is over with.

However, think back on what the District was like in the early 1990s versus what it is now. It is a totally different place, and it is our Nation's Capital. We need to be proud of what goes on here.

I congratulate you. You are off to a good start. I followed your career there.

I do want to bring up, since my colleague Mr. Alexander brought up the CASA, Court-Appointed Special Advocates, in my prior life I was a district attorney in north Alabama, and we put together a pilot new program to interview with physically and sexually abused children, and we called it the Children's Advocacy Centers. We started there in north Alabama; there are 7-, 800 of them around the country now. We couldn't believe that what we started to try to rescue these kids and hold the offenders accountable and then provide services to restore their lives and their families' lives would be copied by communities around the country.

But I came to D.C., and we worked with the task force here for a number of years to establish the Safe Shores Program, and it was a newcomer. It needed to be here because we have a lot of kids that are in the system here that—their situations need to be addressed.

But the nonprofit that is the pilot of this, the National Children's Alliance, moved here to D.C. I have to tell you, their involvement with D.C. government from the get-go was a nightmare. The National Children's Alliance was going to collocate with Safe Shores, and we found a firehouse on the other side of the Hill, on the Senate side across from the Hyatt Regency, that had been shuttered for years, and we were going to move together in there. This membership organization was going to occupy some administrative floors upstairs, and this working child abuse intervention program, Safe Shores, was going to be downstairs. It would be in a firehouse. What a nice image for kids to come into that that are going to have to tell what I would not want any child to have to tell.

But the control board then sort of intervened and took over and delayed that decision and delayed that decision. But then we looked with the city's help—or the District's help, we looked at Gales School and another older school on the Senate side as well. We got excited about that collocation. In fact, that was authorized in the 2002 budget and then funded to the tune of \$7.3 billion, but this city pulled or cancelled those plans in 2004 because city administrator Robert Bobb—I think I have the name right—decided that was not an appropriate use for that particular site. So once again, after years of awaiting, an expectation that was pulled again.

The downside, the National Children's Alliance spent money with the city's understanding, cooperation and participation with architecture plans to show what that school could be converted to for Safe Shores' benefit, for the National Children's Alliance benefit as well, and they lost that money when that project was pulled. So they went their own way and bought property in another location. Safe Shores went another way there. But we have a claim in the city or District process for reimbursement for that money. I know this is new to you.

Mayor FENTY. Yes.

Mr. CRAMER. Hopefully it is not new to your folks. Would you all take another look at that? That thing has just been stalemated for so long, and I think there are some equities there that we need to look at together. Sorry you had to listen.

Mayor FENTY. Oh, that is fine.

Mr. CRAMER. Along the way, Safe Shores got created. We have hosted groups here from all around the country, Columbus, Ohio; Chicago before they built their programs. Sent task forces in here. Together we hosted them as Safe Shores, and they went back to their communities and built their programs and established an even stronger model for the rest of the country. It has been a terrific partnership, nonprofit, that helps the public sector, too, because your Child Protective Service workers get a chance to work in an environment at Safe Shores that they wouldn't get if there wasn't a Safe Shores.

I think there are a lot of issues involved. I will address a letter to you and help you see what our concerns have been and what the history has been, and let's see where we can go with that. Thank you.

Mayor FENTY. We will follow up with you, Congressman, and the Chairman right away.

Mr. CRAMER. I thank the Chair and the committee's indulgence over that.

Mr. SERRANO. No, we thank you for that.

Mr. Ruppertsberger.

By the way, congratulations. I see the Orioles are in first place.

Mr. RUPPERSBERGER. Let me ask you one question, Mr. Mayor: Do you like the Yankees?

Mr. SERRANO. I think I can answer that for him. He loves the Yankees.

Mr. RUPPERSBERGER. I withdraw that question. I wouldn't put the citizens of Washington in that position at all. I withdraw that question. It is a little thing we have: going between the Orioles and the Yankees.

#### WASHINGTON METROPOLITAN AREA TRAFFIC

First, I want to say leadership starts at the top. Your team have done an excellent job. Management is about hiring the best people. Working with your county council, it is so important to have that check and balance, share the credit and set your mission. You have to have good people. I think your priorities are in order. Any major metropolitan area needs to prioritize.

With that said, I am going to get into the area of infrastructure. That is the issues of traffic. Those of us who travel in D.C. and who have been involved in local government understand there is a lot more that we could probably do in D.C. The traffic situation has evolved, and it is pretty bad. And we in this area, the Virginia, Washington and Maryland area, are facing a problem, probably worse if we don't deal with it in the next 10 years, as bad as LA. We have to really address the issue. A lot of it is getting people out of cars into rail, those type of issues.

What I want to raise with you and would like to work with you on that, and I have had conversations Chairman Oberstar and Chairman Serrano. Chairman Oberstar is Chairman of the Transportation Committee in the House. We have a BRAC (Base Realignment And Closure) process. My district, MD-02 goes from Fort Meade to Havre de Grace; but Fort Meade, NSA, BWI airport, all in that area. So we are going to have a tremendous number of peo-

ple coming from Virginia and Washington working in these areas because of BRAC 2005.

I did some research, University of Maryland College Park and also the University of Minnesota. There are groups within the colleges themselves who are getting educated in the transportation area with studies. The focus of the studies is to improve not only signage, but to use technology to synchronize our lights, to study where we can improve the traffic, how we can improve the traffic. In order to improve traffic it can't be one street at a time. It is look at the whole picture of traffic. I think this is something extremely important for the Nation's Capital and for your constituents—

Mayor FENTY. Yes.

Mr. RUPPERSBERGER [continuing]. And for Congresswoman Holmes Norton's constituents, that we work together and it ties in. It is not just D.C.; it is people coming from D.C., Virginia, Maryland, this whole area.

I would like to make contact with you after this hearing and talk to you about that and maybe attempt to talk to the Chairman about it with the possibility of getting some monies for a study to deal with the issues of traffic. Traffic not only deals with the issues of moving people, people sitting in their cars going to work, they waste a lot of time, it is also a quality-of-life issue for your constituents.

Mayor FENTY. We would appreciate working with you. As a former county exec, you know you how important this is and how politics is local. So I think both because of your jurisdiction and your congressional district and then how regional traffic issues impact the city, it would be a great partnership. So you have my complete support. I would be glad to have my staff reach out to you immediately right after this hearing.

Mr. RUPPERSBERGER. Okay.

#### GANG TASK FORCE

The other thing is the issue of gangs. We were able within the CJS subcommittee to get monies—and, by the way, crime has no geographical boundaries new to gangs—and to get monies to go from Philadelphia to North Carolina, including the District, and to really work with a database that will get real-time information on where we are and identifying gangs throughout the whole area. If there is a lot of law enforcement—for instance, there is a lot of focus in northern Virginia, and the gangs move into the District and into Maryland.

So this gang task force is a task force that will use technology, but also another component of this is to deal with the issue before the kids get to gangs. The reason kids go to gangs, because their family is worse than what they feel they are getting in the gang, and the gang becomes their family. So we are dealing with different communities to try to reach to the children ahead of time. So I think it is also important to communicate about meeting with your police chief.

Mayor FENTY. Yes.

Mr. RUPPERSBERGER. Do you call it chief or commissioner in D.C.?

Mayor FENTY. Chief.

Mr. RUPPERSBERGER. Mainly your police chief—and make sure she ties into the jurisdiction. The headquarters of this will be in Maryland with the Maryland State Police, and we want to make sure you are tied into our software package and whatever we need to do there. So those are two issues after the fact we will get with you on.

Mayor FENTY. We will follow up both with you and the Chairman. Thank you.

Mr. SERRANO. The Chair wishes to note I recognize Members alternating between Democrats and Republicans based on when that Democrat or Republican walked into the hearing, and I skipped over Mr. Goode, and I totally, totally apologize. And I recognize you, and instead of the 5 usual minutes, you can take 5½.

#### D.C. REPRESENTATION IN CONGRESS

Mr. GOODE. Thank you, Mr. Chairman. I won't use that.

Mr. Mayor, Mr. Gandhi and Mr. Gray, thank you for being here. I know Mr. Gray mentioned this, the issue of D.C. representation here on Capitol Hill. Do you want to see House and Senate representation for residents of the District of Columbia? Is this an accurate statement?

Mayor FENTY. Yes, yes.

Mr. GOODE. Have you thought about trying to incorporate with Maryland and return D.C. to—part of the District north of the Potomac to the State of Maryland and become part of Maryland so that you would have that representation?

Mayor FENTY. I think there are a lot of different viewpoints on this issue, as you can imagine, Congressman. From my own informal poll, I think most residents feel that the District is so unique now that merging back, retrocession, is not the preferred option. There are some district residents who actually support it, though.

The other thing, and I can't speak for Maryland residents, but the other thing I have heard, and you can certainly speak to Congressman Ruppertsberger or Governor O'Malley on this, is that Maryland residents don't support that either.

It seems that the option that has been pushed for over the last couple of decades is to give the District of Columbia full voting representation for the 600,000 residents. That is the preferred option.

Mr. GOODE. Now, in the situation with the part of the District that used to be south of the Potomac. Arlington is just part of Virginia now.

Mayor FENTY. Right.

Mr. GOODE. Let me ask you this: What if Arlington said, hey, we want the whole full District back?

Mayor FENTY. You know, sir, again, there are just no limits to the number of hypotheticals that you could come up with around voting representation. I think two things are true: That the District residents unanimously are not satisfied with where we are now, and the District residents also appreciate that we have some momentum on this issue. Just the virtue of the fact we raised the question and try to help come up with a solution, shows that momentum. And everyone from Senate Majority Leader Reid to our own Congresswoman here, and 57 Senators and the majority of the House believe that something should be done.

We started with a compromise that Congresswoman Norton and Congressman Davis came up with a bipartisan compromise last year, and hopefully we can push forward on that. I haven't heard anybody from Virginia mention that, but that one probably would not have the support of District residents. I think working together we will come up with something very quickly, and I think the tides are turning in the District's favor.

Mr. GOODE. All right. Thank you, Mr. Chairman.

Mr. SERRANO. Thank you.

I don't think that plan would work because then Maryland would have two baseball stadiums, and Virginia would have none. See, it all comes under baseball. That is what this is all about, you realize, right? It is that nice stadium.

Ms. Wasserman Schultz.

Ms. WASSERMAN SCHULTZ. Noting that the Florida Marlins are still in first, Mr. Chairman.

Mr. SERRANO. Not for long.

#### CAPITOL VISITOR CENTER

Ms. WASSERMAN SCHULTZ. Mayor Fenty, it is very good to meet you. I haven't had a chance to meet you personally.

I wanted to focus on the impending opening of the Capitol Visitor Center. We are working closely with the city on developing the Circulator bus route that will pick up tourists, visitors to the CVC, at Union Station, circle through some circuitous route, and keeping in mind the security needs that we have at the Capitol, and then eventually drop them off at hopefully someplace close so that the little legs of children, frail legs of senior citizens won't have to walk extremely far.

How is the coordination going with the Capitol Police and with the Architect of the Capitol on that process of developing that route? There is obviously going to be an increased demand for that Circulator bus route. Are you adding buses; are you addressing the demand?

The other concern that I have is, there is a dollar charge for getting on that bus. And, you know, I chair the Legislative Branch Subcommittee, and our committee members are also somewhat concerned on both sides of the aisle about the additional cost of getting those folks transported to the CVC.

Mayor FENTY. So let me address the first issue. I think the general point is the administration, the local administration, supports this 100 percent. I know that DDOT has been in discussions with the Architect of the Capitol, and I think they are discussing everything from additional buses to making sure that there is additional hours, and that we kind of focus in this particular Circulator route on the unique needs of our tourists. And so we will make sure that we will continue to do that.

I think one of the things we are very cognizant of and paying attention to is how the Circulator has been marketed. It has really been a boon for the District since we established it. People like to know everything from the colors of the bus, to how well they are kept, the regularity that they run, to the very tight routes, as well as the price of the fares. So expect that to remain intact as we

bring the Circulator not only to the Capitol route, but we bring more Circulator routes throughout the District of Columbia.

If you need anyone from the Department of Transportation to just give you an update or more specifics or time lines, we would be glad to get it. But from my understanding, the discussions with the Architect have been going very well.

Ms. WASSERMAN SCHULTZ. If we could sit down with DDOT, that would be great, so I could get a more specific update. The concern that I have is I think the Circulator buses hold about 50 people, something like that, from what I understand; 40 maybe.

Mayor FENTY. I think 50 seats, and then it can go as high as 70 with standing.

Ms. WASSERMAN SCHULTZ. Many of our groups have more people than that, and the buses circulate every 10 minutes. So if you are trying to get a group of 150 kids from the Union Station to the CVC, it will take 50 minutes for the whole group to gather, at least.

When I was speaking to the Architect of the Capitol at our CVC oversight hearing, which we have every month, I didn't really get a satisfactory answer as to how we were going to address that concern. Obviously we can't have it take 50 minutes to have a school group to get to the CVC.

Mayor FENTY. That is a good question. Let me reiterate to you how important the tourism industry is to the elected officials of the District of Columbia government. And to that extent we would find it in our interest to make sure, whether it is larger buses, whether it is two buses back to back, or something that—the transportation officials could probably come up with better ideas—whatever it is, to make sure that our Circulator route on the Capitol is tourist friendly, we will get it accomplished. We will both meet with the Architect and provide you and the Chairman with a briefing on a couple of different alternatives, and as is the case, hopefully, you can help us come to the right decision.

Ms. WASSERMAN SCHULTZ. Thank you.

#### D.C. AND CAPITOL POLICE COORDINATION

Two questions. I know that I have spoken to the Capitol Police about their perception of the coordination that goes on between the DC Police and the Capitol Police. What is your perception of how well the two agencies work together?

Mayor FENTY. To be honest with you, I think it is nothing short of remarkable, given all of the threats. Every time I ask the Chief the number of threats and incidents that come in to the Nation's Capital, it is more than any resident would ever imagine. Whether it is putting out of the bomb threats that have been right outside the Capitol, or just going after people who happen to be speeding around the Capitol campus, I think there is great coordination. It started under our predecessor Anthony Williams and the Ramsey administration. But our Chief Lanier was a special operations division commander, which is one of the reasons why I selected her, because she had a tremendous amount of training in homeland security, special operations and working with the Federal police authorities.

Ms. WASSERMAN SCHULTZ. Well, it is a tremendous source of pride for me as a woman that you have a female police chief, and I think it is to your credit that you made that selection because she seems to be doing an excellent job.

#### BIKE SHARING PROGRAM

Mr. Chairman, with your indulgence I just want to ask about the bike-sharing program, because we are starting a bike-share program on the Capitol grounds and wondered if you had any advice for us as we move forward. We are trying to minimize costs, definitely had to cut back the ambition of some of the people who were spearheading this effort, but how do you assess—the real issue is how do you assess the potential need for the service, how much you would—

Mayor FENTY. To be honest with you, two things. One, we know the District residents. We know that people are both more concerned about being healthy, more concerned about their environment and want ways to demonstrate both.

Two, as anyone who has just traveled to any major city in Europe knows, bicycles are a lot bigger part of the daily activity there. In fact, there are some European cities that have garages for bicycles. We want to keep pushing in that direction.

The thing I will stress is that putting dollars forward to it is worth it. I think it increases the quality of life. More people want to live here when there are more bike routes and bicycles available.

I think the private sector will pony up to it. I don't know how the private-public partnerships work on the Hill, but we have been able to use them in our bike-sharing program, and we would be glad to share that with you.

Ms. WASSERMAN SCHULTZ. While we are meeting on the CVC, if we could add on the bike-share program, that would be great. Thank you very much.

Mayor FENTY. Thank you.

Mr. SERRANO. I will put the rest of the questions in the record.

#### FISCAL SITUATION

Mr. SERRANO. I would like to move on now to discussion of the city's financial security and soundness. There have been a few troubling articles recently that I would like you to comment on, Dr. Gandhi. First, it has been reported the city entered into a situation with bonds that have now being portrayed as a risky way to finance projects. Is it true that, as reported, the city now has to repay more than a million dollars a month more than expected? Will this amount increase, and does this concern you?

Mr. GANDHI. Sir, I think that article that had appeared in the newspapers really misses the whole mark. The program that we with, the so-called auction rate securities whereby we borrow short term, had been a very successful program. In year 2008 alone, we would save \$10 million using that program. In the last few years, I would say since 2006, we would save \$100 million in interest costs by using that particular program.

What happens here is that we have to look at the mix of our borrowing. Of about \$4½ billion borrowing, these so-called auction rate securities that the article referred to is about 10, 11 percent.

And I think it is a most appropriate mix to have since it saves us a lot of money. And that situation is entirely under control. And by the end of this next month, we will have provided to secure those securities with enough funding and enough provision that I would say the city is for more better off than if we had not taken on those auction rate securities.

Mr. SERRANO. So the last part of my question was, did this concern you that this would create a problem?

Mr. GANDHI. No, sir, not at all. There are \$200 billion securities out like that. Hundreds of municipalities use that. And we used it most judiciously.

Mr. SERRANO. I have to tell you, the committee members are outraged that you would think a reporter didn't get the story right. Oh, boy, am I in trouble.

#### FINANCIAL AUDIT

My next question is regarding the recent audit which found three material weaknesses—and that is the quote—in the city's handling of its finances. Could you discuss what is being done to correct these problems? And is there reason to be concerned that these issues, coupled with a downturn in the housing market, could threaten the economic strength of the city?

Mr. GANDHI. The material weakness issue is troubling, and we are very much concerned about that. One had related to the school system, and we had experienced that material weakness last year. We had not had enough time to work on it; however, I am quite confident as we proceed through the 2008 audit that we would remove those material weaknesses substantially.

And I guarantee you, Mr. Chairman, Mr. Regula and members of the committee, the city's financial situation is not at all threatened by any of these since we have received a clean audit—this would be the 11th consecutive balanced budget with clean audit with substantial reserves. And we have had A-plus bond rating with a stable outlook from all three rating agencies simultaneously. That has never happened before. So I am quite confident about the city's finances under the leadership of the Mayor and the council.

#### CRIME

Mr. SERRANO. One last question. Could you comment on your plans to combat crime in the District? In recent weeks there were a number of murders in one Northeast D.C. neighborhood. As well, The Washington Post ran a story about the large increase in home burglaries in the city. Whether the economic downturn is to blame for the increase or not, could you comment on what your plan is to do to confront this increase in crime?

By the way, I should have prefaced that by saying I don't want to sound like a contradiction. On one hand I want to take myself out of business in having anything to do with telling the city how to behave. That day hasn't come yet. On the floor we get a lot of questions about what is happening in D.C., both from Members who live here in the District and others who have general well-intentioned concern. So these questions are not part of a continuation of a behavior of the past, but rather to be able to answer questions as they come to us.

Mayor FENTY. We find it much more than appropriate. We actually appreciate the question.

What the Chief has done—it is important to start out by saying if you look at the crime map, it actually looks the opposite of Dr. Gandhi's chart. It has steadily gone down. Whether you measure it in homicides, burglaries, robberies or any other type of violent crime probably going back 25 years, it just continues to go down. There are upticks from time to time. And what we found is the uptick like the one you described in the fifth district, they are happening less and less. They are happening longer intervals.

Mr. FENTY. So our job is to try and extend that interval and reduce the uptick by as much as possible. The Chief is doing a number of different things, one, putting more police officers on the street, everywhere from New York, Chicago, Philadelphia, that is obviously the key. She is taking people out of desk jobs. I just went to an academy graduation where 40 new officers are hitting the streets. We are going to get up to a sworn officer count of 4,200 by the end of the fiscal year, the budget that you will be approving, and we have got money in there to do so.

The second thing that she is doing is really trying to make sure that we solve some of these tragic crimes quicker. Just take the homicide rate for example. The homicide closure rate for this year is 64 percent, which is almost double where it was last year. And last year was one of the highest levels that it had ever been. That shows great work on the part of our detectives, bringing people off the streets who could then do a subsequent crime.

The other thing that we are obviously trying to do is to make sure that we beat crime to the punch. We learned this from other jurisdictions. Tactical units are trying to get in front of the crime as much as possible and prevent it from spiking. We have had some excellent arrests since that spike hit in the Fifth District, many of which were announced over the last 48 hours.

So a lot of things along that nature. We pulled 312 guns off the street in the District of Columbia this year. That is about 100 more than we pulled off the streets at this time last year, which shows great work for the police department, but a lot of work to do and just reducing guns in big cities in this country.

Mr. SERRANO. Chairman Gray.

Mr. GRAY. Yes, thank you very much, Mr. Chairman.

I want to underscore a point that the Mayor made, and that is the Council made the decision about a year ago to invest additional resources in being able to bring onboard more police officers. We made the commitment for up to another 400 police officers which, as the Mayor indicated, would bring us to the full strength of 4,200. And it is exciting to know that we will be able to reach that just in a matter of months.

And we recognize, too, that it isn't just a question of law enforcement. Congressman Ruppertsberger talked about gangs earlier. The Council recently authorized more than \$1 million to look at the gang problem in the District of Columbia. And we are actually studying it from the very perspective that he talked about. And that is, gangs as a substitute for families. In fact, the work is being done by our network of family strengthening collaboratives in the District of Columbia. And we expect to have some results from that

by the end of this fiscal year and to move to work with the Mayor to try to implement some of the findings of that.

We also have before us a piece of legislation that we expect to fund during this budget period. And that is the motor vehicle theft prevention program which has been successful in 12 other states. It would allow us to have an intensified focus on motor vehicle theft in the District of Columbia. And we know that those issues can lead to so many other crimes as well, especially as our kids, you know, who steal cars and engage in other kinds of crimes as a result of that get younger and younger.

Mr. SERRANO. Thank you to both of you for that answer. This is incredible. While we are sitting here, Mr. Regula got an e-mail from Senator McCain, and I got one from Senator Obama and Mrs. Clinton. They just want to know, is the city ready for their inauguration? Are we ready for them?

Mayor FENTY. Yes, yes, Mr. Chairman.

Mr. SERRANO. It is going to be a big party. We are looking forward to it. That concludes our round of questioning.

Committee rules do not provide for noncommittee members to participate. However, we are honored to have Ms. Holmes Norton with us. And I ask unanimous consent, which I got from Mr. Regula, to have her address the committee on the hearing. And that is what I want to do because it is the proper thing. Besides, she is the one that got me on the field at Nationals Stadium during that first game. And I have got to be grateful, if you know what I mean. You were too busy taking pictures with the players. You know, we just went through the same thing in the Bronx, the history of that stadium. Half the folks thought it was a great idea and half thought it was a terrible idea. I am two blocks from that stadium. I bet you, 5 years from now, they will think that we were geniuses for building a new Yankees Stadium. I suspect the same thing is going to happen in D.C. because it looks good and it is part of a larger plan.

Mayor FENTY. That is right.

Mr. SERRANO. A larger plan.

Ms. Holmes Norton.

Ms. NORTON. Thank you very much, Mr. Chairman. And all I was doing was taking care of the Chairman. I haven't been here for 17 years for nothing. I do want to say how much I appreciate your courtesy, Mr. Chairman, in allowing me to sit with you. I appreciate, having lived in New York, having met you first in New York, that the highest compliment you could give me is for you to call me a nudge.

Mr. SERRANO. Nudge.

Ms. NORTON. Yes. You see, if you are a New Yorker, you know how to truly pronounce it. But the Chairman and I also know some words in Yiddish that neither of us would like to be called. So I accept nudge.

I want to thank Mr. Regula while I am sitting here as well because most of the time I was in Congress, I was dealing with Mr. Regula. First, I want to say that Mr. Regula, before I came to Congress, long before I came to Congress, was regularly putting in his own voting rights bill. It is a very reasonable bill. It is a logical bill. It is not the first choice of the District of Columbia. But it had

nothing to do with nudging from me or from residents. It had to do with his sense that you don't have people paying taxes, going to war. And I just want to thank him again for that.

When we had our—when we had our hearings, I specifically asked that Mr. Regula's bill also be included in the hearings, when we were having hearings on this bill. I want to thank you also, Mr. Regula, because it was when I was in the minority that we got the agreement that has since been honored by this Chairman that the District budget would always come out on September 30. This is an extraordinarily important action for us not to have to wait months and months because sometimes the Congress cannot always get its own work done in time.

Mr. Chairman, I do want to say for myself how much I appreciate your invaluable leadership on the entire budget process. I want to note that what you have done on needle exchange and on voting rights, allowing us to spend our own money is hard—it is hard to indicate what that has meant to the city or to me personally. The Mayor was quick to fund a comprehensive needle exchange. So a needle exchange is a very small part of what, in fact, he has put the city money with the support of the City Council to doing. It means everything to the residents of the District of Columbia. And I think you will see the AIDS rate go down the way it went down sharply in New York, for example, when you did needle exchange, which you, too, did it the right way. You were in office a few months before you had moved each of these two priorities, matters forward to us, and we deeply appreciate it.

I do want to congratulate the Mayor, Mayor Fenty, and City Council Chairman Gray. This is a new Mayor and a new City Council Chairman so they both had to start off learning from each other and working with each other. To be sure, the mayor found a city in working order, thanks to the prior mayor, but he has taken that working order and in many ways improved it. You have asked him about the schools which for him has become a signature issue. And I think for the city it is that kind of issue. He could not have done it without a council chair who had, in some ways, a much harder job because he has got 13 independent people whom he has to convince for everything. And he has done the most extraordinary job in bringing people together. I think we are very fortunate to have both of these elected officials.

I did want you to know, Mr. Chairman, Ms. Wasserman Schultz raised the question of the Visitor Center. And we are—my subcommittee is the authorizing committee. This is something that is going to be a great concern to all Members because when the Visitor Center opens and we have had a hearing on it as well as on the infrastructure of the Capitol, we are going to have more people come in. They are going to be your people, if I may say so, Mr. Chairman, and Mr. Regula. And it is truly—the city has a new issue, making sure that these people get here and get here quickly. But I agree with Ms. Wasserman Schultz; you cannot possibly drag people up to Union Station and say, give me a buck, and then we will let you go to the Visitor Center. You and I are going to be blamed for that, for charging people to be sent to the Capitol.

Interestingly—and this is a happy coincidence—I was so concerned about the plan that I asked everyone to come to see me, the

Capitol Police, all concerned. And at 4:00 today, Mr. Chairman, there is a meeting on this matter. One solution seems to me is already in place, and I have asked them to consider that solution. I am always ready to hear why it doesn't work. We have the buses come to the Botanic Gardens, leave off all of your constituents, and then, without all of the air pollution, we use golf carts for people who need them. The others walk up. And everybody seems to be happy.

So the whole notion of saying to everybody, we are not going to take you to the Capitol, we are going to take you to Union Station. Then we are going to put you on another bus; you will love it, and we want a dollar from you. Tourist unfriendly.

I don't know what would make anybody want to do it that way. But I think you ought to want us to stop it before you get a whole bunch of Members coming at you from every end once that dollar has to be put over by school children, by people who barely made it to D.C. But we are trying to deal with this in the way we deal with everything involving the Capitol, cooperatively with the city.

I do want to say for the record since it was raised, Mr. Chairman, that the two public officials sitting before you urged me to oppose private school vouchers, and I did so. The majority of District residents did. It was a pilot program. It ended as of this year. There may need to be some more funding in order to allow the children to be properly placed. The program funded a study. And after 1 year, they were supposed to report back whether there was any difference in the performance of children in the public schools and in the other schools.

And the report, if I may read it, just to put it on the record, the report found—and here is what it found: There was no significant impact off the program on reading or math achievement.

And the whole purpose was to see whether or not if you took a controlled group and compared them, there would be significant differences.

Mr. Chairman, there are long waiting lists of children who want to get into the D.C. charter schools. These are public schools accountable to the people of the District of Columbia. I had met with the voucher parents. They have said to me that one of the reasons that they were enthusiastic about vouchers is they could not get into charter schools. My own view is that the preferred local school district, the residents prefer, and we have become a model for the Nation of charter schools. That is where, it seems to me, at least after this year, the money should go. I want to quote you a poll that shows that 76 percent opposed giving taxpayer-funded vouchers to parents to pay for their children to attend private schools.

Finally, and I raised that only because it was put on the record and it needed to have on the record, it seems to me, the information that I had. And I want you to know, Mr. Chairman, the authorizing committee has not and has indicated it will not reauthorize this program, that we have done what we said we would do for 5 years. We do not intend to leave these children out here, and so some funding may be necessary.

I want to congratulate the city. The bond rating, Mr. Chairman, is among the things that are most important to look at. They have a projected decline of \$62.5 million each fiscal year. To his credit,

Mr. Gandhi usually comes up with a very conservative projection. And it might not be that steep, but I congratulate you for warning us that it could be that steep. And I want you to know that part of your money comes from commercial real estate. We have had a decline. And what you are able to get in revenue from residential real estate, I note in your testimony, Mr. Mayor, that for commercial office space, there was an increase of 4.4 percent. And the amount of commercial office space and the vacancy rate declined from 6.2 percent to 5.8 percent, meaning that that is a robust—still a robust part of your economy. I am chair of the subcommittee that has to do with Federal leasing and construction.

Mr. Chairman, you also have seen St. Elizabeth's, and we hope to get those funds out.

Thank you very much for indulging me.

Mr. SERRANO. Thank you. Mr. Regula.

Mr. REGULA. Thank you, Mr. Chairman.

I congratulate you, Mr. Mayor, on what you are doing in the education system. And I want to say, even though I am leaving here, I am going to follow your success.

Mayor FENTY. Thank you.

Mr. REGULA. Because it is the most important thing for this city to do what you are doing and to give these young people opportunities that they might not otherwise have.

And secondly, I want to congratulate you, Mr. Chairman. This is your maiden voyage as a Chairman of this committee. You have done a superb job. I have been on a lot of subcommittees over 36 years, and you do it very well. And it has been a pleasure to work with you. And as I said earlier, we have been extremely collegial in trying to address the challenges. But none is greater than the one you have as leader of this city, and I think you are doing a great job on with that responsibility, too. And thank you, Mr. Chairman.

Mr. SERRANO. Thank you. And let me conclude this hearing with two final comments.

One, I want to reiterate the deep appreciation and respect that this committee and this Congress has for you, Mr. Regula. Thirty-six years is a long, long time to be in Congress, to be anywhere, doing this kind of work. And the service, you know, the press always talks about problems in Congress. They never talk about this kind of service and this kind of dedication. All of you who are out there know what dedication is, otherwise you wouldn't be here today. So we thank you for your special respect for your colleagues and your special respect for the District of Columbia.

I can only reiterate once again how difficult it was for me when I found out, as a person that was born in a territory of the United States, I was going to oversee a committee that oversaw District of Columbia. And so I don't know what others may feel, but I will continue to try to get rid of the job that I have so that you have more and more home rule, and I will have less and less to say about D.C.

And with that in mind, we stay committed to helping you. There are two places we live in: We live in our districts, and we live in this region, this area. So whatever happens here is to our benefit

and to our pride and joy. All I can tell you is, next year you should come in behind me in the race. It would help your budget request.

But other than that, Mr. Mayor, Mr. Chairman, Dr. Gandhi, we are so proud to be involved with you. And we thank you.

Mr. REGULA. And I thank you, Mr. Chairman, for teaching me all about baseball.

Mr. SERRANO. Hey. You know, we have exported three things to Latin America: Democracy, capitalism, baseball. One of the three has been a huge success.

**Questions for the Record from Mr. Serrano**

- 1) **Emergency Planning: The FY2009 request for emergency planning and security costs is a nearly \$11 million increase over FY08, due mainly to the Presidential Inauguration. Could you explain what support the DC government provides for Federal officials and events and whether the city is reimbursed for all of these costs.**

The increase in the President's FY 2009 Emergency Planning and Security Fund (EPSF) payment anticipates that the District will support activities related to the 56<sup>th</sup> Presidential Inauguration, which is currently estimated to cost the District over \$20 million. The estimated cost was based on preliminary discussions with the District's stakeholder agencies, inflation, and is subject to change depending on threat level. The estimates for the upcoming inauguration are also based on the previous inauguration which cost the District government \$14.3 million. The District was not provided additional funding to support the previous inauguration and was advised by OMB to offset local costs by drawing down funds from EPSF and the National Capital Region's Urban Areas Security Initiative (UASI) grant funding. As you know, UASI is a multi-year program that is intended to fund long term projects for the National Capital Region identified by regional leadership.

The EPSF is intended to reimburse the District for costs associated with emergency planning and providing public safety at events related to the presence of the nation's capital in the District, and providing response support to immediate and specific terrorist threats or attacks in the District and surrounding jurisdictions. Aside from Presidential Inaugurations, the District provides planning and support for First Amendment-related demonstrations, IMF/World Bank Board meetings, the Independence Day celebration on the National Mall, the State of the Union, heightened security levels as dictated by the U.S. Department of Homeland Security, the activation of the Joint Operations Command Center for significant District events, and the transportation of certain high level dignitaries.

Additionally, due to the federal presence, the District provides security and medical response support for the transportation of the President, Vice President, and First Lady of the United States. The District also incurs significant costs associated with the processing and detention of persons arrested by federal law enforcement agencies during First Amendment-related demonstrations. Since the inception of the EPSF in FY 2003, thru FY 2007, the District has been denied reimbursement by OMB for approximately \$5.5 million related to these costs. While OMB contends that these expenditures are the responsibility of the jurisdiction hosting the President, Vice President, and First Lady, the District believes that these costs should be reimbursable due to the fact that it serves as the permanent and symbolic home for these officials.

**Answer from Chairman Vincent C. Gray, Council of the District of Columbia**

The city provides security, emergency preparedness, sanitation, traffic and crowd control, and fire and emergency medical services for all demonstrations, marches, etc., related to the presence of the federal government, e.g., IMF demonstrations, war and human rights protests.

The city also provides security and emergency medical services for each inauguration. The expenses for the services provided for these demonstrations, etc., and inaugurations are reimbursed based on an agreement between the District and the Federal Government. Additional security is provided for escort/transportation services for the President, Vice President, and members of their families, other federal officials and visiting dignitaries as well as frequent deployments of fire and emergency medical services equipment to helicopter arrivals. The District has spent nearly \$5 million on executive support from 2003 - 2007 for which it has not been reimbursed. Section 731(a)(2)(d) of the Home Rule Act states that the District shall assist the Secret Service in carrying out their protective duties when requested on a non-reimbursable basis. Thus, the taxpayers of the District of Columbia must incur these expenses over which they have no control.

The costs for Emergency Planning and Security for FY 2009 have increased for two reasons. One, the additional expenditures associated with the upcoming inauguration. Two, the reduction in the carryover amounts of reimbursement funds from prior fiscal years. In the past two fiscal years remaining balances have been \$11.4M (FY 2006) and \$15.2M (FY 2007). It is anticipated that the carryover from FY 2008 will be less than the prior two years.

- 2) **Domestic Violence: A recent report by the Equal Rights Center revealed that one year after an anti-discrimination law was passed regarding housing for victims of domestic abuse, that prejudice against this group is still prevalent. What can the DC government do to ensure that victims of domestic abuse are not discriminated against when seeking housing?**

The District's Office of Victim Services has provided funding to two local non-profit groups -- the District Alliance for Safe Housing and the DC Coalition Against Domestic Violence -- that assisted the Equal Rights Center Study in conducting the study referenced above. In addition, with additional District support, those groups have developed a public awareness campaign aimed at informing domestic violence victims about their legal rights with regards to housing, how to enforce those rights, and available legal assistance. In addition, the District's local FY09 budget contains \$1.5 million for the creation of 95 new units of transitional housing for such victims.

**Answer from Chairman Vincent C. Gray, Council of the District of Columbia**

The Council approved \$1.5M in the Mayor's FY 2009 budget for the Office of Victim Services to create 96 units of safe supportive housing for victims of domestic violence. The housing will be provided in conjunction with the District Alliance for Safe Housing.

**Questions for the Record from Mr. Regula**

- 1) **Library Program:** In Fiscal Year 2008, the Committee provided \$9 million to enhance the city's libraries and the Fiscal Year 2009 budget proposes an additional \$7 million. What are your plans to enhance DC public libraries, and how will these Federal funds be used?

The DC Public Library currently is undergoing a transformation that encompasses its services, programs, collections and buildings. From a capital construction perspective, the Library is addressing facility needs across the system. This includes opening interim libraries, building new libraries to replace those that are closed, and launching renovation and rebuild projects.

The \$9 million in Federal funding that was provided for this purpose in FY08 was allocated to total reconstruction projects at two long-neglected neighborhood branch libraries -- the Francis A. Gregory Neighborhood Library, located at 3660 Alabama Avenue SE (in Ward 7) and the Washington Highlands Neighborhood Library, located at 115 Atlantic Street, SW (in Ward 8) -- and a comprehensive renovation of the Petworth Branch Library, which is was opened in 1939 and is located at 4200 Kansas Avenue, NW (in Ward 4).

The additional \$7 million contained in the President's budget request will be divided between the Francis Gregory and Washington Highlands projects. Local funding (thru FY09) of \$14.2 million also has been allocated for these projects and the renovation at Petworth.

- 2) **HIV-AIDS:** While on average the United States has 14 cases of HIV per 100,000 people, in DC there are 128 cases per 100,000 people. I understand the city receives grants from the Department of Health and Human Services in excess of \$45 million per year. What is the city doing to address HIV and are you effectively using the Federal resources provided by HHS?

The DC Department of Health (DOH) is the lead District Government agency for policy and programs on HIV/AIDS. Within DOH, the HIV/AIDS Administration (HAA) is lead agency charged with attacking the HIV/AIDS epidemic. HAA is led by Dr. Shannon Hader, a recent appointee of the Mayor who is a medical doctor and former epidemiologist with the Centers for Disease Control who has published numerous studies on transmission of the disease. HAA partners with health and community-based organizations to provide HIV/AIDS prevention and care services to District residents. Services include medical support, HIV counseling and testing, data and information on HIV/AIDS programs and services as well as on the impact of HIV/AIDS on the community, education, information, referrals, and intervention services. A drug assistance program (ADAP) provides drugs at no cost to eligible District residents who are HIV positive or have AIDS. The HAA administers the District's budget for HIV/AIDS programs, provides grants to service providers, monitors programs, supports community participation through planning councils and tracks the incidence of HIV and AIDS in the District of Columbia.

Dr. Hader is transforming HAA into a data-driven agency, utilizing the full benefit of epidemiology (including HIV/AIDS case data and population-based studies) to improve the scope, quality and distribution of care and treatment and prevention services in the District. DOH/HAA also seeks to build new capacity among current community providers and engage new partners by mainstreaming HIV/AIDS into their existing activities and also initiating new programs. With significantly improved data, DOH/HAA is examining its prevention and intervention portfolio (including both locally and federally funded programs) for revision to meet the scale of the District's epidemic and its diversity of population.

In addition, DOH/HAA is reinvigorating its federally-required community planning panels with new members, expertise and support to most effectively allocate federal care and prevention resources. And, with support from the Mayor, DOH/HAA is strengthening its partnerships within the District Government to engage more agencies in the response. DOH/HAA also has integrated its Sexually Transmitted Diseases (STD), Tuberculosis (TB) and adult Hepatitis programs with HIV/AIDS to better coordinate the co-morbidities of these diseases. Lastly, we know that heightening awareness and reducing stigma are crucial elements to controlling HIV/AIDS in our community, and, as a result, the District has undertaken a large scale promotion campaign to fully implement routine HIV testing as a standard of health care and increase public awareness about ways to reduce risky behavior leading to infections.

3) **Principal Training: I am a former school principal and I know what an important role principals play in the success of a school. In FY2008, the Committee provided the city with \$2 million for a School Leadership Academy and I am very pleased that the fiscal year 2009 request includes an additional \$3.5 million for recruiting, development and training of principals and other school leaders.**

a. Can you describe how your leadership academy works?

We are in the initial phases of designing the academy. Our primary focus now is identifying the best individuals to lead and staff it. Once we have them on board, they will create a detailed blueprint for the academy, including a detailed curriculum, which will track the deliverables outlined in our initial spending plan to Congress.

In addition, in response to an immediate need for new school leaders, we have undertaken a national recruiting effort to fill the 30-40 principal vacancies we will have in the fall with highly qualified candidates from around the country, as described in that plan. In addition, we are identifying the high-performing principals already in our system and creating a structure through which they can provide very substantive mentoring to principals that are not performing as well but have potential to improve. Finally, we have begun providing targeted professional development for principals of schools that are in restructuring, or where we have found that particular situations (classroom management, behavior, etc.) are having an adverse affect on student performance.

Ultimately, once academy personnel have been hired, they will develop a strategic plan to improve school leadership across the entire district and also comprehensive professional

development and mentoring programs to support that strategic plan. In this way, in addition to recruiting high-quality school leaders from outside the district, we will begin to grow our internal capacity by providing the necessary supports to keep good principals and help them develop into even better principals, and also to create a pipeline of high-potential school personnel (i.e., teachers, counselors, assistant principals, etc.) from within our schools.

b. Is it producing qualified and motivated principals?

As noted above, in this first reform year, Chancellor Rhee has focused her efforts on ensuring that every DC public school is led by a highly-competent school leader in the fall. We have had an amazing response to our national call for candidates and are on track to meet our ambitious principal recruiting goals for the coming year. In fact, we are extremely excited with the group of principals who will be joining DCPS for the 2008-2009 school year. Our leadership program will provide these individuals with continuing resources, supports and enrichment to enhance their ability to effect student achievement in the classroom.

c. What are you doing to ensure that you can retain your best principals so they do not leave to work in Virginia or Maryland?

We have learned that one of the most common reasons that principals leave DCPS for other districts is because the district's central office inability to efficiently deliver human resource and other basic services stymied their ability to focus on the students and academic achievement in the classroom. As we move forward with reforming central office and have relocated our facilities modernization into a separate agency, we are freeing up principals to manage their schools, instead of dealing with an inefficient and unresponsive bureaucracy. We believe that this will have a significant impact on both principal retention and student achievement.

4) **Jump Start Funding: The budget request includes a \$20 million Federal payment to "Jump Start" school reform in the city. These funds are requested to develop qualified principals, improve curriculum, help low performing schools, and improve data on student achievement. This request is being characterized as a one-time request. Will the city be in a position to fund these efforts with local funding in future years?**

As you know, the \$20 million in new Federal funds contained in the President's budget to "jump start" the Mayor's education reform initiative will support: the recruitment, development and training of principals and other school leaders; the creation of programmatic interventions in low performing schools; a customized data reporting and accountability system on student performance that will support improved instruction and a new performance incentive pay program for teachers; and outreach efforts for DCPS parents, including training regarding what to expect from the system, how to understand how standardized test data and other measurement tools reflect the performance of their student, his or her teacher, and the school, and ways they can their children's academic success.

While we will expect that continued investments in several of these areas will be needed beyond FY09 – in particular funding for school leadership development and individuals school interventions – we believe that by closing and consolidating underutilized school buildings, operating the remaining buildings more efficiently, and downsizing central administration, we will be able to free up existing local funds to support them. In addition, we believe that over time, by providing higher-quality, more diverse educational programs, we will attract students back into DCPS, and, because the system’s local funding is driven by enrollment and would increase as student enrollment increases, we expect our local budget to grow enough to help absorb some of the “Jump Start” costs.

## WITNESSES

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	Page
Duff, J.C .....	1
Fenty, A.M .....	133
Gandhi, N.M .....	133
Gibbons, J.S .....	1
Gray, V.C .....	133
Kennedy, A.M .....	101
Thomas, Clarence .....	101



# INDEX

## The Federal Judiciary

March 12, 2008

	Page
Chairman Serrano's Opening Statement .....	1
Mr. Regula's Opening Statement .....	2
Judge Gibbons' Testimony .....	2
Statement of Paul R. Michel, Chief Judge, U.S. Court of Appeals .....	23
Statement of United States Sentencing Commission .....	27
Statement of Jane A. Restani, Chief Judge, U.S. Court of International Trade .....	33
Statement of Hon. Barbara J. Rothstein, Director, Federal Judicial Center .....	36
Director Duff's Testimony .....	39
Retroactivity of Crack Cocaine Sentencing Amendment .....	52
Cost Containment .....	53
Panel Attorney Rates .....	54
Judges Leaving the Federal Bench .....	55
Workload of Judges .....	57
Federal Protective Service .....	57
Construction of New Courthouse in Los Angeles .....	58
Questions for the Record:	
Chairman José E. Serrano .....	61
Ranking Member Regula .....	86

## United States Supreme Court

March 13, 2008

	Page
Chairman Serrano's Opening Statement .....	101
Mr. Regula's Opening Statement .....	102
Justice Kennedy's Testimony .....	102
Statement of Stephen T. Ayers, Acting Architect of the Capitol .....	109
Justice Thomas' Testimony .....	113
Building Modernization .....	113
Judicial Salaries and Ethics .....	114
Teaching the Role of the Judiciary .....	116
Politicization of the Judiciary .....	117
Supreme Court Workload .....	119
Judicial Pay .....	120
Moment of Silence for the Troops .....	122
Electronic Courtrooms .....	122
Cameras in the Courtroom .....	123
Minority Hiring .....	125
Releasing Audio Tapes and Other Information .....	127
Court Security .....	128

	Page
Supreme Court Visitors .....	128
Supreme Court Jurisprudence .....	129
International Judicial Visits .....	130

**District of Columbia**

**April 30, 2008**

	Page
Chairman Serrano's Opening Statement .....	133
Mr. Regula's Opening Statement .....	134
Mayor Fenty's Testimony .....	135
Chairman Gray's Testimony .....	142
Dr. Gandhi's Testimony .....	155
Quarters Program .....	181
D.C. Public School Reform .....	181
HIV/AIDS Prevention Programs .....	182
School Dropout Prevention .....	194
Three-Sector Education Funding .....	194
D.C. Statehood .....	195
Cap on Attorney Fees for Special Education Cases .....	196
Federal Funding of D.C. ....	196
Federal Funding for D.C. Education .....	197
Court-Appointed Special Advocate Program .....	198
National Children's Alliance .....	198
Washington Metropolitan Area Traffic .....	200
Gang Task Force .....	201
D.C. Representation in Congress .....	202
Capitol Visitor Center .....	203
D.C. and Capitol Police Coordination .....	204
Bike Sharing Program .....	205
Fiscal Situation .....	205
Financial Audit .....	206
Crime .....	206
Questions for the Record:	
Chairman José E. Serrano .....	213
Ranking Member Regula .....	215