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Judicial Security: Responsibilities and Current Issues

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Summary

The importance of judicial security was underscored by the murders of family members of a Chicago federal judge on February 28, 2005, and the killings less than two weeks later of a state judge, a court reporter, and a sheriff's deputy in an Atlanta courthouse. Shortly after these incidents, the House and the Senate held hearings and legislation was introduced to (among other things) improve security for judicial officers in the courtrooms; safeguard judges and their families at home; restrict postings of personal information about judicial officials and their families on the Internet; extend or make permanent the authority to redact certain information from judges' and their families' financial disclosure forms; and increase penalties for attacks against them and other law enforcement personnel. These legislative initiatives were H.R. 1710, H.R. 1751, H.R. 4311, H.R. 4472, H.R. 4732, S. 1608, S. 1558, and S. 1968. Several of the bills have been passed by either the House or the Senate, one bill has been passed by both Houses, but none has been enacted. Separate legislation was enacted (P.L. 109-13) that appropriated funds for intrusion detection alarms in judges' homes.

By statute, the United States Marshals Service (USMS) within the Department of Justice has primary responsibility for the security of the Judiciary, but USMS is to work closely with the Judicial Conference of the United States, the Administrative Office of the United States Courts (AOUSC), and the Federal Protective Service (FPS) within the Department of Homeland Security. Concerns have been raised, however, about the staffing of, and the communication and coordination between, these offices. According to USMS, more than 400 court facilities nationwide are under its protection.

Both federal and state judicial organizations have also attempted to address judicial security concerns. The Judicial Conference has, among other things, encouraged newly appointed judges to provide personal information to USMS, and urged USMS to provide additional training to marshals and inspectors. The National Center for the State Courts (NCSC) issued a document intended to serve as a framework for state judicial security, and has held two summits on court safety and security.

Federal court security funding is currently provided under two sets of appropriations bills, one for the Judiciary and one for USMS. The majority of the Judiciary funding for security is ultimately transferred to USMS to administer the program that pays for contract security guards and other expenses. The FY2007 Judiciary budget request for court security is \$410.3 million — a \$42.1 million (11.4%) increase over the FY2006 appropriation. Separately, the FY2007 budget request for USMS for judicial and courthouse security is \$343 million — a \$19 million (5.9%) increase over the FY2006 appropriation.

Several related issues may merit consideration as Congress considers judicial security, including funding and resources, communication and consultation, federal/state collaboration, and continuous oversight. This report will be updated upon passage of relevant legislation, or as other events warrant.

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Judicial Security: Responsibilities and Current Issues

Introduction

Although the security of all federal buildings increased in the wake of the April 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City and the September 11, 2001, terrorist attacks, the importance of judicial security was brought to the nation's attention by the murders of family members of a Chicago federal judge on February 28, 2005,¹ and the killings less than two weeks later of a state judge, a court reporter, and a sheriff's deputy in an Atlanta courthouse.² A year later, in March 2006, the public learned about death threats made against U.S. Supreme Court Justices in 2005.³ Press accounts have described other threats and violence directed at the Judiciary.⁴

In his *2005 Year-End Report on the Federal Judiciary*, Chief Justice John G. Roberts, Jr. expressed concern about the murders in Chicago and Atlanta:

These attacks underscored the need for all branches of government, state and federal, to improve safety and security for judges and judicial employees, both within and outside courthouses. We see emerging democracies around the world struggle to establish court systems in which judges can apply the rule of law free from the threat of violence; we must take every step to ensure that our own judges, to whom so much of the world looks as models of independence, never face violent attack for carrying out their duties.⁵

U.S. Attorney General Alberto R. Gonzales voiced similar sentiments when he spoke at the Conference for Chief United States District Judges on April 14, 2005:

The Department of Justice and the Marshals Service will continue to work to ensure that threats to federal judges are quickly assessed and

¹ David Heinzmann and Jeff Coen, "Federal judge's family killed; Husband, mother found slain in basement," *Chicago Tribune*, March 1, 2005, p. 1.

² James Oliphant, "More Killings Raise Court Safety Fears," *Legal Times*, March 14, 2005, vol. 28, p. 1.

³ Bill Mears, "Justice Ginsburg details death threat," *CNN*, March 15, 2006, available at [<http://www.cnn.com/2006/LAW/03/15/scotus.threat/index.html>].

⁴ See, for example, Amanda Paulson and Patrik Jonsson, "How judges cope with everyday threats on the job," *Christian Science Monitor*, March 4, 2005, p. 1.

⁵ See [<http://www.supremecourtus.gov/publicinfo/year-end/2005year-endreport.pdf>] for the text of the Chief Justice's *2005 Year-End Report on the Federal Judiciary*.

appropriate measures are taken. We will not accept that a judge is intimidated or threatened in any way in discharging his or her obligation to faithfully interpret the law. To that end, I have directed a review of judicial security measures be undertaken so that the Department, as well as state and local enforcement, can benefit from a compilation of best practices from across the nation.⁶

During the 109th Congress, the House and Senate held hearings, and some Members of Congress introduced legislation to (among other things) improve security for judicial officers in the courtrooms; safeguard judges and their families at home; restrict postings of personal information about judicial officials and their families on the Internet; extend or make permanent the authority to redact certain information from judges' and their families' financial disclosure forms, and increase penalties for acts against them and other law enforcement personnel. The bills discussed in this report are H.R. 1710, H.R. 1751, H.R. 4311, H.R. 4472, H.R. 4732, S. 1608, S. 1558, and S. 1968. In addition, legislation was enacted (H.R. 1268, P.L. 109-13), that included a provision to appropriate funds for intrusion detection alarms in judges' homes. This report discusses the current framework for federal judicial security, legislative efforts in the 109th Congress to improve judicial security, other proposals for reform, and the FY2007 budget request for judicial security.

Judicial Security Responsibilities and Jurisdiction

As the Chief Justice suggested in his previously mentioned remarks, all three branches of the federal government play unique roles in helping to ensure the safety of judges and the security of the federal courts. In this joint effort, the role of Congress is to authorize programs, appropriate funds, and provide oversight of judicial security. The Judicial Conference of the United States⁷ — the principal policy-making body of the federal Judiciary — governs the administration of the U.S. Courts. The Judicial Conference's Committee on Judicial Security monitors the security of the Judiciary (including protection of court facilities and proceedings, judicial officers, and court staff at federal court facilities and other locations), and makes policy recommendations to the conference. As the central support entity for the judicial branch, the Administrative Office of the U.S. Courts (AOUSC) implements Judicial Conference policies, including security matters.

By statute,⁸ the United States Marshals Service (USMS) within the Department of Justice (DOJ) has primary responsibility for the security of the Judiciary, including the safe conduct of court proceedings, and the security of federal judges and court personnel at court facilities and off-site. USMS also provides protective details for those who are targets of threats and attacks, and provides other law enforcement

⁶ See [<http://www.usdoj.gov/ag/speeches/2005/agremarksccusdj.htm>] for the text of the Attorney General's speech.

⁷ The Chief Justice of the United States is the presiding officer of the Judicial Conference.

⁸ 28 U.S.C. 566(a).

services for DOJ.⁹ Within USMS, the Judicial Security Division (JSD) is specifically responsible for providing security services and staff support for the federal judiciary, including personal protection for judges and physical security of federal courthouses.

According to USMS, over 2,000 sitting judges and other court officials at more than 400 court facilities nationwide are under its protection.¹⁰ An appointed U.S. Marshal has security responsibility in each of the 94 federal judicial districts and the District of Columbia Superior Court. District U.S. Marshals provide and oversee security of the Judiciary using USMS resources and court security officers (CSO), who are employees of private security companies under contract with USMS. Over 4,500 CSOs provide various types of security (e.g., fixed posts, roving patrols, entry screening, and mail and packages screening) in courthouses and at multi-tenant facilities.¹¹ Also under USMS jurisdiction is the design, installation, and maintenance of security systems, and oversight of the communication equipment.

USMS conducts threat assessments when the threats are directed against individuals (e.g., federal judges, U.S. attorneys, court staff, and family members), then determines the level of security that is necessary for developing security plans and assigning the required resources to ensure their safety. A Deputy Marshal is required to attend any session of court at the request of the presiding judge.¹² A judicial security inspector (a senior-level Deputy Marshal) is assigned to each judicial district to evaluate courthouse security and procedures, and to coordinate scheduling, posting, and other matters related to CSOs. The inspectors also conduct security surveys at judges' homes and recommend improvements. To enhance its capability to strengthen protection of the Judiciary, on June 1, 2004, USMS established the Office of Protective Intelligence (OPI) to review and analyze intelligence information about the security of those under USMS protection. On a daily basis, OPI issues security advisories, intelligence bulletins, and law enforcement alerts to USMS district offices and senior staff at headquarters so that protective measures can be

⁹ For example, USMS is also responsible for (1) providing protection for witnesses who testify for the government in cases involving organized crime and other significant criminal activity, (2) transporting criminal defendants to and from court appearances, (3) arranging for space in detention facilities to house pre-sentenced criminals, and (4) managing and disposing of forfeited properties acquired by criminals through illegal activities. For more information, see [<http://www.usmarshals.gov/duties/factsheets/judicial.pdf>].

¹⁰ Other space in the court facilities under the control of USMS includes holding cells adjacent to courtrooms, interview rooms used by attorneys and prisoners, cellblocks, prisoner elevators, and office space for USMS use.

¹¹ According to USMS, CSOs must pass a comprehensive screening process to ensure they meet specific background, physical, medical, and weapons qualification standards. Many have law enforcement experience.

¹² As federal law enforcement officers, Deputy Marshals have other responsibilities, including criminal investigations, fugitive apprehension, witness protection, prisoner transportation, and executing court orders.

taken.¹³ When threats are made, USMS works with the Federal Bureau of Investigation (FBI).¹⁴

According to USMS, the protective services it provided to the Judiciary during FY2005 included the following:

- provided security services during 160 judicial conferences and 43 other significant gatherings of members of the federal Judiciary;
- coordinated and provided personnel and additional security resources for 128 high-threat trials;
- reviewed and processed 953 threats/inappropriate communications made to federal judicial employees (this number is higher than its annual average of 600 such communications in previous years);
- monitored and managed 68 protective details for federal judges and assistant U.S. attorneys as a result of inappropriate communications or potential threats; and
- provided training for 210 USMS district threat investigators and judicial security inspectors, and provided orientations for 472 CSOs.

The Federal Protective Service (FPS) within the Department of Homeland Security (DHS) has overall responsibility for security in General Services Administration (GSA)-managed, multi-tenant federal buildings.¹⁵ When those buildings include court facilities, USMS and FPS share security responsibilities,¹⁶ authorized by a series of memoranda of agreement (MOA) between GSA and DOJ.¹⁷

¹³ Based on information USMS provided on May 31, 2006.

¹⁴ USMS conducts investigations related to the protective actions, and the FBI has responsibility for investigating threats for prosecutorial purposes.

¹⁵ P.L. 107-296.

¹⁶ According to the USMS, a 75% judicial occupancy rule was developed to help define what constitutes a primary courthouse versus a multi-tenant facility housing federal court operations. Under this rule, a primary courthouse has one or more judges in residence, and at least one courtroom where the court and court-related activities occupy 75% or more of the rentable square footage.

¹⁷ A 1997 MOA between the GSA, USMS, and AOUSC defined each agency's area of responsibility for judicial security (as delineated in the 1982 *Report of the Attorney General's Task Force on Court Security*). Authority, under the MOA, was delegated from GSA to DOJ to determine and provide the appropriate level of perimeter access control at all GSA-controlled facilities housing judicial officers. When FPS was transferred from GSA to DHS in 2003, the MOA was reaffirmed by a Memorandum of Understanding (MOU) which stated that the terms of the 1997 MOA would continue without interruption (continued...)

When the court is the sole tenant in a GSA-managed building, USMS has primary responsibility for security, although FPS may provide some support for the perimeter security, or may delegate that responsibility to USMS. How the responsibilities are shared varies on a case-by-case basis depending on the differing requirements of tenants, functions, and locations of occupied space. These shared responsibilities and jurisdictions at individual court-occupied buildings are further determined by agreement (sometimes in writing), and coordinated to avoid duplication. Generally, USMS is responsible for and controls judicial space and access to it, while FPS is primarily responsible for perimeter security and for other interior space that is not court-related space. FPS conducts risk assessment of multi-tenant buildings to deter threats and take countermeasures. Uniformed FPS officers and hired contract guards (similar to CSOs) protect the buildings, their assets, and investigate crime at the facilities. Other than perimeter responsibilities, FPS duties may include visitor entry processing, roving patrols, garage access control, and mail and package screening.¹⁸

To protect the Judiciary, the principal entities are to communicate and coordinate at the national and local levels. At the national level, the Judicial Conference's Committee on Judicial Security coordinates security issues involving the federal courts with USMS, DOJ, and DHS. According to USMS, the Marshals Service works with AOUSC Office of Court Security and the Office of Facilities and Security on a daily basis, and the Committee on Judicial Security also consults and coordinates over national and district level security matters. At semi-annual meetings, the Committee on Judicial Security and USMS senior management discuss security, legal, and budget issues. USMS and AOUSC also hold several working sessions prior to quarterly review meetings with the AOUSC associate director. Issues discussed at the meetings include purchase and installation of security systems, CSO staffing, and budget matters. At the local level, U.S. Marshals routinely meet with the district chief judge at court security committee meetings comprising representatives from the magistrate, district, and bankruptcy courts (and may include circuit judges and U.S. attorneys) to review and implement security plans. In addition, AOUSC and USMS consult on security considerations (e.g., design and installation of security systems) in the construction of new or renovated courthouses.

There have been concerns over the years, however, about adequate staffing, threat assessment capabilities, and consultation between USMS and AOUSC to

¹⁷ (...continued)

with DHS assuming the responsibilities transferred from GSA. Parties to the MOU were DOJ, DHS, and AOUSC (signed by Attorney General John Ashcroft on Nov. 20, 2003, Leonidas R. Meham, Director of AOUSC on Nov. 21, 2003, and Secretary of DHS, Tom Ridge on Jan. 21, 2004).

¹⁸ Among FPS protective and security capabilities are (1) specialized response capabilities (e.g., canine, hazardous materials, and weapons of mass destruction response teams); (2) intelligence-sharing and investigative collaboration with law enforcement agencies at local, state, and federal levels; (3) key participation in federal anti-terrorism task forces; and (4) continuous monitoring of facility alarms and emergencies through FPS remote dispatch control centers. See [<http://www.ice.gov/pi/news/factsheets/fps061104.htm>] for more information about FPS.

protect the Judiciary. The DOJ Inspector General (IG)¹⁹ issued a report in 2004 recommending that USMS, among other things, (1) ensure that all threats to the Judiciary are assessed within established time frames; (2) update its historical threat database; (3) assign full-time representatives to all FBI field offices and ensure effective liaison with intelligence agencies; and (4) create a centralized capability²⁰ to identify, collect, analyze, and share intelligence with USMS districts and other offices. These concerns were raised at congressional hearings held in 2005, and consultation between USMS and AOUSC was included as a provision in some of the legislation discussed below.

Legislative Action

During the 109th Congress, legislation was introduced and hearings were held in both the House of Representatives and the Senate related to the issue of judicial security. The subjects of that legislation and those hearings include ways to improve security for judicial officers in the courtrooms, to safeguard judges and their families at home, to restrict personal information postings about judicial officials on the Internet, and to increase penalties for acts against judicial officials and other law enforcement personnel. Of the nine bills discussed below, one bill, H.R. 1268, was enacted into law (P.L. 109-13) to provide funds to USMS for intrusion detection systems in judges' homes. Another bill (H.R. 4311) has passed both houses, but has not been enacted. The House has passed two other bills (H.R. 1751 and H.R. 4472), and the Senate has passed one other bill (S. 1558).

Legislation Enacted

On May 11, 2005, the President signed into law H.R. 1268, *Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005* (P.L. 109-13). The law included an appropriation of \$11.9 million to USMS, as the Judicial Conference requested, to provide intrusion detection systems in judges' homes. Reportedly, 1,600 to 1,700 judges and magistrates have expressed interest in having the systems.²¹ According to the *2005 Annual Report of the Director*, AOUSC staff and the Judicial Conference's Judicial Security Committee are working with USMS to implement the home intrusion detection system program. Installation of the systems is underway, and USMS has agreed to pay the charges for their monitoring and maintenance.

House Legislation and Hearing

H.R. 1751. Among the House bills related to judicial security introduced during the 109th Congress, H.R. 1751, the "Secure Access to Justice and Courtroom

¹⁹ U.S. Department of Justice, Office of the Inspector General, *Review of the United States Marshals Service Judicial Security Process*, Report Number I-2004-004, March 2004.

²⁰ As mentioned above, OPI was created within three months after the IG report was issued.

²¹ "Most judges ask for paid home alarms," *Associated Press*, March 15, 2006, see [<http://www.kansascity.com/mld/kansascity/news/politics/14100021.htm>].

Protection Act of 2005,” was the subject of a hearing. Representative Louie Gohmert introduced H.R. 1751, for himself and Representative Anthony D. Weiner, on April 21, 2005. Among other provisions, the bill would (1) prohibit the possession of a dangerous weapon in a federal court facility; (2) increase penalties for assaulting, kidnaping or murdering judges or their families; (3) restrict the posting of certain personal information about judges, jurors, or witnesses on the Internet; (4) require USMS to coordinate with AOUSC on security issues; and (5) provide states with grants for witness and victim protection programs, grants for threat assessment databases, and funding for states to enhance court security.

On April 26, 2005, the House Judiciary Committee’s Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on H.R. 1751.²² Representative Howard Coble, chairman of the subcommittee, stated at the beginning of the hearing:

We must work together in a bipartisan effort to ensure that our judicial system operates in a safe environment. Judges, witnesses, courthouse personnel, and law enforcement must not have to face threats of violence when carrying out their duties. Our mission here is to provide the resources and the tools necessary to ensure that our judicial system works. Our words must translate into deeds and meaningful reforms and resources.

Highlights of the hearing included the testimony of Judge Cynthia Stevens Kent, of the 114th Judicial District Court in Tyler, Texas, who has received numerous death threats over the years. Judge Kent expressed her support for H.R. 1751 and called the bill a “thoughtful and wonderful start to addressing the need to protect judges, prosecutors, jurors, witnesses, and those who are in our judicial system.”²³ She asked the committee to consider (1) creating a national clearing house to collect and correlate federal and state breaches of security; (2) developing protocols to respond to the threats; (3) enacting tougher penalties for threats, assaults, and murders of judges and their families; (4) establishing grant programs to distribute funds to state courts to enhance security; and (5) providing federal judges with emergency communication devices, including global positioning system capabilities.

In her testimony,²⁴ Judge Jane R. Roth, then-chair of the Judicial Conference’s Security and Facilities Committee and a judge on the Third Circuit Court of Appeals, stressed concerns about USMS staffing shortages, and its ability to provide judicial security as well as manage its other law enforcement duties (e.g., to apprehend fugitives, asset forfeiture, and witness protection). Judge Roth also expressed concerns about what she viewed as USMS threat assessment capabilities, and DOJ’s willingness to share information about staffing levels and to consider changes with

²² U.S. Congress, House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, *Secure Access to Justice and Court Protection Act of 2005*, hearing on H.R. 1751, 109th Cong., 1st sess., April 26, 2005 (Washington: GPO).

²³ See [<http://judiciary.house.gov/HearingTestimony.aspx?ID=269>] for the text of Judge Kent’s testimony.

²⁴ See [<http://judiciary.house.gov/media/pdfs/roth042605.pdf>] for the text of Judge Roth’s testimony.

the Judicial Conference. She supported a number of security actions, some of which were already part of H.R. 1751: consultation and coordination between the Director of AOUSC and the Director of USMS regarding judicial security requirements; installation of home intrusion detection systems;²⁵ permanent authority to redact certain information from judges' financial disclosure; firearms training for judges; and penalties for those who file false liens against judges.

John F. Clarke, then-U.S. Marshal for the Eastern District of Virginia (who was confirmed to be Director of USMS on March 16, 2006), also testified at the hearing. Mr. Clarke stated that USMS is on target to implement all of DOJ's Inspector General's March 2004 report, *Review of the United States Marshals Service Judicial Security Process*. He also said that the chairman of the Judicial Security Review Working Group that Attorney General Gonzales established soon after the Chicago and Atlanta murders had met with the Judicial Conference and AOUSC. He also noted that DOJ had provided \$100,000 to the National Center for State Courts (NCSC) for its study of state and local court security. (NCSC initiatives are discussed later in the report.)

On November 9, 2005, the House passed H.R. 1751 by a vote of 375 to 45. The bill included an amendment that would authorize any federal judge, magistrate, U.S. Attorney, or any other DOJ officer who represents the U.S. in a court of law, to carry firearms (subject to training and regulation that the U.S. Attorney General prescribes). It also included a provision that would make permanent the authority for the Judiciary to redact information on judges in their financial disclosure forms to protect them from possible threats.

Other House Bills. Other judicial security bills introduced in the House during the 109th Congress included the following:

H.R. 1710. On April 19, 2005, Representative Weiner introduced H.R. 1710, the "Internet Police Protection Act of 2005," which would prohibit knowingly making restricted personal information about a covered official publicly available through the Internet. The bill defines "covered official" to include a U.S. court officer, juror, or magistrate judge, or a grand or petit juror. The bill was referred to the Subcommittee on Crime, Terrorism, and Homeland Security of the House Judiciary Committee on May 10, 2005. The main thrust of the bill, to help protect covered officials from harmful information being posted (on the Internet), was incorporated in H.R. 1751 (introduced two days after H.R. 1710, with Representative Weiner as an original cosponsor) and H.R. 4472 (discussed below).

H.R. 4311. On November 14, 2005, Representative James F. Sensenbrenner, Chairman of the House Judiciary Committee, introduced H.R. 4311, a bill to amend the Ethics in Government Act of 1978. The legislation would make permanent provisions to allow redaction of judges' required financial disclosure forms if the Judicial Conference finds that the release of the information could endanger the judge or the family. The bill was passed on December 7, 2005, by voice vote, under suspension of the rules, and was received in the Senate on December 12, 2005. On

²⁵ As noted earlier in this report, funding for these systems was provided in P.L. 109-13.

January 27, 2006, it was referred to the Senate Committee on Homeland Security and Governmental Affairs. On June 7, 2006, the Senate discharged H.R. 4311 from committee, amended the bill to include family members and to extend the public filing requirement, and passed the bill by unanimous consent.

H.R. 4472. On December 8, 2005, Representative Sensenbrenner introduced H.R. 4472, the “Children’s Safety and Violent Crime Reduction Act.” H.R. 4472 is a package of the core provisions of three previously passed anti-crime bills: H.R. 3132 (the Children’s Safety Act of 2005), H.R. 1279 (Gang Prevention and Deterrence Act), and the previously discussed H.R. 1751 (the Secure Access to Justice and Courthouse Protection Act).²⁶ Title VII of the bill contains several provisions relating to court security that were contained in H.R. 1751. Among other things, it (1) requires USMS to consult regularly with AOUSC on judicial security; (2) authorizes the appropriation of an additional \$20 million for USMS for each of fiscal years 2006 through 2010 to hire additional staff for court security; (3) requires a report by the Attorney General on the security of federal prosecutors; (4) establishes special penalties for murder, kidnaping, and related crimes against federal judges and federal law enforcement officers; (5) authorizes federal judges and prosecutors to carry firearms; and (6) prohibits the possession of a dangerous weapon in a court facility. H.R. 4472 also incorporates the main thrust of H.R. 1710 to help protect covered officials from harmful information being made public so that it can be used to intimidate or facilitate the commission of a crime of violence against that official or an immediate family member. The House passed the bill by voice vote, on March 8, 2006, under suspension of the rules. H.R. 4472 was referred to the Senate on March 9, 2006, where it is pending on the Senate calendar.

H.R. 4732. On February 8, 2006, Representative Jon C. Porter introduced H.R. 4732, a bill to provide federal penalties for killing federally funded public safety officers, including judicial officers (e.g., judges, prosecutors, and court security officers). H.R. 4732 was referred to the House Judiciary Committee on February 8, 2006, where it is pending.

Senate Hearing and Legislation

On May 18, 2005, the Senate Judiciary Committee held a hearing entitled “Protecting the Judiciary at Home and in the Courthouse.” The committee heard testimony that highlighted the nature and scope of threats against judges, other law enforcement officials, and their families, and the need for better consultation between the Judiciary and USMS to improve security. Senator Arlen Specter, chairman of the committee, stated the following at the beginning of the hearing:

There’s no doubt that the rule of law is the backbone of our civilized society. The capability of the judiciary and to determine the rule of law without fear or favor

²⁶ H.R. 4472 did not include the photographing, broadcasting, or televising the courts that had been part of H.R. 1751.

is an indispensable prerequisite in our democratic society. Personal security along with judicial independence must be safeguarded at all costs.²⁷

Highlights of the hearing included testimony from Judge Joan H. Lefkow, whose husband and mother were murdered at her home on February 28, 2005. Judge Lefkow appealed to the committee to make judicial security a priority, and to “support the vital role of judges in sustaining a society based on the rule of law instead of right being defined by might.”²⁸ She advocated the rapid distribution of funds for judges’ home intrusion detection systems (discussed later in this report), and urged support for legislation to prohibit the posting of personal information about judges and other public officials on the Internet without their written consent. Judge Lefkow also requested adequate funding and staffing for USMS. Finally, because of what she termed “gratuitous attacks on the judiciary” that she viewed as encouraging attacks on judges, she appealed for the committee’s “help in tempering the tone of the debates that concern the independence of the judiciary.”

Judge Roth, who had testified in April before the House subcommittee on H.R. 1751, reiterated her concerns about judicial security. She expressed her view that there was “an ongoing crisis in the relationship that exists between the Judiciary, the United States Marshal Service and the Department of Justice,” and that the Judiciary had been excluded from the key areas of policy, planning, and budget when resource needs are determined. She proposed that USMS and the Judiciary be required “to jointly submit to Congress 180 days after the date of enactment a report that states what the security needs of the judiciary are and how they are to be addressed” as a way to assist committee oversight, and to bring about a more productive relationship between Judiciary and DOJ.²⁹

Senator Specter also referred to the IG’s March 2004 report on USMS threat assessment capability to collect and to share intelligence. IG Glenn A. Fine submitted written testimony to the committee that discussed the report’s recommendations, indicated that USMS had agreed with all the recommendations, and stated that USMS had since provided the information on the status of corrective action. With the killings in Chicago and Atlanta, the IG expressed his belief that USMS Office of Protective Intelligence must be staffed appropriately in order to effectively collect, analyze, and disseminate intelligence to provide the necessary security for the federal Judiciary. The IG concluded that although USMS had begun to take steps to address the deficiencies, USMS and DOJ should address the issues on an expedited basis.³⁰

²⁷ Opening Statement of Sen. Arlen Specter in U.S. Congress, Senate Committee on the Judiciary, *Protecting the Judiciary at Home and in the Courthouse*, 109th Congress, 1st sess., May 18, 2005, S.Hrg 109-57 (Washington: GPO, 2005).

²⁸ See [http://judiciary.senate.gov/testimony.cfm?id=1495&wit_id=4282] for Judge Lefkow’s written testimony.

²⁹ See [http://judiciary.senate.gov/testimony.cfm?id=1495&wit_id=4283] for Judge Roth’s written testimony.

³⁰ See [<http://www.usdoj.gov/oig/testimony/0505c/index.htm>] for the IG’s testimony.

Then-Director of USMS, Benigno Reyna, also testified at the hearing and described USMS's mission, scope of responsibilities, and the challenges as it works to provide protection for the Judiciary.³¹

Senate Bills. Subsequent to the hearing, legislation was introduced in the Senate to enhance judicial security by raising penalties for crimes committed against judges and law enforcement officers and increasing protection for them and their families.

S. 1605. On July 29, 2005, Senator Jon Kyl introduced S. 1605, the "Law Enforcement Officers' Protection Act of 2005," that would amend the federal criminal code to prohibit killing or attempting to kill a federally funded public safety officer (including a judicial officer). The bill would establish or increase penalties for (1) assaulting federally funded public safety officers (including a federal judge and other federal officials); (2) retaliating against such an officer, judge, or official by murdering or assaulting a family member; and (3) committing murder, manslaughter, and related crimes under federal jurisdiction. S. 1605 was referred to the Senate Judiciary Committee, where it is pending.

S. 1558. On July 29, 2005, Senator Susan M. Collins introduced, for herself and Senator Joseph I. Lieberman, S. 1558, a bill that would amend the Ethics in Government Act of 1978.³² Similar to H.R. 4311, this bill would exempt family members of judicial officers and employees (under current law, only officers and employees are exempt) from publicly filing reports disclosing certain personal and sensitive information, if there is a finding that publication of such information could endanger judicial officers, employees, or their families. The bill would allow a report to be redacted to the extent necessary to protect these individuals, and extend the authority to redact for four years to December 31, 2009. S. 1558 had been referred to the Senate Committee on Homeland Security and Governmental Affairs on the day it was introduced. On November 10, 2005, the bill was discharged from the committee by unanimous consent, and passed by unanimous consent on the same day with two amendments³³ sponsored by Senator Patrick Leahy. S. 1558 was received by the House on November 14, 2005, and referred to the House Judiciary Committee, where it is pending. As noted earlier, the Senate passed H.R. 4311 on June 7, 2006.

S. 1968. On November 7, 2005, Senator Specter introduced S. 1968, the "Court Security Improvement Act of 2005," for himself and Senators John Cornyn and Patrick Leahy. Several of the bill's core provisions are similar to H.R. 1751. Among other things, S. 1968 would (1) require the Director of USMS to consult and coordinate with the Judicial Conference on security requirements for the judicial

³¹ See [http://judiciary.senate.gov/testimony.cfm?id=1495&wit_id=4284] for Mr. Reyna's written testimony.

³² The bill would amend 5 USC App., Sec. 105(b)(3) and Sec. 105(b)(3)E.

³³ One amendment changed the title of the bill to read: "To amend the Ethics in Government Act of 1978 to protect family members of filers from disclosing sensitive information in a public filing and to extend for 4 years the authority to redact financial disclosure statements of judicial employees and judicial officers." The other amendment inserted language in the bill to include family members of judicial officers and employees.

branch on a continuing basis; (2) impose penalties against those who file false liens against federal judges and federal law enforcement officers, who may be the targets of retaliation; (3) prohibit possession of dangerous weapons in federal court facilities; (4) provide grants to states to improve security for state and local court systems; and (5) authorize the Attorney General to make grants to states, local governments, and Indian tribes to create and expand programs to protect witnesses and victims of crime. Like S. 1558 and H.R. 4311, the bill would also extend authority to redact personal or sensitive information from financial disclosure forms that may harm family members of judicial officers, and extend the provision for five years. S. 1968 was referred to the Senate Judiciary Committee on November 7, 2005, where it is pending.

Judicial Conference Actions

By statute,³⁴ the Judicial Conference must hold annual meetings. By tradition, though, the conference meets biannually, in March and September of each year. At the March 15, 2005, meeting, just four days after the Atlanta courthouse shooting, the conference adopted a resolution which called on DOJ and USMS to review fully and expeditiously all aspects of judicial security, particularly security at judges' homes and other locations away from the courthouse. The conference also called upon the legislative and executive branches to provide adequate security funding and took the following actions:

- directed AOUSC to work with commercial information providers to block certain information about judges and their families;
- tasked conference committees to review whether further action would be needed to improve off-site security for judges; and
- asked the Security and Facilities Committee to continue to work with USMS on off-site security for judges.

At the September 20, 2005, meeting, the Judicial Conference Committee on Security and Facilities decided to develop an agreement between AOUSC and DOJ to provide up to \$4,000 per judge for the purchase of home intrusion detection systems (from the \$11.9 million appropriated to USMS for this purpose by P.L. 109-13 in May 2005). The conference also adopted a recommendation, proposed by the Executive Committee, to divide the Committee on Security and Facilities into two committees: the Committee on Judicial Security,³⁵ and the Committee on Space and Facilities. The jurisdictional change, enabling a separate committee to devote its full attention on judicial security, became effective October 1, 2005.

³⁴ 28 USC, Sec. 331. After each of the conference meetings, separate meetings of circuit chief judges and district judge representatives typically are held, and are chaired by judges selected from the conference membership.

³⁵ The committee is charged to review, monitor, and propose recommendations to the conference policies regarding the security of the federal judiciary, e.g., protection of court facilities and proceedings, for judicial officers, other officers and employees of the judiciary, and their families.

At the March 14, 2006, meeting, the Judicial Conference voted to:

- authorize the placement of security screening equipment and contract security guards at leased facilities housing federal probation and pretrial services offices (about 50 offices nationwide are in leased space, not federal courthouses);
- urge USMS to provide more frequent training for deputy marshals and judicial security inspectors responsible for security surveys of judges' homes, and more training on how to provide an effective security detail;
- encourage newly appointed federal judges to provide personal information to USMS, as requested, and for USMS to ensure the security of such information; and
- urge the U.S. Bureau of Prisons to adopt a policy of screening (but not reading) all outgoing mail to judges and courts from inmates in federal prisons.³⁶

Actions by the National Center for the State Courts

In addition the federal response to the killings in Chicago and Atlanta, state and local officials also suggested or adopted measures for enhanced security of judges, court personnel, and courthouses. In addition to their value in improving state court security, those actions may provide lessons for federal judicial security efforts. Also, congressional interest in the security of the state courts is evidenced by the inclusion of provisions contained in legislation that provide federal grants to states.

In introducing S. 1968, Senator Specter said that the “rampage in Atlanta reminds us that the issue of judicial security is no less of a compelling problem for State and local courts, where approximately 32,000 State and local court judges sit compared to approximately 2,400 Federal judges.”³⁷ Some have observed that there are occasions when threats made against state judges follow them when they move to the federal bench.³⁸ There has been some consultation and sharing of information between the federal and state entities to enhance the security of the courts. For example, Judge Roth (then-chair of the Judicial Conference’s Security and Facilities Committee and a judge on the Third Circuit Court of Appeals) spoke at a summit on state court security (discussed below) and provided assistance to the National Center for State Courts (NCSC)³⁹ as the center developed proposals on the issue.

³⁶ See [http://www.uscourts.gov/Press_Releases/judconf031406.html] for the March 14, 2006, press release.

³⁷ *Congressional Record*, daily edition, vol. 151, no. 146, Nov. 7, 2005, p. S12449.

³⁸ Based on information provided by a court security expert on May 31, 2006.

³⁹ NCSC is an independent, nonprofit organization, whose mission is to improve the
(continued...)

In March 2005, NCSC issued *The Essential Ten Elements for Effective Courtroom Safety and Security Planning*, a document intended to serve as a framework for state judicial security.⁴⁰ The 10 elements included funding, threat assessments, standard operating procedures, and court design. As of April 2006, the Conference of Chief Justices and the Conference of State Court Administrators' Committee on Security and Emergency Preparedness were working on a manual that is based on the ten elements.⁴¹

NCSC followed the recommendations by sponsoring a National Summit on Court Safety and Security⁴² on April 21, 2005, which was partially funded by DOJ. The summit convened 100 state chief justices, sheriffs, court administrators, and federal, state, and local policy makers. Preliminary recommendations proposed by the summit were to (1) create a national threat assessment and incident reporting database to provide critical information to all stakeholder groups; (2) create a national clearinghouse on court security to facilitate information sharing and cross cutting research; (3) create strategies for leveraging resources across stakeholder groups at the national, state, and local levels; and (4) integrate court safety and security issues in homeland security planning and funding.

A follow-up summit was held on November 17, 2005, to continue the discussions. NCSC credits Judge Roth, a speaker at both summits, for being instrumental in identifying federal security issues and resources. As a result of the summits, a report, *A National Strategic Plan For Judicial Branch Security*, was issued on February 7, 2006. It recommended several strategies, including the following: (1) promote leadership; (2) establish a national coalition on court security; (3) develop a national incident-reporting database; (4) address education and training needs; and (5) pursue funding for these activities.⁴³

³⁹ (...continued)

administration of justice through leadership and service to state courts, and courts around the world. For more information about NCSC, see [<http://www.ncsconline.org/index.html>].

⁴⁰ The document was created by the NCSC Joint Committee of Conference of Chief Justices and the Conference of State Court Administrators Security and Emergency Preparedness Committee. The 10 elements were (1) Operation Security: Standard Operating Procedures; (2) Facility Security Planning: Self Audit Survey of Court Facilities; (3) Emergency Preparedness and Response: Continuity of Operations; (4) Disaster Recovery: Essential Elements of a Plan; (5) Threat Assessment; (6) Incident Reporting; (7) Funding; (8) Security Equipment and Costs; (9) Resources and Partnerships; and (10) New Courthouse Design. See the NCSC press release at [<http://www.ncsconline.org/What'sNew/TenPointPlan.pdf>].

⁴¹ According to NCSC, three chapters may be ready for review at its annual meeting this summer, and work on other chapters will proceed. Information was provided by the NCSC on April 7, 2006.

⁴² For more information about the summit and its preliminary findings, see [<http://www.ncsconline.org/What'sNew/CourtSecurity/PrimaryFindingdApril25.htm>].

⁴³ Dr. Pamela Casey, *A National Strategic Plan for Judicial Branch*, prepared for the National Center for State Courts and the National Sheriff's Association, Feb. 7, 2006. The report is available at [<http://216.15.146.200/MS/MS32/page.php?p=355>].

In March 2006, NCSC, USMS, and the National Sheriffs Association met to discuss areas in which they can collaborate and build on one another's resources. They identified three initial activities that were needed: (1) a court security workshop to be offered at the National Association for Court Management's annual meeting this summer; (2) educational programs to train judges and court staff to identify possible threats and suspicious behavior, and to enhance their personal safety; and (3) a USMS National Institute on Judicial Security to provide court professionals with education and technical assistance.⁴⁴

FY2007 Judicial Security Budget Request

The Judiciary Fiscal Year 2007 Congressional Budget Justification included this statement:

The current war on terrorism places even greater emphasis on the need for the judiciary to have funding that will provide protection for federal judges, staff, litigants, attorneys and members of the public who work in or visit federal courthouses. The potential for courthouses to be the target of a biological or radiological attack is high and is a major concern of the judiciary and the USMS. The judiciary and the USMS continue to evaluate innovative ways to provide security, and to review and assess systems and methods that will keep the judiciary's security at the most effective level. The continued need for an enhanced level of security for the judiciary is affected by factors beyond its control, such as the number of trials involving terrorists, dangerous drug traffickers, members of militant groups, and criminal enterprises whose crimes are of a complex and violent nature. Attendance at trial by associates of these individuals also heightens the need for enhanced security.

At the April 2006 House hearing on the FY2007 Supreme Court budget request, at which U.S. Supreme Court Justices Anthony Kennedy and Clarence Thomas testified, Representative Joseph Knollenberg, chairman of the House Appropriations Subcommittee on Transportation, Treasury, HUD, the Judiciary, District of Columbia, and Independent Agencies, said that, "given the dangers of terrorism and the high profile of the justices and the Supreme Court building, as chairman, I think that security should be the top priority for any increases in budgetary resources." The following day, Chairman Knollenberg, presiding over the subcommittee's hearing on the overall federal judiciary FY2007 budget request, reaffirmed that ensuring adequate funds for court security is "a top priority for me."

Federal judicial security is generally funded annually under two separate sets of appropriations bills, one for the Judiciary and one for USMS.⁴⁵ The House provides funding for the Judiciary under Title IV of the Transportation, Treasury, Housing and Urban Development, the Judiciary, District of Columbia, and Independent Agencies appropriations bill. In the Senate, it is funded under Title IV of the Transportation,

⁴⁴ Information was provided by the NCSC on April 7, 2006.

⁴⁵ Funding for judicial security at the state and local level is not addressed directly in the scope of this report. Each state is funded differently, and funding levels vary from state to state.

Treasury, the Judiciary, Housing and Urban Development, and Related Agencies appropriations bill. The Court Security account under Title IV funds guard services, security systems, and equipment for courthouses and other federal facilities. Under this account, a major portion of the funding is transferred to USMS for administering the Judicial Facility Security Program that pays for CSOs, and for charges paid to FPS in court occupied space. The FY2007 budget request for the Court Security account is \$410.3 million — a \$42.1 million (11.4%) increase over the FY2006 appropriation. The increase is reportedly driven by personnel pay and benefits increases, and other adjustments to maintain current services, and to cover the costs for additional security measures, including 34 additional CSOs, and \$16.8 million for additional and replacement security systems and equipment.⁴⁶

USMS is funded in separate legislation. In the House, funding is provided under Title I of the Science, State, Justice, Commerce, and Related Agencies appropriations bill. In the Senate, funding is under Title I of the Departments of Commerce and Justice, Science, and Related Agencies appropriations bill.⁴⁷ For FY2007, the Administration has requested \$826 million for USMS, of which \$343 million would be allocated for judicial and courthouse security. The \$343 million budget request is \$19 million (5.9%) more than the FY2006 appropriation. The FY2007 request would fund 1,841 full-time-equivalent (FTE) positions (2.8% above the FY2006 level) for judicial and court security.⁴⁸ In addition, an estimated \$5 million and 54 FTE positions would be derived from reimbursable resources for judicial and courthouse security.⁴⁹

Concluding Observations

In the year after the Chicago and Atlanta murders, federal and state officials raised concerns about judicial security, and several proposals for improvement were considered or adopted. The Judicial Conference made recommendations and took actions to enhance security for court facilities and provide off-site protection for judges. Legislation was enacted providing funds to USMS for the installation of intrusion detection systems in federal judges' homes, and the installations are currently underway. The House and Senate Judiciary Committees conducted hearings

⁴⁶ For details about funding for the Judiciary, see CRS Report RL33339, *Judiciary Appropriations for FY2007*, by Lorraine H. Tong.

⁴⁷ The differences reflect the restructuring of House and Senate subcommittees' jurisdictions at the beginning of the 109th Congress.

⁴⁸ The FY2007 request includes 62 additional permanent positions and 51 additional FTE positions. According to the Administration, the FY2007 request includes an increase for USMS judicial and courthouse security programs of \$8 million, including 49 permanent positions and 25 FTE positions; and the remaining 13 additional permanent positions and 26 additional FTE positions will be derived from adjustments to USMS base budget (to maintain current levels of activities and services).

⁴⁹ USMS reimbursable resources are largely derived from interagency transfers. The largest amount of interagency transfers to USMS are made by the Office of the Federal Detention Trustee.

and legislation was introduced to improve overall federal judicial security. Some of the legislation would provide grants to state courts for witness and victim protection programs. Most of the judicial-security-related bills were introduced during the first session of the 109th Congress. Attention to the issue continues in the second session, with final action on legislation pending in either one or both Houses of Congress.

As Congress considers efforts to enhance judicial security by authorizing programs, appropriating funds, and conducting oversight, several related issues may merit consideration:

Resources and Staffing. The FY2007 budget requests for the Judiciary and USMS would provide increased resources and staffing to enhance the security of the Judiciary. Even if the budget requests are fully funded, subsequent events (e.g., gaps in security revealed later by further tragedies, or across-the-board reductions in spending) may lead some to suggest the need for additional funding. Also, continuing resolutions on appropriations in past years have resulted in delaying overall Judiciary funding and, therefore, in implementing related actions.

Consultation and Coordination. As evidenced by testimony presented at congressional hearings, there have been long-standing questions raised about the degree and quality of communications between the principal entities charged with protecting the Judiciary. Provisions included in some of the House and Senate bills discussed in this report call for improved consultation and or coordination between USMS and AOUSC, or between the Judicial Conference and USMS. There is, however, no requirement in the bills that any of these organizations report to Congress on actions taken to consult or coordinate. Both AOUSC and USMS have new directors, and new leadership may create a new dynamic and potential opportunities for strengthening consultation and coordination.

Federal and State Collaboration. As noted in this report, there have been several instances of federal and state courts collaborating and communicating to address judicial security issues. Building on those relationships, perhaps through partnerships to establish a national clearing house on judicial security information, could help to enhance security at the both the national and state levels. The sharing of information and resources (e.g., either through technological means or at regularly scheduled seminars involving federal and state officials, and others) could also prove more cost-effective than a less collaborative relationship.

Continued Focus and Oversight. The challenge to federal and state officials is continuing to make judicial security issues a priority. Generally, after tragic events — such as the murders in Chicago and Atlanta — immediate efforts are taken to address the issue. As time elapses, however, the momentum generated in the aftermath of those tragedies is often difficult to sustain. Therefore, continued congressional oversight and legislative action may be a critical factor to enhance the security of the Judiciary