

# CRS Report for Congress

## Judicial Security: Responsibilities and Current Issues

Updated April 7, 2008

Lorraine H. Tong  
Analyst in American National Government  
Government and Finance Division



Prepared for Members and  
Committees of Congress

# Judicial Security: Responsibilities and Current Issues

## 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 courtroom security for judicial officers; safeguard judges and their families at home; restrict postings of personal information about judicial officers and their families on the Internet; extend or make permanent the authority to redact certain information from judicial officers, judicial employees, and their families' financial disclosure forms; and increase penalties for attacks against them and other law enforcement personnel. Although several judicial security bills were introduced in the House and Senate in the 109<sup>th</sup> Congress, the security provisions enacted were in an appropriations act (P.L. 109-13), which included funding for intrusion detection alarms in judges' homes. Early in the 110<sup>th</sup> Congress, the chairmen of the House and Senate Judiciary Committees introduced H.R. 660 and S. 378, the Court Security Improvement Act of 2007, companion bills similar to the bills introduced in the previous Congress. H.R. 660 was referred to three committees: Judiciary, Ways and Means, and Oversight and Government Reform. Following the May 3, 2007, hearing on H.R. 660 by the House Subcommittee on Crime, Terrorism, and Homeland Security, the House Judiciary Committee held a markup and amended the bill on June 13, 2007, and reported it on July 10, 2007. On that same day, the other two House committees were discharged from the bill, and the House passed H.R. 660. After a February 14, 2007, hearing on judicial security and independence, the Senate Judiciary Committee approved S. 378 on March 1, 2007, and reported the bill on March 29, 2007. On April 19, 2007, the Senate passed S. 378. After resolving differences between the House and Senate versions, the Senate passed H.R. 660, as amended, on December 17, 2007, by unanimous consent. Two days later, the House approved the amended bill by voice vote. On January 7, 2008, the President signed H.R. 660 into law (P.L. 110-177). Congress also passed H.R. 1130, the Judicial Disclosure Responsibility Act, to extend the authority of the Judicial Conference (through 2009) to redact certain personal information of judicial officers, employees, and their families from financial disclosure statements. On May 3, 2007, the President signed H.R. 1130 (P.L. 110-24).

Both federal and state judicial entities have addressed judicial security concerns. By statute, the United States Marshals Service (USMS) within the Department of Justice has primary responsibility for the security of the judiciary. USMS works closely with the Judicial Conference of the United States, the Administrative Office of the United States Courts, and the Federal Protective Service within the Department of Homeland Security. Concerns have been raised, however, about the staffing of, and the communication and coordination between, these offices. 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 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 appropriations bills, one for the judiciary and one for USMS. Related issues that may receive congressional consideration or oversight are funding and staff resources, communication and consultation, and federal/state collaboration. This report will be updated as 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 reports of the murders of family members of a Chicago federal judge on February 28, 2005,<sup>1</sup> and the killings less than two weeks later of a state judge, a court reporter, and a sheriff's deputy in an Atlanta courthouse.<sup>2</sup> In June 2006, a sniper shot a state judge in Reno, Nevada, through the window of the judge's office.<sup>3</sup> Press accounts have also described other threats and violence directed at the judiciary.<sup>4</sup> Supreme Court Justices were also intended targets of violence. In March 2006, the public learned about death threats made against Supreme Court Justices in 2005.<sup>5</sup> In November 2006, it was revealed that home-baked cookies infused with rat poison had been mailed to all nine Justices in 2005; and, according to the media report, Justice Sandra Day O'Connor was quoted as saying that "each one contained enough poison to kill the entire membership of the court."<sup>6</sup> According to the U.S. Marshals Service (USMS), there were 1,145 inappropriate communications made against federal judges, U.S. attorneys, and other USMS protectees, compared to 679 in FY2003.<sup>7</sup>

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

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

<sup>3</sup> Scott Sonner, "Police Seek Suspect in Shooting of Nevada Judge, Later Slaying Across Town," *The Associated Press*, June 13, 2006 [<http://www.law.com/jsp/article.jsp?id=1150115724481>].

<sup>4</sup> 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.

<sup>5</sup> Bill Mears, "Justice Ginsburg details death threat," *CNN*, March 15, 2006 [<http://www.cnn.com/2006/LAW/03/15/scotus.threat/index.html>].

<sup>6</sup> Kevin Bohn, "O'Connor details half-baked attempt to kill Supreme Court," *CNN*, November 17, 2006 [<http://www.cnn.com/2006/LAW/11/17/court.cookies/index.html>].

<sup>7</sup> Based on information USMS provided to the author on March 21 and 24, 2008. According to the USMS Office of Protective Intelligence, an "inappropriate communication" is defined as "any communication made either in writing (including e-mail), by telephone, verbally, through an informant, or otherwise suspicious activity that threatens, harasses, or makes unsettling overtures of an improper nature directed at a protectee, which by definition

(continued...)

In his *2005 Year-End Report on the Federal Judiciary*, issued on January 1, 2006, 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.<sup>8</sup>

Then-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 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.<sup>9</sup>

During the 109<sup>th</sup> Congress, the House and Senate held hearings, and several 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 officers 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 court officials and other law enforcement personnel.<sup>10</sup> The bills were H.R. 1710, H.R. 1751, H.R. 4311, H.R. 4472, H.R. 4732, S. 1558, S. 1605, S. 1968, and S. 3835. No final action was taken on these bills prior to the adjournment of the 109<sup>th</sup> Congress, although legislation was enacted (H.R. 1268, P.L. 109-13) that included a provision to appropriate funds for intrusion detection alarms

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<sup>7</sup> (...continued)

warrants further investigation. Threats are included in the term inappropriate communication. Thus, all threats are inappropriate communications, but not all inappropriate communications are threats.” In addition to U.S. Supreme Court Justices and federal judges, other protectees the USMS may protect are Tax Court judges, U.S. deputy attorney general, director of the U.S. Office of National Drug Control Policy, U.S. Attorneys and Assistant U.S. Attorneys, federal public defenders, clerk of courts, probation officers, pre-trial services officers, U.S. trustees, jurors, witnesses, and USMS employees.

<sup>8</sup> 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*.

<sup>9</sup> See [<http://www.usdoj.gov/ag/speeches/2005/agremarksccusdj.htm>] for the text of the attorney general's speech.

<sup>10</sup> See **Appendix** for details about legislation in the 109<sup>th</sup> Congress.

in judges' homes. Another bill, S. 2766, did not originally include court security provisions, but such provisions were adopted by the Senate as an amendment.<sup>11</sup>

Early in the 110<sup>th</sup> Congress, the chairmen of the House and Senate Judiciary Committees introduced companion judicial security bills similar to those that were introduced, but not enacted, in the previous Congress. The companion bills are H.R. 660 and S. 378.<sup>12</sup> Senate Judiciary Committee Chairman Patrick J. Leahy, in remarks to introduce S. 378, said that the Court Security Improvement Act of 2007 is

a consensus measure with bipartisan support nearly identical to the bill we passed in the Senate last December. House Judiciary Chairman Conyers is introducing an identical measure in the House with bipartisan support. This bicameral, bi-partisan introduction sends a strong message that we intend finally to finish this difficult struggle and enact this bill that should have been enacted months ago to increase protections for the dedicated women and men throughout the Judiciary in this country. This is an important issue, and one I plan to make a priority in this Congress.<sup>13</sup>

The House and Senate committees of jurisdiction held hearings on judicial security. After a February 14, 2007, hearing on judicial security and independence, the Senate Judiciary Committee approved S. 378 on March 1, 2007, and reported the bill on March 29, 2007. H.R. 660 was referred to three committees: Judiciary, Ways and Means, and Oversight and Government Reform. Following the May 3, 2007, hearing on H.R. 660 by the House Subcommittee on Crime, Terrorism, and Homeland Security, the House Judiciary Committee held a markup and amended the bill on June 13, 2007, and reported it on July 10, 2007. On the same day, the other two House committees were discharged from the bill.

The Senate passed S. 378 on April 19, 2007, and the House passed H.R. 660 on July 10, 2007. The Senate received H.R. 660 on July 11, 2007, and on August 3, 2007, the bill was referred to the Senate Judiciary Committee.

After resolving differences between the House and Senate versions, the Senate passed H.R. 660, as amended, on December 17, 2007, by unanimous consent. The House approved the amended bill by voice vote two days later on December 19, 2007. On January 7, 2008, the President signed H.R. 660 into law (P.L. 110-177).

Prior to the enactment of H.R. 660, House Judiciary Committee Chairman John Conyers Jr. introduced H.R. 1130, the Judicial Disclosure Responsibility Act, to extend through 2009 the authority of the Judicial Conference to redact certain

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<sup>11</sup> The House version of the National Defense Authorization Act for FY2007, H.R. 5122, did not contain similar court security provisions. Ultimately, the conference report was adopted, and H.R. 5122 was signed into law without the court security provisions.

<sup>12</sup> For a legal analysis of these two bills, see CRS Report RL33884, *Court Security Improvement Act of 2007: A Legal Analysis of H.R. 660/S. 378*, by Charles Doyle.

<sup>13</sup> Sen. Patrick Leahy, "S. 378. A bill to amend title 18, United States Code, to protect judges, prosecutors, witnesses, victims, and their family members, and for other purposes," remarks in the Senate, *Congressional Record*, daily edition, vol. 153, January 24, 2007, p. S1062.

personal information of judicial officers, judicial employees, and their families from financial disclosure statements. The House and Senate passed H.R. 1130, and the President signed the bill into law (P.L. 110-24) on May 3, 2007. P.L. 110-177 extended the redaction authority through 2011.

This report discusses the current framework for federal judicial security, legislative efforts in the 110<sup>th</sup> Congress<sup>14</sup> to improve judicial security, other proposals for reform, as well as the FY2008 appropriation and FY2009 budget request for judicial security.<sup>15</sup>

## Judicial Security Responsibilities and Jurisdiction

As the Chief Justice suggested in his 2005 annual report, 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 States<sup>16</sup> — the principal policymaking 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,<sup>17</sup> 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 judges and others who are targets of threats and attacks, and provides other law enforcement services for DOJ.<sup>18</sup> 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

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<sup>14</sup> For more information on judicial security bills in the 109<sup>th</sup> and 110<sup>th</sup> Congresses, see CRS Report RL33473, *Judicial Security: Comparison of Legislation in the 110<sup>th</sup> Congress*, by Nathan James.

<sup>15</sup> See **Appendix** for details about judicial security legislation considered in the 109<sup>th</sup> Congress.

<sup>16</sup> The Chief Justice of the United States is the presiding officer of the Judicial Conference.

<sup>17</sup> 28 U.S.C. §566(a).

<sup>18</sup> 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>].

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.<sup>19</sup> An appointed U.S. marshal, confirmed by the Senate, 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.<sup>20</sup> Also under USMS jurisdiction is the design, installation, and maintenance of security systems, and oversight of the communications 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.<sup>21</sup> 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 taken.<sup>22</sup> When threats are made, USMS works with the Federal Bureau of Investigation (FBI).<sup>23</sup>

Among the services the USMS Judicial Security Division provided the federal judiciary during FY2007 were the following:

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<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> As federal law enforcement officers, deputy marshals have other responsibilities, including criminal investigations, fugitive apprehension, witness protection, prisoner transportation, and executing court orders.

<sup>22</sup> Office of Congressional Affairs, USMS, telephone conversation with author, May 31, 2006.

<sup>23</sup> USMS conducts investigations related to the protective actions, and the FBI has responsibility for investigating threats for prosecutorial purposes.

- Opened the Threat Management Center, which provides 24/7 response capability for intake and review of threats against the judiciary
- Established the National Center for Judicial Security on March 30, 2007. The center provides a wide range of services and support to federal, state local and international jurisdictions as they seek advice and assistance on judicial security. It initiates programs and activities directly related to threat assessment, training, information sharing and technology review.
- Provided protective investigations training to 100 deputy U.S marshals and judicial security inspectors.
- Launched a \$5.3 million initiative to replace closed circuit television videocassette recorders with state-of-the-art digital recorders at more than 200 courthouses.
- Provided guidance and oversight for over 1,145 protective investigations.
- Coordinated with district offices and General Services Administration for 160 architectural designs and review projects, and 385 construction and security projects within USMS space.
- Conducted feasibility study of seven primary courthouse facilities to examine cost implications of assuming perimeter security responsibilities.
- Increased by seven the number of judicial security inspectors for a total of 101 inspectors.
- Protected Supreme Court justices on 172 occasions.
- Coordinated security for 137 judicial conferences.<sup>24</sup>

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.<sup>25</sup> When those buildings include court facilities, USMS and FPS share security responsibilities,<sup>26</sup>

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<sup>24</sup> U.S. Dept. of Justice, United States Marshals Service, "Fact Sheet: Judicial Security," USMS Pub. No. 21-D, Revised December 3, 2007 (Washington, 2007), pp. 1-2. Available at [<http://www.usmarshals.gov/duties/factsheets/judicial.pdf>].

<sup>25</sup> FPS was transferred from GSA to the DHS pursuant to the act to establish the Department of Homeland Security, P.L. 107-296 (6 U.S.C. 203, Sec. 403).

<sup>26</sup> 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, (continued...)

authorized by a series of memoranda of agreement (MOA) between GSA and DOJ.<sup>27</sup> 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.<sup>28</sup>

To protect the judiciary, the principal entities communicate and coordinate at the national and district 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

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<sup>26</sup> (...continued)

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.

<sup>27</sup> A 1997 MOA between the GSA, USMS, and AOUSC defined each agency's area of responsibility for judicial security. According to the MOA, the three parties recognize that a cooperative effort is needed to provide the federal courts with the necessary security. This MOA stated, "The requirements of this joint effort are delineated in the March, 1982, 'Report of the Attorney General's Task Force on Security'; the March 1982, 'Joint Statement of the Chief Justice and the Attorney General before the Judicial Conference of the United States'; the December 1982, Delegation of Procurement Authority from GSA to the Department of Justice (DOJ); the June 1995, DOJ report entitled 'Vulnerability Assessment of Federal Facilities'; and the 1997 Delegation of Authority from GSA to DOJ delegating USMS authority to determine and provide the appropriate level of perimeter access control at all GSA-controlled facilities that house a judicial officer." 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 with DHS assuming the responsibilities transferred from GSA. Parties to the MOU were DOJ, DHS, and AOUSC (signed by then-Attorney General John Ashcroft on November 20, 2003, then-director of AOUSC Leonidas R. Mechem on November 21, 2003, and then-Secretary of DHS Tom Ridge on January 21, 2004).

<sup>28</sup> 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.gsa.gov/Portal/gsa/ep/programView.do?programId=8479&programPage=%2Fep%2Fprogram%2FgsaOverview.jsp&P=PS&pageTypeId=8195&oid=11911&channelId=-12951>] for more information about FPS.

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 protect the judiciary. The DOJ inspector general (IG)<sup>29</sup> 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 capability<sup>30</sup> to identify, collect, analyze, and share intelligence with USMS districts and other offices. These concerns were raised at congressional hearings held in 2005,<sup>31</sup> and consultation between USMS and AOUSC was included as a provision in some of the legislation discussed below. In testimony before the House and Senate Subcommittees on Financial Services and General Government on March 21, 2007, Judge Julia S. Gibbons, chair of the Judicial Conference Budget Committee, raised concerns regarding the cost and quality of FPS security services to protect court facilities.<sup>32</sup>

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<sup>29</sup> 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 (Washington, DC: March 2004).

<sup>30</sup> OPI, as mentioned above, was created within three months after the IG report was issued.

<sup>31</sup> 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, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., April 26, 2005 (Washington: GPO, 2005), and U.S. Congress, Senate Committee on the Judiciary, *Protecting the Judiciary at Home and in the Courthouse*, hearing, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., May 18, 2005, S. Hrg. 109-57 (Washington: GPO, 2005).

<sup>32</sup> 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 of Appropriations of the United States Senate, March 21, 2007, pp. 9-10, see [<http://www.uscourts.gov/testimony/GibbonsSenate32107.pdf>]. Hereafter cited as Judge Gibbons' March 21, 2007, Statement.

## Legislative Action in the 110<sup>th</sup> Congress

During the first month of the 110<sup>th</sup> Congress, the chairmen of the House and Senate Judiciary Committees introduced the Court Security Improvement Act of 2007 — H.R. 660 and S. 378, respectively.<sup>33</sup> The companion bills reflect the core provisions of legislation introduced, but not enacted, in the 109<sup>th</sup> Congress to address judicial security issues.

H.R. 660 was referred to three committees: Judiciary, Ways and Means, and Oversight and Government Reform. Following the May 3, 2007, hearing on H.R. 660 by the House Subcommittee on Crime, Terrorism, and Homeland Security, the House Judiciary Committee held a markup and amended the bill on June 13, 2007, and reported the bill on July 10, 2007. On that same day, the other two House committees were discharged from the bill, and the House passed H.R. 660 by voice vote. After a February 14, 2007, hearing on judicial security and independence, the Senate Judiciary Committee approved S. 378 on March 1, 2007, and reported the bill on March 29, 2007.

Among other things, both H.R. 660 and S. 378 (as introduced and as passed by each House) call for (1) requiring the director of USMS to consult with the Judicial Conference of the United States on a continuing basis to ensure that the conference's views on security requirements for the judicial branch are taken into account when determining staffing levels, setting priorities for security programs, and allocating judicial security resources; (2) extending authority of the Judicial Conference to redact certain personal information from financial disclosure reports filed by judicial officers, judicial employees, and their family members by amending the Ethics in Government Act of 1978; (3) authorizing funds for USMS to hire deputy marshals; (4) imposing fines or imprisonment (for not more than 10 years), or both, for filing false liens against federal judges or law enforcement officers; (5) authorizing grants to states, local governments, and Indian tribes for witness and victim protection programs; (6) prohibiting dangerous weapons in federal courthouses; and (7) requiring the Attorney General to submit to the House and Senate Judiciary Committees, no later than 90 days after the date of enactment of the legislation, a report on the security of assistant U.S. attorneys and other federal attorneys arising from the prosecution of terrorists, violent criminal gangs, drug traffickers, gun traffickers, white supremacists, those who commit fraud and other white-collar offenses, and other criminal cases. In addition, the bills call for USMS to expand its protective responsibilities to the U.S. Tax Court. Other provisions concerned the assignment of senior judges, and the appointment of magistrates.

The Senate passed S. 378 by a vote of 97-0 on April 19, 2007. After resolving differences, the Senate and the House passed H.R. 660, as amended in late 2007. The President signed the bill into law (P.L. 110-177) on January 7, 2008.

A third bill, H.R. 1130, the Judicial Disclosure Responsibility Act, was introduced to extend through 2009 the authority of the Judicial Conference to redact

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<sup>33</sup> For a legal analysis of these two bills, see CRS Report RL33884, *Court Security Improvement Act of 2007: A Legal Analysis of H.R. 660/S. 378*, by Charles Doyle.

certain personal information of judicial officers, judicial employees, and their families from financial disclosure statements. The President signed the bill into law (P.L. 110-24) on May 3, 2007. P.L. 110-177 extended the redaction authority through 2011.

## House Legislation and Committee Action

**H.R. 660.** On January 24, 2007, House Judiciary Committee Chairman Conyers introduced (for himself and Representatives Louie Gohmert and Robert C. Scott) H.R. 660, the Court Security Improvement Act of 2007. H.R. 660 was referred to the House Judiciary Committee and, in addition, to the Committees on Ways and Means, and Oversight and Government Reform (for a period to be subsequently determined by the Speaker of the House, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned).

On May 3, 2007, the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on the bill. Subcommittee Chairman Robert C. Scott expressed concern about the rise in violence against justices and judges, and stressed the importance of enhancing judicial security. He highlighted provisions of H.R. 660 that (1) call for greater consultation between the USMS and the Judicial Conference of the United States to ensure that the conference's views are considered when staffing levels and priorities for security programs and allocation of resources are determined; (2) authorize adequate resources for the USMS, including \$20 million over five years to hire new deputy marshals to investigate threats and provide protective details for judges and U.S. attorneys; and (3) authorize \$100 million (over five fiscal years) to provide grants to state and local governments to expand and create witness protection programs.<sup>34</sup> The ranking minority member noted that the bill did not provide for the protection of law enforcement officers. He added, however, that other legislative efforts were being made to address these concerns. Stating that there was "a dire need to provide basic security services in the courtroom and for witnesses" at the state and local level, the ranking minority member said, "H.R. 660 represents a good first step in that direction. But, in my view, there is more we can and should do to address this problem."<sup>35</sup>

The subcommittee received testimony from Judge Robert M. Bell, chief judge of the Maryland Court of Appeals; Judge David B. Sentelle, chairman of the Judicial Conference Committee on Judicial Security; and John F. Clark, director of USMS, to hear their views on H.R. 660 and issues related to judicial security. Judge Bell, testifying on behalf of the Conference of Chief Justices and the Conference of State Court Administrators,<sup>36</sup> expressed support for adding provisions to the bill, namely,

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<sup>34</sup> Statement of Chairman Scott, "House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security Holds Hearing on H.R. 660, The Court Security Improvement Act of 2007." Congressional Transcripts, Congressional Hearings, *Congressional Quarterly*, May 3, 2007, pp. 1-2. Hereafter cited as May 3, 2007, House hearing on H.R. 660.

<sup>35</sup> Statement of Rep. J. Randy Forbes, May 3, 2007, House hearing on H.R. 660, pp. 2-3.

<sup>36</sup> According to the judge, the conferences' membership consists of the highest judicial (continued...)

the creation of a new federal grant program that would enhance state court security by conducting assessments and implementing improvements based on those assessments. He also urged that the highest state court in states and territories be eligible to apply for federal funds, and that state and local courts be eligible to apply directly for discretionary federal funding.<sup>37</sup>

Expressing support for H.R. 660, Judge Sentelle stated that “this bill will contribute significantly to the security of federal judges and their families.” He indicated that “great strides” in consultation between USMS and the conference had been made with regard to the installation of home detection systems in judges’ homes, but that such consultation needed to be formalized in statute (so that such consultations in the future do not rely on the individuals currently serving in those positions). To illustrate the level of ongoing interaction, he said, “Director Clark and I are on the phone or in person together sometimes several times a week, sometimes for days at a time and in remote locations and technical centers in other parts of the country.” Judge Sentelle also stressed the importance of redaction authority for judges’ sensitive information in financial disclosure forms. In written testimony, he expressed support that the authority be made permanent (not terminated on December 31, 2009, as provided for in the bill and in H.R. 1130, discussed further below), and, if the House and Senate did not agree to grant permanent authority, he requested that redaction authority be extended until December 31, 2011.<sup>38</sup>

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<sup>36</sup> (...continued)

officers and state court administrators in each of the 50 states; the District of Columbia; the Commonwealth of Puerto Rico; the Northern Mariana Islands; and the Territories of American Samoa, Guam, and the Virgin Islands. The National Center for State Courts serves as the secretariat for the conferences and also provides services to state court leaders throughout the nation.

<sup>37</sup> Testimony of Judge Bell, May 3, 2007, House hearing on H.R. 660, pp. 5-6. See [<http://judiciary.house.gov/media/pdfs/Bell070503.pdf>] for Judge Bell’s written testimony.

<sup>38</sup> Testimony of Judge Sentelle, May 3, 2007, House hearing on H.R. 660, pp. 7-9. Among issues addressed in written testimony, the judge stated that the conference does not take a position on whether USMS should be required to protect the U.S. Tax Court (as provided for in Sec. 104 of the bill). He expressed concern that USMS resources to protect the federal judiciary could be strained if funds were not provided for this purpose, and suggested that USMS protective services for the U.S. Tax Court be reimbursed by that court. He further suggested, “If the Committee believes it is necessary to provide expanded protection to the U.S. Tax Court, we respectfully request that the provision be more narrowly tailored, replacing the phrase ‘any other court’ with ‘U.S. Tax Court’” (as so amended in the Senate bill, S. 378). Also on behalf of the conference, Judge Sentelle stated opposition to a provision (Sec. 504) to amend the Federal Magistrates Act by mandating that senior judges have the right to vote on candidates for magistrate judge positions (along with active district judges of the court) because such a change would “unduly restrict the flexibility of district courts in this area.” See [<http://judiciary.house.gov/media/pdfs/Sentelle070503.pdf>] for Judge Sentelle’s written testimony.

Director Clark said that H.R. 660 would “go a long way in helping the Marshal[s] Service provide the absolute best security for our judicial families.”<sup>39</sup> Although not a provision in the bill, the issue of USMS’s ability to issue administrative subpoenas was raised. Director Clark expressed the view that “administrative subpoena authority would be of great value” to USMS and “we are one agency that I believe needs it and should have it and would be very responsible if we did have it.”<sup>40</sup>

The upgrade of security in old courthouses, and authority for judges to carry firearms in courthouses (not provided for in H.R. 660), was also discussed at the hearing. Judge Sentelle expressed the Judicial Conference’s position in favor of allowing judges to carry firearms, but the conference would prefer to see such authority be addressed in a separate bill, so that H.R. 660 would “not be bogged down by provisions that might be more controversial than what is in there now.”<sup>41</sup>

Following the subcommittee markup of H.R. 660 on June 6, 2007, the House Judiciary Committee held a markup on the bill on June 13, 2007. The committee approved the bill, as amended in the nature of a substitute, and ordered it reported to the House. The substitute amendment provided for: (1) expanding prohibition of published personal information of a judge in the bill to include state and local law enforcement officials, witnesses, and paid informants; (2) making permanent the redaction authority of sensitive personal information in financial disclosure reports filed by judicial officers, judicial employees, and their families; (3) increasing statutory maximum criminal penalties related to assaulting judges; and (4) directing the U.S. attorney general to study whether the public’s general access to state and local records may be harmful to the safety of a judge.<sup>42</sup>

Two other amendments were proposed and discussed at the committee markup. One amendment would have granted discretionary authority to federal appellate and district court judges (with certain safeguards for due process rights and measures to protect non-party witnesses and jurors) to allow media coverage of court proceedings. Another amendment would have permitted judges and prosecutors to carry firearms. Both amendments were withdrawn after the committee chairman stated his intention to hold hearings on both issues in order to give each matter further examination.<sup>43</sup>

The House Judiciary Committee reported the bill as amended (H.Rept. 110-218) on July 10, 2007. On the same day, the House Ways and Means and the Oversight and Government Reform Committees discharged H.R. 660 from their respective

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<sup>39</sup> Testimony of Director Clark, May 3, 2007, House hearing on H.R. 660, p. 7. See [<http://judiciary.house.gov/media/pdfs/Clark070503.pdf>] for Director Clark’s written testimony.

<sup>40</sup> *Ibid.*, p. 17.

<sup>41</sup> Testimony of Judge Sentelle, May 3, 2007, House hearing on H.R. 660, p. 14.

<sup>42</sup> Based on June 13, 2007, markup transcripts of H.R. 660 on the House Judiciary Committee’s website, available at [<http://judiciary.house.gov/Printshop.aspx?Section=498>], pp. 66-68, and 94-95.

<sup>43</sup> *Ibid.*, pp. 72, 85-86, and 93-94.

committees, and paved the way for the House to bring it to the floor under suspension of the rules. Later that day, the House passed H.R. 660 by voice vote under suspension of the rules. The Senate received H.R. 660 the next day, and on August 3, 2007, the bill was referred to the Senate Judiciary Committee.

**H.R. 1130.** On February 16, 2007, House Judiciary Committee Chairman Conyers introduced (for himself and six original cosponsors) H.R. 1130, the Judicial Disclosure Responsibility Act. H.R. 1130 would amend the Ethics in Government Act of 1978 to extend through 2009 the authority of the Judicial Conference to redact certain personal information (e.g., residences) about judicial officers and judicial employees in financial disclosure reports which could expose them to potential harm. The bill would also restrict such information about their family members from similar disclosure.<sup>44</sup> The provisions of H.R. 660 and S. 378, as introduced, to extend redaction authority were contained in this bill. The committee approved the bill by voice vote on February 28, 2007, and it was ordered to be reported. On March 20, 2007, it was reported (H.Rept. 110-59) and the House passed H.R. 1130 (415-0)<sup>45</sup> the next day under suspension of the rules. The Senate received the bill on March 22, 2007, and it was referred to the Senate Homeland Security and Governmental Affairs Committee. The Senate discharged the bill from committee by unanimous consent on April 19, 2007, and passed it by unanimous consent on the same day. On May 3, 2007, the President signed the bill into law (P.L. 110-24).

## Senate Legislation and Committee Action

**S. 378.** On January 24, 2007, Senate Judiciary Committee Chairman Leahy introduced (for himself and for Senators Arlen Specter, Harry Reid, John Cornyn, Edward M. Kennedy, Susan M. Collins, Orrin G. Hatch, and Charles E. Schumer) S. 378, the Court Security Improvement Act of 2007. The bill was referred to the Senate Judiciary Committee. On February 14, 2007, the Senate Judiciary Committee held a hearing on “Judicial Security and Independence.” Chairman Leahy said he wished that court security legislation had been enacted last year, and noted that it was a bipartisan measure and a bicameral effort. The chairman said the following:

We cannot tolerate or excuse violence against judges, and no one should seek to minimize its corrosive damage to our system. Congress should rise to the occasion without further delay or distraction and enact the Court Security Improvement Act. These protections are crucial to the preservation of the

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<sup>44</sup> During the committee markup, Rep. F. James Sensenbrenner Jr., offered an amendment to make the redaction permanent. According to Rep. Sensenbrenner’s statement in the committee report, there was support for the amendment but it was not adopted in order to expedite sending the measure to the Senate (which reportedly had oversight concerns). Discussions during the markup indicated that a permanent redaction would be considered later (when the court security bill is considered). U.S. Congress, House Committee on the Judiciary, *Judicial Disclosure Responsibility Act*, report to accompany H.R. 1130, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 110-59 (Washington: GPO, 2007), p. 11.

<sup>45</sup> On March 8, 2007, the Congressional Budget Office estimated that “enacting H.R. 1130 would have no significant impact on the federal budget.” U.S. Congressional Budget Office, “Cost Estimate: H.R. 1130, Judicial Disclosure Responsibility Act” (Washington, DC: March 8, 2007), p. 1. Available at [<http://www.cbo.gov/ftpdocs/78xx/doc7853/hr1130.pdf>].

independence of our federal Judiciary so that it can continue to serve as a bulwark protecting individual rights and liberty. Our Nation's founders knew that without an independent Judiciary to protect individual rights from the political branches of government, those rights and privileges would not be preserved. The courts are the ultimate check and balance in our system of government in times of heated political rhetoric. In recent years, Justice Sandra Day O'Connor has spoken out against the attacks on the Judiciary and the need to reinforce its security and independence. She continues to lend her voice to this important topic even after stepping down from the bench.<sup>46</sup>

Ranking Member Specter and several members of the committee also stated their strong support for improving judicial security and for making the passage of the court security bill a priority. Supreme Court Justice Anthony M. Kennedy testified on the subject of judicial independence.<sup>47</sup> Justice Kennedy and others on the committee expressed the view that the security of the judiciary is vital to judicial independence. Some emphasized that security means not only physical safety for judges, but also safety from verbal attacks against the judiciary that can have harmful consequences.

In submitted testimony, Judge D. Brock Hornby, representing the Judicial Conference, expressed support for S. 378 and provided the views of the conference on several provisions of S. 378. Judge Hornby stated, "When enacted, this bill will contribute significantly to the security of federal judges and their families."<sup>48</sup>

USMS funding and the role it plays in protecting the judiciary were also discussed at the hearing. John Clark, director of USMS, submitted testimony in which he related that he had personally met with the chief judges and judicial security inspectors in many of the 94 judicial districts around the country to discuss the security needs of each district, in the courthouses and in the judges' residences. He also indicated he had many productive meetings with AOUSC Director James Duff.<sup>49</sup>

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<sup>46</sup> U.S. Congress, Senate Committee on the Judiciary, "Statement of The Honorable Patrick Leahy" (Washington, DC: February 14, 2007.) Available at [[http://judiciary.senate.gov/member\\_statement.cfm?id=2526&wit\\_id=103](http://judiciary.senate.gov/member_statement.cfm?id=2526&wit_id=103)].

<sup>47</sup> U.S. Congress, Senate Committee on the Judiciary, "Testimony of The Honorable Anthony M. Kennedy, Associate Justice, United States Supreme Court" (Washington, DC: February 14, 2007). Available at [[http://judiciary.senate.gov/testimony.cfm?id=2526&wit\\_id=6070](http://judiciary.senate.gov/testimony.cfm?id=2526&wit_id=6070)].

<sup>48</sup> U.S. Congress, Senate Committee on the Judiciary, "Testimony of The Honorable D. Brock Hornby, Judge, United States District Court," (Washington, DC: February 14, 2007). Available at [[http://judiciary.senate.gov/testimony.cfm?id=2526&wit\\_id=6071](http://judiciary.senate.gov/testimony.cfm?id=2526&wit_id=6071)].

<sup>49</sup> In addition to reporting on the near completion of the installation of home detection systems in judges' homes, USMS Director Clark discussed the reorganization of the Judicial Security Division (JSD) in November 2006, which reflects two mission-oriented components: Judicial Operations and Judicial Services. The first component includes an expanded Office of Protective Intelligence (OPI) with 10 new criminal investigators and one intelligence specialist to provide threat response capabilities 24 hours a day, seven days a week, and to analyze and investigate all threats to the federal judiciary. According to the director, in FY2006, JSD investigated 1,100 judicial threats, handled 230 personal (continued...)

On March 1, 2007, the Senate Judiciary Committee approved S. 378 with an amendment by voice vote, and it was ordered to be reported.<sup>50</sup> On March 29, 2007, it was reported (S.Rept. 110-42).<sup>51</sup> On April 19, 2007, the Senate passed S. 378, as amended, by a vote of 97-0.<sup>52</sup> The House received the Senate-passed bill the next day.

The Administration expressed support for the passage of both H.R. 660 and S. 378. In its *Statement of Administration Policy* on each of the bills, the Administration stated the following:

The legislation would enhance the ability of the Federal government to prosecute individuals who attack or threaten participants in the Nation's judicial system,

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<sup>49</sup> (...continued)

protection details, and provided security for almost 200 judicial conferences, protected Supreme Court Justices while on travel, and responded to bomb and hazardous materials threats as well as improved security at numerous courthouses. Further, the director said JSD is in the final stages of constructing a Threat Management Center to serve as the nerve center for threats and inappropriate communications against judicial officials and others under USMS protection. He also outlined several other initiatives to enhance judicial security, including improvements in the protective investigations program, and the establishment of a National Center for Judicial Security that would be operated, staffed, and managed by members of the JSD and provide services and support to federal, state, local, and international jurisdictions concerning advice and assistance related to judicial security. See [[http://judiciary.senate.gov/testimony.cfm?id=2526&wit\\_id=6072](http://judiciary.senate.gov/testimony.cfm?id=2526&wit_id=6072)] for the text of the director's statement.

<sup>50</sup> U.S. Congressional Budget Office, "Cost Estimate: S. 378, Court Security Improvement Act of 2007," (Washington, DC: March 23, 2007). Available at [<http://www.cbo.gov/ftpdocs/79xx/doc7912/s378.pdf>].

<sup>51</sup> According to the committee report accompanying S. 378, the committee adopted an amendment to eliminate the 12<sup>th</sup> judge on the D.C. Circuit Court and add a judge to the Ninth Circuit Court (due to the increased workload of the Ninth Circuit, while the D.C. court workload has decreased in recent years). A Senator offered another amendment to make permanent one temporary federal judgeship. The chairman had "suggested that such measures should be considered as part of a comprehensive bill that would address judicial needs nationwide." Subsequently, the Senator withdrew his amendment. U.S. Congress, Senate Committee on the Judiciary, *The Court Security Improvement Act of 2007*, report to accompany S. 378, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 110-42 (Washington: GPO, 2007), p. 3. On May 8, 2007, the chairman introduced S. 1327, a bill to "create and extend" for 10 years five expired or soon-to-expire temporary judgeships (one each in California and Nebraska, which had expired, and another three, in Hawaii, Kansas, and Ohio, which are close to expiration). The bill was referred to the Senate Judiciary Committee.

<sup>52</sup> The Senate adopted by unanimous consent S.Amdt. 896, a manager's amendment to make technical and clarifying changes concerning the protection of magistrate judges and U.S. Tax Court judges. Under this amendment, the U.S. Tax Court would reimburse USMS for its protective services. Although a number of other amendments were filed or considered, they were not adopted. Among them were S.Amdt. 891, an amendment to express the sense of the Senate that Congress should offset the cost of new spending (tabled by a vote of 59-38); and S.Amdt. 897, an amendment to provide for the appointment of additional federal circuit judges and to divide the Ninth Judicial Circuit into two circuits, and for other purposes (ruled out of order by the chair).

including judges, lawyers, witnesses, and law enforcement officers. A Nation founded on the rule of law must protect the integrity of its judicial system, which must apply the law without fear or favor.<sup>53</sup>

However, the Administration also expressed its view that the provision requiring consultation between the judiciary and the Department of Justice was unnecessary because consultation was already taking place on a regular basis. It also believes that the statutory requirement could “erode the Justice Department’s ability to protect judges in accordance with the Department’s own determination of threat and security assessments.” In the statement on S. 378, it stated that “The Administration looks forward to continuing to work with Congress to address constitutional issues raised by certain provisions of this bill and to enhance judicial security.”<sup>54</sup>

## House and Senate Passage

The Senate passed S. 378 on April 19, 2007, by a vote of 97-0. The House passed H.R. 660 on July 10, 2007, by voice vote under suspension of the rules. As passed in their respective chambers, the House and Senate bills in most of their key provisions are essentially the same, but differ in a few areas. For example, the Senate-passed bill includes a provision, not in the House-passed bill, to increase by one the number of judgeships (28 to 29) in the Ninth Circuit Court of Appeals and to decrease by one the number of judgeships (12 to 11) in the District of Columbia Circuit Court of Appeals. The House-passed bill includes provisions not in the Senate bill, including a provision to make permanent the existing authority (ending in 2009) of the Judicial Conference to redact certain personal information of judicial officers, employees, and their families from financial disclosure statements (see H.R. 1130, P.L. 110-24 discussed below). Other differences that distinguish the House-passed bill from the Senate version include House provisions that (1) instruct the Attorney General to conduct a study on whether public access to state and local records could pose a danger to the federal judiciary; (2) authorize the Attorney General to award grants for each state to establish and maintain threat assessment databases (to which the Justice Department and other states would be allowed access); and (3) authorize appropriations of \$10 million (for each of the fiscal years 2008 through 2012) for the Fugitive Apprehensive Task Forces.

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<sup>53</sup> U.S. Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy, S. 378 – Court Security Improvement Act of 2007*, Washington, D.C., April 19, 2007 and Executive Office of the President, Office of Management and Budget, *Statement of Administration Policy, H.R. 660 – Court Security Improvement Act of 2007*, Washington, D.C., July 10, 2007.

<sup>54</sup> *Ibid.* The Administration’s statements on S. 378 and H.R. 660 are nearly identical. The Administration’s positions on grant programs and reimbursement of USMS for the proposed protection of the U.S. Tax Court are also mentioned in the *Statement of Administration Policy*. The statements on S. 378 and H.R. 660 are available at [<http://www.whitehouse.gov/omb/legislative/sap/110-1/s378sap-s.pdf>] and [<http://www.whitehouse.gov/omb/legislative/sap/110-1/hr660sap-h.pdf>].

## Legislation Enacted

After resolving differences between the House and Senate versions of H.R. 660, the Senate passed the amended bill on December 17, 2007 by unanimous consent. Two days later, on December 19, 2007, the House approved the amended bill by voice vote under suspension of the rules.<sup>55</sup> On January 7, 2008, the President signed H.R. 660 into law (P.L. 110-177).

Among other things, P.L. 110-177 contains provisions to

- (1) require the director of USMS to consult with the Judicial Conference of the United States on a continuing basis to ensure that the conference's views on security requirements for the judicial branch are taken into account when determining staffing levels, setting priorities for security programs, and allocating judicial security resources;
- (2) extend authority of the Judicial Conference through 2011 to redact certain personal information from financial disclosure reports filed by judicial officers, judicial employees, and their family members;
- (3) raise penalties for attacking or threatening federal judges or their family members;
- (4) authorize funds for USMS to spend \$20 million (for each of fiscal years 2007 through 2011) to hire deputy marshals to protect courts and investigate threats;
- (5) impose fines or imprisonment (or both) for filing false liens against federal judges or law enforcement officers;
- (6) prohibit dangerous weapons in federal courthouses;
- (7) instruct the Attorney General to conduct a study on whether public access to state and local records could pose a danger to the federal judiciary, report to Congress on the results of the study, and make any necessary recommendations;
- (8) authorize the Attorney General to award grants for each state to establish and maintain threat assessment databases (to which the Justice Department and other states would be allowed access);
- (9) increase by one the number of judgeships (28 to 29) in the Ninth Circuit Court of Appeals and a decrease by one the number of judgeships (12 to 11) in the District of Columbia Circuit Court of Appeals; and

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<sup>55</sup> On December 19, 2008, both chambers agreed to S.Con.Res. 62, a measure that removed a provision in H.R. 660 that would have provided funds for the payment of insurance premium increases for federal bankruptcy and territorial judges. Such an increase would have added about \$1 million in new spending without a corresponding offset, and would have violated a House pay-as-you-go rule.

(10) authorize senior judges to participate in the appointment of magistrate judges and court officers, rulemaking, governance, and administrative matters.<sup>56</sup>

## Judicial Security Budget: FY2008 and FY2009

Funding for federal judicial security is generally appropriated annually under two separate appropriations bills, one for the judiciary and one for USMS. The House provides funding for the judiciary under the Financial Services and General Government appropriations bill. Similarly, in the Senate, funding for the judiciary is provided under the Financial Services and General Government appropriations bill. The Court Security account funds guard services, security systems, and equipment for courthouses and other federal facilities. Under this account, the bulk of the funding is transferred to USMS for administering the Judicial Facility Security Program that pays for CSOs. For FY2008, Congress appropriated \$410 million for the court security and would fund 53 full-time equivalent (FTE) positions. Of the total requested for this account, approximately \$73 million is projected to pay FPS for its security services in court-occupied space, and about \$3 million for program administration and staff costs at the AOUSC.<sup>57</sup> For FY2009, the judiciary has requested \$439.9 million for court security. This amount would include funding for 62 FTE positions.

USMS is funded under separate appropriations bills. 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.<sup>58</sup> For FY2008, Congress appropriated a total of \$866.5 million for USMS salaries and expenses account for FY2008 for 4,262 FTE positions. Of the total amount, \$357.3 million have been allocated, including 1,715 FTE positions, for judicial and courthouse security,

The FY2009 USMS budget request is \$933.1 million, including 4,523 FTE positions. Of this total, \$377.8 million and 1,804 FTE positions would be allocated for judicial and courthouse security.

## House and Senate Subcommittee Appropriations Hearings

On March 21, 2007, the House and Senate Subcommittees on Financial Services and General Government held separate hearings on the FY2008 federal judiciary budget request. Representative José E. Serrano, chairman of the House

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<sup>56</sup> For further details about provisions contained in P.L. 110-177, see CRS Report RL33884, *Court Security Improvement Act of 2007: A Legal Analysis of H.R. 660/S. 378*, by Charles Doyle, and CRS Report RL33473, *Judicial Security: Comparison of Legislation in the 110<sup>th</sup> Congress*, by Nathan James.

<sup>57</sup> Based on information provided to the author by AOUSC on May 25, 2007.

<sup>58</sup> The differences reflect the restructuring of House and Senate subcommittees' jurisdictions at the beginning of the 110<sup>th</sup> Congress.

Subcommittee on Financial Services, and Senator Richard J. Durbin, chairman of the Senate Subcommittee on Financial Services and General Government, each expressed concern about judicial security. Judge Julia S. Gibbons, chair of the Judicial Conference Committee on the Budget, and James C. Duff, director of AOUSC, testified at both hearings. Judge Gibbons detailed her concerns about inoperable cameras that provide surveillance of the exterior of some courthouses. In one instance, after pellets were fired at a district courthouse at night, the court discovered that no surveillance footage could be reviewed because the FPS cameras were not recording any exterior views. Following several reports from district judges that the perimeter security equipment provided by FPS had not been maintained or repaired and that security may have been compromised, USMS assumed responsibility for the repairing or replacing of FPS-perimeter security cameras. She expressed her appreciation to USMS, but noted that the situation resulted in the judiciary paying both USMS and FPS for identical services. According to Judge Gibbons, “FPS continues to be unable to provide the Judiciary with adequate cost-effective services, working equipment, detailed billing records, and timely cost projections.” She told the subcommittees that the Judicial Conference voted a week ago to support the efforts of USMS to assume security functions currently performed by FPS at court facilities (where the judiciary is the primary tenant), and to be funded for the associated costs.<sup>59</sup>

In his testimony, Director Duff stated that the judiciary and USMS were “building a stronger working relationship.” Noting that USMS Director Clark had attended each of the Judicial Conference’s Judicial Security Committee meetings since its establishment in January 2006, and his efforts to encourage his senior staff to meet regularly with AOUSC staff to consult and implement security policies, Director Duff stated, “This improved relationship with the USMS will enhance the security of the Judiciary.”<sup>60</sup>

In committee report language, the House Appropriations Committee expressed concern with “the quality of service” the Federal Protective Service has provided the judiciary, and encouraged the judiciary to “continue to explore options with other Federal law enforcement agencies that might be able to provide these security services.”<sup>61</sup>

In report language, the Senate Appropriations Committee expressed its expectation that USMS will fully cooperate as the judiciary conducts fiduciary and program oversight responsibilities for the Judicial Facility Security. The Senate bill also includes Section 307, which calls on the director of USMS to consult with the director of AOUSC to designate certain courthouses for a pilot program under which the USMS — rather than the Department of Homeland Security (FPS) — will provide building-specific security services. The AOUSC would reimburse the USMS

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<sup>59</sup> Judge Gibbons’ March 21, 2007, Statement, pp. 9-10.

<sup>60</sup> See [[http://www.uscourts.gov/testimony/Duff\\_Senate32107.pdf](http://www.uscourts.gov/testimony/Duff_Senate32107.pdf)] for the text of Director Duff’s testimony.

<sup>61</sup> U.S. Congress, House Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2008*, report to accompany H.R. 2829, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rpt.110-207 (Washington: GPO, 2007), p. 45.

for these services under the pilot.<sup>62</sup> In enacted legislation,<sup>63</sup> a pilot project was established authorizing USMS to assume perimeter security duties from FPS at seven selected court facilities on a temporary basis.

In prepared testimony at the FY2009 budget hearings before the House and Senate Subcommittees on March 12, 2008, Judge Gibbons discussed the pilot program that will involve the USMS monitoring the exterior of the courthouses with court security officers and assuming control of FPS monitoring equipment. The USMS, working with the AOUSC, selected seven courthouses<sup>64</sup> for the pilot, which is anticipated to begin in the fourth quarter of fiscal year 2008 for a duration of approximately 18 months. An evaluation of the pilot is expected to be provided to congressional subcommittees. The estimated annualized cost of the pilot is \$5 million, which would be offset by expected reductions in FPS billings.<sup>65</sup>

## Judicial Conference Actions

By statute,<sup>66</sup> the Judicial Conference must hold annual meetings. By tradition, however, the conference meets semiannually, 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 that 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;

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<sup>62</sup> U.S. Congress, Senate Committee on Appropriations, *Financial Services and General Government Appropriations Bill, 2008*, report to accompany H.R. 2829, 110th Cong., 1st sess., S.Rept. 110-129 (Washington: GPO, 2007), pp. 54 and 56.

<sup>63</sup> H.R. 2764, the Consolidated Appropriations Act, 2008 (P.L. 110-161) .

<sup>64</sup> The seven are the Everett McKinley Dirksen U.S. Courthouse, Chicago, IL; the Theodore Levin U.S. Courthouse, Detroit, MI; the Sandra Day O'Connor U.S. Courthouse, Phoenix, AZ; the Evo A. DeConcini U.S. Courthouse, Tucson, AZ; the Russell B. Long Federal Building/U.S. Courthouse, Baton Rouge, LA; the Old Federal Building and Courthouse, Baton Rouge, LA; and the Daniel Patrick Moynihan U.S. Courthouse, New York, NY.

<sup>65</sup> 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 of Appropriations of the United States Senate, M a r c h 1 2 , 2 0 0 8 , p p . 2 - 3 , a t [http://www.uscourts.gov/Press\_Releases/2008/Gibbons\_2009\_House\_Final.pdf].

<sup>66</sup> 28 U.S.C. 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.

- 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).<sup>67</sup> 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,<sup>68</sup> 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.

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.<sup>69</sup>

At the September 19, 2006, meeting, the Judicial Conference had voted to ask Congress to appropriate funds directly to the Federal Protective Service (FPS), and

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<sup>67</sup> According to the U.S. Marshals Service, installation of intrusion detection alarm systems has been completed in 100% of federal judges' homes. The information was provided to the author on February 19, 2008.

<sup>68</sup> The committee is charged to review, monitor, and recommend 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.

<sup>69</sup> U.S. Courts, "Conference Supports Shift in Responsibility for Courthouses," news release (Washington, DC: March 14, 2006). Available at [[http://www.uscourts.gov/Press\\_Releases/judconf031406.html](http://www.uscourts.gov/Press_Releases/judconf031406.html)].

to request that the President incorporate direct funding for FPS charges in the President's FY2008 budget request.<sup>70</sup>

As Judge Gibbons noted at the March 21, 2007, House and Senate budget hearings, the Judicial Conference recently voted to endorse a recommendation to support the efforts of USMS, possibly by legislative means, to assume security functions at court facilities (where the judiciary is the primary tenant) currently performed by FPS, and to receive funding for these functions.<sup>71</sup>

## **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 in the 109<sup>th</sup> Congress, 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.”<sup>72</sup> Some have observed that there are occasions when threats made against state judges follow them when they move to the federal bench.<sup>73</sup> 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 Jane 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).

The National Center for State Courts (NCSC)<sup>74</sup> has developed proposals on the security issue. In March 2005, NCSC issued the *Essential Ten Elements for Effective Courtroom Safety and Security Planning*, a document intended to serve as a

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<sup>70</sup> FPS charges federal agencies for its services on a pro-rata basis. The judiciary could save administrative costs were the Department of Homeland Security to provide funding directly to FPS. U.S. Courts, “Report of the Proceedings of the Judicial Conference of the United States,” September 19, 2006, p. 10. Available at [<http://www.uscourts.gov/judconf/proceedingsSept06.pdf>]

<sup>71</sup> Judge Gibbons's March 21, 2007, Statement, p. 9.

<sup>72</sup> *Congressional Record*, daily edition, vol. 151, November 7, 2005, p. S12449.

<sup>73</sup> Based on information provided by a court security expert to the author on May 31, 2006.

<sup>74</sup> NCSC is an independent, nonprofit organization, whose mission is “to improve the 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/D\\_About/index.htm](http://www.ncsconline.org/D_About/index.htm)].

framework for state judicial security.<sup>75</sup> The 10 elements dealt with such matters as funding, threat assessments, standard operating procedures, and court design. The Conference of Chief Justices and the Conference of State Court Administrators' Joint Committee on Security and Emergency Preparedness have been working on a manual that is based on the 10 elements. NCSC followed the recommendations by sponsoring a National Summit on Court Safety and Security<sup>76</sup> 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 policymakers. 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 credited 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.<sup>77</sup>

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 that summer; (2) educational programs to train judges and court staff to identify possible threats and suspicious behavior, and to enhance their personal safety; and

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<sup>75</sup> 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>].

<sup>76</sup> For more information about the summit and its preliminary findings, see [<http://www.ncsconline.org/What'sNew/CourtSecurity/PrimaryFindingdApril25.htm>].

<sup>77</sup> Dr. Pamela Casey, *A National Strategic Plan for Judicial Branch Security*, prepared for the National Center for State Courts and the National Sheriff's Association, February 7, 2006. The report is available at [[http://solutions.ncsconline.org/Recommended\\_strategies\\_Appendices\\_Final\\_Report\\_2-7-061.pdf](http://solutions.ncsconline.org/Recommended_strategies_Appendices_Final_Report_2-7-061.pdf)].

(3) a USMS National Institute on Judicial Security to provide court professionals with education and technical assistance.<sup>78</sup>

## Concluding Observations

In the two years following 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 the homes of federal judges who requested them. In November 2007, installation of all these systems was completed.<sup>79</sup>

The House and Senate Judiciary Committees have conducted hearings, both Houses introduced and passed legislation to improve overall federal judicial security. The President signed the Court Security Improvement Act of 2007 bill into law (P.L.110-177). As Congress continues to consider efforts to enhance judicial security by authorizing programs, appropriating funds, and conducting oversight, the following are some of the issues Congress might choose to address.

**Resources and Staffing.** Budget requests for the federal judiciary and USMS would provide funding, staff, and resources to maintain and enhance the security of the judiciary. Even if the budget requests are fully funded, subsequent events (e.g., possible gaps in security revealed later in the event of further tragedies, or across-the-board reductions in spending) may lead some to suggest the need for additional funds or staff. Congress may consider whether continuing resolutions could lead to funding delays and affect implementation of needed security enhancements. Any potential changes in FPS funding and jurisdiction for the security functions it provides to the judiciary may have short- and long-term administrative, staffing, and other implications for the judiciary, USMS, and FPS.

**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 in both House and Senate bills, now enacted, discussed in this report call for USMS to consult on a continuing basis with the Judicial Conference of the United States. There is, however, no requirement in the law that a formal report be submitted to Congress on actions taken on such consultation. Both directors of AOUSC and USMS have been in their positions for over a year, and the new leadership appears to have created potential opportunities for enhancing judiciary-USMS consultation and coordination. Issues concerning adequate FPS protective services for the perimeter of judicial facilities are also a

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<sup>78</sup> Information was provided to the author by the NCSC on April 7, 2006.

<sup>79</sup> Based on information USMS provided to the author on February 19, 2008 via electronic communication.

concern that may require continued coordination and communication, or other remedies. The 18-month pilot program for USMS to assume security functions from FPS at selected courthouses will begin later in the year. Following the pilot, an evaluation of the program will be submitted to Congress. Consideration may be given to an informal or formal evaluation of the pilot at mid-point to determine whether adjustments, if any, are needed.

***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, might 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) might also prove more cost-effective than a less collaborative relationship. The establishment of the National Center on Judicial Security may provide more opportunities for collaboration on various levels to enhance judicial security.

***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, and the shooting in Reno — 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 and to build on the progress that has been made.

## Appendix. Legislation in the 109<sup>th</sup> Congress

During the 109<sup>th</sup> 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 included 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 officers on the Internet, and to increase penalties for acts against judicial officers and other law enforcement personnel. Of the 11 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) passed both houses, but was not enacted. The House passed two other bills (H.R. 1751 and H.R. 4472<sup>80</sup>), and the Senate passed one other bill (S. 1558). In addition, although the Senate adopted S. 2766 with a court security amendment, the bill was later incorporated into another bill, H.R. 5122 — without the court security provisions.

### 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. According to the *2005 Annual Report of the Director*, AOUSC staff and the Judicial Conference's Judicial Security Committee worked with USMS to implement the home intrusion detection system program. USMS agreed to pay the charges for their monitoring and maintenance. According to USMS, of the 1,616 requests judges and magistrates made to install security systems in their homes, 1,413 systems have been installed. Pre-installation surveys of all homes have been completed.<sup>81</sup>

### House Legislation and Hearing

**H.R. 1751.** Among the House bills related to judicial security introduced during the 109<sup>th</sup> Congress, H.R. 1751, the Secure Access to Justice and Courtroom 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

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<sup>80</sup> However, H.R. 4472, the Children's Safety and Violent Crime Reduction Act, was ultimately passed and signed into law without the court security provisions of H.R. 1751, the Secure Access to Justice and Courtroom Protection Act of 2005. Both bills are discussed below.

<sup>81</sup> Based on information provided by USMS to the author on February 8, 2007.

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. Representative Howard Coble, then-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.<sup>82</sup>

Highlights of the hearing included the testimony of Judge Cynthia Stevens Kent, of the 114<sup>th</sup> 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.” She asked the committee to consider a number of recommendations, including (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.<sup>83</sup>

In her testimony, 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 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; permanent authority to redact certain information from judges' financial disclosure; firearms training for judges; and penalties for those who file false liens against judges.<sup>84</sup>

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<sup>82</sup> 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, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., April 26, 2005 (Washington: GPO), p. 1.

<sup>83</sup> *Ibid.*, pp. 19-20.

<sup>84</sup> *Ibid.*, pp. 8-10.

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 was 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.<sup>85</sup>

On November 10, 2006, the Senate received the bill and referred it to the Senate Judiciary Committee. The bill was discharged from the committee by unanimous consent on December 6, 2006. On that same day, the Senate passed H.R. 1751, as amended, by unanimous consent, but no final action on the bill was taken prior to the 109<sup>th</sup> Congress's adjournment.

**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 defined "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, Jr., then-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 found that the release of the information could endanger a judge or the judge's family. The House passed the bill on December 7,

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<sup>85</sup> Reportedly, there were discussions at the end of September 2006 to include the court security provisions of H.R. 1751 in the National Defense Authorization Act for FY2007, H.R. 5122, and subsequent discussions to possibly add them to the port security bill, H.R. 4954. However, both bills were passed without the court security measures. See John M. Donnelly, "2006 Legislative Summary: Defense Authorization," *CQ Weekly*, December 18, 2006, p. 3341, and Kathryn A. Wolfe, "Port Security Legislation Clears," *CQ Today*, October 9, 2006, p. 2708.

2005, by voice vote, under suspension of the rules, and sent it to the Senate on December 12, 2005. On 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. The Senate sent a message on its action to the House on the same day. No further action was taken prior to the adjournment of the 109<sup>th</sup> Congress.

**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 was 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).<sup>86</sup> Title VII of the bill contained several provisions relating to court security that were contained in H.R. 1751. Among other things, it would have (1) required USMS to consult regularly with AOUSC on judicial security; (2) authorized 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) required a report by the Attorney General on the security of federal prosecutors; (4) established special penalties for murder, kidnaping, and related crimes against federal judges and federal law enforcement officers; (5) authorized federal judges and prosecutors to carry firearms; and (6) prohibited the possession of a dangerous weapon in a court facility. H.R. 4472 had also incorporated the main thrust of H.R. 1710 to help protect covered officials from harmful information being made public so that it could 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. However, as passed by the Senate on July 20, 2006, and signed into law (P.L. 109-248) on July 27, 2006, the legislation did not include the court security provisions.

**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, but no further action was taken prior to the adjournment of the 109<sup>th</sup> Congress.

## Senate Legislation and Hearing

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, then-chairman of the committee, stated the following at the beginning of the hearing:

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<sup>86</sup> H.R. 4472 did not include the photographing, broadcasting, or televising the courts that had been part of H.R. 1751.

There's no doubt that the rule of law is the backbone of our civilized society. The capability of the judiciary to determine the rule of law without fear or favor is an indispensable prerequisite in our democratic society. Personal security, along with judicial independence, must be safeguarded at all costs.<sup>87</sup>

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.”<sup>88</sup> 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.<sup>89</sup>

Senator Specter also referred to the DOJ 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.<sup>90</sup>

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<sup>87</sup> U.S. Congress, Senate Committee on the Judiciary, *Protecting the Judiciary at Home and in the Courthouse*, hearing, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., May 18, 2005, S.Hrg. 109-57 (Washington: GPO, 2005), p. 1.

<sup>88</sup> *Ibid.*, p. 7.

<sup>89</sup> *Ibid.*, p. 14.

<sup>90</sup> *Ibid.*, p. 78.

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.<sup>91</sup>

**S. 1605.** On July 29, 2005, Senator Jon Kyl introduced S. 1605, the “Law Enforcement Officers’ Protection Act of 2005,” which 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, but no further action was taken before the 109<sup>th</sup> Congress adjourned.

**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.<sup>92</sup> 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 amendments<sup>93</sup> sponsored by Senator Patrick Leahy. S. 1558 was received by the House on November 14, 2005, and referred to the House Judiciary Committee. The bill was subsequently referred to the House Subcommittee on Courts, the Internet, and Intellectual Property on February 6, 2006. No further action was taken on the bill prior to the end of the 109<sup>th</sup> Congress. (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 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

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<sup>91</sup> Ibid., pp. 16-18.

<sup>92</sup> The bill would amend 5 U.S.C. App., Sec. 105(b)(3) and Sec. 105(b)(3)E.

<sup>93</sup> 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.

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. (See below for efforts to include the bill's court security provisions in the National Defense Authorization Act for FY2007.) No further action on the bill was taken prior to the adjournment of the 109<sup>th</sup> Congress.

**Amendment 4252 to S. 2766.** On June 14, 2006, Senator Harry Reid submitted (for himself and Senators Patrick Leahy, Arlen Specter, Richard Durbin, with Senator Barack Obama added as a cosponsor on the following day) a court security amendment (essentially the text of S. 1968, see above) to S. 2766, the National Defense Authorization Act for FY2007 (introduced on May 9, 2006). The next day, on June 15, 2006, Senator Carl Levin proposed the amendment, as modified, on Senator Reid's behalf. The Senate adopted the amendment, *en bloc* with other amendments, by unanimous consent, and the Senate subsequently passed S. 2766 on June 22, 2006. However, the House version of the National Defense Authorization Act for FY2007, H.R. 5122, did not include court security provisions. Although there were discussions about including such measures in H.R. 5122, ultimately, the court security provisions (Sec. 1086) as proposed by the Senate were not included in the conference report (H.Rept. 109-702) to H.R. 5122, which the House passed (398-23) on September 29, 2006, and that the Senate subsequently passed by unanimous consent the next day. Thus, the bill that the President signed into law (P.L. 109-364) on October 17, 2006, did not contain court security provisions.

**S. 3835.** On August 3, 2006, Senator John Cornyn introduced S. 3835, the Court and Law Enforcement Officers Protection Act of 2006. The bill would (1) impose mandatory minimum prison terms for homicide, manslaughter, and kidnaping crimes against federal judges and law enforcement officers; (2) allow federal judges, U.S. attorneys, and Justice Department employees to carry firearms; (3) increase penalties for assaults against U.S. employees and officers and impose mandatory minimum prison terms for assaults against federal judges or law enforcement officers; and (4) impose mandatory minimum penalties for retaliating against a federal judge or law enforcement officer by murdering, kidnaping, assaulting, or threatening a family member. The bill was referred to the Senate Judiciary Committee, but no further action was taken before the 109<sup>th</sup> Congress adjourned.