

# FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2016

---

---

## HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS FIRST SESSION

---

### SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS

#### **ANDER CRENSHAW, Florida, *Chairman***

TOM GRAVES, Georgia	JOSÉ E. SERRANO, New York
KEVIN YODER, Kansas	MIKE QUIGLEY, Illinois
STEVE WOMACK, Arkansas	CHAKA FATTAH, Pennsylvania
JAIME HERRERA BEUTLER, Washington	SANFORD D. BISHOP, JR., Georgia
MARK E. AMODEI, Nevada	
E. SCOTT RIGELL, Virginia	

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

WINNIE CHANG, KELLY HITCHCOCK,  
ARIANA SARAR, and AMY CUSHING,  
*Subcommittee Staff*

---

### **PART 6**

	<b>Page</b>
<b>Office of Management and Budget</b> .....	<b>1</b>
<b>General Services Administration</b> .....	<b>55</b>
<b>The Supreme Court</b> .....	<b>107</b>
<b>The Judiciary Budget</b> .....	<b>143</b>



---

U.S. GOVERNMENT PUBLISHING OFFICE

## COMMITTEE ON APPROPRIATIONS

HAROLD ROGERS, Kentucky, *Chairman*

RODNEY P. FRELINGHUYSEN, New Jersey	NITA M. LOWEY, New York
ROBERT B. ADERHOLT, Alabama	MARCY KAPTUR, Ohio
KAY GRANGER, Texas	PETER J. VISCLOSKY, Indiana
MICHAEL K. SIMPSON, Idaho	JOSE E. SERRANO, New York
JOHN ABNEY CULBERSON, Texas	ROSA L. DELAURO, Connecticut
ANDER CRENSHAW, Florida	DAVID E. PRICE, North Carolina
JOHN R. CARTER, Texas	LUCILLE ROYBAL-ALLARD, California
KEN CALVERT, California	SAM FARR, California
TOM COLE, Oklahoma	CHAKA FATTAH, Pennsylvania
MARIO DIAZ-BALART, Florida	SANFORD D. BISHOP, JR., Georgia
CHARLES W. DENT, Pennsylvania	BARBARA LEE, California
TOM GRAVES, Georgia	MICHAEL M. HONDA, California
KEVIN YODER, Kansas	BETTY McCOLLUM, Minnesota
STEVE WOMACK, Arkansas	STEVE ISRAEL, New York
JEFF FORTENBERRY, Nebraska	TIM RYAN, Ohio
THOMAS J. ROONEY, Florida	C. A. DUTCH RUPPERSBERGER, Maryland
CHARLES J. FLEISCHMANN, Tennessee	DEBBIE WASSERMAN SCHULTZ, Florida
JAIME HERRERA BEUTLER, Washington	HENRY CUELLAR, Texas
DAVID P. JOYCE, Ohio	CHELLIE PINGREE, Maine
DAVID G. VALADAO, California	MIKE QUIGLEY, Illinois
ANDY HARRIS, Maryland	DEREK KILMER, Washington
MARTHA ROBY, Alabama	
MARK E. AMODEL, Nevada	
CHRIS STEWART, Utah	
E. SCOTT RIGELL, Virginia	
DAVID W. JOLLY, Florida	
DAVID YOUNG, Iowa	
EVAN H. JENKINS, West Virginia	
STEVEN M. PALAZZO, Mississippi	

WILLIAM E. SMITH, *Clerk and Staff Director*

# FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR 2016

MONDAY, MARCH 16, 2015.

## OFFICE OF MANAGEMENT AND BUDGET

### WITNESS

**HON. SHAUN DONOVAN, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET**

Mr. CRENSHAW. Well, good afternoon, everyone. The hearing will come to order. I thank you all for being here.

Director Donovan, we welcome you to the hearing today. We know that you have been pretty busy with the pending budget resolution. We appreciate the time you have given us to be here to give your testimony and answer any questions.

And the first thing I want to do is say thank you for having the budget submitted on time. I think that is the first time since 2010 that has happened, so congratulations. And I hope that that bodes well for the upcoming budget season.

Now, the OMB has a great responsibility of constructing a budget that reflects the President's vision for our Nation, and because of this responsibility, I believe that your agency has an even greater duty to be judicious and be deliberate with your own budget request.

Today, I hope not only to have an informative discussion about your fiscal year 2016 appropriations request, but I hope that we can dive into some important policies and assumptions included in the President's overall request for fiscal year 2016.

Since 2010, this committee, under the leadership of the full committee chairman, Hal Rogers, has carefully worked to reduce discretionary spending by some \$175 billion. However, in this same time period, we have seen mandatory outlays and net interest increase significantly. While we have made significant strides on the discretionary side of the ledger, our long-term economic and national security interests require continued deficit reduction and renewed efforts to reduce our national debt.

And speaking of the debt, our statutory debt ceiling was reached yesterday, and the Treasury will once again take extraordinary measures to avoid default. But, at some point, these extraordinary measures become routine and ordinary. And I would caution the administration that this routine is not a comfortable one and remind you that S&P downgraded our country's credit rating in 2013, in part because of that. So we expect you to use your influence with the administration to keep the country from going over the fiscal cliff.

The demographic changes underway in this country mean that the benefits of Social Security and Medicaid and Medicare enjoyed today are bills that are going to be paid by our children and their grandchildren tomorrow. And so, regrettably, the President's budget does not address the unavoidable question of how to distribute the economic costs of an aging population over generations. And to ensure the health of our economic future, we must rein in out-of-control spending on the mandatory side of the ledger. And I hope you can explain how the administration plans to address these looming challenges.

The fiscal year 2016 budget request includes large increases for both your operating account and your IT account. Your operating request is a 6.2 percent increase over fiscal year 2015. And I think you should think about, at a time when our Nation needs to continue to exercise fiscal constraint and restraint, that OMB should think about leading by example.

Now, you are also requesting a \$15 million increase in your IT account. And I appreciate the strides the administration has made to improve the use of IT resources across the government, increase efficiency, reduce waste, and identify savings. And so I would like to hear more about your plan to improve the digital services and prevent the kind of failure we saw with the rollout of [healthcare.gov](http://healthcare.gov).

I would also like to discuss the role OMB plays in strengthening Federal cybersecurity. More and more, we are seeing threats to our national security via cyber attacks to our network and to our operating systems, so your role in guiding and coordinating cyber policy is increasingly important.

In addition, OMB has a critical task of reviewing all Federal regulations to ensure that these proposed regulations keep pace with modern technology, promote the changing needs of society, and avoid duplicative and inconsistent policies.

And, as you know, Senator Boozman, my counterpart in the Senate, sent you a letter recently on the Department of Labor's proposed fiduciary standard, because we believe the SEC should move first in any rulemaking in order to address the issues of duplication and any confusion that would surround different standards of care for broker-dealers and investment advisors. So we look forward to hearing from you on that timeline of the proposed rule—as well as public input.

And, finally, let me say that the way that the administration works with the Corps of Engineers to pick these so-called new start projects is something that I am concerned about. Because, after three consecutive fiscal years with no new starts, the fiscal year 2014 omnibus allowed the Corps to initiate a limited number of new studies and new construction projects, but, unfortunately, the administration's mismanagement of the fiscal year 2014 funds led the need for this committee to include more stringent guidelines for fiscal year 2015 funds.

And yet it looks to me like the administration has yet again disregarded the congressional recommendations and appears to have used their own budget metrics for choosing new start projects. And I will ask you a question later on this to shed some light on the

criteria the administration used in the selection of the four new starts in the 2015 workplan as well as the new starts for 2016.

So, again, let me thank you for being with us today. I look forward to hearing your testimony.

And before that, let me turn now to Ranking Member Serrano for any questions or comments he might have.

Mr. SERRANO. Thank you, Chairman Crenshaw. I would like to join you in welcoming Shaun Donovan, Director of the Office of Management and Budget, to this hearing.

OMB plays a unique role in preparing the President's budget and in making sure that agency budget requests are consistent with the President's priorities. In addition, OMB monitors the implementation of government programs by reviewing their performance; coordinates and reviews all significant Federal regulations; and oversees crosscutting, governmentwide issues like IT performance and procurement.

In all of these areas, OMB improves the efficiency and effectiveness of the Federal Government as a whole. Because of this, your budget request, while somewhat small compared to other agencies under our jurisdiction, has a wide-ranging impact.

Your request for fiscal year 2016 totals \$97.4 million. This includes a relatively small increase of \$5.7 million to help ensure you have the personnel and the tools necessary to meet these numerous responsibilities.

The President's fiscal year 2016 budget, prepared with your counsel, creates a strategic plan that strengthens our economy and invests in working families by improving access to early and higher education as well as affordable health care, investing in our infrastructure, and partnering with local communities and business to create good-paying jobs and affordable housing. I commend OMB for your role in these efforts.

Additionally, OMB plays a pivotal role in ensuring our Federal agencies and employees have the resources needed to do their jobs. Because of the sequester, Federal employees have had to shoulder a large portion of the budget cuts, and many Federal workers have sought better opportunities in the private sector. I am particularly pleased that the President's fiscal year 2016 budget seeks to end the sequester in order to fund strategic investments that strengthen our competitiveness in the global economy.

I am also interested in hearing about the current progress being made on the implementation of the DATA Act and how this subcommittee can be of help in providing the resources necessary in order for OMB to effectively comply with the statute's reporting requirements.

I hope we will have a chance to discuss all these issues in further detail today. Thank you for your service and for appearing before this subcommittee, and I look forward to hearing about your priorities for fiscal year 2016.

Thank you.

Mr. CRENSHAW. Thank you.

Director Donovan, you are recognized for your testimony. If you could keep that within a 5-minute range, that will give us plenty of time for questions. The floor is yours.

Mr. DONOVAN. Thank you, Mr. Chairman, Ranking Member Serrano, members of the subcommittee. Thank you for the opportunity to present the President's 2016 budget request for the Office of Management and Budget.

I want to first thank this subcommittee for its work on 2015 appropriations. Over the last 2 years, you have provided OMB with resources to halt the furloughs and staffing losses that threatened our ability to meet our responsibilities at the high standards that Congress expects. Restoring capacity allows us to deliver more value for taxpayers through improved program management, smarter regulations, and more identified opportunities for savings.

The bipartisan Murray-Ryan agreement allowed for critical investment in shared discretionary priorities, not just at OMB but across government, and contributed to stronger growth and job market gains. That is why the President will not accept a budget that locks in sequestration going forward and he will not accept a budget that severs the vital link between our national security and our economic security.

Instead, the President has proposed a budget that builds on our economic and fiscal progress and ends sequestration, fully reversing it for domestic priorities in 2016, matched by equal dollar increases for defense. These investments are fully paid for with smart spending cuts, program integrity measures, and common-sense loophole closures.

The President's request for OMB is \$97.4 million, a 6 percent increase over 2015. OMB plays a pivotal part in executing the President's management, regulatory, budget, and legislative agenda and ensuring that the Federal Government works at its best on behalf of those it serves.

The request supports an additional 22 full-time equivalents, allowing us to deliver more value through improved program management, smarter regulations, and additional identified opportunities for efficiencies and budgetary savings. This includes dedicating resources to new statutory responsibilities and initiatives that provide critical returns to taxpayers and are key priorities for this subcommittee, such as DATA Act implementation, procurement reform, and our open-data initiatives.

With the request, OMB staffing would still remain roughly 8 percent below 2010 levels.

I would like to highlight one area of investment in support of the President's management agenda in particular: the need for smarter IT delivery and stronger cybersecurity across government.

OMB is requesting \$35 billion for information technology oversight and reform, or ITOR, to support the use of data, analytics, and digital services to improve the effectiveness and security of government systems.

Since the inception of ITOR, agencies have reported \$2½ billion in cost savings and avoidance resulting from OMB's enhanced oversight and reform efforts. OMB and ITOR resources support OMB's central coordinating role under FISMA to ensure agencies are effectively responding to cyber events. And, last year, ITOR was used to pilot the U.S. Digital Service, which has already saved the agencies millions of dollars and assisted with many of our toughest digital challenges.

The 2016 request enhances oversight of agencies' cybersecurity preparedness and expands the central USDS team at OMB to support standing up digital service teams at 25 agencies across the government.

Our efforts to help deliver a smarter, more innovative, and more accountable government extend to our regulatory responsibilities, as well. The administration is committed to an approach to regulation that promises economic growth, competitiveness, and innovation while protecting the health, welfare, and safety of Americans.

We continue to make significant progress on the retrospective review of existing regulations, eliminating and streamlining regulations to reduce burden and cost. Since 2010, agency retrospective reviews have detailed over 500 initiatives, saving more than \$20 billion in the near term. This work will continue to be a major focus for OMB.

The responsibilities I have described here are in addition to the work with agencies to prepare and execute the Federal budget. And while some people think only about OMB's efforts on behalf of the President's budget, members of this subcommittee know that OMB works with Congress every day to provide information and analysis and to respond to contingencies and unforeseen circumstances.

I want to close by thanking you again for the opportunity to testify today. It is a particular honor for me to serve in this role given the critical role that OMB plays and the talented individuals who work there. Supporting OMB and the work we do to make government perform better for the American public will continue to be a smart and necessary investment, and I look forward to continuing to work closely with this subcommittee to that end.

Thank you. I would be glad to take your questions.

Mr. CRENSHAW. Well, thank you.

[The information follows:]

*EMBARGOED UNTIL 3PM ON MARCH 16, 2015*

**TESTIMONY OF  
SHAUN L. DONOVAN  
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET**

**BEFORE THE  
APPROPRIATIONS SUBCOMMITTEE ON  
FINANCIAL SERVICES AND GENERAL GOVERNMENT  
U.S. HOUSE OF REPRESENTATIVES**

**MARCH 16, 2015**

Mr. Chairman, Ranking Member Serrano, Members of the Subcommittee, thank you for welcoming me here today and giving me the opportunity to present the President's Fiscal Year (FY) 2016 Budget request for the Office of Management and Budget (OMB).

Before I discuss OMB's role and request, I want to thank this Subcommittee for its work on the Consolidated and Further Continuing Appropriations Act of 2015. Building off the bipartisan Murray-Ryan agreement, that Act marked a second consecutive year where Congress was able to largely move away from unnecessary fiscal crises and austerity, helping to lay the groundwork for stronger growth and job market gains. In part, that progress is the result of hard work by the members and staff of this Subcommittee and others, who came together on a bipartisan basis to reverse a portion of sequestration and then continued moving the appropriations process back towards regular order.

Through the last two appropriations cycles, this committee has provided OMB with the resources needed to discontinue the furloughs the agency experienced in 2013 and halt the unacceptable staffing losses that threatened OMB's ability to meet its responsibilities at the high standard of quality we hold ourselves to, and that Congress expects from OMB. After reaching an all-time low level of staffing in early 2014, OMB has been able to start the process of restoring some of its capacity, attracting more of the high-performing, dedicated civil servants OMB depends on to do its work. OMB has also been able to increase its investment in learning and development opportunities for our staff, providing additional avenues to enhance program knowledge and cultivate future leadership potential. But adding more staff and improving development isn't just a benefit to OMB. It allows us to deliver more value for taxpayers through improved program management, smarter regulations, and more identified opportunities for efficiencies and budgetary savings.

In combination with Congress finishing most of its full year appropriations work by mid-December, the additional resources and staffing at OMB also helped facilitate an on-time President's Budget submission for FY 2016. An on-time Budget is an important step in the move back towards regular order.

Just as this investment in OMB has helped us to deliver for Congress and the American people, the investments across government that were made possible by the increase in the discretionary caps in Murray-Ryan have helped other agencies fulfill their missions. In 2013, OMB was uniquely positioned to see the disruption caused by the uncertainty of sequestration and the painful and



*EMBARGOED UNTIL 3PM ON MARCH 16, 2015*

short-sighted disinvestments that agencies were forced to make in order to try to weather mindless cuts. By contrast, the bipartisan Murray-Ryan agreement made room to at least partially restore long-run investments in priorities like research and development and early education, to restore core government services at agencies like the Social Security Administration, and to responsibly fund our national security.

The investments made possible by the Murray-Ryan agreement have also contributed to the overall health of our economy. In 2014, we added more jobs than in any year since the late 1990s, growth that has continued into the first couple months of this year. And, far from interrupting our fiscal progress, 2014 also saw the deficit fall to less than 3 percent of GDP. We need to build on this progress and avoid the return to short-sighted austerity and disinvestment that would occur when sequestration returns in full in 2016. That's why the President has proposed a Budget that would more than pay for ending sequestration with smart spending cuts, program integrity measures, and commonsense loophole closers, while keeping deficits low. As the President has made clear, he is not willing to accept a budget that locks in sequestration going forward, and he will not accept a budget that severs the vital link between our national security and our economic security.

#### **The FY 2016 Office of Management and Budget Request**

As you know, OMB plays a pivotal part in executing the President's management, regulatory, budget, and legislative agenda and ensuring that the Federal government works at its best on behalf of those it serves. OMB works with and across agencies to improve management and create a government that is more effective, efficient, and supports continued economic growth. In coordinating the review of Federal regulations, OMB focuses on protecting our health, safety and environment while promoting economic growth, job creation, and innovation. Through its role in helping develop, manage, and oversee agency budgets and its support of the appropriations process, OMB helps execute on the Administration's fiscal goals and key priorities. And we work to be a trusted and respected source of information for our counterparts in the Administration and Congress as well as the public, as evidenced by the high-quality analysis conducted by OMB's excellent staff.

The President's FY 2016 Budget request for OMB is \$97.4 million, a 6% increase over the 2015 enacted level. At this level of funding, OMB would be able to support an additional 22 full-time equivalents (FTE). The additional staff will allow OMB to more effectively oversee program management and funding, including identifying opportunities for budgetary savings, across more than 100 agencies and departments throughout the Federal government, while meeting increasing responsibilities in key priority areas for this subcommittee. For example, this includes staffing new work to oversee Digital Accountability and Transparency Act (DATA Act) implementation, as well as dedicating increased resources to initiatives, like procurement reform and the retrospective review of regulations, which provide critical returns to taxpayers in the form of improved government management and smarter regulations. Additional staff will also go towards meeting the increasing challenges associated with protecting privacy, through efforts to improve cyber security, better coordinate between the government and the private sector on response to threats, and ensure consistent and appropriate IT and practices across government for using data to improve program effectiveness.

Despite needed increases in appropriations for OMB in 2014 and 2015, OMB's current staffing levels remain roughly 12 percent below where they were five years ago. This reduction in staffing has

*EMBARGOED UNTIL 3PM ON MARCH 16, 2015*

coincided with OMB having to take on new responsibilities, including through provisions included in the DATA Act; the Statutory Pay-as-You-Go Act; the GPRA Modernization Act; the Budget Control Act; and the National Defense Authorization Act of 2013.

Responsibilities added by Congress over the past few years that have contributed to OMB's workload have included: new financial reporting requirements associated with the DATA Act; scoring legislation for PAYGO and publishing the PAYGO scorecard; calculating sequestrable amounts for mandatory programs and issuing discretionary sequestration reports under the Budget Control Act; coordinating the development and quarterly OMB reviews of Cross-Agency Priority Goals as well as establishing and maintaining a central performance.gov site; working with the Department of Defense and other agencies to modernize personnel security; overseeing spending transparency via USASpending.gov; and overseeing and coordinating intellectual property enforcement.

In addition to increased staffing, OMB is requesting additional resources that will be put towards implementation oversight and satisfying reporting requirements established by the DATA Act that are intended to expand Federal financial data reporting and improve data standards. OMB will need to develop software that can maximize data quality, minimize future workload, and leverage existing processes to improve reporting. This approach is necessary for addressing the unique challenges presented by DATA Act requirements and current systems limitations.

With its request, OMB would still be 8% below its 2010 FTE level. OMB would deploy these resources across its responsibilities to deliver greater impact for the American people.

### **Working Towards a Government of the Future**

The President is committed to creating a government that makes a significant, tangible, and positive difference in the economy and the lives of the American people. The President's Management Agenda focuses on four pillars: effectiveness—delivering world-class customer service to citizens and businesses; efficiency—enhancing productivity and achieving cost savings across the Government; economic growth—opening Government-funded data and research to the public to spur innovation, entrepreneurship, economic growth, and job opportunities; and people and culture—unlocking the full potential of today's Federal workforce and building the workforce needed for tomorrow. OMB has already played an important part in helping to guide and coordinate successful Administration-wide efforts to modernize and improve citizen-facing services, eliminate wasteful IT spending, reduce the Federal real property footprint, and open tens of thousands of Federal data sets to spur innovation in the private sector.

OMB's request will enable it to continue to play a key role in executing on the President's Management Agenda in order to make government work better for taxpayers. The additional resources will let OMB ramp up promising efforts and build on progress in a number of key areas, including:

#### *Smarter IT Delivery*

Building on the support Congress provided in FY 2015, we are requesting \$35 million for Information Technology Oversight and Reform (ITOR) to support the use of data, analytics, and digital services to improve the efficiency, effectiveness, and security of government operations and programs. OMB has been an effective steward of ITOR resources. Since its inception,

*EMBARGOED UNTIL 3PM ON MARCH 16, 2015*

agencies have reported about \$2.5 billion in cost savings and avoidance resulting from OMB's enhanced oversight and reform efforts.

The requested resources will help institutionalize modern systems design and development principles and invest in scaling up particularly promising efforts like the U.S. Digital Service (USDS). In 2014, ITOR funding was used to pilot USDS, a small team of our country's top digital experts housed within OMB working to expand the Federal government's capacity to deliver world-class service to the American people. USDS efforts have included helping on top national priorities like coordinating critical data for the Ebola response in West Africa and working with the new leadership at the Department of Veterans Affairs (VA) to build a Digital Service team inside the VA that is redesigning the tools veterans and their families use to interact with the VA. In an early example of this team's potential, a small group of in-house developers and designers rebuilt the Veterans Employment Center tool, allowing the VA to cancel a planned \$2.4 million procurement, eliminate another ongoing \$9 million per year contract, and save \$3.3 million per year on a separate ongoing contract. The USDS also developed the TechFAR Handbook, a guide to using flexibilities within the Federal Acquisition Regulation to improve IT acquisition, and the Digital Services Playbook, which outlines best practices for digital service delivery.

The 2016 request expands the central USDS team at OMB to support standing-up Digital Service teams at 25 agencies across the government. The OMB USDS team will also continue to help coordinate cross-agency technology initiatives such as visa modernization, electronic health records, federal student loan processing, and other high-priority projects, while serving as a resource for the small, high-impact agency teams that will tackle the most high-priority challenges faced at individual agencies. OMB will also use ITOR funding for training current Federal IT professionals to scale modern development practices across the workforce, to provide accountability to ensure agencies see results, and to recruit even more highly skilled digital service experts and engineers into government. Additional ITOR funding will also help OMB work with agencies to ensure continued success in implementing the recently passed Federal Information Technology Acquisition Reform Act (FITARA), which is designed up deliver better value to taxpayers by improving federal IT acquisitions.

#### *Stronger Cyber Security*

OMB also continues to play a critical role in strengthening Federal cybersecurity, including through its newly-formed E-Gov Cyber and National Security Unit. OMB and ITOR resources help to support data-driven, risk-based oversight of agency cybersecurity programs and agencies' responses to major cybersecurity incidents. For example, this past year, agencies have improved the percentage of workers compliant with the strong authentication standard, which requires the use of two-factor authentication such as a personal identity verification (PIV) card to access Federal network resources, to over 70 percent. However, more work remains, particularly to increase compliance among non-DOD civilian users. In coordination with National Security Council staff and the Department of Homeland Security, OMB will hold CyberStat reviews with agencies to help ensure that they have robust protections in place to address cybersecurity threats, while ITOR cybersecurity resources support research and policy formulation directed at emerging threats.

*EMBARGOED UNTIL 3PM ON MARCH 16, 2015*

To improve cybersecurity, OMB will also use ITOR funding to conduct oversight of agency cybersecurity preparedness, including ensuring successful adoption of the Department of Homeland Security's Continuous Diagnostics and Monitoring program to quickly and efficiently identify cybersecurity vulnerabilities and mitigate risk. Additionally, OMB will use ITOR resources to work with Federal agencies to ensure continued successful implementation of the recently-passed Federal Information Security Modernization Act of 2014 and to support response to cyber incidents, where OMB plays a central coordinating role to ensure agencies are taking appropriate actions to effectively respond to cyber events and address any deficiencies in their cybersecurity programs.

#### *More Efficient Acquisition*

OMB has also been centrally involved in efforts to simplify Federal contracting, streamline purchases, increase benchmarking for more data-driven Federal management, and expand shared services to make government more cost effective. For example, as announced in December 2014, the Administration is shifting its approach to purchasing through the adoption of a Category Management model where the Administration will "buy as one" by creating common categories of products and services across Government. Through the application of best commercial practices as well as the collection and sharing of key performance information, the government will improve how we acquire and manage common requirements to ensure that agencies get a more competitive price and better performance when they are buying similar products under similar circumstances. This new model will allow our acquisition workforce to focus their time and energy on critical mission-specific procurement. In the United Kingdom, the government was able to realize savings of roughly 10% from its adoption of category management practices. In the area of IT contracting, where we will initially focus, savings of that magnitude could return \$5 billion in annual savings as early as the end of calendar year 2016. As we scale this effort across more categories, it could lead to even more significant savings in the future.

Beginning in 2014, OMB has also been essential to efforts to establish cost and quality benchmarks in human resources, finance, acquisition, IT, and real property, allowing agencies to compare performance with peer agencies and the government-wide average and pursue efficiencies. In 2015 and 2016, we will expand the Benchmarking program to include customer satisfaction metrics and to incorporate the results into agency performance reviews and strategic planning exercises.

#### *Cost-Effective, Evidence-Based Regulation*

Our efforts to help deliver a smarter, more innovative, and more accountable government for the American people extends to our regulatory responsibilities. OMB is responsible for reviewing significant rulemakings and ensuring that our regulatory system is both cost-effective and evidence-based. The Administration is committed to an approach to regulation that promotes economic growth, competitiveness, and innovation while protecting the health, welfare, and safety of Americans, now and into the future.

*EMBARGOED UNTIL 3PM ON MARCH 16, 2015*

The Administration continues to make significant progress in the President's unprecedented prioritization of the retrospective review of existing regulations. OMB is focused on rooting out regulations that are unnecessary or overly burdensome and streamlining, modifying, or repealing those regulations to reduce burdens and costs. Since 2010, the publicly released agency retrospective reviews have detailed over 500 initiatives that will reduce costs, simplify the regulatory system, and eliminate redundancy and inconsistency. This effort has already produced completed actions that will save more than \$20 billion in regulatory costs in the near term, with more savings to come. This work will continue to be a major focus for OMB.

The number of final rules reviewed by the Office of Information and Regulatory Affairs (OIRA) and issued by agencies at this point in the Administration is actually lower than the number reviewed and issued at this point in the previous administration. By promoting health, safety and welfare, as well as reducing long run costs to the American economy, the net benefits of regulations issued through the fifth fiscal year of this Administration were about \$200 billion when factoring lives saved and injuries prevented.

All of the responsibilities and efforts described above are in addition to our work with agencies to prepare the President's Budget and execute Federal budgetary policies, and our work with Congress. While some people think only about OMB's efforts on behalf of the President's Budget, Members of this subcommittee know that OMB works with Congress every day to provide information and analysis, and in order to help respond to contingencies and unforeseen circumstances. In the regular course of its work, OMB meets thousands of Congressional reporting requirements each year. Last year, OMB also worked with Congress on development, enactment and implementation of a supplemental appropriation to address the outbreak of Ebola, fortifying domestic public health systems, containing and mitigating the epidemic in West Africa, speeding the procurement of drugs and vaccines, and strengthening global health security. OMB also worked with Congress to ensure that counter-ISIL efforts were properly resourced.

I want to close by thanking you again for the opportunity to testify on OMB's FY 2016 Budget request. When I was nominated to be Director, I testified to what a particular honor it would be for me to serve given the unique and critical role OMB plays in the functioning of the Federal government and the outstanding contributions made by the talented men and women who work throughout this institution. Supporting OMB and the work we do to make government perform better for the American public will continue to be a smart and necessary investment. I look forward to continuing to work closely with Congress and this Subcommittee as we continue to move toward regular order. Thank you and I'd be glad to take your questions.

**Shaun Donovan, Director**

Shaun Donovan was sworn in as the 40<sup>th</sup> Director of the Office of Management and Budget on July 28, 2014. Donovan has committed his life to public service focused on good government and smart investment, while also building his leadership skills in the private, non-profit and academic sectors.



Prior to OMB, Donovan served as the 15<sup>th</sup> Secretary of the U.S. Department of Housing and Urban Development, where he managed the Department's \$47 billion budget – helping families buy homes, aiding households in fighting off foreclosure, revitalizing distressed communities and combating homelessness. While at HUD, Donovan made critical investments to speed economic growth, while also offering new savings proposals and ensuring fiscal responsibility.

In December 2012, President Obama signed an Executive Order creating the *Hurricane Sandy Rebuilding Task Force* and appointed Donovan as Chair. The *Task Force* was charged with creating a comprehensive regional plan, based on local vision for redevelopment, to guide long term disaster recovery efforts. This appointment built on his experience with disaster-related recovery and rebuilding challenges from a national perspective in response to Hurricanes Katrina and Rita. Together with U.S. Homeland Security Secretary Janet Napolitano, he led the President's *Long-Term Disaster Working Group* composed of more than 20 federal agencies. The Group worked closely with State and local communities, as well as experts and stakeholders from around the nation, to create the National Disaster Recovery Framework published in 2011.

Prior to his service in the Obama Administration, Donovan previously served as Commissioner of the New York City Department of Housing Preservation and Development (HPD) where he created and implemented HPD's New Housing Marketplace Plan to build and preserve 165,000 affordable homes, the largest municipal affordable housing plan in the nation's history.

His work at HPD included the New York City Acquisition Fund, an award-winning collaboration with foundations and banks to finance affordable housing; an innovative inclusionary zoning program; an ambitious supportive housing plan; and the Center for New York City Neighborhoods, one of the earliest responses to the foreclosure crisis. Before his service as HPD Commissioner, Secretary Donovan worked in the private sector on financing affordable housing, and was a visiting scholar at New York University (NYU).

He was also a consultant to the Millennial Housing Commission on strategies for increasing the production of multifamily housing. The Commission was created by the United States Congress to recommend ways to expand housing opportunities across the nation. Secretary Donovan also served in the Clinton administration as Deputy Assistant Secretary for Multifamily Housing at HUD, where he was the primary federal official responsible for privately-owned multifamily housing. At that time, he ran housing programs that helped 1.7 million families access affordable housing. He also served as acting FHA Commissioner during the Clinton/Bush presidential transition. Prior to his first service at HUD, he worked at the Community Preservation Corporation (CPC) in New York City, a non-profit lender and developer of affordable housing. He also worked at the Joint Center for Housing Studies at Harvard University and as an architect. Donovan holds a B.A. and Masters degrees in Public Administration and Architecture from Harvard.

Mr. CRENSHAW. Let me start the questions by asking—I mentioned in my opening statement about the Department of Labor and fiduciary standards. And you know that Senator Boozman and I wrote you a letter expressing our concerns. We think that there may be some unintended consequences with the rule that might harm low- and middle-income folks that are seeking financial advice regarding their retirement. And I know you are reviewing that proposed regulation. Let me ask you a couple of questions about that.

Number one, how can you make sure that we are not going to duplicate or there are going to be inconsistent regulations with what the SEC already does?

Number two, will there be an opportunity for the public to have input into these proposed rules?

And, number three, just give us a timeline. Is there going to be adequate time—if there is going to be public input, can we be assured that there is going to be adequate time to listen to whatever that input is?

Could you answer those three questions?

Mr. DONOVAN. Sure. And, Mr. Chairman, as you know, when a rule is pending at OMB, I am limited to some extent on what I can say about the specifics of that rule.

What I can say in response to your questions is that, first of all, Department of Labor has specific statutory responsibilities that are unique in this area. And so it is important that they move forward on rulemaking but to do it in a coordinated way. And, in fact, they have had extensive consultation with SEC, who has provided technical assistance in this process. And so they are coordinating closely.

Second, we will ensure that there is a chance for input. As you know, there was an original proposed rule in 2010. There was significant input there, and there will be an opportunity for input again on this as the proposed rule is published and goes through the public comment process.

On the timeline, I can't give you specifics about that at this point, but obviously we will work closely with you and this committee to make sure you stay apprised as we move forward.

Mr. CRENSHAW. Well, thank you. This subcommittee also oversees the SEC, and we will ask them the same kinds of questions. Because often times at the Federal level there are overlaps, duplications, inconsistencies. And it sounds to me like maybe they have started on the right foot to try to coordinate this, but we will monitor that as it goes on.

Let me ask a broader question, just about your overall operating budget. In your 2015 budget, as I understand it, there is money that—you were going to hire 30 new folks by the end of this year. And in your 2016 request, there is money for another 22 new hires.

And the question becomes, is that something you can absorb? I mean, in a 2-year period, you are going to hire 52 new people as well as replace the people that are working there now that might leave for whatever reason. Do you know the last time you hired 52 new employees in a 2-year period, and do you think that is something you can absorb effectively and efficiently?

Mr. DONOVAN. Well, it is an important question. And, to be very specific, as we have been rebuilding from sequestration, thanks to the investments from this committee, we have actually hired about 100 people over the last 12 months. Now, a significant number of those actually account for attrition; there is natural turnover. But it gives you a sense that we certainly have the capacity and that we are very focused on moving forward to hire, given the resources this committee provides.

And, in fact, since the so-called Cromnibus was passed in December, that has given us the certainty for this year, and we have further ramped up our efforts to try to bring on line the people that the budget you passed for 2015 allows us to hire.

Mr. CRENSHAW. Well, because I think you know as well as anyone that what they call the 302 allocation that we will receive, 302(b)s, we don't know exactly how much money that we will have available, but more than likely it is not going to be a whole lot more money than last year. It could be less than 1 percent. We don't know that yet.

But when you ask for a 6.2 percent increase, you must know that that stands out in these tough economic times. And maybe—help me understand why OMB, as a model of efficiency, would need that kind of increase in today's world?

Most of the members of this subcommittee—in fact, all the Members of Congress have had their office accounts reduced by about 15 percent over the last 2 years in an effort to lead by example. And so I would hope that that is something you consider, in terms of leading by example, as well.

Tell us what you think about the fact that in these tough economic times you still need a 6.2 percent increase in your funding.

Mr. DONOVAN. Well, let me try to break down a little bit what that 6 percent would go to.

Almost half of that increase is things like cost-of-living increases, rent changes that we pay to GSA. So it really is just inflationary effects on our budget is about half of it.

Most of the remainder is going to implement new responsibilities that we have. The DATA Act, in particular, is probably the largest of those—legislation, obviously, passed on a bipartisan basis last year that we worked very closely with Congress on and, we believe, can lead to some real improvements in the way we account for government spending across the Federal Government. But we are implementing that now, and it takes significant resources to do that.

But there are others, like cybersecurity—recent legislation that was passed that increases OMB's authorities there—that are important that we carry forward; privacy; a few others, as well.

A smaller share of the remainder is really going to continue to rebuild some of the capacity that was lost. And, again, that is, we think, important given the enormous effect that sequestration had on OMB.

But, to be clear, we are not rebuilding the full capacity. We have made OMB more efficient. And we would still end up—even if we got 100 percent of that increase that we have asked for, we would still end up 8 percent below the staffing level that we had in 2010. So we think we have been able to find ways to become more efficient.



Just the last thing I would say on this is that OMB is not unique. The President has obviously proposed that we increase investment on the discretionary side. I think you said in your opening comments, as well, that—I think there is pretty broad recognition, the real challenges we have in the long-run fiscal picture are not on the discretionary side of our budget; they are on the mandatory side.

And so the overall structure of our budget more than pays for any discretionary increases that we have by lifting sequestration. We, in fact, not only pay for it; we achieve \$1.8 trillion in deficit reduction over 10 years overall, largely through changes on the mandatory side and on the tax side.

Mr. CRENSHAW. Well, thank you.

And now I would like to recognize Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

Director Donovan, you have made it clear that the President will not accept a budget that reverses our progress by locking in sequestration.

What do you mean by that? Given your unique viewpoint on the entire Federal Government, what do you predict would be some of the severe and negative consequences if it gets locked in?

Mr. DONOVAN. Well, first of all, as I mentioned earlier, OMB saw, both in its own budget and its own agency but also across government, perhaps better than any agency what the effects of sequestration were the first time around, whether it was the furloughs that we had to take at OMB but also at many other agencies, but, more importantly, tens of thousands of children who lost their access to early education, tens of thousands of veterans and others who were made homeless again by the cuts to programs for homelessness and housing vouchers, and a range of other areas, as well, cuts to research and development and other types of investments, education and training, that are critical to our economic growth going forward.

And those are the same types of effects that we are concerned would happen if sequestration goes fully back into effect again in 2016, which is what would happen if we don't enact some sort of agreement like Murray-Ryan to lift those sequestration caps.

Mr. SERRANO. Well, my next question, you basically answered part of it, but, you know, we need you on the record on this.

OMB did take a big hit—8 furlough days, more than anyone else. How does the \$5.7 million increase or 6.2 percent over the fiscal year 2015 repair some of the damage that has been done?

And that is our big concern, not—you know, because people are going to talk about growing the budget. But some of these situations are not growing the budget; they are just trying to get back to where you were a couple of years ago.

How could we repair some of it?

Mr. DONOVAN. Well, for an agency like OMB, where our single most important asset and the vast, vast majority of our budget goes toward is our people. They are our most important asset, where, obviously, our most important job is to provide the critical analysis and work that the government needs to function effectively and to save money where it can. And that is really driven, most of all, by our career staff.

And we did see not only furloughs, but we saw a drop in staffing to the lowest level in many decades at OMB. Staff morale dropped. And so we would invest a very small amount in training and other things to get capacity back up.

But the single most important thing is to restore at least some portion of the cuts in staffing that we saw. We are currently 12 percent below the level of staffing that we had in 2010. And even if we got the full request that we have put forward, we would still be 8 percent below the staffing level that we had in 2010. So it restores a portion of but not the majority of those cuts.

Mr. SERRANO. Let me ask you a quick question on information technology. The information technology reform and oversight program that you implemented, I could go through the details of, you know, the success stories, and you could tell us about it very quickly, but my bigger question is: It seems to me that one of the first questions I heard asked when I got on Appropriations a long time ago was about how far the Federal Government was lagging in the whole IT area. Why are we still having this discussion? You would think by now—is it that whatever progress we made now has become old progress because it keeps changing? Or is it that we never made the progress?

Mr. DONOVAN. Well, I think the good news here is that we have made progress with the investments that we have made. But I will also say there is still a significant distance to go.

What we have seen is both the quality of the way government contracts and implements technology improving, whether it is just on the basics of acquiring software but also on cybersecurity. At the same time, we are seeing that costs are going down, really for the first time, that we have started to bend the cost curve, if you will, on implementing information technology. And this ITOR account has been particularly important in that way.

Just one example. We do now a Portfolio Stat system, we call it, where we meet with every agency on a regular basis and go through every one of their significant IT investments and really examine are they on track or not. And that is done through a centralized team at OMB in our Chief Information Officer's office at OMB.

We have achieved, at this point, about \$2½ billion of savings just through those Portfolio Stat sessions. So it has been a very important step, I think, one of many steps, in starting to move toward a much more efficient and effective IT structure for government.

Mr. SERRANO. All right.

Just very briefly, because my time is up—and you might have answered the question, but I need to hear it again. Is it that every time we make progress in this area it gets old and we have to catch up again? Or is it that we never really did everything we were supposed to do?

Because it seems to me that at times there were folks out in the community who have better equipment than the Federal Government has sitting on their desk, you know, in their den or in the living room. Why is that happening, and how scary is that?

Mr. DONOVAN. Well, certainly, in the cybersecurity area I think is the place that perhaps we ought to be most concerned about whether we are keeping up. And the truth is that the pace of change, if anything, has accelerated rather than slowing down,

and, therefore, it constantly requires us to move forward, to put in place new technologies and new advances.

And that is an area where we have proposed, in fact, across the entire Federal budget, a significant increase in focus and responsibilities, not only a 10 percent increase to about \$14 billion overall on cybersecurity, but also the creation that we just announced a few weeks ago of a new—we call it CTIC, Cyber Terror Information Center, that is really bringing together all of the intelligence that we have across the entire Federal Government to make sure that we are staying ahead of whatever attacks we may be seeing across both the private sector and the public sector.

Mr. SERRANO. Thank you.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Rigell.

Mr. RIGELL. Thank you, Mr. Chairman.

Mr. Donovan, I appreciate you being here very much. And I just noted in your bio that “Mr. Donovan has committed his life to public service focused on good government and smart investment,” so we are starting out on common ground on that. So I appreciate your service.

Mr. DONOVAN. Thank you.

Mr. RIGELL. I would like to understand more about what the President is proposing in this budget as it relates to cutting inefficient spending. I am really tossing you a softball here, but I really do want to understand the position of the administration on spending generally. I sought this office because of how troubled I am about our Nation’s fiscal trajectory. Walk us through that, and let me see how convincing you are on this point.

Mr. DONOVAN. Well, overall, the budget proposes more than 100 different cuts, consolidations, efficiencies. Some of those are straight reductions or eliminations of programs, but we have also done a range of things in the budget—for example, where can we consolidate programs or even entire agencies, whether it is on food safety or a range of other areas? So I think we have taken a pretty comprehensive look at where we can find savings and consolidations that streamline government.

I think, as we all know, what has been the single most important driver of our long-term fiscal challenges is really around, as the chairman said at the outset, the demographics that we are facing and, in particular, healthcare costs.

Mr. RIGELL. Right.

Mr. DONOVAN. And that is an area where the budget is particularly focused. Not only have we seen the slowest growth in healthcare costs over the last 3 years that we have seen in 50 years, but the budget goes farther. It includes, for example, \$400 billion in additional reductions to Medicare and Medicaid as part of a broader strategy to try to make sure that we build on the improvements that we have seen in the growth of healthcare costs.

The last thing I would just say is that—you know, we have talked about discretionary and mandatory spending. We also believe that we have to take a close look at wasteful spending in the Tax Code, as well. And so we have a broad range of areas where we are proposing to make changes to our Tax Code that not only

have substantial savings going forward but also, frankly, would contribute to our economic growth. Because there are many places in the Tax Code that they not only aren't producing revenues, but they are adding to the inefficiency of our economic picture and with changes could actually encourage economic growth, as well.

Mr. RIGELL. Okay.

I want to change the topic for a moment and then talk about sequestration. Lifting it, certainly to a great extent, if not entirely, particularly for me because of its impact on defense, is a priority.

So I would like to understand, if we are not successful in that effort—and I am not conceding that we won't be, but walk through how sequestration would affect your budget at your office, the office that you are leading there.

Mr. DONOVAN. Well, I am relatively new in this role. What I can tell you is the effect that sequestration had in 2013 meant that we had to furlough a substantial number of workers, we completely froze hiring. And it meant that OMB was unable to respond as quickly or as effectively as we should have been to a broad range of situations, whether it was government shutdown or a range of other situations.

But I think the more immediate and important impacts of sequestration can be felt in our military communities. Don't take my word for it; the Joint Chiefs have spoken out, I think, very effectively over the last few weeks that our national security would be put at risk by a return to sequestration.

Mr. RIGELL. I share that view.

Mr. DONOVAN. And, on the other side, I think the President has also made clear, as has Ash Carter and many others, that we can't protect our national security simply by investing in the defense budget. Just to take a few examples, veterans' care is on the so-called nondefense side of our budget. The Department of Homeland Security, which is critical to protecting the homeland, is on the so-called nondefense side of the budget.

So, in many ways, even if you just focus on national security, the ability to protect the homeland depends on lifting sequester both for the Defense Department and the nondefense side of the budget.

Mr. RIGELL. Thank you for your testimony.

I yield back. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Thanks, Director, for being here today—

Mr. DONOVAN. Thank you.

Mr. QUIGLEY [continuing]. And your work.

O'Hare Airport, often the world's busiest airport, going back and forth I think with Atlanta, and O'Hare modernization, the result of which, while critical to the economic engine which is O'Hare, has brought in a whole new level of complaints and noise issues for my constituents.

In the meantime, the FAA has done considerable work preparing to do a noise metric study, back to 65 DNL, established some 30 years ago—rather arbitrary, not based on any scientific data. A lot of new science out there is talking about the long-term health ef-

fects of prolonged exposure to such noise. But the FAA needs your help, quite frankly, to move forward for this multiyear study.

Can you tell us where we are on that potential analysis?

Mr. DONOVAN. Yeah. Congressman, first of all, let me apologize if there has been some delay in finalizing this study. We are actively engaged with the FAA in reviewing it, as we speak, and I am hopeful that we can bring it to conclusion quite quickly in the next few weeks.

Mr. QUIGLEY. Well, I appreciate that.

So, for people watching at home know, it is not just that they are going to make planes quieter. It has nothing to do that, necessarily, off the top. What it can do, though, is increase the availability, the areas in which noise-proofing is required for houses and schools and businesses in our districts, reducing the noise significantly.

Let me switch topics here—transparency in government. We have a bill that we have introduced that addresses this, but let me make it relevant to you. Right now, you require agencies—that they post their budgets and their justifications on their own Web sites within 2 weeks of submission, I believe. OMB has a lot of data on its central Web site right now, and I think you have made great strides in that area.

Budget summaries and numbers are available in a central location, but the budget justifications, the critical “why do they need this money” portion of the budgets, is still scattered across hundreds of government Web sites. These justifications are often not available in any sort of a searchable, sortable format. Many are in formats, such as a PDF, that are hard for third parties to easily pull data from and information.

I think it is important that we have some sort of central repository for this that places all agency budgets and their justifications in the common searchable, sortable, and machine-readable format.

Can you tell me a little bit about your office’s efforts to get this kind of data in one place, in one accessible, usable format, if possible?

Mr. DONOVAN. Sure. And I appreciate your focus on this because it is a very important subject that doesn’t get enough attention, I think, in terms of the ability to make information available.

For ourselves at OMB, we made a big effort this year to have, for the first time ever, all of the numbers associated with the budget available in a way that we made public. And, in fact, we had some very interesting—I don’t know if I would call them apps, but outside companies, programmers, and others come in and use that in ways to make the, sort of, Federal budget understandable in a way that it had never been before. And we are quite excited by that possibility.

So we are already starting to think—and this is a helpful suggestion—in terms of other places we might look and where you think would be most useful going forward for our next budget presentation. So we will take that as a suggestion that we could work with your office on and come back to you with some specifics about sharing the budget justifications more directly.

I guess the other thing I would say is this is an area where the President has been particularly focused more broadly because there is so much government information that we aren’t sharing as wide-

ly as we could. And, in fact, that information can be a huge economic advantage to the U.S. economy. If you think about weather data, for example, and the way that that has created whole industries in the United States, it really is an important part of our Open Government Initiative.

We have put 75,000 data sets out into the public realm since the President came to office, and that number is accelerating with recent open government initiatives. And so this is an area where we would love to follow up and work with you more closely.

Mr. QUIGLEY. We appreciate that. And our office would be glad to work with you. Thank you.

I yield back, Mr. Chairman.

Mr. CRENSHAW. Thank you.

I would like to now recognize Mr. Womack.

Mr. WOMACK. Thank you very much, Mr. Chairman.

And, Mr. Director—

Mr. DONOVAN. Good to see you.

Mr. WOMACK. And good luck to the Crimson.

Mr. DONOVAN. Thank you.

Mr. WOMACK. They have a tall order.

Mr. DONOVAN. They do. They do.

Mr. WOMACK. And should they be victorious, they most likely will meet up with my Razorbacks. Of course, we have to beat Wofford.

The real winner—

Mr. DONOVAN. So you are saying you are rooting for the Crimson, it sounds like?

Mr. WOMACK. Well—

Mr. DONOVAN. I think we might be the better choice, given the alternative.

Mr. WOMACK. I am going to pass on that one.

The real winner is my chairman down here, though, because that tournament is being played—that round is being played in his hometown. So the economy of Jacksonville, I think, is going to benefit greatly.

I am glad Mr. Quigley brought up the issue of transparency. I want to talk about that for just a minute and probably for the time that I have.

In 2009, there was a memorandum circulated regarding the President's position on transparency, and so I want to kind of delve into that a little bit and, maybe for my own benefit, understand. When the agencies across the spectrum submit their budget requests, you go through it, triage it, and then you send certain information back to the agencies. I understand those are called pass-backs; is that right?

Can you walk me through the process real quickly on how that works; if I am an agency and I send you my budget, what I get back and how different it might be from what I submitted?

Mr. DONOVAN. Well, typically, agencies are working over the summer to produce their initial budget proposals. We get those around Labor Day. And then we work—and it is a back-and-forth process. There is lots of interaction and meetings and discussion with the agencies.

But then typically around Thanksgiving, we would so-called pass back to the agency a sort of marked up budget with our response, where we are obviously balancing, you know, funds we have available and different policy choices between agencies to make those decisions. And then there is a so-called appeal period where they would come back to us with any appeals they have of the pass-back.

Mr. WOMACK. Well, back to the question of transparency, is that not a transparent process? In other words, can the public not track how this give-and-take is going between the agency and the OMB, back and forth? Is there some way that it could work better, to put a little bit more sunlight on it so that people can understand how the end game is actually being created here?

Mr. DONOVAN. Yeah, I guess two things I would say on that. It is a very interactive process over a long period of time, so I am not—I would have to think about whether there were particular pieces or moments that would be most useful in the process.

But I also—there is a longstanding tradition that, sort of, staff-level interactions, whether it is on the budget side, the regulatory side, agency decisionmaking, are not public to, sort of, protect the directness and the, sort of, productivity of those exchanges.

So we do, obviously, make a lot of pieces public at the point that there are decisions made, but not all of the internal decisionmaking and back-and-forth is public. And I think I would have some concerns about making everything public, in the sense that it might hamper honest back-and-forth between the agencies and OMB at times.

Mr. WOMACK. I know you are kind of new in this, but given the way this process works, the way you do your budget and the way we do ours—and we have a Budget Committee markup on Wednesday—and I do appreciate your testimony before the Budget Committee earlier—is there a better way to do this?

And are you optimistic that we are going to be able to come to some kind of agreement? Because the numbers do not really match up all that well. I mean, we are still not in the same universe.

Mr. DONOVAN. Yeah. Well, look, we are anxiously awaiting what I think we will see on Wednesday, both in the House and the Senate, the initial budget resolutions.

And I guess I would say what makes me at least somewhat optimistic is that, on a bipartisan basis, Congress came together and passed Murray-Ryan, which is really the model that I think our budget builds on, which is to say recognizing that, as we have talked about earlier, sequestration is not allowing us to make the investments that we need to and that in fact discretionary spending is not the driver of our deficits in the mid to long term, that we ought to replace sequestration with smarter cuts and ways to raise revenue on the discretionary and the tax side, because those are really the places that are driving our deficits long-term.

And I think what makes me hopeful is that there has been bipartisan agreement on that, and I think there has been bipartisan—many folks speaking out, as we just heard on this committee, on a bipartisan basis that we ought to look at changing sequestration and making the investments that we need to.

Mr. WOMACK. Well, as they say, the devil is in the details, on how we solve the sequestration issue. I will just say this, and I have said it before in the Budget hearings, and I will say it again for the record here: that we are not going to appreciably change the trajectory of the course we are on right now unless and until we deal with the mandatory side of spending. And that is just—mathematically and actuarially, that is the truth.

Our entire Congress, both sides of the aisle, and in a bicameral way, is going to have to recognize the true drivers. I have this one chart, Mr. Chairman, that I refer to a lot, and I will refer to it when I go home and have my meetings with my constituency. That piece in the red is the mandatory piece of spending. And you can see the downward pressure that is having on all of our discretionary spending.

The issues before us right now have a lot less to do with discretionary spending than they do with the mandatory side.

And, with that, I will get off my soapbox and yield back.

Mr. CRENSHAW. Thank you.

Mr. Bishop.

Mr. BISHOP. Thank you very much, Mr. Chairman.

Thank you, Mr. Donovan, for your appearance here.

I would like for you to take just a couple of minutes to discuss an issue that is heavy on my heart. The House rules for the 114th Congress requires the CBO and the Joint Committee on Taxation to adopt dynamic scoring. There are some of us and many economists who believe that dynamic scoring relies on uncertain assumptions about certain policy changes.

Can you just take a moment to talk about the downside and/or the benefits, if you see any, of this change to dynamic scoring, particularly in the context of the critical analysis that CBO, the Joint Committee on Taxation and OMB have to employ in order to save the government money and to create efficiencies in government?

Mr. DONOVAN. So I would really say two things about so-called dynamic scoring. The first is—and I think the biggest concern that I would have is that it takes what are really very, very uncertain effects and uses those to score bills in a way that, frankly, I think, makes the budgeting process less accurate, less reliable, less precise.

Just to give you one example, CBO at one point—and I would say, CBO does currently look at, kind of, dynamic effects and reports on those, and we think that is useful to have that additional analysis. But it doesn't actually use it to directly score the bills.

When they did try to estimate the impact of a straight, across-the-board tax cut, there was such a broad range of potential impacts that it actually ranged from a negative impact to a positive impact. In other words, they couldn't even quite tell whether that straight, across-the-board change in taxes was going to help or hurt the economy on a macro basis.

And I repeat that to sort of show the depth of the uncertainty of these effects. And we think, in that kind of context, it is not a good thing for budgeting to be building those directly in.

The second thing I would say, and it really follows from the first, but that dynamic scoring is only looking, typically, at these effects on the tax side and not on the spending side. And so, for example,



if education or investment in infrastructure or other things might have impacts on our long-run economic growth, those are typically not considered or included, whereas a change on the tax side might be.

So it tends, in the way it is usually implemented, to sort of tilt the playing field, if you will, towards tax-side changes and away from other critical investments that we need to make to help economic growth.

Mr. BISHOP. Thank you very much for your thoughts on that.

Can you discuss the increased responsibilities that OMB has had as a result of the cuts in staffing that you have had since 2010? What knowledge, experience, subject specialties are you most in need of as you hire new staff? Which program activities will the new staff be allocated to, and what kind of knowledge or technical gaps will there be?

Do you have challenges recruiting and retaining employees? Do you have flexibility to adjust the salaries of starting employees at a higher pay rate? Can you provide recruitment and retention incentives like student-loan repayment, for example? Can you discuss also your diversity efforts in terms of the workforce in your agency?

Mr. DONOVAN. So one of the critical things in OMB's request this year for fiscal year 2016 is our focus on information technology that I talked about before. And, in particular, the single biggest area that we are focused on is the implementation of the DATA Act, which is a new set of responsibilities for us. It, if implemented correctly and with the right resources, I think, has the potential to make government more transparent—where we spend our money, how we spend our money.

The effectiveness of Federal spending can be significantly improved if we implement the DATA Act correctly, but it is a major undertaking. And so what we have proposed in the budget is additional staff. And, also, a million dollars out of the increase that we have proposed is for contracting to implement the DATA Act correctly.

So that is the single most important of the new responsibilities, in terms of impact on OMB's budget. I would also point to, though, increased responsibilities and focus on cybersecurity as an area that is very, very important, as well as the effectiveness of our digital services.

We have seen, actually—and this really goes to your point about attracting talent into government. We have been able to attract some remarkably talented engineers from Google and Facebook and a range of other leading-edge technology companies to come in for a couple years to government service. And they are already dramatically improving the quality of the service that we provide.

Just to give you one small example, three engineers from the Digital Service went to work on the Veterans' Employment Service and their technology at the VA. Within 3 months, a cost of \$175,000, they had done work that the VA had expected to spend \$25 million on over many years.

And that is just one small example of the way this kind of investment in the staff that really are at the leading edge of technology could help not only improve government service to our veterans and many others but also to reduce costs over the long term.

Mr. BISHOP. Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

Director, good to see you.

Mr. DONOVAN. Good to see you.

Mr. GRAVES. Thanks for being with us today. You have a big task ahead of you, I know.

I wanted to follow up on some of the chairman's comments in regards to the DOL fiduciary rule. I know he has been very active on this issue, and I wanted to share with you a little bit about my views on it and how it impacts constituents in my district.

I come from a very modest district, not very affluent whatsoever. And this is a very important issue, I believe, to everyone but particularly in northwest Georgia.

And it seems to me that the administration is somewhat talking out of both sides of its mouth. The President, in one aspect, is encouraging middle-income Americans to save for their future, which I wholeheartedly support and think that is a very good idea, and everyone should be saving for their future to take care of themselves and their family, but, at the same time, making it nearly impossible for them to do so by supporting this rule and making it impossible for small firms to assist low-income to middle-income families to save for their future.

That creates a tremendous dilemma. In one aspect, you are punishing low- to middle-income earners and benefiting the wealthy. And that is not something that I think is being embraced whatsoever in my district.

And so folks in my district, they need more than a computer interface to make their decisions. They really need face-to-face interaction.

So I guess for us and as a committee and a panel here, what commitment can you provide to us that will ensure that the DOL's fiduciary rule does not disproportionately harm low- to middle-income IRA holders and small businesses throughout the country?

Mr. DONOVAN. Well, as I said earlier to the chairman, I am limited in the specifics that I can go into on the rule because it is pending at OMB at this point.

Generally, what I can say is it is obviously very focused on achieving the right balance of making sure that consumers continue to have access to advice but also protecting them, frankly, from advice that would harm them and hurt their ability to save over the long run.

As OMB does with all regulations, we will be looking very carefully at the cost-benefit analysis to make sure that there are significant benefits from the rule.

And I would only ask that you look carefully at the rule as it comes out. I think you will see that we have learned a lot from the public input that we got on the 2010 proposal and that the rule, obviously, after we propose it, will be open for comment, and we will be listening to what the public has to say.

Mr. GRAVES. Well, we will certainly look forward to that followup. And let me just suggest that I think it is really important that all consumers have the opportunity to have advice and that

that shouldn't be limited nor taken away from them. And I think citizens have the ability to discern good advice versus bad advice and that limiting that option altogether, though, would be harmful to all consumers if they don't have ability to save for their futures.

If I could follow up on one second point, just going back to a hearing you had previously—and I know Mr. Womack was a part of that, and other friends on the Budget Committee. And you were asked by one of the appropriators, as well, Mr. Cole, if OMB had done a full economic analysis of the proposed fiduciary rule.

Where are you in that process of supplying the Budget Committee and maybe, to some extent, this committee with a full economic analysis of the rule?

Mr. DONOVAN. So, again, I am not going to comment on the specifics of exactly where we are in the process. What I can say is that, as we publish the rule, as a rule for public comment, we will have significant analysis of the costs and benefits that we will make public.

Mr. GRAVES. So you continue to maintain that there will be a full economic analysis of the proposed rule when the rule is submitted?

Mr. DONOVAN. Like with any other rule, OMB is responsible for an economic analysis that includes costs and benefits that we make available and look forward to public comment on that.

Mr. GRAVES. Okay.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Yoder.

Mr. YODER. Thank you, Mr. Chairman.

Director, thank you for your testimony today.

Mr. DONOVAN. Thank you.

Mr. YODER. I do want to echo my colleague Mr. Graves, and Chairman—Mr. Crenshaw's comments regarding the fiduciary standards, and I hope that you will do all that you can to ensure that we do a cost-benefit analysis, that we ensure that small- and medium-sized advisors—this doesn't unnecessarily impact those folks locally who are trying to ensure that my constituents have every opportunity to invest and grow their retirement funds, that they don't lose those options, and we don't actually cut against the very purpose of the stated rule. So I just echo their comments and hope that you will know that many of us are concerned about the impact on regular folks at home and those advisors who are small folks in our districts.

I wanted to also continue the conversation you were having with Mr. Womack regarding the budget projections, the administration's plans to cure long-term structural deficits, and what your thoughts may be on how we can work together to solve some of the great fiscal challenges plaguing Washington, D.C. And I think no matter what party you are in, certainly we have to be aware that our country is in a deep well when it comes to our national debt, and that it continues to grow. And I think only in Washington, D.C. would folks pat themselves on the back when the deficit is only a half a trillion dollars a year.

We know it has been much higher than that. It was over one trillion, closer to one and a half trillion when I came into Congress and many of—Mr. Womack and many others in my class came into

Congress. And so progress may be occurring, but we are certainly nowhere where we need to be, and it looks like it may get worse over the next years. CBO's most recent 10-year forecast projects the deficit will be more than \$1 trillion again before 2025, and the national debt will be over \$27.3 trillion.

I have asked repeatedly in meetings at home, and roundtables, and town halls, how many Americans or how many people in the room would like to see the deficit go to \$27 trillion. Strangely, not one hand goes up. And so the entire country doesn't like the direction we are taking fiscally in this country, and don't like the projections that are before us.

And so I guess when looking at the President's budget submission and as we get ready to work on ours this week, what is the administration's position? Does their budget ever balance, and at what point—in what year does it balance?

Mr. DONOVAN. So the aim that our budget had, which has been consistent throughout the President's term, is to meet two key fiscal tests. First, that we bring deficits below 3 percent of GDP, which is widely recognized as the right fiscal standard, and in fact, is well below the average of our deficits over the last 40 years. Our budget would do that in every one of the 10 years of the window.

Second, it takes what is currently, and you just referred to this, CBO shows debt increasing as a share of GDP, to stabilize that debt and start to bring it down over the 10-year window. Our budget achieves that goal as well. It is a total of about \$1.8 trillion in savings, and it really does it through three key areas: healthcare savings, which is the single most important thing that we can do to drive down our deficits long term; second, looking for ways to change our tax code to lower our wasteful spending in our tax code; and, third, immigration reform. In fact, one of our big challenges, to go to the chairman's point at the outset, is our demographic challenge.

We have over time more and more retirees per worker in the country, and immigration reform is one of the most important things we can do to start to rebalance those demographics. CBO says that immigration reform would save almost \$1 trillion over 20 years, and even more in the out years. And so those are the three key strategies we would pursue.

Mr. YODER. Well, and I appreciate the President submitting his budget on time and putting ideas on the table. I do think, and I agree with my colleague Mr. Womack, that the elephant in the room, or the issue that is being ignored continues to be the mandatory spending. And it doesn't just have an impact on the deficits as they continue to grow. And I notice you say in a quote just this week, "The President's budget provides official projections for spending, revenues, deficit, and debt with the 10 years, reflecting the President's proposed policies, including ending sequestration, investing in growth opportunity, and reducing deficits and debt." And I think the deficits don't—they don't see a reduction in terms of GDP. I think you may be correct in terms of historic averages, but we continue to increase that debt nearing \$25, \$26, \$27 trillion. So even with those sort of rosy projections, I do believe our deficits continue to grow.

And so I think that is a bit of a misstatement. And it goes to the point that Mr. Womack is making regarding mandatory spending. It has an impact just not only on deficits as a whole and our debt as a whole, but it has an impact on where we invest. And I note that if you look to the 1960s, we were spending 32 cents out of every dollar on investments and only 14 cents out of every dollar on entitlements. Yet when you get to 2030, that number, by some estimates, is 61 cents out of every Federal dollar. So I think whether you are a fiscal conservative and you are concerned about the debt and the interest payments that Americans will be paying, and by some estimates \$1 trillion a year by the end of the next decade just in interest payments alone, we all should be concerned about that.

But regardless, if you want to invest in education or transportation or research, that won't occur when that group of entitlement spending continues to grow at such a rapid rate. And so, I would look further in the questioning today and in the President's efforts to address that topic for your statements to really take that on because it is something that we are going to have to work on with both parties.

Mr. DONOVAN. And let me—I think I was agreeing with you that mandatory spending is critical, and in fact healthcare costs and—and really making progress on healthcare costs is the single-most important piece of bringing down mandatory spending, and, in fact, I think the good news there is that over the last few years, because of the improvements that we have seen, partly due to the Affordable Care Act, CBO now projects we are going to spend over \$200 billion less in 2020 on Medicare and Medicaid than they thought just a few years ago. And so continuing to push in that direction, particularly on healthcare spending, is the single-most important thing we can do—

Mr. YODER. Well, I think we would all—Mr. Chairman, I will wrap up my questions here—I think we would all agree it continues to balloon in an out-of-control way that cannot be sustained. And so while we appreciate the President's submission, we have a long way to go, and in order to get relief on sequestration and in order to invest in other priorities, we are going to have to still continue to find ways to reduce our mandatory spending because it is going to impact everything we do in this town.

And with that, Mr. Chairman, I will yield back.

Mr. CRENSHAW. Thank you. And, members, I think we have time for another question—round of questions if you have them, and I do. And I would like to start—I mentioned in my opening statement about the Corps of Engineers and how they do studies and we call them New Starts, and then your agency is tasked with choosing which New Starts to move forward with.

And before you got where you are, there had been some series of mismanagement, in 2014, about which projects were meeting qualifications, what the standards were. And so this Appropriations Committee got involved in 2015 and put in what I would say are pretty reasonable goals and guidelines as to how you go about picking those projects that are eligible as New Starts. But it appeared that in 2015 you didn't really look at all the new guidelines that were put in place and kind of used your basic budget guidelines.

So tell us how, like, for instance, in 2016 what kind of standards, guidelines, are you going to use in terms of picking New Starts?

Mr. DONOVAN. So just to start, Mr. Chairman, this is an area where the Army Corps has lead responsibility. We provide oversight, as we do with most agencies around the Federal Government, but it really is the Army Corps' methodology and their decisionmaking. What they are using, and our understanding, and certainly we could follow up to discuss this further with you if you would like, is that they did incorporate all of the requirements of the law from 2015 in their decisionmaking.

What they have done is to, given the very limited number of starts for—pick the projects that provided the highest cost-benefit return based on the methodology they used. And as I said, I think—from our perspective, they did incorporate the 2015 requirements as they did those reviews.

So at this point we don't have any plans to have a different methodology for 2016, but, again, we would be happy to follow up with you both to discuss this more broadly and also, as we talked about before, the specifics of how we could work with the Jacksonville Port to ensure that they have a project that has the potential to be more cost effective based on the way the Army Corps looks at it.

Mr. CRENSHAW. I just want to be sure—as you point out, there are a lot of ports around the country, including JAXPORT, which is my district in Jacksonville, Florida. They rely heavily on designation as a New Start. And I would encourage you all, maybe the Corps as well, to—the cost-benefit analysis is just one of the four or five criteria that were laid out in the omnibus last year, and want to encourage you to make sure you look at all of those criteria.

And then also you mentioned the Jacksonville port. Do you, for instance, give recommendations? Do you give guidance to a port like that that didn't become eligible for a New Start, as a how they might better—as you look at the criteria maybe help them understand where they could do better under those guidelines?

Mr. DONOVAN. We would be happy to do that. The Army Corps is the best sort of place to be able to give that kind of feedback, but we often will do that with the Army Corps to make sure that we understand places where it can—a project can improve in terms of its scoring in cost-benefit analysis.

Mr. CRENSHAW. Because that is why this committee set forward those guidelines, so that they would all be considered. And we just want to be sure that they are following through on what this Appropriations Committee has decided to do.

Let me ask you—a lot of people have talked about IT. Mr. Serrano had a question on this, Mr. Bishop talked about it, and we have appropriated money so you can have the oversight and reforms. And by most accounts, the administration has done a pretty good job. You have had some successes, as I mentioned in my opening statement, and I was reading that maybe you can report savings or avoiding over almost \$3 billion in IT costs.

But I was reading also this analysis that was done by what they call the International Association of IT Asset Managers, and they found that Federal agencies spend about \$36,000 per Federal em-

ployee to make sure that all this IT works well, and the private sector spends about \$5,000 per employee. And in your request you have got \$15 million. That will bring the total for IT up to \$35 million. And that is a pretty big increase. It might be difficult for us to maybe provide you those funds.

But it is clear that just spending more money, you would know, we all agree, just spending more money doesn't solve the problems. And you have talked a lot about the bright smart people you have coming, but if you look at the numbers, you are asking for 71 additional staff. That is a huge increase. I mean, you have got 41 people, as I understand it now, and so you add 71, you have had a 200 percent increase in the staffing.

And I know you have responsibilities, but if you are finding these bright smart folks that can come in, then do you really need all that many people, if you can find bright smart people, that that might be better than having a whole lot of people that aren't as bright and smart as that handful that you are looking for. So tell us about that. Because that is a pretty big increase in—and I know you are doing better, but 200 percent in one year, that is a lot—that is a big increase. Tell us about that.

Mr. DONOVAN. Well, first of all, what I would say is I think it is very important to look at this in perspective of the over \$80 billion that we spend a year in the Federal Government on IT, and frankly, the thousands and thousands of people who work on IT across the Federal Government.

What we are talking about, because you are looking at it just as part of this sort of ITOR category, it is a substantial increase. We think it is justified because the early results from what we have been doing on ITOR have had real positive impacts and much bigger cost savings. I talked about this USDS example, \$25 million in savings from \$175,000 of time and investment spent by the team. So we actually think this can have a big, big impact on savings. And, in fact, we have already started to see, if you look at contracting costs, those costs start to come down, really, for the first time in more than a decade. And so I think we are making progress in those places.

One of the things, frankly, that we have learned and that we are starting to implement on the IT side, that we have learned from the private sector, is the way that they manage their IT. And part of the problem, frankly, is that we act too much right now like many, many different agencies as opposed to one Federal Government. The number of licenses we have on particular software products, the way that we buy our hardware, whether it is, you know, laptops or desktops or hand-helds, we buy them often with multiple contracts across many agencies as opposed to a single Federal Government, where we can really get the economies of scale. And so one of the things that we are implementing with these new resources would be a significant expansion of what we call category management.

It is a strategy that the private sector uses extensively. In fact, the U.K. Has recently put it into effect. They are already saving between 10 and 15 percent on their contracting costs in IT. And we think it is a very promising direction to go, to take what we are currently doing and expand it significantly. We would be happy to

talk to you more about the specifics of that, but we really do think we have the potential to drive the way the Federal Government uses IT to a much better place much closer to the private sector with these investments.

Mr. CRENSHAW. Well, as I asked you earlier about the—on the operating side you want to hire 52 new people in this 2-year span. Here you are going to hire 71 new people in 1 year. Is that possible? Can you go find 71 folks that—in a year that are going to do the things you need to do?

Mr. DONOVAN. Well, the large majority of those would be through this digital service model, where they are coming in for 2 years. And what we have seen, frankly, and we have—we could show you a list of names at this point, the demand is—surprised even us, and this is why we felt like we needed to jump on it. Because we have been able to do extensive recruiting, and to really get fantastic talent from tech companies, this felt like an opportunity to scale it up quickly because of the interest that we are seeing.

Mr. CRENSHAW. Thank you.

Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. In fiscal year 2015, the omnibus incorporated report language directed funds be made available for additional permanent staff within the Office of the Intellectual Property Enforcement Coordinator. This was done to address a concern that especially in periods such as the one we just experienced, when there is no confirmed head of the office in place, important work like coordinating voluntary efforts to reduce online copyright infringement goes by the wayside.

What progress have you made in staffing up this office? This was a concern of this committee last year.

Mr. DONOVAN. Well, I am very happy to report that Danny Marti, our coordinator, was confirmed by the Senate last week, and I don't actually have a start date for Danny. I don't know if anybody else does, but we are hoping he starts very quickly to be able to lead that office.

We also do have included in our request for 2016 a very small number of staff for that office to be able to increase the focus that we have on privacy issues. Obviously, the work that we have both on infringement of intellectual property, but also protecting the privacy of that property is very, very important. And that is an area where we think we need to focus as well.

Mr. SERRANO. Now, are you getting a pushback from anywhere in private industry or any other place or in government itself, in order to carry this out? Because this is a very important task.

Mr. DONOVAN. It is. And Congressman, as you know, there can be tensions in the steps that we take to protect Americans, whether it is on cybersecurity or in other areas, and authorities that may—law enforcement agencies may wish to pursue with our efforts to balance that with protection of privacy for American citizens, for our companies, and otherwise. And so this is an area where we are constantly looking at and making sure that—and this is one of the reasons why OMB's role is so important as we sort of—our classic role is to have oversight and sort of to balance the industry—the interests of agencies across the Federal Government. This is an



area where we do have to sort of work through the potential conflicts that there may be between security and privacy at times.

Mr. SERRANO. Let me ask you a question that may not affect you at all, but maybe you could give the committee a sense of where this is going to play out or how it is going to play out.

For over 50 years we have had this policy on Cuba which seems to be thawing now, and I certainly have been on the side of ending it totally. One of the issues that doesn't get any attention is the fact that for over 50 years people have been dancing in this country and singing songs, and other artwork has been looked at that has been put together in Cuba years ago, and not a penny because of the relationship in royalties, went to any Cuban artists or their estate or their relatives or whatever. Is that something government will be involved eventually if somebody lays a claim to that? Or is that the, you know, ASCAP and the Association of Songwriters and Composers? Because every time you hear Mambo Kings or whatever, watch it on TV, no one got a penny in Cuba for that money—or for that music.

Mr. DONOVAN. You know, it is a fascinating question. I am a big fan of the Buena Vista Social Club and a range of other sort of re-discovery of Cuban music. But the truth is I honestly don't have a clear answer on that. What I would love to do is get back to you.

More generally, I can say that a lot of our efforts on trade, for example, are focused on trying to make sure that there are enforceable protections for our intellectual property in other countries. And so I would definitely imagine that this will be a focus of our negotiations and discussions going forward, but I can't tell you specifically the effect on music. And I would be happy to ask my staff to follow up and figure it out and get back to you.

Mr. SERRANO. Sure. And the part I would like to know is really will government play a role—will our government play a role at all or will this be left over to the, you know, to the music associations and so on—because we are talking about a lot of money.

Mr. DONOVAN. Yep.

Mr. SERRANO. A lot of money going into the Cuban economy, if you will. Anything new that you can tell me on that note?

Mr. DONOVAN. March 23 Danny Marti will be starting as our intellectual property enforcement coordinator.

Mr. SERRANO. That is great.

Mr. DONOVAN. Exciting news for us.

Mr. SERRANO. That is great.

Let me just ask you a question. On OMB's retrospective regulatory review of look-backs has created a savings of more than \$20 billion and calculated net benefits of \$200 billion. Tell us more about this work, because this is an area where there are large numbers, and it seems like a small question, but the numbers indicate that it is a more important question than we would think.

Mr. DONOVAN. Well, early on in the administration the President asked OMB, and specifically our Office of Information and Regulatory Affairs, OIRA, to work with agencies to take outdated or ineffective regulations, either take them off the books or change them so that we could save money for American consumers or businesses, State and local governments, and improve the way regulation works. And what we have seen out of that is about 500 dif-

ferent completed initiatives from agencies that, as you said, in the short run saves about \$20 billion and over the longer run substantially more than that.

Since I started last summer, we have redoubled our efforts on that. We have engaged with all the agencies across the Federal Government. We have also gone out to stakeholders and asked them the places where they think we could make the most progress on this regulatory look-back. And we are finding, whether it is things like improving the lives of truckers across the country by limiting their paperwork and the way that they have to report, to a range of other areas that in individual terms may not be huge things that will end up on the front page of newspapers, but when you look at them all together, they are having a real impact on the everyday lives of Americans.

And I think this is something the President is very excited about, and we are going to—you will see more of this, literally, in the coming days. We will have more reports out from agencies on the next stage in this regulatory look-back to improve the way we regulate.

Mr. SERRANO. That is great.

So Chairman, let me end by making more of a statement than a question, although I want you to keep it in mind, Mr. Director.

But going back to Cuba again, another issue that is really important, in my understanding, and I have no documented proof, is that when we broke relations over 50 years ago, there were a couple hundred if not over 1,000 Cubans who went daily to work at Guantanamo base, and then they would come back into the other Cuba, if you will. Most of those people, or a lot of them, might be dead. Some may be alive. Some spouses may be alive. Something tells me these were Federal workers. Obviously, they worked for us. Something tells me not a penny of pension was ever paid, you know, and this is again another issue that as we begin to thaw out this relationship, so that we may have to pay attention to all of these things because there are a lot of dollars that was supposed to be in Cuba that are not there now. And I know a lot of people will oppose that, saying: Oh, no, no. Not a penny, but, you know, why do I suspect that not a single person got a pension from the Federal Government after we broke relations? Keep that in mind.

Thank you.

Mr. CRENSHAW. I think there is a lot of unanswered questions about that whole issue, including the claims that a lot of folks have against the Government of Cuba.

Mr. SERRANO. Exactly.

Mr. CRENSHAW. So that will all, I am sure, get washed out.

Mr. WOMACK, do you have any other questions?

Mr. WOMACK. Just a couple of final things.

First of all, Director, thank you again for your testimony today.

I want to talk about the do-not-pay portal for just a moment, designed to reduce and eliminate improper payments—I think it is a great idea. Frankly, I am a little surprised that more people are not talking about it. I know it is low-hanging fruit, but I think it is a step in the right direction for the office.

Regarding do not pay, I understand that it has not received guidance on contracting with third party private-sector businesses. Is there a reason that is taking so long?

Mr. DONOVAN. To be honest, I am not—I can't answer that question directly. I would be happy to work with my team and—

Mr. WOMACK. I would like to have—

Mr. DONOVAN [continuing]. Get back to you, yep.

[The information follows:]

As a matter of copyright law, foreign songwriters whose music is played on over-the-air broadcasts in the United States, for example, are generally entitled to be paid for those performances. These payments may be collected by collective management organizations (CMOs) in the U.S., and with respect to foreign rights holders, those funds may be distributed via reciprocal arrangements with a foreign-based collective management society. We understand that there is at least one such group in Cuba. As a result of the present day embargo on Cuba, however, it is our understanding that U.S.-based CMOs may not be able to enter into reciprocal agreements with their Cuban counter-part(s), and vice-versa, and as a result, rights holders in both countries may face certain difficulties in effective licensing and royalty collection at the present time. As our relationship with Cuba evolves, and trade normalizes over time, we will need to review how the systems work and how best to support reciprocal arrangements for the effective licensing of music between the U.S. and Cuba.

Mr. WOMACK. I would like to have that. And then finally, early in your testimony when discussing sequestration, and we all have our opinions about sequestration, but you made a comment that just kind of sticks with me. You said, and if I didn't understand this right please correct me, but you talked about how from a personnel standpoint the office became much more efficient, that you learned to practice some kind of efficiency. That is kind of what stuck in my head. And I assume that was regarding Federal agencies across the spectrum, or maybe it was just confined to OMB, I don't know.

But if that is true, then how can we be so against a concept like the Budget Control Act that was designed to account for the raising of the debt ceiling and to cut dollar for dollar certain types of Federal spending? Why did it take sequestration to force the Federal Government to practice efficiency? As you know, I am an ex-mayor, and every day that I went to work as mayor I looked for ways to force the people that worked within the city's infrastructure, that I had jurisdiction over, to find a way to do the things that we were supposed to do and get the very best value for it.

Now, I know the Federal Government is a much bigger entity than the city of Rogers, Arkansas, but why did it take sequestration to force the Federal Government to practice efficiency?

Mr. DONOVAN. Well, I guess if I either said that or implied it through my comments, then it wasn't what I intended, because I think my view would be that the opposite is true, that the problem with sequestration was that—

Mr. WOMACK. Well, you said that you learned through the sequester, that first year of sequestration, before Ryan-Murray, that you learned—the Federal Government learned to be more efficient from a personnel standpoint.

Mr. DONOVAN. I think over a number of years we have found places within OMB to be able to make adjustments and to be more efficient in certain areas. We have other areas where we have grown and we actually need to grow because we have greater re-

sponsibilities. I think the problem with sequestration is that it was these kind of mindless across-the-board cuts as opposed to smarter cuts.

In really picking areas to focus on, that we should be growing, and other areas that we should be shrinking, and so the effects that we saw directly from sequestration really were to cut things that made sense to cut and cut things that didn't make sense to cut, and in fact, more of the latter rather than the former. And so I think the impacts that we saw—and I can certainly talk about it from the HUD point of view was, you know, veterans ending up back on the streets even though we knew that was going to cost us more money in the long run and a range of other things that really were both—had bad human consequences but also bad fiscal consequences.

I think the right way to make cuts is to do it in a measured, thoughtful way that really, you know, takes out of the system inefficiencies. But the problem with sequestration is that it was not that kind of approach. It was kind of this across-the-board approach that really did hurt the government's ability to function effectively.

Mr. WOMACK. Well, to that, we will agree. I am a big believer that the sequestration is a mindless approach, a lazy man's way to effect some kind of budgeting outcome when it should be a much more targeted, much more thoughtful, much more tactical approach to cutting spending.

But I will say this at the risk of sounding like a broken record—I continue to say it over and over again—if we think that we are going to—if our goal is to convince the American public that we are going to achieve some kind of fiscal sanity, if you will, only on the discretionary side of the budget, the public is going to be terribly misled, we will woefully disappoint them, because it simply is not going to happen under the construct that we have today.

And with that, Mr. Chairman—

Mr. DONOVAN. We can agree on that as well.

Mr. WOMACK. And I thank the director again for his testimony here today.

Mr. DONOVAN. Thank you.

Mr. CRENSHAW. Thank you. And Mr. Serrano, I think, has no further questions. I don't have any further questions.

So we want to thank you for taking the time to be here. Thank you for your testimony. And you have got a big job, and we wish you the best as we go through this appropriation season and the budgeting season, and again thank you for your service.

This meeting is adjourned.

## **Chairman Crenshaw**

**Senator Boozman and I wrote you a letter recently regarding the DOL proposal on changing the definition of fiduciary duty.**

**Question: Can you tell us if the OIRA staff or anyone from the OMB has met with the White House, NEC, or the Department of Labor prior to the re-proposal being submitted? If so, what was the nature of the meeting(s)?**

OIRA is responsible for implementing Executive Orders 12866 and 13563, and thus is responsible for coordinating the interagency review of regulations. In that capacity, it is often helpful and/or necessary for OIRA to have conversations with the agencies across the Executive Branch, including EOP components, prior to review to facilitate a more efficient process.

## **Chairman Crenshaw**

**As you know, the DOL proposed amending the definition of fiduciary in 2010 and withdrew the proposal in 2011. After 4 years of drafting the re-proposal, the Department of Labor submitted to OMB their fiduciary duty definition this February.**

**Question: What assurances can you give us that OIRA will conduct a thorough review of the re-proposal?**

OIRA devotes the time and resources necessary to ensure its review is consistent with Executive Orders 12866 and 13563. Executive Order 12866 gives OIRA up to 90 days to review agency regulations, though the agency can request an extension. However, the amount of review time needed on any given rule can vary, and OIRA endeavors to complete reviews in fewer than 90 days, when feasible.

## **Chairman Crenshaw**

**Studies have shown that the OMB review of DOL proposed rules averages 117 days. Given the complexity and potential impact of an amendment to the definition of fiduciary under ERISA, one would think the time to review the rule would be greater than the average rule.**

**Question: Do you think the review on the current DOL proposal will take significantly longer than the average DOL rule?**

Executive Order 12866 gives OIRA up to 90 days to review agency regulations, though extensions can be granted. However, the amount of review time needed on any given rule can vary, and OIRA endeavors to complete reviews in less than 90 days, when feasible.

## **Chairman Crenshaw**

**Question: What opportunity will OMB provide for the public to participate in a meaningful way and provide input on the Department of Labor proposal?**

Under Executive Order 12866, members of the public can request meetings with OIRA on actions under review, and many stakeholders have availed themselves of this opportunity during the current review of the re-proposal. Since OIRA will review the DOL proposal before and after the comment period during the full rulemaking process, the public will have two opportunities to request meetings with OIRA. In addition, consistent with the Administrative Procedure Act, DOL will publish its proposal in the *Federal Register* for public comment.



## **Chairman Crenshaw**

**Question: What do you believe is the appropriate amount of time needed for the public to review the proposal?**

Executive Order 13563 directs the agency to afford a meaningful opportunity for public comments, with a comment period that should generally be at least 60 days.

## **Chairman Crenshaw**

**Question: Please provide a table of the actual cost of the fiscal year 2015 pay raise for civilian employees for each Cabinet level agency for fiscal year 2015.**

**Chairman Crenshaw**

**Question: Please provide a table of the estimated cost of the fiscal year 2016 pay raise for civilian employees for each Cabinet level agency for fiscal year 2016.**

## **Rep. Amodei**

**Last year, the Interior Secretary Sally Jewell announced Secretarial Order 3336 to protect the sagebrush-steppe ecosystem in the Great Basin area from wild-land fire and invasive species. Included in SO 3336, the Task Force is required to provide the Secretary two reports that outline actions that can be accomplished prior to the onset of the 2015 Western fire season, actions that can be accomplished prior to the onset of the 2016 Western fire season, and actions that will require a longer period for implementation. Such actions include establishing protocols for monitoring the effectiveness of fuels management, post-fire, and long-term restoration treatments and a strategy for adaptive management to modify management practices or improve land treatments when necessary.**

**Question: Is OMB prioritizing funding requested by DOI Secretary Jewell to execute Secretarial Order 3336 this fiscal year?**

OMB continues to support execution of the Department of the Interior's (DOI) Sagebrush Steppe conservation and rangeland fire efforts, including Secretarial Order 3336, through the annual budget process. Ongoing implementation of Secretarial Order 3336 should enable DOI to work with partners and efficiently target existing resources where they will have the most impact. The President's 2016 Budget also includes key investments to support the Federal land management agencies, Federal partnerships with the States, and private landowners engaged in conservation. Rangeland fire is one component of a larger fire challenge that affects peoples' safety and livelihoods, as well as wildlife and other important resources across the West. In addition to \$30 million requested for DOI's Wildland Fire Landscape Resilience program, the 2016 Budget supports a bipartisan proposal already introduced in the House and Senate to provide stable fire suppression funding while minimizing adverse impacts to other programs, allowing the Federal government to fund wildfires similar to how we fund response to other natural disasters.

## **Rep. Amodei**

**Question: Is OMB directing the Department of Interior to prioritize addressing the threats to greater sage grouse habitat on federal lands?**

The Department of the Interior (DOI), Department of Agriculture (USDA), western States, and local partners have undertaken a major collaborative effort to conserve the Sagebrush Steppe ecosystem. The President's 2016 Budget includes key investments in DOI and USDA programs to advance these efforts and protect our working lands, which support significant economic activity and benefit more than 350 species, including the greater sage grouse. These investments include \$78 million for sagebrush habitat conservation at DOI, \$30 million for DOI's Wildland Fire Landscape Resilience program, a proposal to establish a new funding framework for wildland fire suppression, and continued support for the unprecedented investment by USDA's Natural Resources Conservation Service in voluntary conservation through the Sage Grouse Initiative.

## Rep. Amodei

**As you know, many different agencies use the statistical area formula created by OMB called the Metropolitan Statistical Area (MSA) to determine various programmatic funding and administrative policy.**

**Question: In OMB's calculation of metropolitan statistical areas, please provide the calculation and factors for determining population density. Is the number of tourists or visitors factored into the consideration of population density? If not, how would the population density differ if visitors and tourists were accounted for?**

The Office of Management and Budget's (OMB) metropolitan-micropolitan standards[1] does not directly take into account measures of population density. The statistical areas comprise whole counties or groups of whole counties, and there are no population density requirements for either the component counties or the entire areas. The presence of urban areas, as delineated by the U.S. Census Bureau, is used to identify central counties of metropolitan and micropolitan statistical areas.

The Census Bureau does use residential population density in identifying the underlying urban areas. These core urban areas are delineated by grouping together census tracts and blocks that meet a minimum population density of 500 people per square mile. However, the Census Bureau does not collect or have available to it systematically collected, geographically detailed information on numbers of tourists or visitors in an area, so they are not factored into the delineations of urban areas. Without these detailed tourist and visitor data and standards for incorporating them, it is not possible to assess their effect on the delineations of urban areas or subsequently on metropolitan and micropolitan statistical areas.

OMB clearly states in its standards and bulletins that it delineates metropolitan and micropolitan statistical areas for statistical purposes only. For example, OMB's current (2010) "Standards for Delineating Metropolitan and Micropolitan Statistical Areas" note that "in reviewing and revising these areas, OMB does not take into account or attempt to anticipate any public or private sector nonstatistical uses that may be made of the delineations." OMB further cautions agencies about using these statistical areas for programmatic purposes, and states that it is the agency's responsibility to ensure that these delineations are appropriate for their intended use.

[1] Available at: [www.whitehouse.gov/omb/inforeg\\_statpolicy/](http://www.whitehouse.gov/omb/inforeg_statpolicy/)

## Rep. Herrera Beutler

Director Donovan, as part of the National Defense Authorization Act passed in December of last year Congress enacted the REFI Pacific Act. According to CBO the legislation was fully offset, meaning in order to implement the law no new appropriations are required. However, it appears OMB and NOAA have decided to ignore the law and demand an additional \$10.3 million to refinance a loan worth roughly \$26.5 million. Considering refinancing the loan actually increases the likelihood of NOAA recovering the full amount of the loan plus interest your math is concerning to say the least.

These fishermen face high regulatory costs that threaten to drive them out of business while the fish they have sacrificed to protect are finally coming back. In addition to regulatory costs, fishermen pay the federal government another 5 percent off the top every single time they land their catch. The REFI act was enacted to address this issue, yet implementation is stalled because your agency is essentially holding these people hostage. Congress and the President approved this bill. It is now the Administration's job to carry it out.

**Question:** Please explain to the Committee how this astronomical number has come about, and how OMB is working with NOAA to ensure the law is properly enacted.

We support the work this fishery has done to become sustainable and recognize the importance of refinancing this loan and lowering the payments for these fishermen. We also share your concern about ensuring the law is appropriately implemented; however, we are responsible for executing the provisions enacted in the National Defense Authorization Act (NDAA) in compliance with all applicable Federal laws. Notably, that includes the Federal Credit Reform Act (FCRA).

The Administration found that the provision only *authorized* the appropriation of the modification and subsidy cost of the new loan. It did not provide the funding necessary to modify the existing loan terms, the subsidy cost of issuing a new loan, or the necessary appropriations language to satisfy FCRA requirements. Therefore, in order to follow through on this important authorization, the President's 2016 Budget included \$10.3 million for the modification and subsidy cost of refinancing the loan, along with the additional appropriations language needed to execute the authorized refinancing. The Budget request will cover the full cost of the refinancing, including:

- **Modification cost.** FCRA requires that any government actions that directly or indirectly increase the net cost to the government be paid for with budget authority in advance. In this case the payoff of the current loan results in a net loss of approximately \$10 million in payments. The outstanding balance of this loan is approximately \$28.4 million, with an interest rate of just under 7 percent, and a 30 year term. Payments under the new loan would fall from roughly \$2 million per year on the existing loan to about \$1 million.
- **Subsidy cost.** FCRA also requires an express appropriation of subsidy costs and loan limitation in an appropriations act. NOAA is still finalizing the cost estimate, and is currently using a placeholder estimate of \$300,000.

We are open to working with you and the Congress on alternate ways to secure the funding and language needed. As you know, because of rulemaking and referendum timing, the earliest this refinancing could occur is December 2015. Securing the necessary authority and appropriation now versus at the beginning of FY 2016 has a negligible impact on when payment relief is provided to the fishermen.



## **Rep. Quigley**

Thousands of constituents in my district are negatively affected by airplane noise at the O'Hare International Airport one of the world's busiest airports. Last September, I and other Members from the O'Hare area sent a letter urging OMB to expedite the FAA's multi-year review of the 65 decibel DNL noise metric, which is used to measure noise impacts on people due to aviation activities. Airplane traffic has increased dramatically since the metric was first used in 1976. I believe this metric is outdated and disconnected from the real impact that air traffic noise is having on my constituents. The FAA has been reviewing whether changes to the metric are warranted for several years, but telling my constituents that the FAA's noise metric study is not near completion after five years offers them cold comfort when jet noise is blanketing their communities.

**Question: Can please update us on the status of this study?**

We are aware of the delay in reviewing this information collection request. Since the hearing, we have been working with the FAA to expedite the review and have made this a priority. We continue to actively review the request and will bring this review to conclusion as quickly as possible.

## Rep. Quigley

**I have been pushing transparency standards since my first day here in Congress. The Office of Information and Regulatory Affairs (OIRA's) is currently required by executive order to report meetings with lobbyists regarding changes in agency-proposed rules. However, multiple GAO reports and testimony by GAO have found OIRA's disclosures to not quite be up to par.**

**Question: Can you tell me how OIRA is working towards complying with the executive order and if you know if they are implementing any of the 11 recommendation GAO has made?**

OMB and OIRA takes seriously its responsibility to provide transparency in the regulatory review process. In accordance with Executive Order 12866, OIRA docket all meetings about rules under review. Records of those meetings, including a list of meeting participants and the written materials shared with OMB at the meetings, are available on its website, [reginfo.gov](http://reginfo.gov).<sup>[1]</sup> With regard to the disclosure of meetings with outside parties, we feel we largely have implemented GAO's recommendations. And, in light of recent reports, we are striving to ensure that meeting records are updated in a timely manner. In addition, OIRA continues to explore additional improvements to bring enhanced transparency to the regulatory review process.

[1] Information available at: [www.reginfo.gov](http://www.reginfo.gov) and, specifically, at the following link: [www.reginfo.gov/public/do/eom12866Search](http://www.reginfo.gov/public/do/eom12866Search).

## Rep. Quigley

**I have a bill that focuses on various aspects of government transparency- the Transparency in Government Act which I recently reintroduced. One section of this legislation is focused on centralizing departmental budget requests. Right now, you require that agencies post their budget requests and justifications to their own websites within two weeks of submission. OMB has lots of data on a central website right now, and I can tell you have made great strides to make all of this accessible.**

**Budget summaries and numbers are available in a central location, but budget justifications, the critical "why we need this money" portion of budgets, is still scattered across hundreds of government websites. These justifications are often not available in any sort of "searchable, sortable" format. Many are in formats such as .pdf that are hard for third parties to easily pull data and information from.**

**I think it is important that we have a central repository that places all agency budgets, and their justifications in "searchable, sortable, and machine readable" format.**

**Question: Can you tell me a little bit about your efforts to get all of this data in one place, in one accessible, usable format?**

As you noted, OMB makes a significant amount of budget data available on a central website ([www.omb.gov](http://www.omb.gov)). This year, we took additional steps to make the President's Budget more broadly available to the public. Specifically, we released all of the data included in the President's Fiscal Year 2016 Budget in a machine-readable format on GitHub, an online collaborative data repository. We also made the main Budget volume available on Medium, a publishing platform that makes the Budget more easily read and shared on a phone or tablet.

OMB requires agencies to make their congressional budget justification materials available online to the public no later than two weeks after transmittal of those materials to the Congress. Through the Budget Formulation and Execution Line of Business (BFELoB), OMB also works with agencies to develop automated tools that could help facilitate collecting and publishing congressional budget justifications and other budget materials. These BFELoB tools may be able to help agencies produce budget requests and justification materials in a more searchable and sortable format. We will convey your concerns to agencies and explore possible solutions.

## Rep. Quigley

**Last year in testimony before this Subcommittee, GSA was not able to state that GSA had an up to date, accurate inventory for all Federal Real Property owned by the Federal Government. Since then, in February 2015, GAO updated its "High-Risk" Series and for the 6th consecutive Congress, "Federal Real Property Management" was again on the list. Along with GSA, OMB plays a key role in the management of Federal Real Property and has been tasked with improving data reliability.**

**Question: Does OMB have an up to date, accurate inventory for all Federal Real Property owned by the Federal Government?**

The General Services Administration's (GSA) Federal Real Property Profile (FRPP) database provides an accurate inventory of Federal real property owned and leased by the Government. GSA and the Office of Management and Budget (OMB) are continually working to improve the data attributes associated with the inventory (e.g., asset size, operation and maintenance cost, etc.). We have made significant strides within the last year alone.

OMB has worked with GSA and the Federal Real Property Council to transform the FRPP into a decision management tool. This will incentivize agencies to improve data quality because the FRPP data now directly support their decision-making capability. For example, the new tools will provide detailed data on properties' annual cost, location, size, and lease expiration, among other data elements, in a structured format that fully supports the ability of agency management teams to identify efficiency opportunities and to implement data driven decision-making. When fully implemented in the fourth quarter of FY2015, the system will provide agencies with greater management capability and insight into the efficiency and cost opportunities their portfolios present over the next five years.

## **Rep. Serrano**

### **Question: What are you doing to ensure that government-wide implementation of the Federal IT Acquisition Reform Act CIO authorities is successful?**

The CIO authorities included in FITARA open the door to significant improvements in how agencies manage information technology (IT) resources. As you know, the law builds on prior laws and OMB initiatives (M-11-29: "*CIO Authorities*") which emphasize the importance of having a department CIO who is accountable for the full range of IT resource decisions across their agency. The Office of Management and Budget (OMB) is currently working on a Government-wide implementation and expects to provide guidance to agencies this spring.

Ongoing follow-up with agencies during and after implementation is critical to achieving the objectives of FITARA. As a part of OMB's approach, agencies will provide specific plans which identify the changes they will make to their processes and provide evidence that the requirements are fully implemented. OMB will incorporate follow-up on these plans into regular oversight processes, such as PortfolioStat.

OMB Staff are available to provide an update to this Committee at an agreeable time.

## **Rep. Serrano**

**The federal government's core budgeting system (MAX) is more than 20 years old and lacks the capabilities of more modern information systems.**

**Question: Where are you in modernizing this system and what work do you have planned for in FY 16?**

OMB continues to make incremental progress in modernizing the most outdated components of the MAX A-11 budget system within tight funding constraints.

In FY 2015, we completed a 7-year project to replace the 20+ year old A-11 desktop client applications with new web-based versions. These new web-based applications allow OMB to quickly disseminate software updates to fix problems or accommodate new policy requirements, and avoid a growing problem where agency security policies prevented installation of the desktop software. These web-based applications also made it easier for us to implement new features, including context-sensitive help functions and budget workflow tracking.

OMB has also focused on improving the security of MAX A-11 by implementing Government and industry best practices to protect against cyber threats. MAX is fully accredited at the appropriate FISMA level, and, further, has passed several independent threat assessment tests. We are currently in the process of implementing continuous monitoring to guard against risks.

In FY 2016, our top priority is to address residual performance issues with the A-11 web-based client that became apparent during the Government-wide rollout of these applications. Depending on available resources, we would also make incremental improvements to the web-based application based on user feedback; begin a multi-year project to replace the 20+ year old legacy back-end (i.e., server-based) components of MAX, which are written in outdated, unsustainable programming languages; and extend context-sensitive help and budget workflow tracking.

## **Rep. Womack**

**Director Donovan, I think the efforts that OMB has facilitated, specifically through the Do Not Pay Portal, to reduce and eliminate improper payments is fantastic. This is the proverbial low-hanging fruit, and frankly, it surprises me that more people aren't talking about this.**

**One question I have for you today centers around contracting for this data analysis. I understand that the Do Not Pay Portal has not received guidance on contracting with third-party, private sector businesses on this.**

**Question: Is there a reason that it is taking so long?**

On May 31, 2013, OMB submitted to the Congress a Do Not Pay (DNP) Database Integration Plan. The Plan focused on supporting the development of the initial Treasury DNP working system by providing guidance on agency access to the DNP Initiative; improving data use agreements to facilitate data access for the purposes of program integrity; and including other databases in the DNP Initiative. In addition, on August 16, 2013, OMB issued Memorandum M-13-20, on Protecting Privacy while Reducing Improper Payments with the DNP Initiative. The M-13-20 guidance included standards for the use of or access to commercial databases.

Notwithstanding the efforts of Treasury's DNP Initiative, OMB has been focused on enhancing the quality of the data it makes available to agencies in order to reduce the number of false matches and provide more conclusive results. Our analysis consistently indicates Federal agencies need more complete access to Federal databases.

To address this need, the President's FY 2016 Budget builds on Congressional and Administration action to reduce improper payments including improving payment accuracy by further sharing available death data across Government agencies to prevent improper payments. The Budget proposal would provide the DNP system at Treasury access to the Social Security Administration's full death data, including data from States, to prevent, identify, or recover improper payments and expands the use of the DNP system to States, to improve the integrity of Federal benefit programs administered by the States. In addition, we will continue to look for additional data sources for the DNP system from Government or private sector sources.

## **Rep. Womack**

**Question: Do you see this as a way to help the federal government make advances in eliminating and reducing improper payments?**

OMB views leveraging private sector experiences and best practices as a way to help the Federal Government make advances in eliminating and reducing improper payments. As a recent example, on May 9, 2014, the President signed the Digital Accountability and Transparency Act (DATA Act) into law. The DATA Act authorized the transfer to Treasury of all assets identified by the Secretary of the Treasury that support the operations and activities of the Recovery Operations Center (ROC) of the Recovery Accountability and Transparency Board relating to the detection of waste, fraud, and abuse. OMB is currently working with Treasury to take the lessons learned from standing up the ROC, which include private sector practices, and use them to strengthen our work in improving the DNP Initiative. Using the lessons and tools from the ROC, we look forward to developing more robust data analysis capabilities that offer agencies real time insight to prevent fraud and abuse.



TUESDAY, MARCH 17, 2015.

**GENERAL SERVICES ADMINISTRATION**

**WITNESS**

**DENISE TURNER ROTH, ACTING ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION**

Mr. CRENSHAW. Well, this meeting will come to order. I want to welcome everyone. And just to let you-all know, this is a busy time for the appropriators. I just came from a Defense Appropriation Subcommittee hearing, which is still going on, and I imagine a lot of the members on both sides of the aisle are in the middle of other meetings, so they may be coming and going during our time together, but we will see.

But I want to wish everybody a happy St. Patrick's Day. I think everybody is somewhat blinded by the green tie that my ranking member is wearing.

Mr. SERRANO. O'Serrano.

Mr. CRENSHAW. O'Serrano. Welcome everyone. I want to welcome Acting Administrator Roth to the hearing today. You have been on the job now for a little less than a month?

Ms. ROTH. Yes, yes.

Mr. CRENSHAW. But who is counting? We are happy to have you before the subcommittee today.

Ms. ROTH. Thank you, sir.

Mr. CRENSHAW. The General Services Administration is often referred to as the Federal Government's landlord, but the GSA's mission goes well beyond providing office space and managing property. Agencies across the Federal Government rely on GSA to assist in their procurement and their acquisition needs. They depend on the GSA to deliver effective and economical technological solutions, and in a time of shrinking budgets and scarce resources, we think your role is all the more important, and we on the committee expect you to be a leader in finding savings and driving efficiencies in your own budget.

The subcommittee has pressed the GSA to make better use of its existing portfolio of buildings and shrink the Federal footprint through a reduction into GSA's inventory of leased and owned land. Now, you know, in the last several years, we have seen a reduction in staffing across the Federal Government, so it follows that we should see a reduction in space requirement. The 2015 omnibus provided you with \$70 million for space consolidation activities, and I look forward to hearing from you today on how you intend to use the funding to shrink the GSA building inventory, particularly in regard to the many vacant and underused buildings in your portfolio.

Now, your 2016 request has an increase of 1.13 billion over fiscal year 2015 in the Federal buildings fund, and that is \$560 million more than the rental payments that you receive. I understand you want to provide a level of service that your customers are paying for, but a 12 percent increase to construct new buildings and perform maintenance may be a little bit unrealistic in these difficult fiscal times. We have a responsibility to the American taxpayer to be judicious, and deliberate, and that is their tax dollars, and so we want to make sure that you only budget for the highest priority projects and not merely match your budget with the level of rent that you collect.

Remember, the Federal Government is your customer, but your investor is the U.S. taxpayer, and your job is to be as good a steward of the taxpayer dollars as you can. This is the first time in many years that GSA has submitted a 5-year capital investment plan, and I think that is an important step forward in managing the portfolio in a more prudent and productive way. That will provide more transparency to stakeholders and taxpayers, and I am curious to learn about what additional benefit you believe is derived from requesting an advance appropriations of nearly \$10 billion for fiscal year 2017.

So once again, welcome to you, Acting Administrator Roth, appreciate your service, and look forward to your testimony. So now I would like to recognize the man in the green tie, Mr. Serrano for any opening statement he might like to make.

Mr. SERRANO. My tweak this morning, Mr. Chairman, was that growing up in New York, I learned one thing, that on this day, we are all Irish. So that is a big party down there as you know and everywhere else.

Thank you, Mr. Chairman. I would like to join you in welcoming the Acting Administrator of the General Services Administration, Denise Turner Roth, before our subcommittee. With the recent departure of GSA Administrator Dan Tangherlini, the GSA is entering a time of transition, and Ms. Roth is leading the way.

The GSA has undergone significant change in the past few years. Some in response to scandal, and some in response to the changing needs of the Federal Government. The budget request for the General Services Administration in fiscal year 2016 attempts to continue these changes while providing some much-needed investment in federally-owned facilities around the Nation. This year, GSA proposes significant new construction and repairs and alterations, including several significant repair projects in my hometown of New York. However, this new construction pales in comparison to the amount spent on the rental of space by the Federal Government. As many of you know, I have concerns about our efforts to ensure a better balance between leased and owned properties, so I hope to discuss this with you further today.

However, GSA is not just asking for appropriations for this fiscal year. The request also asks for significant advance appropriations which this committee has found problematic in other areas in the past. Given the current climate here, I think it will be difficult to fulfill that request. I would also be interested in discussing with you the ongoing problems that the Puerto Rico Federal Courthouse project in San Juan has been experiencing with their renovation

project. I know that there have been efforts to get the project back on line in terms of the timeframe and cost, but I remain troubled that this project has gotten so off track.

Lastly, I would be remiss if I did not mention the specter of sequestration that is once again looming over us. GSA was badly hurt by sequestration last time, with significant construction and repair projects left languishing. This in turn hurt private sector job growth since many companies that otherwise would have contracted with the Federal Government were unable to do so.

I hope that we can find a sequester solution that avoids these harsh problems and continues our economic growth. As I said last year, GSA is the Federal Government's landlord, architect, facilities manager, procurer, and supplier. In all of these diverse roles, GSA plays a critical role in ensuring government efficiency and effectiveness. I look forward to discussing how your fiscal 2016 budget accomplishes these goals, and I know you have all our answers gathered in this last month.

Ms. ROTH. Yes. Thank you.

Mr. SERRANO. Thank you. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you. And so Acting General Services Administrator Roth—

Ms. ROTH. Yes.

Mr. CRENSHAW [continuing]. We look forward to hearing your testimony. If you could keep it in the range of 5 minutes. Your full testimony will be submitted for the record, but the floor is yours. Welcome.

Ms. ROTH. Thank you, sir. I appreciate being here. Good morning, Chairman Crenshaw, Ranking Member Serrano, and members of the committee. My name is Denise Turner Roth, and I am honored to be here today serving as the Acting Administrator of the U.S. General Services Administration. Over the past year, I helped implement many of the changes and reforms. We have refocused GSA on its core mission. We remain committed to delivering the best value in real estate, acquisition, and technology services to the government and the American people.

In participation with you, I will remain dedicated to building on the progress GSA has made. While we are proud of our progress, GSA still faces significant challenges. For the past 5 fiscal years, the vital link between the rent GSA collects and the amount GSA can reinvest into our assets has been broken. To properly maintain the Nation's public buildings and to make critical infrastructure investments, we need to restore this balance.

Today I would like to highlight GSA's efforts to provide greater transparency, efficiency, and savings through the commonsense investments proposed in GSA's fiscal year 2016 budget request. We have developed a long-term plan for investment that outlines priorities for renovations and new construction, including courthouses and land ports of entry. These projects are spread across the Nation covering 32 states from Florida to Alaska. However, executing this plan is not possible without stable funding. GSA's fiscal year 2016 request allows us to start delivering on this long-term capital plan.

In addition, we have a request for advanced funding of the Federal Buildings Fund for 2017. We are also requesting to invest

\$564 million from previous rent collections in support of our infrastructure priorities. In fiscal year 2016, GSA is particularly focused on upkeep and renovations in our existing inventory. Unfortunately, GSA's major repair and alterations accounts have also suffered from significant cuts over the past 5 fiscal years. As a result, the backlog of repairs needed continues to grow while the cost and urgency of these repairs continue to increase.

GSA is also requesting funds to deliver critical new investments. For instance, GSA is requesting \$380 million as part of the enhanced plan for the DHS consolation at St. Elizabeth's. This funding will allow DHS to move out of costly leased space and into consolidated offices on the campus. GSA fiscal year 2016 and 2017 requests would allow us to meet DHS' mission, needs, and stay on track to complete the facility. This budget also requests more than \$250 million for our appropriated accounts, as well as \$13 million to begin preparing for the next presidential transition.

While GSA seeks to make the investments vital to America's future, we also continue to focus on executing reforms to improve oversight, streamline administrative functions, strengthen accountability, and enhance transparency within our agency. Our inspector general—in partnership with our inspector general, we will continue to maintain our vigilance and take whatever actions are necessary.

The men and women of GSA have made great progress in refocusing this agency on its important mission. The President's fiscal year 2016 budget request will allow GSA to continue our work and give our partners and the American people the services and support they need. I look forward to working with this committee to continue our progress.

Thank you for the opportunity to appear before you today, and I am happy to answer your questions.

[The information follows:]

STATEMENT OF  
DENISE TURNER ROTH  
ACTING ADMINISTRATOR FOR GENERAL SERVICES ADMINISTRATION  
BEFORE THE  
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES

March 17, 2015

Good morning Chairman Crenshaw, Ranking Member Serrano, and Members of the Committee. I am honored to be here today for the first time as the Acting Administrator of the U.S. General Services Administration (GSA).

GSA's mission is to deliver the best value in real estate, acquisition, and technology services to the government and the American people. This mission is essential to making government as effective, efficient, and responsive as possible. However, in trying to meet that mission for the nation's real estate, GSA is currently on an unsustainable course. For five fiscal years, the vital link between the rent GSA collects from agencies and reinvestment in the American people's assets has been broken. During this time, GSA has received significantly reduced funding, putting us on an unsustainable trajectory in trying to meet our solemn responsibility to properly maintain the nation's public buildings and to make the critical infrastructure investments that will support the American people.

The President's Fiscal Year 2016 request will put us back on course to meet that mission. First, the budget supports smart and dependable infrastructure investment through transparent, long-term capital planning. Second, it provides full funding of the Federal Buildings Fund (FBF) in FY 2016. Third, it proposes investing prior year rent collections to address urgent priority project needs. Lastly, it promotes consistency by providing advanced funding of the FBF in FY 2017.

Today, I would like to highlight GSA's efforts to provide greater transparency and certainty in proposed real estate investments; the common-sense investments proposed in GSA's FY 2016 request; our planned execution of the FY 2015 program; and GSA's continued progress in becoming more efficient internally as we execute our continued reforms.

### **Long-Term Capital Planning –**

Congress created GSA's Federal Buildings Fund in 1972 to provide a dedicated source of revenue for needed investments and enable GSA to execute its federal real estate mission using best practices found in the private sector that are "unavailable where funding uncertainties preclude the precision planning necessary to implement them."<sup>1</sup> We are working to improve our

---

<sup>1</sup> U.S. House of Representatives. Report to Accompany H.R. 10488, Public Buildings Amendments of 1972. 92<sup>nd</sup> Congress, 2<sup>nd</sup> session. Report 92-989. Washington, DC. 1972. Web. March 3, 2015.

planning and, as part of our FY 2016 budget request, have developed a coordinated long-term capital plan for investment that outlines the priorities for renovations and new construction, including Courthouses and Land Ports of Entry.

If we are able to execute on this plan, GSA will be able to invest in modern, secure land ports of entry that keep our country safe and promote economic growth; public buildings that lead the way in energy and water efficiency and drive down operating costs; courthouses that are secure and efficient; historic assets that are properly maintained; and a reduced federal footprint that provides significant long-term savings to taxpayers. This plan provides greater transparency to Congress and other stakeholders about the Administration's highest priorities and, if we are able to execute on it, gives communities more certainty on when they can see action on urgent and long-pending investment needs.

The dedicated resources of the FBF, as outlined in the long-term capital plan, would support:

- 1) Six new courthouses, reflecting urgent priorities identified by the Administrative Office of the U.S. Courts, that will administer justice more efficiently and with improved security;
- 2) 103 repair and alteration projects that will facilitate space consolidation, protect the health and safety of building occupants, improve federal service delivery, and save taxpayers money;
- 3) Nine mission-critical border station modernization projects that will improve the nation's security and make trade more efficient, promoting economic growth and creating jobs;
- 4) Four environmental cleanup projects that will reduce public health risks and improve and protect natural resources;
- 5) A critical new project to protect against cyber threats; and
- 6) Completion of the Enhanced Plan for the Consolidation of the Department of Homeland Security Headquarters at St. Elizabeths, which will save taxpayers \$4.2 billion in comparison to how DHS is currently housed.

These projects are spread across the nation, covering 32 states from Florida to Washington. Unfortunately, executing this plan is not possible without the capital planning certainty that Congress envisioned for the FBF.

#### **Fiscal Year 2016 Request –**

GSA's FY 2016 request allows us to start delivering on this long-term capital plan. We are again requesting full funding of the FBF, allowing GSA to invest the rent it collects from agencies back into our publicly owned buildings to meet the urgent needs of partner Federal agencies. Additionally, we are requesting to invest \$564 million from previous year rent collections in support of urgent priorities.

#### *Maintaining Our Assets –*

In FY 2016, GSA is particularly focused on basic upkeep and renovations of our existing inventory. Unfortunately, GSA's Major Repairs and Alterations (R&A) line item has borne a disproportionate share of cuts over the last five fiscal years. This makes little fiscal sense because the backlog of repair needs continues to grow while the costs, scope, and urgency of these repairs only increases over time. For instance, at the Goodfellow Federal Center in St. Louis, Missouri, we are working on basic utility upgrades that are needed to support the facility. We originally asked for \$37 million to complete this project and were not able to fund it. Now, in FY 2016, we are again asking for funding, but the project cost has increased to \$44 million.

Additionally, as projects are delayed and costs increase, the backlog of needs continues to grow across the country. This year, we have a number of new needs, including the Sixth Street Federal Building in Los Angeles, California. Here, we are proposing \$12.3 million to upgrade outdated building systems in the 59-year old facility and reconfigure the layout to bring in more partner agencies to the owned space. If we do not receive funding, GSA will simply have to come back again in a future fiscal year at greater expense to taxpayers, and with potentially bigger problems that need to be fixed.

Importantly, these are not lavish projects, but basic upkeep. As one example of the kind of upgrades we are hoping to make, in FY 2016, GSA is proposing to invest \$46.5 million to repair the Alexander Hamilton U.S. Customhouse in New York, New York. This project, split into two phases, will first remediate water infiltration at the historic facility to prevent future damage to the building. Following our long-term capital plan and if we receive advanced funding as requested, we would then invest \$27.2 million in FY 2017 to replace and upgrade the building exterior.

#### *Making Smart Investments –*

As we move in support of GSA's existing inventory, we are also looking to make the investments that will deliver better, more rational, and more efficient real estate in support of the American people.

No project better illustrates the value of these investments than our new, Enhanced Plan for the consolidation of the Department of Homeland Security at St. Elizabeths. DHS and GSA have worked together to cut construction costs by \$800 million, accelerate the delivery timeline by five years, and move an additional 3,000 employees to the campus, improving utilization and making it a fuller consolidation for DHS. Taken together, these changes make this project a hallmark of efficiency; this campus will set the standard not just for DHS, but for what is possible with other agencies. In total, once completed, taxpayers will save \$4.2 billion in costs compared to how DHS is currently housed.

GSA is requesting \$379.7 million in FY 2016 to complete much of the remaining adaptive reuse of historic buildings on the campus. Once renovated, GSA will be able to move DHS out of costly, scattered lease space from across the National Capital Region into these facilities. If GSA's FY 2016 and FY 2017 requests are fully funded, the project would be 78 percent

financially complete and we will be rounding the corner in delivering on this sorely needed investment.

Additionally, GSA continues to look for opportunities to meet the needs of the Judiciary by investing in their highest priority Courthouse projects. In FY 2016, GSA is requesting \$181.5 million to build Nashville, the Courts' top new construction priority. If provided full funding in FY 2016 and advanced funding in FY 2017, we also identify funding to meet the Court needs in Toledo, Ohio, currently the Courts' second-highest priority. While the amount of funding for Toledo could change depending on the Courts' annual prioritization process, GSA's funding levels, or other Administration priorities, GSA is looking to bring more certainty into funding for all of our partner agencies, including the Judiciary.

GSA also prioritizes investment along the border that will secure our nation and promote economic growth. GSA's FY 2016 request includes \$191.2 million in support of two major Land Port of Entry modernizations: Alexandria Bay, New York, and Columbus, New Mexico. Last year, over one million vehicles and 206,000 trucks passed through these two land ports accounting for over \$14 billion in commerce flow<sup>2</sup>. In Alexandria Bay, GSA proposes to invest \$105.6 million for the first phase of a two-phase project. This project will modernize this port in desperate need of upgrades, resolving gridlock issues at the border through expanded commercial and non-commercial lanes, as well as enhancing security through new inspection facilities that meet current requirements. This is the third fiscal year, since FY 2012, that GSA has requested funding for Alexandria Bay.

Finally, GSA continues to prioritize investments that result in long-term savings to taxpayers. With resources from FY 2014, GSA invested \$70 million in consolidation projects that will reduce the government's real estate footprint by 507,000 rentable square feet and save partner agencies \$17 million in annual rent costs, ensuring short-term paybacks. For instance, at 201 Varick Street in New York, New York, GSA made a \$5 million investment that allowed us to consolidate an agency out of leased space that costs \$7 million annually in rent payments. In FY 2016, GSA is requesting \$200 million in support of this program.

#### *Advanced Funding of the FBF –*

To better and more consistently fund these essential investments, the Budget Request also includes a critical new provision: advanced funding of the Federal Buildings Fund program for FY 2017. The budget requests \$9.95 billion, including \$5.67 billion for Rental of Space, \$2.36 billion for Building Operations, \$375 million for Basic Repairs, and \$1.54 billion for Construction, Major Repairs & Alterations, and Special Emphasis Programs. If funded, in FY 2017, GSA plans to pursue necessary repairs to federal buildings, undertake key upgrades at vital Land

---

<sup>2</sup> U.S. Department of Transportation, Bureau of Transportation Statistics, North American Transborder Freight Data; accessed at [http://transborder.bts.gov/programs/international/transborder/TBDR\\_QA.html](http://transborder.bts.gov/programs/international/transborder/TBDR_QA.html) on March 5, 2015.



Ports of Entry, and continue with phased construction of critical assets such as the DHS consolidation at St. Elizabeths. GSA's long-term capital plan outlines these capital priorities.

Advanced funding, in concert with a long-term capital plan, is consistent with the best practices around planning and execution within the private sector, as Congress initially envisioned when creating the Federal Buildings Fund. We hope that these efforts will result in more certainty in planning and funding so we can truly deliver the best value in real estate to the American people.

#### *Appropriated Accounts –*

This budget also requests more than \$250 million for our appropriated accounts, as well as \$13 million to begin preparing for the next Presidential transition. This funding supports activities that increase the efficiency and effectiveness of our partner agencies. The budget request includes \$62 million for the Office of Government-wide Policy to develop policies and tools to drive savings and effectiveness in a number of areas, including procurement and travel. The budget also provides \$61 million for our Operating Expenses account, which includes the Office of Real Property Utilization and Disposal, a critical resource for government agencies looking to reduce holding and operating costs by disposing of unneeded real estate. In addition, this request includes \$58 million for the Office of Citizen Services and Innovative Technologies (OCSIT). OCSIT is focused on facilitating easy access for citizens, businesses, and the media to information from the government through services such as cloud technology, USA.gov, and Data.gov. Additionally, OCSIT is delivering technology services to partner federal agencies in cutting-edge and more efficient ways. The presidential transition funding is of particular importance, as GSA looks to help ensure the successful transition of administrations in 2016 in accordance with the Pre-Election Presidential Transition Act of 2010.

#### **Execution of Fiscal Year 2015 Appropriations –**

Although GSA believes the FBF is on an unsustainable trajectory and we are looking at ways to bring greater certainty to our planning and funding in FY 2016, we are committed to investing the resources provided in the FY 2015 Consolidated Appropriations Act responsibly and expeditiously.

We have submitted our annual spend plans outlining the priorities we will be able to fund with the resources provided, and are working with our Authorizing Committees in the House and Senate to get approval of our capital projects.

Across these efforts, GSA retains our commitment to transparency and responsiveness. As a signal of this commitment, GSA is working to meet every reporting deadline in the FY 2015 Appropriations Act, and we will work to continue to meet reporting deadlines moving forward.

**Continued Reform –**

While GSA seeks to make the investments vital to America's future, we also continue to focus on executing reforms to improve oversight, strengthen accountability, and increase efficiency within our own agency. We will continue to maintain our vigilance in taking whatever actions are needed, in partnership with GSA's Inspector General, to make the agency as efficient and responsive as possible.

Through our consolidation of CxO functions, we continue to find efficiencies that help us drive down the cost of overhead across the organization. This consolidation of information technology, financial management, and human resources functions will allow us to save an estimated \$95.5 million (17 percent), \$29.2 million (21 percent), and \$11.5 million (12 percent), respectively, compared to FY 2013. Additionally, due to stringent spending controls, along with the planned transfer of almost 300 financial operations staff to the U.S. Department of Agriculture, we have reduced Full Time Equivalents (FTE) by 5.4 percent across the organization and have compiled a cumulative savings of \$143 million in travel expenses from FY 2012 levels. We will continue to seek out every opportunity to improve our efficiency as an organization, and to take any action that is needed to ensure we remain an accountable and responsive agency.

**Conclusion –**

GSA has made great progress over the last three years in restoring the reputation of our agency and in refocusing on our important mission of delivering the best value in real estate, acquisition, and technology services to government and the American people. The President's FY 2016 budget request will allow us to meet that mission effectively. I look forward to working in partnership with Congress to continue our progress.

Thank you for the opportunity to appear before you today. I am happy to answer any questions you have.

Denise Turner Roth is the Administrator for the U.S. General Services Administration. As Administrator, she is working to build on GSA's progress and continue this agency's efforts to deliver the best value in real estate, acquisition, and technology services to government and the American people.

Roth arrived at GSA in March 2014, when she assumed the role of Deputy Administrator. In this role, she provided overall organization management that helped improve performance throughout the agency. She worked with individuals at every level of GSA to support the mission and goals of the agency through the use of strategic planning, measurement and analysis and regular assessment of progress and performance data to improve GSA's results.



Roth has used her experience in executive level management throughout her 18 years of public service to further economic and administrative change. Her career in public service began on Capitol Hill in the office of Congressman Jim Moran. She has since served as a special assistant for legislative affairs in the office of Mayor Anthony Williams and as the public space manager for the District of Columbia Department of Transportation, where she implemented and oversaw a \$36 million revenue stream and managed public space access for major utility and telecommunication companies.

Prior to joining GSA, she served as the City Manager for the City of Greensboro, NC, where her leadership helped pave the way for several new and creative management changes in the city, including the reorganization of city departments and divisions to promote efficiency and improve service delivery. She also helped establish the district office for North Carolina Congressman Brad Miller, served as district liaison and was the vice president for governmental affairs at the Greensboro Partnership where she successfully advocated for \$60 million in state funds to establish the North Carolina A&T State and UNC Greensboro Joint School of Nanoscience and Nanoengineering. Roth welcomes the opportunity to continue her public service in the role of Administrator, using her experience to further strengthen agency performance and service delivery.

Roth received her Bachelor's Degree in Government and Politics at George Mason University, and is a graduate of the Public Executive Leadership Academy at the University of North Carolina at Chapel Hill.

Mr. CRENSHAW. Well, thank you very much, and let me start the questions with a question about the Federal Buildings Fund.

You know, you talk about spending all the rent that you collect from Federal agencies, and you have got a long list of construction projects. In 2014 and 2015, we gave you a lot of money. Now in 2016, when you request 1.1 billion more than you received last year, and that is \$564 million more than the rental payments you take in, that is a big, big increase. I want to find out how you prioritize projects—how do you decide which projects you want to do when you say we would like \$1.1 billion more than we got last year? What goes into your thinking when you prioritize projects that go on your list?

Ms. ROTH. In terms of our budget request overall, and as we talk today, I think you will hear this as a consistent theme. We are looking at our portfolio both in terms of what we are tasked to manage, both what the needs are today as well as what we look at going forward. And so we think that this budget request really represents where we are in terms of where the capital needs are and how we will manage going forward, and that also explains the 2017 advance appropriations request, because our effort and our focus is how are we making the best decisions today to help to manage them and plan for the portfolio going into the future.

Certainly, our process in terms of how we decide what projects go on the list and how we prioritize them is based on a number of things, but not the least of which includes what the market conditions are, what the returns are on those potential investments, how ready the project is to go forward. And you mentioned consolidation, lease consolidation and the ability to reduce the cost we are paying in lease payments is something that is an important factor that we weigh as well.

Mr. CRENSHAW. Well, in 2014, you had an increase of \$1 billion. In 2015, it was another \$1 billion for new construction repairs. How do you handle those large increases?

Ms. ROTH. I think that we have done a good job trying to be clear on what projects are coming forward and how we are utilizing those dollars to help with the portfolio that we are managing. So that projects that you are familiar with in terms of DHS, that has been important with the committee support for us to be able to move forward with. That effort is just an example, and certainly the list goes on. But in terms of how we use the funds, our focus is really working with the committee to understand what the funding levels are and ensuring that we use those funds to the best of our ability to manage the portfolio.

Mr. CRENSHAW. Do you kind of say this is our rental income, so we will just spend it all as opposed to saying what are our real priorities, and then, do you ever think about actually reducing rents? I mean, I want to be sure that it is not just “here is our money, so we will spend it”, as opposed to saying “here are our priority projects and we will fund those”, and then we look at the rental income and maybe it is more, maybe it is less, and maybe there are things you can do there. Does that enter into your thinking?

Ms. ROTH. Well, the truth of the matter is the inventory and the portfolio itself of assets that we manage are extensive, and so there are probably more needs than we can fund in 1 year, and so the

needs just continue to grow, either from past repair needs or needs that are coming forward. So it is not so much the, okay, we have this dollar level and so let's find projects until we meet to that level as much as here are all the needs, and ultimately having to meet those needs.

I understand the committee has a job to do, and at the end of the day, what we are trying to bring forward is a full understanding of what the portfolio needs are, how we are trying to plan for those needs and where we are going and trying to be clear and transparent about if we receive dollars, how we are utilizing them and what the expectations are.

Mr. CRENSHAW. Gotcha. Thank you. Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. As I mentioned in my statement, Ms. Roth, sequestration had devastating effects on GSA in 2013, and that specter looms over us once again. The President's budget assumed that Congress would deal with sequestration and continue to make investments to ensure the continued growth of our economy. If Members of Congress truly support construction jobs and seek economic benefits from Federal projects, then they need to look no further than GSA. What would be the effect on your agency if Congress does not turn off sequestration?

Ms. ROTH. Well, sequestration certainly has an impact on overall levels that are available for funding, and so when agencies' budgets have been reduced or compressed in terms of their funding levels, we see an impact in terms of the funding that they are able to either augment as a part of a project or be able to enter into projects.

In the past, some of our efforts have helped or tried to help with these efforts such as our ability to help with furniture in IT within space, but ultimately, with all of the projects, as funding is—as the pressure created at the top, it definitely pushes down, and we feel that as a response.

Mr. SERRANO. And so you are telling me that you deal with it as it comes, but you don't—there is no panic right now at GSA that a continued sequestration would devastate, like some agencies feel would devastate them, because there are agencies that come before us, and tell us we can't take another year of sequestration.

Ms. ROTH. Well, and I think what we see is that, as agencies have that pressure, this space becomes less of a priority, and the reality is, with—as we get people into better space as well as consolidate leases, we do see true dollars in savings, and that is a return. So while we are basically responding to the needs as well as trying to manage our portfolio with our funds, but the funds that we receive, the Federal Buildings Fund itself is not necessarily compressed by sequestration, but the ability and activity levels of the other agencies does have an impact on the choices they make and in the work that we are doing.

Mr. SERRANO. Right. Let me ask you about the Puerto Rico courthouse that I mentioned before. GSA began work to modernize the Clemente Ruiz Nazario Courthouse in 2010. This project has been plagued with delays that have interrupted the day-to-day business at a busy Federal courthouse that is critical to the functioning of the criminal justice system in Puerto Rico.

In October 2014, I wrote to the then-administrator highlighting my concerns with the management of this project. I received an

agency response from Associate Administrator Lisa Austin, that frankly left me unsatisfied that GSA has a plan to move this project to fruition.

Ms. Roth, what is the timeframe to finalize the scope of the project with the new contract? And let me make the statement I make at all hearings, and the chairman hears it all the time. No matter how much people tell us they treat them equally, the territories are treated differently. You know, in many cases they get what is left over in the Appropriations Committee, and it is always a battle. I hope GSA, which functions a little different than other agencies, doesn't get caught up in the same thing. These are American citizens living under the American flag with a Federal courthouse. Notice I didn't say a Puerto Rico courthouse, a Federal courthouse, which means it is part of the family, and sometimes it is just forgotten, Virgin Islands, Guam, Samoa, and all the rest.

So while I ask for a question on the issue in general, specifically I always put in the fact that territories should be treated equally, notwithstanding the fact that they are not States. That is another issue. That is about voting in presidential elections. That is about Members of Congress. That is not about sharing from the American resources.

Ms. ROTH. Yes, sir. And our focus and intent is to treat all partners equally, and certainly we have tried to do that, and it has been unfortunate that we have had some of the challenges we have had with this project. I will tell you, even in the role as Deputy Administrator, I was aware of this project. We have a regular update with our buildings team in terms of some of the key priorities, and this is a project that is discussed frequently.

I can tell you that it is being given the attention from our buildings commissioner on a regular basis, and we are keeping very close on understanding what the timelines are and the expectations with the current developer that is on the project, and making sure that the timelines are being met. I can definitely follow up with you and your staff regarding the phasing that we have today because I know that letter was from late last year, but I can assure you that this is a project that it is unfortunate that the timing—that the efforts did not work with the previous developer that we had in place, but I know that it is on a better track now.

Mr. SERRANO. Right. What I would like you to do, and I am not one who asks for commitments because I know that things change. Once you have a scope and an estimate of cost, is it possible to get a commitment from you from the agency to alert the subcommittee of the new requirements and cost, even if it is mid-budget cycle, you know. And also, finally, how much of the original appropriations for this project remains, or will GSA need to fund a new scope of the project with additional appropriations?

Ms. ROTH. Yes, sir. We will definitely follow up with an initial report, and then we can keep reporting back and updating that overall scope in terms of keeping you aware of what the timeline is and the turnaround expectations are.

Mr. SERRANO. All right. Thank you. Thank you, Mr. Chairman.

Mr. CRENSHAW. Mr. Bishop.

Mr. BISHOP. Thank you very much. Again, welcome, Ms. Roth. Let me just follow up on something that Mr. Serrano referred to

earlier having to do with the safety and security of courthouses. In my district, the Federal courthouse in Columbus, Georgia has been ranked as one of the worst Federal courthouses with respect to security over the past several years and has not yet been approved for renovation due to funding constraints.

In fiscal year 2015, \$20 million was appropriated to fund the Judiciary Court Security Program, and in 2016, GSA is again requesting another \$20 million to address the serious security deficiencies. I run into my local Federal judge frequently. He is very, very frustrated every time I see him, whether it is at the post office, the golf course, or in a restaurant. He is frustrated with the security concerns. So if you could just give us a little follow-up of how you are going to prioritize, I would appreciate it.

But I do want to pursue another line of inquiry. Like the more than 90 agencies that are associated with the National Industries for the Blind, Georgia Industries for the Blind, which is headquartered and has two manufacturing locations in my district, works to provide employment opportunities for people who are blind. They manufacture and sell products and also provide services for the Federal Government through the AbilityOne Program. Over the past year or two, AbilityOne has experienced some challenges in its work with GSA.

These challenges have become significant enough that last September, I helped lead a bipartisan letter signed by more than 60 of my House colleagues, which was sent to the former Administrator in which we asked several questions about markups on AbilityOne products, and whether or not GSA and its authorized dealers were complying with the law that Congress created 75 years ago, the Javits-Wagner-O'Day Act. There have been many exchanges back and forth between Congress and GSA, but I have two important questions I would like to ask you on behalf of my Georgia constituents who are blind.

First, the GSA markups on AbilityOne products seem to have spiked over the last few years with some of the markups exceeding 100 percent to 200 percent or higher. It is my understanding that the markups have somewhat been reduced as you have closed down depots or warehouses and moved to a different delivery system, which we understood justified the increases in the markups. Now that they have been reduced, I would like to know when all of the imposed markups on AbilityOne products will finally be lowered to reasonable levels so that Federal agencies are once again paying a fair and reasonable price and more products are being sold and more jobs for the people who are blind are being created.

And the second question is based on recent reporting by the GSA Inspector General where GSA authorized the vendors to continue to sell, in violation of Federal law and regulation, the commercial equivalents of AbilityOne or SKILCRAFT products, which are known as "essentially the same" products. The Inspector General has reported that the GSA has identified and tracks repeat offenders, but no contract language is present in the contracts that penalizes the firms for engaging in illegal practice.

So as the new head of GSA, can you tell us what corrective actions you will take to halt the practice once and for all, and ensure

that no more of your authorized dealers are selling ETS to Federal agency purchasers at a detriment to our AbilityOne constituents?

Ms. ROTH. Thank you, Congressman, for that question. Our relationship with AbilityOne and persons with disabilities is very important, and working with the small businesses in the industry that they help to develop is a very important relationship that we have. And we do serve on their commission as a part of that to really understand both how they interface with Federal Government and as well as the opportunity for how we can improve relationships with other agencies outside of GSA, so it is a very important relationship. We did achieve and are experiencing reductions in the markups as a result of the disclosures—the closures of the distribution centers, and that was something that was an important both consolidation effort for the organization as well as realignment of how we were delivering on our mission. But as I said, it is a very important relationship, so it is something that we keep and will continue to look at.

In general, with our acquisition services, they are a fee-for-service organization, and so the work that they do does have some level of markup, but I appreciate your point in terms of ensuring that it is not an extreme number and having extreme level and impact on the returns for those working with AbilityOne, for example, in this case.

And also certainly with the contract language, if there is opportunity, I am not aware, as I sit here, the work that we have done thus far, but I can say for certain that we have been looking at our contracts in terms of how is the language situated so that we are managing and creating opportunities, and we will continue to look at that. But as you bring this up today, I will make sure that we take a specific look here. That I am informed about the specific look here.

[The information follows:]

GSA follows Judiciary preferences when selecting projects for the Judicial Capital Security program. The Judiciary identifies security deficiencies at court occupied facilities as part of their Asset Management Planning process and also through security evaluation site visits.

After the Judiciary identifies locations with security deficiencies, a Capital Security Study that identifies possible solutions to address those security needs is then developed by the Judiciary in coordination with GSA and the U.S. Marshals Services.

GSA provides feedback based on a review of the various alternatives developed in the studies for addressing the security deficiencies along with the preliminary cost estimates. The Judiciary determines the preferred security improvement plan resulting from the study for each location. The Judiciary then provides their order of priority of projects

Within 30 days of the funding appropriated to GSA for the Capital Security Program in a given fiscal year, GSA submits a courthouse security spend plan, with an explanation for each project to the Appropriations committees in the House of Representatives and the U.S. Senate. After submitting the spend plans, GSA executes the prioritized projects after further development and refinement of the preferred concept within the constraints of the specific courthouses and the available funding.

Mr. BISHOP. We will give you an enforcement stick.

Ms. ROTH. Okay.

Mr. BISHOP. Thank you very much.

Ms. ROTH. Sure, sir

Mr. CRENSHAW. Mr. Amodei.



Mr. AMODEI. Thank you, Mr. Chairman.

Madam Administrator, does your agency have a protocol in place or policy or anything else like that to notify Members of Congress when you are planning on doing something in their district? And let me tell you why I am asking. My district doesn't have a large GSA footprint, but I noticed in the old post office, the Federal building in the town I live in, there was significant, that I can see by driving by, was relandscaped, and so I am just curious as to how that process works to say we are going to Carson City, Nevada to a Federal building, not the post office; we are going to spend money on landscaping; here is how this rose to the top or whatever to be more familiar with that since that property has been discussed, at least informally, in the past, about whether there is a better footprint for the Federal Government, office space there, that sort of thing, and so that is the background.

Is it possible to place a request for saying, hey, whenever you are doing something in District 2, not that we want to get into your business, but just in an informative sense say, hey, here is what we have got going in northern Nevada, just in case you have any questions or somebody asks you about it?

Ms. ROTH. Well, and first let me say I don't see it as getting in our business because I think that we have worked in very close partnership with the committee, and so I definitely operate on the level of more informed, everyone is better off. So the—we have regions, obviously, across the country, have 11 regions, and we have the opportunity to understand what our priorities and work that is coming forward. And certainly we can have our regions, which will be closest to the activities that are coming forward work closely with your office as well as our congressional office.

Mr. AMODEI. That would be great. It is Region 9. If you can have somebody say here is what we have got on our radar scope for your particular district, and by the way, here is the background on what we did with respect to that Carson City property.

Ms. ROTH. Yes, sir.

Mr. AMODEI. That would be great. Also, last year, through the indulgence of the chairman and the committee members, and also a couple of the other committees, we put—we were able to put language in the appropriations bill that talked about a bias against resort cities. And you guys, to your credit, didn't have it in writing like the Department of Justice did, but nonetheless, our concern was not, hey, hold conferences and stuff like that at my district. It is please just make value to the taxpayer the thing. And so if the outfit had the word "resort" in its name or it was, in fact, at a jurisdiction where gambling was legal or something like that, if you are holding a conference or doing something that it is like, hey, if the best value happens to be in Reno or Lake Tahoe or wherever, then please make it on the best value of the taxpayer.

I want to thank the chairman, again, publicly for his indulgence and the committee members for their support of that. And I don't want to kick the dead horse about the Hawaii stuff, but it is my region, and the only reason I want to sensitize you to it is, is when something like that happens, I know that the human nature is we got to go find the most nondescript place we can find, and we got to do something just short of pitching tents, and so we go through

all of these optics drills to make it look like you folks are being responsible with your money.

And so when I see this, I cringe not because I don't like Ruth's Chris, although with my complexion, Hawaii is not a good place to be. But it sets us even farther back on trying to say, listen, if going to Lake Tahoe is the best value, then you should go there, because that is something then we will be able to say look what happened in Hawaii.

So all I would say is, I would ask, first and foremost, I hope that we are making sure that to the extent that we do conferences, travel, that sort of stuff, that we are still looking for the best value to the taxpayer, wherever that is, and that we are renewing our efforts to avoid these appearances which set the whole hospitality industry back.

Ms. ROTH. Yes, sir, and I appreciate that. In terms of—let me just step back and say when I came on board in March of last year, it was primarily to focus on the reform activities that we have undertaken in the organization overall. And so certainly, the attendance to conferences as well as travel in general has been a part of that. And the approach that we have taken is trying to be clear on—to the organization of what the expectations are as well as what travel they are doing and why. Our real focus is ensuring that the travel and activity, whether it be for conference or otherwise mission related, that it is mission related and that we can tie it back to this activity means that we get this type of return for either the staff person or the work that they are responsible for.

And to that end, we put in place travel plans that each of the office leads report up to, so we have a very structured process, and in part, it is to not appear nor have the sense of being selective in the work that we do. We want it to be very clear on here is what the expectation is, here is how it works throughout the process, and then be able to report that and be transparent on it.

Certainly, I was certainly concerned the moment I saw the item and the headlines regarding the travel to Hawaii, and something that we are being sure of is was that travel a group session related to the mission and how can we reinsure that we are providing parameters of expectations of when people travel, how frequently they travel, things of that nature. But I appreciate your point, and we are sensitive to that point as well.

Mr. AMODEI. And I appreciate that, and I would just close with this, are you comfortable with the fact that whether the best value happens to be in New York, Florida, you know, wherever, that there are no discrimination policies presently in your travel policies that say you are not going to Reno, you are not going to Atlantic City, you are not going to Miami Beach, all that stuff where it is perceived as a resort thing, what I would like to know is your opinion is do we have any of those biases still in the agency or are we looking at what the cost is?

Ms. ROTH. Our concern is cost and mission related, as well as we do encourage our employees to look for alternatives that if it is better for the group to come together via video teleconferencing as opposed to travel, that is our priority. And I do talk about travel as I move around the organization, and I visited all of our regions, and so being clear on what the expectation is is something that we

are asked about regularly, so I don't think there is a sense of a bias in the organization around certain locations, and we try to be clear—

Mr. AMODEI. Great.

Ms. ROTH [continuing]. With the staff on that when the question comes up, because, of course, it does come—you know, this item is in a certain location, is that okay? We want to encourage that everyone is making their decisions based on value, but as well as the mission and how we are—the return that we are going to get as an organization and whether there is alternatives to traveling overall.

Mr. AMODEI. Okay. Great. Thank you. Thank you, Mr. Chairman. Yield back.

Mr. CRENSHAW. Thank you. I want to ask you about consolidation. We reduced spending \$175 billion, so that means you got a smaller work force and that ought to mean that you need less space for people to go to work. And recognizing that, in our omnibus bill, we put \$70 million for you to work on consolidation, and we put in the omnibus bill that we said only spend this money if you are going to truly save money.

Obviously, you got to spend money to consolidate things, but at the end of the day, you want to be saving money. And so, can you tell us what you have done so far with that \$70 million? How are you going to use that to do the consolidation, and can you point to true savings that are going to result from that?

Ms. ROTH. Yes, sir. And we will be sending a spend plan to you, I believe, later this week that will outline some of the projects that are in progress, but when—what we are able to look at, and as we look at consolidation opportunities, we are looking for getting the best value in terms of whether it is consolidating multiple agencies to one location, or if it is bringing in one sole tenant, but bringing in their other leases.

And so we will be able to outline for you, both in terms of what those projects are, but as well as what lease reductions that will lead to and what annual savings we are expecting.

Our efforts overall is just that in terms of as we identify what projects as well as identifying which projects makes sense for consolidation. It is getting the sense of will we find savings by consolidating, can we utilize existing properties, and what will be the cost tradeoff between upgrading these properties and moving these leases into the same location, but we will definitely send that to the—

Mr. CRENSHAW. So you will be able to tell us that this is how much space that you saved?

Ms. ROTH. Yes.

Mr. CRENSHAW. And give us a number it reduced, I mean, if that is the case. It would seem to me if you are going to reduce your spending on space, you are going to have less space, so you can say this is how much less space we have, this is how much money we are saving, and I hope it is more than \$70 million, because that is what you are going to spend to save the money.

Ms. ROTH. Save the money, yes, understood.

Mr. CRENSHAW. When we will get that report?

Ms. ROTH. The spend plan will be coming up later this week. It would be this week.

Mr. CRENSHAW. And then, all right, but this year, I think the request was for \$200 million for consolidation.

Ms. ROTH. Yes.

Mr. CRENSHAW. Do you have a—do you put the spend plan in place before you ask for the money, or do you just ask for the money and then when the money comes, you say, well, let's write a plan to show how we are going to save money?

Ms. ROTH. So we look for projects that are pending or we understand from agencies they may be interested in going into a consolidated space. One of the things that are necessary, and we are seeing that with DHS, is that those agencies have to take the step of being aggressive with their square footage, for example, as an opportunity. With the steps of that nature, it allows for us to take enough space with DHS, we will get 3,000 more people into that location. That is what we are looking for.

So we get a sense, and we know, just throughout the year as we are working with agencies, which are ready to bring in leases, which have done the work to either have the policies internally, and there are a number of them, understanding that this is where the savings, the cost savings for much of them are coming from.

Mr. CRENSHAW. But you don't know if for example when we get that spend plan, will it give us a bottom line number. This is—we have \$70 million, this is how we are going to spend it, and this is the space reduction.

Ms. ROTH. Yes, sir.

Mr. CRENSHAW. And then the \$200 million, you don't have a plan yet. We are to assume that you are going to spend the 70 million wisely and end up with an overall savings, and then if you ask for \$200 million, you will give us a spend plan that says after we spend 200 million extra dollars, at the end of the day, we are going to save more than that, hopefully some great multiple of that. When do you write the plan? When do you write the plan how you are going to spend the \$200 million that is going to save whatever?

Ms. ROTH. They happen in tangent. And I can tell you that we wouldn't come with the \$200 million request if we hadn't seen successes that we have seen in recent years with other plans that we have on the table or the work that we have done. But yes, we will be able to tie both the square footage current usage with the proposed change in usage as well as this dollar savings from the savings of the lease, and we are always looking for the same level of return of investment that we are getting more out of it than we are having to put into it, because otherwise, it would not—

Mr. CRENSHAW. We look forward to hearing that. Let me change the subject. Let me ask you about the FBI building. Your predecessors have come before us, and that is a big, big undertaking. I mean, you are going to build 2.1 million square feet of office space out somewhere, and you are going to exchange the FBI building.

Ms. ROTH. Yes.

Mr. CRENSHAW. And that is very, very complicated. And one of the things I think the Inspector General said a couple of years ago, maybe in 2013, the IG didn't really see the kind of policies and procedures in place to really carry that out in an effective way. Where

you are in that process? How did you decide, for instance, did you just say we are going to go out to the FBI building, we are going to exchange that, and somehow we are going to build 2.1 million square feet of office space somewhere. The concept is you will get enough money from the FBI building to get 2 million square feet of new space in exchange for building what has got to be for a whole lot of money.

Now, for instance, when is the last time you had the FBI building appraised?

Ms. ROTH. So in terms of our approach overall to all of our portfolio, we are looking for where is the best opportunity. Do we have properties that are sitting that do not—

Mr. CRENSHAW. I know, but let's talk about the FBI building.

Ms. ROTH. Right. And so with the FBI building, in particular, it is not meeting the needs of the FBI currently, and so that is how, in part—

Mr. CRENSHAW. Do you have any idea how much it is worth?

Ms. ROTH. That is something that the market sets. Certainly we do appraisals of our properties, but considering the fact that we are in a competitive market right now where we don't want to show our hand, as it were, but this process—

Mr. CRENSHAW. But have you had it appraised?

Ms. ROTH. We have had it appraised.

Mr. CRENSHAW. Of late. You can't tell us what that is?

Ms. ROTH. I am not sure. The last appraisal was probably prior to 2013 or 2013 may have been the date, and I can certainly follow up with the committee. But let me just say overall, our effort and focus is that this process is going to really set the value for this building. We are in a—currently, in terms of—we are in phase 1, and we are having a selection of potential developers that we are narrowing down to currently. And from that process is really going to tell us the value of this property in terms of what the market is willing to bear and cover for it. We don't know if there will be a delta. We are—our hope is that it will not, but, of course, that is what we are looking for is to cover the cost of replacing that building.

Mr. CRENSHAW. So how did you decide you needed 2 million square feet? That is what you decided? That is what you need for FBI people?

Ms. ROTH. As we look at—as we work with our tenants as well as our partners, we look at what their needs are and get an understanding. In terms of the FBI, they are not able to fit—I think it was the number 52 percent of those who should be in headquarters are not able to fit there because of that location.

Mr. CRENSHAW. But you have an idea—you are in the process of picking, I think, three developers, right? Or you pick three sites, and you are going to pick a developer that is going to say—we could sell the property and use the money and go build a new building, or we can exchange it, but the concept is the same thing.

Ms. ROTH. Yes.

Mr. CRENSHAW. You say, look, we have got a really valuable piece of property, and we are going to end up with some new office space, brand new out somewhere else, but you want to hopefully make sure that you kind of get even-steven. In other words, you

don't want to spend twice as much money as your building is worth to build a new building?

Ms. ROTH. Absolutely not.

Mr. CRENSHAW. So where are you in the process? You are farther along. I am very concerned that that is so complicated. I want to make sure, and I have told your predecessor, make sure you all have the ability in-house or get some people to figure it out because a lot of people would love to be involved in that deal.

You know, in Great Britain, we sold our embassy. We are building a new embassy, and we sold the embassy for more than we are going to spend on the new building. That is a good deal.

Ms. ROTH. Yeah.

Mr. CRENSHAW. And so I hope at the end of the day, when you have this new facility out there somewhere, that you won't come to us and ask for some more money because it wasn't a great deal in terms of what the FBI building is worth. That is why I think it is important that you kind of keep up with the value of that vis-a-vis the value of what the new office is going to be.

Ms. ROTH. As well as us being transparent and open with the committee and members about the process as it is happening, so we have—we are in a process of narrowing down the developers, and this fall, I think, we might be in a place of actually being able to make an award, but we will continue to inform yourselves and staff about where the progress is and how it is coming forward. That is a concern of ours as well. We definitely want this project to have a return that is a good return so that we can go and do other good projects the same. This is an important project for us, and so we definitely take that in—

Mr. CRENSHAW. Keep us posted. That would be great.

Ms. ROTH. Yes, sir.

Mr. CRENSHAW. Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman.

Mr. CRENSHAW. Maybe—I didn't see Mr. Quigley come in.

Mr. QUIGLEY. Up to you.

Mr. SERRANO. Oh, no, no, no.

Mr. QUIGLEY. Whatever.

Mr. SERRANO. Go ahead.

Mr. QUIGLEY. Thank you, Mr. Chairman. Sorry I was at the sister subcommittee meeting, THUD, so glad to be here now.

Ms. Roth, as you know, the Federal Government is the largest property owner in the world. Obviously many of these properties are underutilized, not utilized at all, while requiring a lot of maintenance and security expenses, for example. But last year, this subcommittee, the GSA was unable to state that it had an up-to-date accurate inventory for all its real property owned by the Federal Government. I was troubled that since then, we determined that GAO has updated its a high risk series for the sixth consecutive Congress, Federal real property management was on the list. So I guess the same question, does GSA have an up-to-date accurate inventory of all Federal real property owned by the Federal Government?

Ms. ROTH. Yes, sir, and thank you for that question. Obviously that is something that we have been working on quite a bit, and what we have been able to do is improve in terms of the data sets

that we are asking agencies for and what they are reporting, and so as that gets better, then I think our data and reporting will get better. Certainly for GSA we have been able to provide that list, make it public, put it on a Web site, and that is what we want to be able to achieve with all of the Federal agencies, so we continue to work through that.

Mr. QUIGLEY. What is it going to take to get it all done?

Ms. ROTH. I think part of it is very much the quality of the data that is going in and understanding what assets each of the agencies actually are responsible for. Certainly there are many and numerous agencies throughout the Federal Government that are responsible and own agencies beyond—own property beyond GSA, and so it is working with them to help with the quality of their data and their reporting.

Mr. QUIGLEY. Do we know how many real property and land inventory databases exist in the Federal Government?

Ms. ROTH. As I sit here, I don't know databases, but I can certainly get back to the committee with that.

Mr. QUIGLEY. How difficult would it be to get it into one database some day?

Ms. ROTH. I will tell you that we—and especially in the past year that I have been here, we have been using technology quite a bit to help us improve in terms of our delivery of services to the American people and the public just in general, so I think that our technology understand—how we understand technology now and our ability to use that to help improve our database is much better than it has been in the past.

Mr. QUIGLEY. And the final part is once we—how are we doing improving getting rid of surplus property, in your mind?

Ms. ROTH. In terms of surplus property, I think that there is always room for improvement, but I think that some agencies are doing better than others. And again, it is part of understanding what their—what is in their portfolio as well as how to dispose of it and ensuring that they have the talent and skill set internally. We certainly are in due help when asked, but it is something that we continue to work on with agencies.

Mr. QUIGLEY. Final question. Is there anything we can do to encourage them more than we already are to get rid of the surplus properties?

Ms. ROTH. I think that the support of the committee has been important. One of the things that we do see in terms of portfolio managers is, is the reality, is their ability to be able to hold onto revenue or something of that nature that comes from the sale of property may be an incentive that they currently don't have.

Mr. QUIGLEY. Right.

Ms. ROTH. And—but there are a number of strategies such as that that might be of help, and we can certainly follow up and have a discussion with the staff regarding that.

Mr. QUIGLEY. Thank you. I yield back, Mr. Chairman.

Mr. CRENSHAW. I think that has been an ongoing concern that to manage all that property, that we have a list of it so we kind of know then and you can help us when you dispose of property, all those kind of things. So I appreciate it, Mr. Quigley. Let's go to Mr. Yoder.

Mr. YODER. Oh, sorry. How are you?

Ms. ROTH. Good, sir. Thank you.

Mr. YODER. Thank you for coming to our hearing today. Thank you, Mr. Chairman. I wanted to echo the sentiments of Mr. Quigley related to the real property issue. He and I both raised this issue in previous hearings. I raised it the last couple of years, and one of the things I can't answer for my constituents is what we own. My constituents can't go to a map and look at it and see what government owns in the Third District of Kansas, what property may be idle, what property may be—we overpaid for, and so it is a real disconnect between the assets the government owns and our constituents holding us accountable because we have no way to properly display to our constituents what we own. Congress doesn't know all the property our government owns.

So I want to just reiterate some of the points that Mr. Quigley had and just engage in that dialogue a little further. You know, we don't know how many golf courses we own, for example, or how many parking garages we own or how many hotels we own, and so I am encouraged that since we brought this up a couple of years ago that the GSA has acknowledged this is a priority and is working towards resolution, and I appreciate your comments in that regard.

I did note that we were able to make a nice Pinterest, I guess slide, that shows the budget request, so certainly I know where GSA is capable of using technology in a way that could help us understand what our requests are, can do the same thing for our property. Obviously it is a much bigger undertaking.

Are you familiar with the letter that MAPPS sent to the administrator of the GSA in January of this year? MAPPS is the Management Association for Private Photogrammetric Surveyors.

Ms. ROTH. I apologize. I am not familiar with this specific letter.

Mr. YODER. Let me just tell you what the letter is. Maybe you will be familiar with it, and maybe you could respond. MAPPS has actually offered their private set of surveyors and mappers, they have actually offered to help the GSA categorize all their property. It says, "MAPPS stands ready to assist GSA with the development of a current accurate geo-enabled inventory of all Federal real property assets. They would be pleased to work with your staff to discuss the available services, technology standards, and specifications that will meet GAO's expectation and comply with congressional instruction."

And so I would be interested to know if you have considered using outside private parties to help in this effort, particularly experts that have a history of being able to categorize large amounts of information like this?

Ms. ROTH. So at this point, just to step back, GSA has placed our properties on a map and have made that available, and so we do have that, and certainly we have the real property database that we report out, and the last one was from fiscal year 2013.

With that being said, as I was commenting earlier, some agencies are further along than others in being able to both report on their data as well as to manage that. So to the extent that there are other external efforts that are available, we certainly are open to exploring what makes sense, and—but we continue to work with



the Federal Real Property Council as well as OMB to really try and have heard the message that—of getting that list clean as well as made available.

Mr. YODER. But you would agree that if a constituent or even our office wanted to create a geolocation list of Federal property that is owned in the State of Kansas, that would be very difficult to do, given the resources made available by the GSA?

Ms. ROTH. Currently, in terms of the information that you are receiving that GSA collects from the other agencies, it doesn't give the full picture, and I understand that that is certainly what Congress wants, and that is something that we are trying to—

Mr. YODER. I would say it doesn't even give a partial amount of the picture. And if you look at the language that was added to the Appropriations Act passed last year, it says "GSA is charged with compiling the Federal real property profile. Numerous studies have found that this profile contains a significant amount of inaccurate information. The committee is outraged that the Federal Government cannot provide an accurate accounting to the American people of all the property that it owns.

"The committee expects GSA to work with agencies across government to improve the data contained in this report and improve transparency to the American taxpayer. Within 90 days of the enactment of this Act, GSA shall report to the Appropriations Committee on steps taken to improve the quality of the profile."

Has the GSA reported to the committee as required by the Act?

Ms. ROTH. My understanding is that we have been reporting to the committee, but regardless of that, to your point, it is not quality data, and it is not allowing for that geospatial map that I think the committee is looking for. So our ability to continue to improve in that regard, and if there are private sector entities that could help with that, I do think that is something that we should explore. So just the point is, even—whatever we are applying it today is not meeting our expectations nor yours, and we will continue to work on that.

Mr. YODER. I appreciate that response, and I would encourage you to make this a top priority. I would encourage you to look at third parties that have an expertise in this issue. I would encourage the GSA to respond to the letter to MAPPS if they haven't; and if they have, to provide the committee with a response to that letter. And to provide this service to the American people not only creates an opportunity for our constituents to have more engagement on what we are doing here, but it also would make our jobs—make us more capable of reducing the Federal real estate portfolio in a way that could save taxpayers money, reduce the debt, and we can't engage in that unless we have the information.

So this is a critical first step to this committee being able to do its job, and for us being able to do our job to our constituents to give them the information that they need to hold us accountable.

And with that, Mr. Chairman, I yield back. Thank you for your testimony.

Mr. CRENSHAW. Thank you. Let's go to Mr. Serrano.

Mr. SERRANO. Thank you, Mr. Chairman. Let me, before I go on to a question I had set to go, just back up something that the chairman said. We are concerned that what is happening with the FBI

building, which is not described in detail in the budget request, and the concern is that it will diminish oversight of this project by this committee, and I join the chairman in that. And I would like to ask you, Ms. Roth, has GSA ever used its exchange authorities for a project this large before?

Ms. ROTH. This is among one of the largest projects. I am not sure that any other has met this level. But with that being said, and I understand at this stage, there isn't a role for the committee to play. However, we do think it is very important to have your buy-in and comfort with the project as well, so we will continue to inform the staff, as well as the committee, of the activities that are occurring and can have that, I think they are meeting regularly already, but that is an important role.

Mr. SERRANO. Just a correction, and I do it in a friendly way. There is always a role for the committee to play. And after all, we are the only committee that is in the Constitution, I think. Right? One of the few. There is a role for us to play.

Ms. ROTH. Absolutely. I apologize, sir.

Mr. SERRANO. It helps our relationships if we understand that. Also, just to give you a story, I remember a few years ago, we had an agency come before us and say don't give us any more money. We don't need any more money. And we had never heard that in my 40 years in government. It turned out to be the agency that wasn't watching Wall Street do what they were doing, and so we would like to have oversight. But let me get back to my favorite and most difficult subject because I don't understand it. The leasing versus the purchasing. You know, the American dream is to own, not to rent, so why would government be any different, and how much money do we spend on leasing? And I see that you have \$5.5 billion in leasing of privately-owned space. What are we doing to remedy that? And is your ultimate goal to bring leasing down, or is it the agency's ultimate goal? I am not going to put it on you. You have been there a month. But is the agency's ultimate goal to bring leasing down?

To me, it is much better to know that that building belongs to us and that building belongs to us because once it belongs to you, you could always sell it to make money; and, you know, the folks on the other side believe that the best way to save money is by cutting the budget. I disagree. I think it is also by growing the budget to investments. And for us to be leasing, which is more costly than building, I just don't get it. So where are we headed in that?

Ms. ROTH. As we approach our portfolio—

Mr. SERRANO. Or is the committee not being paid attention to on that subject?

Ms. ROTH. No, sir. I regret every word of that. Absolutely. As we approach our portfolio, we are looking for certainly the best value for housing for the agencies that we are working with, but I think that you have seen GSA be more proactive year over year in terms of helping agencies see the value of both consolidating leases as well as us being very stringent in our efforts to improve on the assets that we have as well and make them available and being smarter about how we are utilizing them.

So using the square footage of space in different ways, I think has been an important step as well. So at the end of the day, you

know, data tells us that owning and having agencies and property that is owned is a better value overall. Sometimes that is not available, and that is the unfortunate part at times when that is the case, but we do have a preference in terms of own. It is just not always available. But what we have been working on is trying to reduce the cost of annual lease payments through improvement of owned facilities as well as consolidation efforts.

Mr. SERRANO. Right. A quick follow-up on that because I know there are some other folks that should be given a chance to ask questions. Maybe it is just one of those questions where you have to turnaround and ask somebody behind you, and I understand that. How did that mind set come into being? When did this start that we should be leasing rather than purchasing?

Ms. ROTH. I am not sure anyone behind me actually knows that either, but I don't know the answer to that. What I do know is as we are approaching our portfolio today, we have been very focused on where are our assets across the country because as you point out, it hasn't been profitable for us or creating a return on the investments that the American public is paying, and to your point in terms of the costs that we pay into the buildings that we are maintaining as such.

So we do have a preference and a focus on how do we make the best value out of the properties we have use of today, and ensure that they can meet the needs of the workforce as we are planning for today and into the future.

Mr. SERRANO. Okay. Mr. Chairman, and my comment was just correct. It wasn't meant to question your respect for the committee.

Ms. ROTH. Thank you.

Mr. SERRANO. I have a feeling that people who have English as a second language, as I do, pay more attention to every word than native speakers. I will get off the hook that way.

Ms. ROTH. Thank you. Thank you, sir.

Mr. CRENSHAW. Thank you. Let's go to Ms. Herrera Beutler and then to Mr. Bishop and then to Mr. Womack.

Ms. HERRERA BEUTLER. Thank you very much, Mr. Chairman. I am on the OIG Web site, and I was hoping you could help me understand something. Is Federal Acquisition Service under your jurisdiction?

Ms. ROTH. Yes, ma'am.

Ms. HERRERA BEUTLER. Okay. So are you familiar with—it is dated March 13. It is from the Assistant Inspector General for Auditing, Office of Audits. It is titled to Commissioner Sharp with regard to major issues for multiple-award schedule pre-award audits. Are you familiar with this?

Ms. ROTH. Just that it was coming out. We were expecting it last Thursday, and we have had some initial conversations about it.

Ms. HERRERA BEUTLER. I wanted to bring specifically for the record and to your attention, because I wasn't familiar with your overall budget, you are requesting flat funding. Correct?

Ms. ROTH. No, in terms of the Federal Acquisition Services, that is an area that is self-funded.

Ms. HERRERA BEUTLER. No, no. I am talking about your budget, GSA's, are you asking for a flat fund, or are you asking for an increase?

Ms. ROTH. GSA is asking for an increase in its budget over 2015. The total budget request is for \$10.6 billion, and it includes an increase over the rental payments that we actually bring in. We are also asking for about \$9.9 billion for 2017.

Ms. HERRERA BEUTLER. Okay, which is a sizeable sum. This doesn't obviously address that whole thing, but there is a piece here that I think might be helpful in recouping some of that cost. I wanted to bring this to the attention of the chair. It just came out, so I don't think everybody has had a chance to go through it. But there are three or four main points that the IG has said for the past 3 years he has issued—how long have you been in this role? Probably not the last 3 years?

Mr. CRENSHAW. The last 3 weeks.

Ms. HERRERA BEUTLER. So this is not your last 3 years, but for the past 3 years, they have been issuing major issues memoranda, and I think he just felt that there were some recurring issues that needed to be addressed, and I wanted to make sure you were aware of them. Especially as you are asking for an increase in budget, this looks like a good area to dig into. When they were going through the acquisition audits, there were four main points he found. First was for over three-quarters of the contracts that they audited, contractors provided the commercial sales practices disclosures that were not current, not accurate, and/or complete to support their prices. Half of the audit—another bullet point—half of the audited contractors supplied labor that did not meet the minimum educational or experience qualifications as required by GSA for contracts. And over a third of the audited contractors did not have adequate systems to accumulate and report scheduled sales, and many contractors improperly calculated their iostats for remittance to GSA. And then fourth point he has here is contracting offices are not fully achieving cost avoidances identified by the pre-audit.

So what he found was there is about, he goes through a few different numbers, but in the same year: We recommend the price and discount adjustments that, if realized, would allow for over \$1.6 billion in cost avoidances and additionally over \$2.7 million in recoverable overcharges.

To a scale of what you are asking, that is a fraction of what you are asking for in an increase, but I would argue, you know, the best part of \$2 billion is worth going after. And so I guess I wanted to ask how much and how closely you worked with the IG to identify these areas where you can improve the system's flow with regard to who is doing what and recoup some of this money. I guess I want to get a feel for what kind of a priority it is for you to kind of walk—because I feel like they are doing the work of that. You just get to take their recommendations. Might as well take advantage of it.

Ms. ROTH. Right. I appreciate that question. The IG and the role of the IG and our partnership with them is very important to us, and we actually meet on a pretty regular basis, at minimum monthly, but frequently are in discussions, either directly or between staff regarding a number of items. So, yes, their role in terms of helping us evaluate and research the production of effort and how it is actually performing has been very valuable. This is,

and as it was brought to my attention, and as Commissioner Sharp looked at the draft of what he was expecting to come out, we definitely had concerns, and there were some opportunities as you pointed out for work and improvement there. And I think that we need to take that more than under advisement, but actually apply a work plan to it, be clear about what the milestones are, and set about implementing those efforts.

There have been some efforts that I know that they have started already. I am not fully aware of all of those pieces but this is something that we are taking very seriously. And to your point, it not only tells us about where cost savings are available, but also where potentially we are not meeting, or those we are working with aren't meeting our policies, and that is problematic.

Ms. HERRERA BEUTLER. Absolutely. Is it possible to ask as you put together—I don't know whose team is here, but as your team is putting together that work plan, that you could keep my office—I don't need to know step by step in detail. I just want to know as its moving, especially as you are coming back to us and the team is coming back to us asking us to increase your budget, I want to also make sure that we are recouping where we can and should be.

Ms. ROTH. Understood.

Ms. HERRERA BEUTLER. Thank you. I appreciate it, and welcome to the job.

Mr. CRENSHAW. Yeah. Actually in the real numbers, it is about \$1 billion, \$100 million in addition. And every year, like 2014 and 2015, it is about a \$1 billion more. I think to her point is you wouldn't have to ask for an increase if you just recouped what was missing. But I am sure you are working on that. Mr. Bishop.

Mr. BISHOP. Thank you very much. Agriculture/agribusiness is the largest economic sector in the Georgia economy, and our State has lots of utilization and collaboration with USDA. It is my understanding that GSA is planning to transfer almost 300 financial operations staff members to the Department of Agriculture. I would like to hear about when this transfer is to take place. Is it on schedule? Will the transfer of these personnel be permanent or temporary? What is the purpose of the transfer? How will the staff become assets to USDA? Will GSA experience any disruption in its operations, the functions that these current GSA people are now performing, and what are the end goals of the transfer in terms of efficiency to both GSA and USDA?

Ms. ROTH. Thank you, Congressman, for the question. The effort between GSA and USDA is really borne out of GSA's efforts to really focus in on its missions of infrastructure and technology and acquisition. What we found is that we had a financial services area, a line of business in which we were providing services for other agencies, but in reality, it was not the main part of our mission as an organization. USDA has had a very mature, financial services area within its organization, and so this move is actually taking the financial services team that has been working at GSA and transferring them to USDA. It is actually a move of people as well as technology. It will be effective March 22, and thus far, it is working well, and we are on time.

With that being said, it is a large move. It is one that we need to continue to watch closer, but in terms of just overall, why we are doing this, it is a part of our effort to continue to focus on really what is the mission of GSA and get back to that mission.

Mr. BISHOP. And, of course, USDA has had challenges dealing with IT and the financial aspects of its mission also, and you have got staff that actually have skill sets to do that—

Ms. ROTH. That is right.

Mr. BISHOP [continuing]. That you are not fully utilizing.

Ms. ROTH. That is right. Ultimately, if we were going to continue with this effort, we needed to invest primarily in the IT segment as well as some level of staff potentially, and it just didn't fit with the mission of what we were doing, but these are a specialized team that will continue to work the same as they move over.

Mr. BISHOP. Will that result in a reduction of your budget?

Ms. ROTH. Yes, it has, and it is reflected in the budget.

Mr. BISHOP. So it is a permanent transfer of that division?

Ms. ROTH. Yes.

Mr. BISHOP. Thank you very much.

Mr. CRENSHAW. Mr. Womack.

Mr. WOMACK. Thank you, Mr. Chairman. And Administrator Roth, thank you for being here. I want to talk for just a moment about the Green Building Certification System used by GSA. I know you have two options, Green Globes and LEED. Some in the construction material industry have expressed concern that their products, proven safe and efficient, used by millions of people around the U.S., are being precluded from LEED certification because they contain vinyl, plastic, or other materials that anti-chemical advocates deem harmful, when in fact, many of these materials have provided great advances in environmental performance, energy efficiency, and occupant safety. So as the GSA is undergoing a regular analysis of reestablishing its partnership with LEED—and I understand you do that every 5 years—can you tell me if you have received any comments from the public on the Federal register portal on this issue?

Ms. ROTH. My understanding is we do have comments that are—we are receiving comments now. I am not certain if we received comments on this particular item; however, I wouldn't be surprised if we were.

Mr. WOMACK. If LEED were to go down this path, if we can agree—or at least I will maintain that they are on a path of over-regulation and extreme environmental activism—do you anticipate that there could come a day when GSA would cease to accept the system as a valid Green Building Certification System?

Ms. ROTH. I think we have to continue to remain open to what is the best system to support the agencies, whether it is LEED or it is something else, and that is what our regular evaluations of that process is. So I think that we have to approach each process in terms of an evaluation of how it is working with fresh eyes.

Mr. WOMACK. Do you have a personal thought on it?

Ms. ROTH. In terms of the LEED certifications, the work that I have been familiar with and the work that we have done at GSA has really focused on the energy savings, and so it hasn't really factored in as much the materials. So in terms of just overall, if

there is a benefit that we are not getting, I want to see us get those benefits. And if there is a way to work with private sector to ensure that those are coming to the table, that is what I think is important.

Mr. WOMACK. But if you could conclude, and I am not trying to speculate that that is a conclusion that you would come up with, but if one could reasonably conclude that this is a form of activism that is being used in a very prominent program, I am going to ask you again, do you consider extreme activism in the evaluation of these criteria?

Ms. ROTH. I think extreme activism and anything that is going to isolate out a group, whether it be this case with LEED in this example, or something else, is problematic. So that is not something that we are looking to have as part of the agency. We want to be able to understand that we are getting benefits in selling green-related activities, whether it is from the light bulbs to the roofs, and we want to get benefits out of that. So if there is extreme activity that is happening and it is not benefiting us, that is not something that we will support.

Mr. WOMACK. Okay. I would like to thank you for including the John Paul Hammerschmidt Federal Building and the U.S. Courthouse in the list of priorities in fiscal year 2017, and would like to get some more details. I know my office would like to get more details on the proposed exterior and structural repairs for that facility, so if your organization could communicate back, that would be one that we would leave for the record.

Finally, I want to talk about the FBI headquarters. I understand that the plan is to basically trade a new site well beyond the central city center for the present site, and it is my understanding that the RFP is for a smaller building. Is that right?

Ms. ROTH. The RFP at this time, I am not sure that that has been made clear. What we are at the place of is trying to get—we are narrowing down a list of potential developers, and they are going to then turn around and give us a sense of what type of project—

Mr. WOMACK. So let me ask you, what is driving the need for the relocation? And if it is related to the inefficiency, building problems or the present location, then help me, because I understand this new facility is going to be \$1.5 billion or something in that regard—the most liberal estimate of the value, as I hear it, of the present location, is around \$500 million. So we are talking about a pretty sizeable difference here. What is driving the need to relocate?

Ms. ROTH. Well, the process itself is what is going to give us a sense of what the value we should expect to get out of the current FBI building, as well as the new location and the cost thereof. We will get a sense of the proposals that are brought forth. But in terms of the need that brought us to the table on this discussion, it really has been FBI's need of having a new facility. The facility that they are currently in is not meeting their needs. And that was—

Mr. WOMACK. That doesn't help me. I am asking specifically. What do you mean it doesn't meet their needs? If you were telling me that it is not big enough, and they are going to have to have

additional space, and they don't want to split a campus or something like that, I would understand that. But I see this is not a space issue. In fact, the new building is probably going to be smaller, but that aside, what is driving that need?

Ms. ROTH. Well, I mean part of it, at least according to our understanding with the FBI is 52 percent of the people who should be in the headquarters are not able to be there because of how the building is shaped and how it is designed internally. The future space could be smaller, but certainly we are using a utilization of the footprints of properties in different ways now than we were in the past, so we are finding ways in which we are putting more people into smaller square footage, so that is quite possible as well. But I think at this point, we are just at a place of where we are going to get back a sense of who are the potential developers to do this work, and then get a sense of what those plans would look like.

Mr. WOMACK. Is it possible that they will keep the current location and will look at maybe a remodel or some other kind of a restructure process there, or is this a foregone conclusion that they are going to move?

Ms. ROTH. Well, in terms of their process, it took two paths in first identifying potential, narrowing down potential sites, and then separately potential developers; and then the sites would be married up with the developer. So the way it is set now is not to go into the same location.

Ms. HERRERA BEUTLER. Would the gentleman yield for a second?

Mr. WOMACK. I would be happy to yield.

Ms. HERRERA BEUTLER. I am not following this line. I always ask this question, but why—was it because it structurally was deficient? Is it unsafe? Can it not be retrofitted to meet new technologies that are necessary? Just a simple why?

Ms. ROTH. I don't know specifically here. I can say that generally when we approach these jobs, it is a matter of understanding what is available for the property that is there, and so it is quite possible to look at a property and say that the costs of retrofitting it or the improvements that are necessary won't give us a good return in terms of building new or utilizing another space. That is how—

Mr. WOMACK. Was it assumed that the present location, inadequate as the building is for the current needs of the FBI—we can stipulate to that—I am not sure I can, but for the sake of the argument—was it assumed that finding a location outside the primary city center area would be of economic value that they could build a new facility out there, give them what the FBI wants, the new building, and trade it for the value of the property where it currently is; and it would be an even trade, that that would drive some of that decision?

Ms. ROTH. Certainly there is a number of factors including the economics of it that go into putting forth these potential exchanges. We were saying earlier this would be the largest exchange of its nature, and so we will have a sense coming out of this process really what the market is willing to bear. But, yes, in terms of what we were looking for here overall is a new location for—well, a new building for FBI. The site process narrowed down the location, and



that is what has us having to check around Maryland or Virginia versus the existing location.

Mr. WOMACK. Mr. Chairman, I don't have a real good, warm and fuzzy feeling on this particular project.

Mr. CRENSHAW. Just so you will know before you got here, we had an extensive conversation about this because, for instance in London, we are selling this very, very valuable piece of property on Berkeley Square, which I hate to see us lose, but because of security issues, we are building a new embassy across the river. But we are selling the valuable piece of property in Berkeley Square for more than we are going to spend building a new building. And that is a good concept. And I had asked her earlier if the concept is that we have got this valuable piece of property downtown, and somebody can build a facility that houses everybody and is more modern, et cetera, et cetera, without having a big gap in between.

I told her we really didn't want to hear her agency come back and say, well, you know, we are \$1 billion short on the new building. So the concept is that it ought to be an even trade. As I said to her, I think it is very, very complicated, and I have asked over and over again, and she is going to tell us what the latest appraisal is, because I think you ought to be appraising that from time to time, and you ought to be assessing what the new one is going to cost. And then you can tell us more if it is going to be kind of, as I said, even Steven. That is a good concept. But just to build a new building and trade somebody for some valuable piece of property downtown, I don't want us to come out on the short end of that stick. So she is going to keep us aware of that.

Mr. WOMACK. Prepare yourself.

Mr. CRENSHAW. Thank you for your concern. Yes.

Ms. HERRERA BEUTLER. This I am also positive is not under our jurisdiction, but who is talking about building the new facility for the Secret Service, the new White House for their training? Whose committee does that go to? They were going to make a proposal today. The Secret Service is requesting \$8 million or so to build a replica of the White House to better help them train. So it is obviously not you.

Mr. CRENSHAW. Probably Homeland. I would think it is Homeland.

Mr. SERRANO. A replica of the White House?

Ms. HERRERA BEUTLER. A replica of the White House so that they can train them.

Mr. SERRANO. They should just keep away from the fences.

Ms. HERRERA BEUTLER. You know, I was going to offer that, but that is not our committee.

Mr. CRENSHAW. And just in passing, there will be a day when the West Wing gets fixed up when whoever the President is doesn't mind moving out. So far, no one wants to move out. I think everybody has had a chance to ask. Let me just ask one last question. This gets into my original question in terms of priorities.

Now, there is \$160 million to buy the Red Cross Building that you would like. Now the State Department is in there, I know, and I think part of the concept is the State Department is going to have \$155 million, and you got \$160 million, and so you have got a \$315 million building that you want to buy. I guess I am just curious,

why is that a big priority? I mean, for instance, what if the State Department doesn't get—if they are going to buy half of it, what if they don't get their \$155 million? What if you don't get your full \$160 million? Is that going to save money? Why is that up on your priority list?

Ms. ROTH. This would be a consolidation effort. DHS is currently in multiple leases across the city, and this would be an opportunity to consolidate their leases overall, so that is primarily what makes this a priority project. In terms of if we don't receive the funding, obviously plans will have to change and look at other alternatives, but ultimately, this is what brings the project to the table.

Mr. CRENSHAW. Is the State Department in there now?

Ms. ROTH. Yes, in part, yes.

Mr. CRENSHAW. And then some other people will go in there as well.

Ms. ROTH. Other State Department leases actually. They would be able to fold all of their leases in there.

Mr. CRENSHAW. That is like when I ask you what are we going to do with the \$70 million in consolidation, you don't necessarily have to spend all that \$70 million, but this is the kind of consolidation you are trying to bring about. You think if you spend \$350 million, put everybody in there, at the end of the day we are going to save money?

Ms. ROTH. Yes, sir. Yes, sir. I want to say—Pat cautions me on this—but I am pretty sure that they are paying about \$12 million in leases annually across the city, and they will be able to go into this facility and reduce those leases. And so that is why we would look at an opportunity of that nature, just for example.

Mr. CRENSHAW. Thank you. I think unless anybody has any further questions, we want to thank you for being here today. You have got a tough job, especially for being here 3 weeks. And keep up the good work. Thank you so much. This meeting is adjourned.

**Financial Services and General Government Subcommittee**  
**Hearing on the General Services Administration**  
**for Acting Administrator Denise Turner Roth**

**Questions for the Record Submitted by Chairman Ander Crenshaw**

*FCC Headquarters Move*

The FCC's FY 2016 budget request asks for \$44 million for a potential move from their current headquarters in Southwest Washington, DC. My understanding is that you are working with the FCC and that the prospectus is currently at OMB for review.

**Question:** When do you expect OMB to approve the agency's prospectus and send it to the Hill for review?

GSA is working with its federal agency partners, including FCC and OMB, to finalize the prospectus for submission to Congress. We will keep the Committee updated as we move this project forward.

**Question:** Has the FCC put forth areas where they see room to decrease their overall rent costs besides just moving out of the space where their rent is increasing?

We are working with FCC to reduce its footprint, and we expect to see a significant reduction in square footage as well as an improvement to space utilization. The lease prospectus will detail these space improvements.

**Question:** If so, can you elaborate on them?

The lease prospectus and corresponding housing plan will provide more information. We will share these documents with your office as soon as they are finalized.

**Question:** How can GSA ensure the total amount needed for a potential move is no more than \$44 million in FY 2016 and no more than or even less than the \$71 million over the course of two years to move?

GSA, in collaboration with the tenant agency, develops detailed agency requirements and utilizes independent estimates to minimize the potential for cost overruns and keep agency rent and build-out costs within estimated limits.

**Question:** How did GSA come up with this total?

GSA, in collaboration with the tenant agency, develops estimates for tenant fit-out and move costs to create a detailed program of requirements and seeking third-party estimates on cost per square foot based on an agency's specific mission needs.

### ***AbilityOne Program***

I am concerned with GSA's compliance with the Javits-Wagner-O'Day Act (JWOD), now known as the AbilityOne Program, which mandates federal agencies to purchase specific supplies and services from organizations employing persons who are blind or significantly disabled.

**Question:** What steps has GSA taken to ensure the JWOD Act is closely adhered to?

AbilityOne's success relies on all Federal agencies, in partnership with non-profit agencies, working to ensure compliance with the JWOD program. GSA is taking many steps to not only ensure JWOD is adhered to, but also to help make AbilityOne products as competitive as possible.

GSA serves on the AbilityOne Commission and looks for opportunities to improve practices in support of blind and severely disabled workers government-wide. As part of this service, GSA focuses on additions to the 'Procurement List' (first source of supply) of new items manufactured by Industries for the Blind, and overall advocacy for initiatives to increase opportunities for blind and severely disabled workers.

GSA also has proactively worked to bar our contractors from selling products on their contracts that may be Essentially the Same (ETS) as AbilityOne Procurement 'A List' items. The AbilityOne Procurement A List contains commodity-type products that are commonly used in office and light industrial settings. Examples of A List products include office supplies such as: writing instruments, paper pads, and desktop accessories. To ensure compliance, GSA conducts periodic reviews and investigates claims of non-compliance. When we discover ETS items on a contract, we issue a contract modification to remove it. Over the past two years, GSA has removed more than 70,000 items from the Schedules. Currently GSA, in partnership with AbilityOne, NIB and Source America are removing an additional 40,000 ETS items. These items will be removed by mid April 2015.

Additionally, GSA is committed to making AbilityOne products as competitively priced as possible. This is, in part, why we have pursued structural reforms that will streamline the distribution of these products. Instead of relying on outdated and expensive distribution centers, we are successfully shifting to a more modern direct delivery model.

During this time of fiscal restraint, all spending on products and supplies has been trending down, including for AbilityOne products. This drop in spending is affecting all businesses. To illustrate, GSA's global supply sales, which include AbilityOne products, have decreased more than 35 percent since FY 2011. This drop is largely attributable to a decrease in DOD deployed forces. Additionally, several AbilityOne products are particularly sensitive to changes in troop levels. For example, AbilityOne's numerous dining facility and personal-use consumables are commonly associated with troop deployments.

The markup for AbilityOne products sold through GSA's Global Supply has averaged 30 percent in recent years. I am concerned that significant GSA markups to AbilityOne products hamper the success of the program.

**Question:** Why is there such a higher markup of AbilityOne products? What is the reason for those markups?

In recent years the GSA Global Supply markup for AbilityOne products averaged 30%; the markup varied depending on the product. The markup traditionally reimbursed GSA for the costs of maintaining GSA's distribution centers and operating GSA Global Supply. GSA, however, has taken action to reduce this figure. Most significantly, GSA closed its distribution centers in 2014 and has transitioned to a direct delivery model that is lowering shipping costs and shortening delivery times. As a result GSA reduced the markup on AbilityOne products to 15% in the first quarter of FY 15.

I am also concerned with GSA's purchase of products determined to be "essentially the same" as AbilityOne products on the procurement list.

**Question:** How does GSA make determinations on "essentially the same" products?

AbilityOne recently released an interim policy in July of 2014 entitled, "Requirement to Purchase Products on the Procurement List Instead of Essentially the Same (ETS) Items". This policy provides a formal definition of Essentially the Same Items. GSA worked with AbilityOne to provide comments and formal recommendations on this draft policy. AbilityOne will be releasing the final policy in 2015.

GSA, AbilityOne, National Industries for the Blind (NIB) and SourceAmerica collaboratively work together to determine if an item is ETS by using the guidelines of the policy and discussing item attributes.

**Question:** What is GSA doing to ensure "essentially the same" products are not replacing AbilityOne products?

GSA appreciates the benefits that the AbilityOne program provides to persons with disabilities and to the U.S. economy. GSA has proactively worked to bar our contractors from selling products on their contracts that may be essentially the same (ETS) as AbilityOne Procurement "A List" items.

GSA, in collaboration with AbilityOne, NIB and SourceAmerica, currently runs an ETS Remediation process twice a year where ETS items are identified on GSA Advantage. Vendors are notified and the items are removed through a modification process. Thus far we have successfully removed over 70,000 items and an additional 40,000 items will be removed in April 2015.

Moreover, to try to address the issue before products are able to be purchased, AbilityOne recently released an interim policy in July of 2014 entitled, "Requirement to Purchase Products on the Procurement List Instead of Essentially the Same (ETS) Items." This policy provides a formal definition of ETS Items. GSA worked with AbilityOne to provide comments and formal recommendations on this draft policy. AbilityOne will be releasing the final policy in 2015.

### *St Elizabeths*

GSA rolled out its Enhanced Plan in February to scale down the approach to consolidate the Department of Homeland Security on St. Elizabeths campus. We appreciate GSA's effort to reduce the projected overall cost from \$4.5 billion to \$3.7 billion and speed the timetable by five years for completion in 2021. I think this is a positive step for a project that has seen significant cost overruns and delays. However, GSA's request for FY16 is very large, coming in at \$380 million or 25 percent of the total new construction request.

**Question:** Is this your highest priority?

Yes. Completing the Consolidated DHS Headquarters at St. Elizabeths is our highest New Construction priority, as outlined in GSA's Congressional Justification.

**Question:** What will the \$380 million fund in FY16?

GSA's FY16 request for \$379,665,000 will allow for rehabilitation of existing buildings on the campus to accommodate components of the DHS Secretary directorate and the Undersecretary of Management, including design of a West Addition to the Center Building, and the Ice House and Hitchcock Hall; as well as completion of the access road and interchange between Malcolm X Avenue and Interstate 295; continuing design of future construction phases; and ongoing historic preservation activities.

**Question:** Is your request scalable?

Funding the complete FY 2016 request will allow us to shorten the timetable for project delivery by five years, reduce construction costs by \$800 million, and save \$1.2 billion over the long term from the best case commercial lease alternative. Any cuts to this request will delay the project, increase costs, and reduce the long-term savings of this investment.

The Committee provided \$144 million in FY15 for a highway interchange to mitigate the impacts that additional traffic will have as a result of the redevelopment of St. Elizabeths.

**Question:** Am I correct that you are requesting additional funds for this in FY16? Can you please explain the need for additional funding?

Yes. The President's FY 2016 Budget includes a request for \$8,625,000 to complete the highway interchange program with mitigation work, such as landscaping and retaining walls for the access road along Shepherd Parkway. This amount is not an increase: the FY 2015 prospectus that GSA submitted to the Congress stated that a future year request would include \$8,625,000 to complete interchange work.

### *Cyber Campus*

In FY15 the Omnibus provided \$35 million for design and to prepare development of a Federal civilian cyber security campus that will house Federal employees and contractors who do cyber security work. In FY16 GSA is requesting \$227 million for site acquisition and construction of a new campus.

**Question:** Where are you currently in the planning and design process?

GSA is currently in the requirements development phase. Once GSA, FBI, and DHS have identified specific agency requirements, we will proceed with the design, site selection, and construction work outlined in the President's FY15 and FY16 Budget requests.

GSA's FY16 request assumes an optimistic timeline for site selection, site preparation, and beginning a large initial construction phase all in the coming year.

**Question:** Please provide a detailed timeline for this portion of the project.

Under GSA's current plan, Phase I project design would begin in FY16 and conclude in FY18. Phase I construction would begin in FY18 and conclude in FY19. GSA will provide additional detail upon completion of the program of requirements.

GSA's requested \$167 million for Phase I construction of the cyber campus.

**Question:** What is included in Phase 1?

The President's FY16 Budget requests \$227,294,000 for Phase 1 of the Civilian Cyber Campus. That request includes \$49,368,000 for site and infrastructure activities once a campus location is selected; \$3,515,000 for additional work to conclude design done in FY 2015; \$167,157,000 for the first of three construction phases. GSA will provide additional information upon completion of the program of requirements.

### ***Red Cross Building Purchase***

GSA is requesting \$160 million to purchase the American Red Cross building which currently houses the Department of State. The total purchase cost is \$315.5 million with the State Department paying for the remaining \$155.5 million.

**Question:** Why is this funding a priority in FY16? Is the State Department the only tenants in the building?

For long-term requirements of the Federal Government, on average the cost of leasing is nearly twice the cost of ownership. Therefore, when GSA has an opportunity to convert a long-term leasing requirement of the government into Federally owned space, we look to pursue those options.

In this case, GSA has the rare opportunity to execute the purchase of a quality building in a highly desirable area at a very competitive market rate. The building, which is located on a Federally-owned site, is ideally located given its proximity to the Department's Headquarters and the Department's desire to consolidate its footprint in the area.

GSA currently leases 1,843,038 square feet of space in the Foggy Bottom submarket, of which 824,000 is leased for the occupancy and use of the State Department. If the purchase is executed as proposed, the federal government will eliminate \$12 million in annual private sector lease costs and avoid re-competitions with potential relocation costs for existing leased space with expirations in June 2020.

No other federal tenants are located in the building.

**Question:** How much do you expect to save annually?

Purchasing the American Red Cross Building would eliminate \$12 million in annual lease payments.



**Question:** Does the State Department include the \$155 million in its budget request?

The State Department is in the best position to discuss its budget request. The Department has expressed that consolidating leased locations into the American Red Cross Building is a significant priority for the Department.

**Question:** What happens if State Department does not get the funding?

GSA and the State Department will work together to identify funding to execute this purchase, consolidate the Department's real estate footprint, and eliminate expensive leases.

**Question:** Does the American Red Cross want to sell the building?

Yes. The American Red Cross has indicated an interest in vacating and selling this building to the government at fair market value.

### *Pre-Election Activities*

The President is requesting \$13 million for pre-election expenses for the nominees of next year's political party conventions or roughly \$6.5 million for each nominee. The first expenses of the Pre-Election Presidential Transition Act of 2010 were reportedly \$9 million in 2012.

**Question:** Why does GSA expect expenses to decrease this time around?

GSA plans to use space currently under lease and already built out with minimal changes to the existing space.

**Question:** What is GSA doing differently to reduce costs by 30 percent?

During the 2012 Transition the Pre-Elect activities were housed at the Mary Switzer building - within the same footprint planned for the Post-Elect Transition activities - since there was only one candidate to house. The space was newly built-out. The cost associated with the Pre-Elect space was the actual cost related to the Pre-Elect footprint as there was no follow-on transition. Had there been a transition the space used for Pre-Elect would have been used as it was for Transition.

### *Virtual Employees*

In 2012, GSA made headlines for spending nearly \$8 million on travel over for years for virtual employees. In response to those headlines, GSA issued CPO IL-12-04 (Extended) Virtual and Satellite Work Arrangements to establish, among other things, the criteria and process for

assessment, approval and management of all new virtual and satellite work arrangements for current and new GSA employees; the criteria and process for termination of virtual and satellite work arrangements; and the requirement for annual review of virtual and satellite work arrangements. And yet, the GSA OIG determined that GSA does not know the number of virtual employees it has, and some virtual employee work arrangements were not fully approved. CPO IL-12-04 (Extended) Virtual and Satellite Work Arrangements will expire on August 10, 2015.

Does GSA plan to extend the directive even though it proved ineffective?

**Question:** If not, what is GSA's timeline for issuing stronger guidance and what processes will GSA establish to enforce the directive?

GSA is revising the CPO-IL-12-04, *Virtual and Satellite Work Arrangements*, to improve the evaluation and approval process, value/cost assessment process, internal controls, and reporting capabilities. The revised CPO-IL-12-04 will be issued by the end of the fiscal year.

GSA has taken action to strengthen internal controls associated with telework, full time telework and satellite work arrangements. GSA completed an agency review to ensure compliance with *GSA Mobility and Telework policy* requirements for training completion and telework agreement approvals for all employees. GSA instituted quarterly reporting requirements to track telework participation and training completion. The Agency has also updated the *GSA Mobility and Telework policy* to require annual training, as well as annual review of telework and full time telework agreements; and to require new hires to complete telework training and have a telework agreement in place within 90 days of onboarding. The draft policy is currently being vetted and will be completed this spring.

**Question:** Does GSA evaluate manager and supervisors based on their ability to comply with Federal law and regulation and agency rules and directives?

Public service is a sacred trust, and the most fundamental responsibility of any organization in government is to ensure compliance not just with the letter, but with the spirit, of the law.

Every performance plan for a manager or supervisor in a business line includes a Critical Element of Integrity. All employees are evaluated against this standard to ensure the highest standard of public service, trust, integrity and ethics are upheld.

**Question:** What organizational, cultural, or informal barriers prevented the effectiveness of CPO IL-12-04 (Extended) Virtual and Satellite Work Arrangements?

GSA is committed to responsibly executing our policies, including CPO IL-12-04 (Extended) Virtual and Satellite Work Arrangements. We appreciate the Inspector General's

recommendations for ways to improve our compliance. GSA is providing training on the provisions of the virtual and satellite work arrangements and has developed frequently asked questions to clarify the process. GSA has also identified business requirements to include additional capabilities in the future state Human Resources Information Technology (HRIT) solution for better internal controls and reporting.

**Question:** Will GSA conduct another such review of all virtual work arrangements to assure the Committee that direct and indirect cost of travel for these employees is to the benefit of taxpayers?

In addition to the quarterly reporting, GSA will conduct annual reviews of virtual work arrangements.

***Federal Building Fund Priority Projects***

**Question:** Please rank in order of priority the combination of all new construction and major repairs and alterations projects.

GSA's FY2016 budget submission proposes \$1,257,997,000 for new construction and acquisition projects and \$1,247,067,000 for Repairs and Alterations. The projects are listed in priority order below:

<b>Construction and Acquisition Program</b>	<b>Project Cost (thousands)</b>
<i>New Construction</i>	
Washington, DC DHS Consolidation at St. Elizabeths	379,665
Somerset, NJ Belle Mead Depot Northern Parcel Remediation	66,079
Washington, DC American Red Cross Building Purchase	160,000
National Capital Region, Civilian Cyber Campus	227,294
Boyers, PA Federal Office Building	35,000
Pembina, ND APHIS Building	5,357
Austin, TX IRS Service Center Purchase	11,887
<i>Land Ports of Entry</i>	

Alexandria Bay, NY Land Port of Entry	105,570
Columbus, NM Land Port of Entry	85,645
<i>New Courthouses</i>	
Nashville, TN US Courthouse	181,500
Nonprospectus (Basic) Repairs and Alterations Program	314,371
<b>Repairs and Alterations Program</b>	<b>Project Cost (thousands)</b>
<i>Major Repairs and Alterations</i>	
New York, NY Jacob K. Javits Federal Building	96,344
San Diego, CA Edward J. Schwartz Federal Building and U.S. Courthouse	60,845
San Francisco, CA Phillip Burton Federal Building and U.S. Courthouse	27,270
Los Angeles, CA Sixth Street Federal Building	12,283
St. Louis, MO Goodfellow Federal Complex	43,847
Detroit, MI Theodore Levin U.S. Courthouse	68,792
Hartford, CT Abraham Alexander Ribicoff Annex	9,970
Cincinnati, OH Potter Stewart U.S. Courthouse	8,101
Milwaukee, WI Federal Building & U.S. Courthouse	27,391
Seattle, WA Federal Office Building	20,850
Blaine, WA Pacific Highway Land Port of Entry	11,930
New York, NY Alexander Hamilton U.S. Customhouse	46,498
Lakewood, CO Denver Federal Center Building 56	6,142
New York, NY James L. Watson U.S. Court of International Trade	5,536

Philadelphia, PA William J. Green Jr. Federal Building	45,000
Washington, DC Herbert C. Hoover Federal Building	150,900
Portland, OR 911 Federal Building	7,439
Salt Lake City, UT Wallace F. Bennett Federal Building	7,758
<i>Repair and Alteration - Design Program</i>	
Washington, DC Robert C. Weaver Federal Building	15,800
<i>Special Emphasis Programs</i>	
Energy and Water Retrofit and Conservation Measures Program	20,000
Judicial Capital Security Program	20,000
Consolidation Activities Program	200,000
Fire and Life Safety Program	20,000

### **Questions for the Record Submitted by Congressman Mark Amodei**

#### *Nevada District 2 Presence*

With limited funding and a real estate portfolio so large the GSA does not know all of the properties it currently owns and manages, we agree that it's important for the GSA to make the most cost efficient and necessary decisions when deciding on projects.

**Question:** What is the policy and procedure for informing Members of Congress when the GSA works on a federally owned property in their district?

GSA has three primary methods of notifying Members of Congress when GSA is working on a federally owned property in their district: 1) GSA sends out contract award notifications; however, note that these are sent to Member offices based on the location of the contractor, not the location of performance; 2) we provide space to many Members of Congress in their Districts, and when projects are ongoing in buildings in which they are housed, they are a part of

notifications about these projects; and 3) we notify Members of Congress of any prospectus-level projects in their Districts as part of the budget submission.

Additionally and less formally, when GSA is aware a Member of Congress is interested in a federal building project in their district, GSA will aim to keep the Member's office updated on key milestones for the project through whatever method they find most convenient.

**Question:** If there is no procedure in place, what will your agency do to ensure that Members of Congress are aware of GSA activity in their districts?

As noted, GSA does currently have in place procedures for a significant number of notifications. However, GSA wants to ensure that all Members are kept fully apprised of GSA activity in their districts and is open to any other suggestions for keeping Members informed.

**Question:** What is the process when determining which maintenance projects would be an appropriate use of funding?

Typically, GSA executes maintenance projects based on: customer urgency and priority (mission requirements); physical condition of the asset; project timing and execution; asset utilization improvement; return on investment; and lease cost avoidance.

**Question:** Are GSA accounts broken down into regional authority? Or does the GSA operate on a national funding priority plan?

GSA develops a Five Year Capital Investment Plan for its major New Construction and Repair and Alteration projects on a national basis. The list represents GSA's plan to address known critical customer requirements and building infrastructure needs for the government-owned portfolio for all projects above the prospectus threshold.

For Basic Repair & Alteration projects, i.e. those projects below the prospectus threshold, GSA currently provides allocations from the national office, holding regional offices responsible for execution. This allows for quicker response to potentially urgent needs that may come up throughout the fiscal year. However, we are currently assessing ways to provide more national guidance on below-prospectus projects as well.

When project funding is enacted, projects are executed at the regional level. Executing projects at the regional level helps ensure the local and regional market and other concerns are clearly understood and taken into consideration.

### *Energy Efficient Building Practices*

The Department of Energy (DOE) in compliance with the 2007 Energy Independence and Security Act has created a rating system that shows best practices for efficient federal facilities. If systems meet various qualities outlined in the rule, federal agencies can use them in their "green" facilities. The DOE standard is the "silver" LEED certification or an agency "can use any appropriate, internal system to ensure that any new Federal buildings or major renovations of Federal buildings meet the requirements."

**Question:** How are you planning to implement or comply with the DOE regulation?

Section 436(h) of the Energy Independence and Security Act (EISA) requires GSA to evaluate green building certification systems every five years to identify a certification system GSA "determines to be most likely to encourage a comprehensive and environmentally-sound approach to certification of green buildings." EISA directs the Director of GSA's Office of Federal High-Performance Green Buildings to provide the findings to the Secretary of Energy who, in consultation with the Department of Defense and GSA, formally identifies the system(s) to be used across the federal government.

After an open and collaborative evaluation process spanning several years, and allowing for agency, public, and private sector input, GSA recommended in October 2013 that agencies use one of two green building certification systems that best suit agency missions and portfolio needs: the Green Building Initiative's Green Globes and the U.S. Green Building Council's Leadership in Energy and Environmental Design.

For GSA, we continue to use the LEED certification system to help determine whether or not we are achieving our goals in the design, construction, and operation of our inventory of buildings.

**Question:** The GSA has completed additional study of the new regulation and system practices in general. How will this study meet your needs going forward?

As noted above, GSA recommended in October 2013 that agencies use one of two green building certification systems that best suit agency missions and portfolio needs: the Green Building Initiative's Green Globes and the U.S. Green Building Council's Leadership in Energy and Environmental Design.

To carry out its recommendation submitted in October 2013 to the Department of Energy, and to stay current with the evolution of the green building certification system marketplace, GSA published a supplemental review of the U.S. Green Building Council's LEED v4 green building certification system to analyze its alignment with Federal green building requirements contained in statute and Executive Order. GSA is using this evaluation to consult with other landholding Federal agencies on the applicability of LEED v4 to assess agency achievement of sustainable

design principles and meet green building requirements. In January 2015, GSA published a request for information in the Federal Register for a period of 60 days to seek external stakeholder input on the applicability of LEED v4. GSA will use its analysis of LEED v4, external stakeholder comment, and feedback from other Federal agencies to augment its 2013 recommendation to the Secretary of Energy as it relates to the LEED certification system, and determine whether or not the newest version of LEED will be recommended for agency use.

GSA evaluation of LEED v4 can be found here: <http://www.gsa.gov/gbcertificationreview>.

**Question:** Last year the Department of Energy issued a regulation making federal property owners provide information on energy and water use in buildings every four years. Can you speak to the agency's ability to meet this requirement and how you feel that GSA will perform?

On October 14, 2014, the Department of Energy issued a final rule entitled, "Green Building Certification Systems for Federal Buildings," which among other things, requires a verification system for post-occupancy assessment of federal buildings that meet DOE's green building certification system.

GSA will be using information already gathered as part of our building certification processes to meet the rule's requirement for a "post occupancy assessment of the rated buildings to demonstrate continued energy and water savings at least every four years after initial occupancy." In addition, it is GSA's practice to review post-occupancy building performance by leveraging utility data from the agency's Energy Use Analysis System and advanced energy and water meters.

As GSA has a mechanism in place to obtain energy and water data for certified projects, GSA will be positioned to meet the rule's requirements, which take effect in October 2015.

**Question:** What is the average return on investment for implementation of LEED or intra-agency "green building" standards? What is the time frame for expected ROI?

When making investments in "green building" components, including energy conservation measures, GSA considers cost in addition to sustainability and other features. Calculating a simple return on investment or payback period for a building project is complicated, since GSA uses an integrated design process where we do not separate "green systems" from non-green. For instance, some of the green features may provide structural support in the building or serve another building requirement, and thus they cannot be considered solely as a green feature and cannot be disaggregated.

GSA conducted an evaluation of our green buildings as documented in the report, "Green building performance: A Post occupancy evaluation of 22 GSA buildings," August 2011. In the



study, GSA selected 22 representative green buildings from its national portfolio and found that operating costs were 19 percent lower than the national average for US commercial buildings. In addition, GSA found that the occupants of these buildings are more satisfied with air quality, cleanliness, and heating and cooling than those working in typical buildings.

When looking at specific energy and water efficiency projects that GSA undertakes, we find quick payback periods. In FY2015, Energy and Water Retrofit and Conservation projects are projected to have an average payback period of 3.1 years.

### **Questions for the Record Submitted by Congressman Quigley**

#### ***Federal Property***

The Federal Government is the largest property owner in the world, but many of those properties are either not utilized or underutilized, all the while necessitating large operating and maintenance expenses.

Last year in testimony before this Subcommittee, GSA was not able to state that it had an up to date, accurate inventory for all real property owned by the Federal Government. I was troubled to find that since then, the Government Accountability Office has updated its "High-Risk" Series and for the 6th consecutive Congress, "Federal Real Property Management" was on the list.

**Question:** Does GSA have an up to date, accurate inventory for all Federal Real Property owned by the Federal Government?

The Administration has made significant progress in creating an updated and accurate inventory of real property owned by the Federal government. However, as the Government Accountability Office (GAO) has noted, more remains to be done to improve the accuracy of this reporting.

Under Executive Order 13327, GSA is tasked with maintaining the Federal Real Property Profile (FRPP), the centralized database of all real property assets held by the Federal government. GSA manages the FRPP under the leadership of the Federal Real Property Council. All Chief Financial Officer (CFO) Act agencies report annually data on real property that is owned, leased, or otherwise managed by the Federal government. Each agency is responsible for gathering and reporting their inventory information.

The continual improvement of data quality in FRPP remains a priority for GSA. GSA collaborated with OMB and the agencies to institute several additional new data quality improvement practices for the FY 2014 FRPP reporting cycle which was completed in December 2014.

**Question:** How many Real Property and land inventory databases exist in the Federal Government and how many taxpayer dollars are spent each year on those databases?

GSA is aware of one other land inventory database that of significant scale. The Bureau of Land Management (BLM) and the United States Forest Service (FS) have a joint venture to track Federal lands using the National Integrated Land System (NILS). This system has a more complete accounting of Federal land as it includes public domain land and public trust land which is excluded in the FRPP. BLM and FS would be in a better position to speak to the costs associated with NILS.

### *Bird Safety*

Per your website, it says that GSA will eliminate its impact on the natural environment and use its government-wide influence to reduce the environmental impact on the federal government.

**Question:** While I applaud your successes demonstrated by the "Going Green Saves Green" sustainability initiatives the agency has implemented, what has the agency done to minimize the impact the agency's portfolio of buildings on bird mortality?

According to the American Bird Conservancy, there are an estimated 300 million to 1 billion birds die each year from collisions with glass on buildings, from skyscrapers to homes. There have been bird collisions and bird deaths associated with the new building that the US Fish and Wildlife Services has moved into in Falls Church Virginia.

GSA's "Facilities Standards for the Public Buildings Service" (P100) contains mandatory facility standards that apply to design and construction of new federal facilities, major repairs and alterations of existing buildings, and lease construction facilities that GSA intends to own or has the option to own. GSA is revising the P100 for 2015 and we are evaluating a specific bird safety measure as a new mandatory standard.

**Question:** What measures has the agency adopted to prevent additional bird mortality for this and other buildings from happening now that spring migration is right around the corner?

GSA is revising its "Facilities Standards for the Public Buildings Service" (P100) for 2015 and is evaluating the inclusion of a specific bird safety measure as a new mandatory standard.

The Council for the Conservation of Migratory Birds was established in 2009 by the Secretary of the Interior and serves to enhance coordination and communication among Federal agencies

regarding their responsibilities under the four bilateral treaties on the conservation of migratory birds (Canada - 1916, Mexico - 1936, Japan - 1972, Russia - 1978). It also builds upon the progress that has been made in recent years on conservation of migratory birds. Participation in the Council is open to all Federal agencies whose activities may directly or indirectly affect migratory bird populations.

**Question:** Is the GSA a member of the Council for the Conservation of Migratory Birds?

GSA has participated on a staff level with the Council for the Conservation of Migratory Birds. In addition, GSA was invited to join the Council this year, and GSA's Chief Architect will be attending the May 2015 meeting.

### *Childcare for Federal Workers*

Administrator Roth, I understand that one of the primary problems for women in the workforce is finding high-quality, affordable day care for their young children. I believe that the Federal Government should lead by example, offering access to affordable child care for our employees' families. I understand that GSA is responsible for helping federal workers gain access to work place child care facilities, and that 104 independently-operated, child care centers are located in GSA-managed spaces across the country.

**Question:** What is GSA doing to continue increasing the availability of child care for federal employees both in DC and in other federal offices around the country?

The primary mission of the GSA Child Care Program is to provide high-quality child care centers that meet the needs of Federal employees nationwide. The Child Care Program supports GSA's national commitment to make quality child care a key building amenity and an essential component of a quality work environment.

The GSA Child Care Program is built on the foundation of the authorizing legislation (40 U.S.C. 590), sometimes referred to as the Tribble amendment. GSA provides space and services for child care centers to operate in facilities under GSA control. Child Care providers are independent companies and can be either for profit or not for profit entities. Space is assigned to child care centers under a GSA Revocable License for Non-Federal Use of Real Property that includes special conditions.

Federal agencies pay GSA rent for child care centers to support their employees who require convenient, high-quality, child care services. Ideally, but not always, child care parents are employed by the agency that pays rent for the space, though access is available to all Federal employees. To ensure financial viability of the child care centers and because child care is a

community program, slots not used by Federal employees are available to families who do not work for the Federal Government (50% of usage can be non Federal).

As agencies experience budget constraints, agency funding in support of child care centers has become more constrained. To alleviate this problem, GSA has been looking at opportunities to create more "joint-use" centers to be shared by all Federal agencies within a designated community. By spreading the costs across agencies, a single sponsoring agency is relieved of the sole financial responsibility for the center.

**Question:** Is GSA facing any barriers to making more child care available for federal employees?

As noted above, as agencies experience budget constraints, funding has become a challenge. To alleviate this problem, GSA has been looking at opportunities to create more "joint-use" centers to be shared by all Federal agencies within a designated community. By spreading the costs across government, a single sponsoring agency is relieved of the sole financial responsibility for the center

Additionally, security requirements can make it harder to access child care centers in Federal space. The elimination of parking and drop off as well as entrance procedures that require non Federal spouses to go through screening can affect enrollment for onsite centers. Additional HSPD-12 background check requirements for staff can make the on-boarding time for child care workers up to 2 months. This can create operational challenges for child care providers to fully staff a Child Care Center and meet minimum child: teacher ratio requirements.

Finally, the requirement for enrollment of at least 50 percent children of Federal workers can be challenging to meet in certain buildings, especially as oftentimes Federal contractors may be the users of these child care centers.

MONDAY, MARCH 23, 2015.

**THE SUPREME COURT**

**WITNESSES**

**HON. STEPHEN G. BREYER, ASSOCIATE JUSTICE, SUPREME COURT OF  
THE UNITED STATES**

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

Mr. CRENSHAW. Well, this hearing will come to order.

First of all, let me welcome Justice Breyer and Justice Kennedy. Thank you for being here today. I know both of you have testified before our subcommittee in times past, and we appreciate you coming back and being with us here again today. We all look forward to this time to have an exchange. Not often does the legislative branch and the judicial branch get to talk to each other. So we look forward to that.

I think all of us know that a fair and impartial judiciary is very much a cornerstone to our democratic system of government. And so the fact that you are here today I think is important. I think the work that you do is obviously very, very important, and not only do you resolve disputes between individuals but also between the executive branch of the Federal Government as well as the legislative branch. And, to do that, you need the respect of the citizens, and I think you have that. I think you also give respect to the citizens and their view of what is right and what is fair. And that is important as well.

So I think today's hearing is important because we do have a chance to talk to each other about issues that are important.

Now, one of the things that I want to commend you all for is your work to try to help save money. Everybody knows that government needs money to provide services, but of late, we are trying to make sure that every task of government is completed more efficiently and more effectively than it ever has been before. Money is limited, and you are to be commended for the work that you have done to try to save the taxpayers' dollars. I noticed that your request this year, \$88.2 million, is almost \$1 million less than you requested last year. And I can tell you my fellow members up here don't see that happen very often when an agency comes in and asks for less money than they received the year before. So we thank you for that.

I know you have done some cost containment initiatives dealing with technology, dealing with personnel, and it has paid off. And I know that there are some small increases, a part of that overall reduction, that are basically inflationary themselves.

So, Justice Kennedy, Justice Breyer, we look forward to hearing from you about the resources that you need and any other comments you might have about the judiciary in general. And we are

going to pledge to you to work as best we can to make sure that you have the resources necessary to carry out your constitutional responsibility. And, once again, thank you for the work you have done to try to save money and be efficient and effective.

And, in closing, just let me say on a personal note, I am from Jacksonville, Florida, and we have something there called the Chester Bedell Inn of the Court. It was one of the first Inn of the Courts established in Florida. And every year they have a special occasion on Law Day, and I wanted to let you know that they will be requesting one of the members of the Supreme Court to come in 2016 to be there for that celebration in Jacksonville, Florida. So I hope you will be on the lookout for that invitation. I know they would love to have you there, and I would certainly welcome the honor to introduce you to Jacksonville, Florida.

Mr. WOMACK. The chairman has no shame.

Mr. CRENSHAW. And that has nothing to do with your budget request. And so we look forward to hearing your testimony, but, first, let me turn to the acting ranking member, Mr. Bishop.

Mr. BISHOP. Thank you very much, Mr. Chairman.

Ranking Member Serrano would very much have liked to have been here today. But he could not, and he sends his sincerest apologies. I am here in his place, and I would also like to warmly welcome you both, Justices Kennedy and Breyer, to our subcommittee.

As has been said in the past years, this is one of the rare opportunities for our two branches of government to interact. Because of this, our questions sometimes range beyond strict appropriations issues. And, as our Nation's highest court, many of us look to you for important insights into issues affecting the Federal judiciary as a whole, which can be especially critical in such difficult and challenging budget times as we are experiencing.

We have to be careful not to allow anything to affect the ability of our Federal judiciary to hear cases and to dispense justice in a fair and a timely manner. We have to be sure also to provide the Supreme Court, as both the final authority on our Constitution and the most visible symbol of our system of justice, with sufficient resources to undertake not just your judicial functions but your public information functions as well.

So we look forward to your testimony and whatever we can do to make sure that we have a strong independent, well-funded judiciary, we want to do that.

I yield back, Mr. Chairman.

Mr. CRENSHAW. Thank you, Mr. Bishop.

And now let me recognize first Justice Kennedy for any remarks you might like to make. We will put your written statement in the record. And if you could keep your remarks in the neighborhood of 5 minutes, that will give us some time to ask questions. But, again, the floor is yours.

Justice KENNEDY. Thank you very much, Mr. Chairman, Congressman Bishop, Congressman Womack. Thank you for your welcome and your greeting to Justice Breyer and to me, and we bring our messages of greeting from our colleagues.

With us today—I will just go in the order of where they are seated—are Jeff Minear, who is counselor to the President, and—or

Counselor to the Chief Justice; and Kevin Cline, who is our budget and personnel director; and Pam Talkin, who is the Marshal of the Court; Scott Harris, who is the Clerk of the Court.

And is Patricia here with you as well? We have Kathy Arberg and Patricia Estrada from our Public Information Office.

As you indicated, Mr. Chairman, we are always very careful, very cautious, about budgetary expenditures. And, as you well know and as the committee well knows, the budget of the Supreme Court is just a small part of the budget for the courts as a whole. And the budget for the courts as a whole is a very small part of the United States budget.

And in I think a day you will hear a presentation from Judge Julia Gibbons of the Sixth Circuit on the budget for the judiciary as a whole. And this is of immense importance. She does a marvelous job for the judiciary, and spends many, many days and weeks on this subject. And the budget for the Federal judiciary as a whole—it is important I think for the Congress to realize—is not just bar judges. There are 7,900 probation and pre-sentencing officers. And this is cost-effective because this keeps people on supervised release so that they are not in custody, and this is a huge cost saving. Quite without reference to the human factor, over the years in the Federal system, we have a very low recidivism rate for those who are on release. It is high if you look at it as one-third, but it is quite low compared to the States. So this is cost-effective.

And the Federal courts as a whole, Mr. Chairman, are a tangible, palpable, visible, clear manifestation of our commitment to the Rule of Law. When people from foreign countries come, as judges often come, and they see the Federal judicial system, they admire it. They are inspired by it. And they go back to their countries and say that this is a nation that is committed to the Rule of Law. And law is part of the capital infrastructure. You can not have a free economic system without a functioning legal system. And so what you do is of immense importance, and we appreciate it.

As to our own budget, as you indicated, Mr. Chairman, overall we have a decrease in our own court operations and expenditures. We have almost exactly a 1 percent—little over a 1 percent increase—and that is for mandated increases for inflation and salary increases that are mandated. And over half of that we have absorbed by cost-cutting in the court. So we have absorbed over half of the mandated increases within the existing framework that we have.

The Court is planning to have, in the year 2016, an electronic filing system so that all of the papers that are filed with the Court will be on electronic filing. We waited in part until the district courts and the circuit courts could get on that system so that we could then take it from them, but of course this also includes filings from State courts and from prisoners. We think this may require an increase in personnel by one or two people. We are not sure. The pro se petitions, of which there—I don't know, it is in your materials—probably in the area of 6,000 a year. These are usually handwritten, prisoner handwritten. When this is put on electronic—an electronic retrievable transmission—system, you will have a database from which scholars and analysts can look at the whole criminal system, both State and Federal, and make compari-

sons. How many—what are the percentage of cases where there is a complaint on inadequate assistance of counsel, or search and seizure, or a Batson violation. And so this will be a database that will give us considerable data for scholars so that we can study our system.

We are, of course, prepared to answer questions about the specifics, but, once again, let me thank you for the honor of being here. My colleague Justice Breyer and I are pleased to answer your questions.

[The information follows:]



**Statement of Justice Anthony Kennedy  
Associate Justice of the Supreme Court of the United States  
Before the  
Subcommittee on Financial Services and General Government  
of the  
House Committee on Appropriations  
March 23, 2015  
3:00 p.m.  
Rayburn House Office Building, Room 2359**

Chairman Crenshaw, Ranking Member Serrano, and Members of the Subcommittee. Thank you for giving Justice Breyer and me this opportunity to appear before your Committee to discuss the budget requirements of the Supreme Court for fiscal year 2016. We are pleased to convey greetings to all of you from the Chief Justice and our colleagues.

We have with us today Jeffrey Minear, Counselor to the Chief Justice; Pamela Talkin, Marshal of the Court; Scott Harris, Clerk of the Court; Kathy Arberg, our Public Information Officer; and Kevin Cline, our Budget Manager.

As is customary, the Supreme Court's budget request consists of two parts. We will present today the first part of the request, which addresses salaries and expenses of the Court. The Architect of the Capitol will provide a separate statement on the second part of the request, which addresses the care of the building and grounds.

Before presenting our fiscal year 2016 request, we would like to express our appreciation for Congress's approval of our funding request for fiscal year 2015. We recognize that Congress and this Subcommittee face a difficult task in allocating a limited pool of available funds among a variety of government components engaged in a wide spectrum of worthwhile activities. The Judiciary's entire budget request is small

compared to the overall federal budget, representing less than two-tenths of one-percent of federal expenditures. The Supreme Court's request, in turn, represents only 1 percent of the Judiciary's budget. Although our request is small considering the requests you receive from other agencies and departments, we appreciate the funding we receive. We are also grateful for the Subcommittee's confidence in our ability to manage those funds efficiently. We assure you that we remain fully committed to prudent fiscal practices.

For fiscal year 2016, the Court is again requesting a minor increase over the previous funding level. The fiscal year 2016 request amount is 78.274 million dollars, consisting of 2.55 million dollars in mandatory expenditures and 75.72 million dollars in discretionary expenditures. This increase is just 780,000 dollars — or slightly more than 1 percent— over the fiscal year 2015 funding level of 77.494 million dollars. The Court's request reflects an increase of 1.32 million dollars in required salary and benefit costs, a 332,000 dollar inflationary increase in fixed costs, and a reduction of 869,000 dollars in Court-initiated cost savings.

We hope that, when you examine our request, you again recognize our own rigorous self-policing of expenses. Our request in fiscal year 2016 is only 0.7 percent more than our fiscal year 2011 request of five years ago. We have not requested a programmatic increase since fiscal year 2012, other than the 500,000 dollar increase requested in fiscal year 2014 to restore the voluntary one-year technology fund reduction we proposed the previous fiscal year. Since fiscal year 2012, our requests have reflected almost 6 million dollars in reductions realized through Court-initiated cost savings, not including the 500,000 dollar one-year technology fund reduction.

We are proud of our self-enforced austerity. Our practice of requesting only essential funding gives us little latitude, however, to absorb budget cuts without impairing critical operations. We do not have the capacity to alter our mission or reduce our functions. We have no control over the number of petitions for review that are filed each year. Nevertheless, we continuously seek out ways to make our operations more efficient.

We would like to give the Subcommittee advance notice that we may need to seek a programmatic increase in our fiscal year 2017 budget request. As the Chief Justice noted in his year-end report, we are currently in the early stages of developing an electronic case-filing system. We expect that the fiscal year 2016 technology funds will be adequate to complete the development and initial implementation of the system. We may need to seek additional funds in fiscal year 2017, however, for two full-time employee positions to assist in the operation, maintenance, and improvement of the system. We are not yet sure whether those positions will be necessary, and we will request additional funding only if and when we are convinced they are needed. Whether the need materializes or not, you can be confident that we will continue to exercise sound management of taxpayer funds.

Perhaps this should be noted in closing. A judiciary cannot function without adequate supporting resources. When judges, legislators, and many other observers from foreign nations study our judicial system, they see at once the results of a long and wise Congressional commitment to provide federal judges with the substantial resources they must have to perform the judicial function. Courthouses, libraries, and technical equipment, including hardware and software for the information age are all provided and

kept up-to-date. And then, of course, the judges must and do rely on the impressive human resources Congress provides them, including devoted staff with a high degree of technical expertise and training. The result is that these observers see a tangible, powerful example of a Nation committed to the Rule of Law. This is an inspiring and necessary lesson for our times. In appearing here today it is our honor and privilege to take express note of this longstanding Congressional commitment to our law and our legal heritage.

This concludes a brief summary of our request. Although we cannot comment on Court decisions or pending cases, we would be pleased to respond to any budget-related questions that the Members of the Subcommittee may have.



Anthony M. Kennedy, Associate Justice,

was born in Sacramento, California, July 23, 1936. He married Mary Davis and has three children. He received his B.A. from Stanford University and the London School of Economics, and his LL.B. from Harvard Law School. He was in private practice in San Francisco, California from 1961–1963, as well as in Sacramento, California from 1963–1975. From 1965 to 1988, he was a Professor of Constitutional Law at the McGeorge School of Law, University of the Pacific. He has served in numerous positions during his career, including a member of the California Army National Guard in 1961, the board of the Federal Judicial Center from 1987–1988, and two committees of the Judicial Conference of the United States: the Advisory Panel on Financial Disclosure Reports and Judicial Activities, subsequently renamed the Advisory Committee on Codes of Conduct, from 1979–1987, and the Committee on Pacific Territories from 1979–1990, which he chaired from 1982–1990. He was appointed to the United States Court of Appeals for the Ninth Circuit in 1975. President Reagan nominated him as an Associate Justice of the Supreme Court, and he took his seat February 18, 1988.



Stephen G. Breyer, Associate Justice,

was born in San Francisco, California, August 15, 1938. He married Joanna Hare in 1967, and has three children - Chloe, Nell, and Michael. He received an A.B. from Stanford University, a B.A. from Magdalen College, Oxford, and an LL.B. from Harvard Law School. He served as a law clerk to Justice Arthur Goldberg of the Supreme Court of the United States during the 1964 Term, as a Special Assistant to the Assistant U.S. Attorney General for Antitrust, 1965–1967, as an Assistant Special Prosecutor of the Watergate Special Prosecution Force, 1973, as Special Counsel of the U.S. Senate Judiciary Committee, 1974–1975, and as Chief Counsel of the committee, 1979–1980. He was an Assistant Professor, Professor of Law, and Lecturer at Harvard Law School, 1967–1994, a Professor at the Harvard University Kennedy School of Government, 1977–1980, and a Visiting Professor at the College of Law, Sydney, Australia and at the University of Rome. From 1980–1990, he served as a Judge of the United States Court of Appeals for the First Circuit, and as its Chief Judge, 1990–1994. He also served as a member of the Judicial Conference of the United States, 1990–1994, and of the United States Sentencing Commission, 1985–1989. President Clinton nominated him as an Associate Justice of the Supreme Court, and he took his seat August 3, 1994.

Mr. CRENSHAW. Justice Breyer, you are recognized.

Justice BREYER. I would simply reinforce what my colleague Justice Kennedy said and what you said, Mr. Chairman, and you are here. And I think that is a very good thing.

So are we because I think our biggest problem is not necessarily the budget, but it is right similar to yours, which is how do you get the American people to understand what their institutions are about. And, in our case, we are not up in some heaven somewhere where we decree things from on high communicating directly with some mysterious source, that we are part of the Government of the United States.

And you are actually interested in the mechanics of how we bring this about. Good. It means we are not totally off on our own. And try to explain to people what we do, as you then try to explain what you do, and you say, We are part of you, and, you know, you are part of us, and that is talking to the people of the United States.

So I am glad to have even a little opportunity to talk about our institution and how it works, and I am glad you are interested. Thanks.

Mr. CRENSHAW. Well, thank you very much.

Justice KENNEDY. Mr. Chairman, I just might mention the Inns of Court, which you alluded to, was the idea of Chief Justice—former Chief Justice—Warren Burger. He loved all things English, and he wanted to replicate this structure in which judges and attorneys and law professors and law students have dinner twice a month and talk about common issues. And he did it with Judge Sherman Christensen of—the late Judge Christensen of Utah. And Cliff Wallace also assisted him, and it has been remarkable. It costs the government no money. And, in Jacksonville, Florida, and in Sacramento, California, in Boston, they have Inns of Court. And it has made a tremendous difference. People thought, oh, this is kind of an interesting idea. It has made a real palpable, tangible, visible difference in the civility that we have within our profession. It has been a remarkable, remarkable achievement. It was Warren Burger's idea.

Mr. CRENSHAW. That is great because it really is there to promote civility, to boost professionalism, and they are doing certainly a great job.

As we begin the questions, I can't help but recall the last time you all were here, I asked you how the Court decides who they are going to send over to testify before us, and I think, Justice Kennedy, you replied it is based on merit. And so you are back again. Good job.

Let me ask you, one of the things that I know there had been a lot of work being done on the building and grounds. And, over the last 10 years, I think this committee has spent or appropriated about \$120 million to, for the first time since 1935, do some upgrades, and so I just want to ask for a kind of an update on how all that work is done. The facade was redone, I guess north and south. Is that all complete? At one time, there was a big hole in the ground next door, but since I have been by of late, everything looks really nice. Can you just give us an update on all of the work that has been done? And is that completed and finished?

Justice KENNEDY. The \$120 million appropriation for the project for refurbishing of the building is completed. We came in under budget. And the project has been closed and has been very, very successful.

Incidentally, the original cost for that was—the original estimate was \$170 million. And I talked with your predecessor when I got the message, and he said, I think we have got a problem. I said, I think it sounds too high to me. We hired our own architect and worked with him. And, in fact, my recollection is that he did most of his work pro bono. And from the architect that we hired—he was from the University of Virginia, taught architecture there—we got it down to 120, and the building came in under that.

There were some contract claims. One of the problems was the windows. If you look at our windows on the court, there are these lovely windows. So to replace the windows, which we had to do, they measured. They measured the bottom for the width of the window, and then the height, but they didn't know that it is not a rectangle. It is a trapezoid. So the window at the top is slightly smaller, and that is to give it perspective. It was a brilliant architecture. And so that was about a \$15 million mistake, which we were not going to pay for. But that is the kind of thing that comes up in the building.

And it is finished. We had to replace all the wires, all the air conditioning. We had the air-conditioning system from 1938, and when it broke, there was a fellow that was retired in West Virginia. We sent a police car to get him, you know, and we said we better fix this. And so that has been done.

The facade is a different project. That is the—some of the marble was actually falling off. The time has not been kind to the marble on the building. And so we are still in progress. The entrance, the west side of the building, is finished, but the north and south and the east have yet to be done.

Mr. CRENSHAW. Gotcha. Let me ask you, and we will have time, I think, for a round of questions or two. The whole security issue. You know, the world is—seems to be getting more dangerous, whether it is internationally or whether it is domestically. And I know from time to time the Supreme Court hears controversial cases. And I know that you spend about \$18 million a year on security—primarily with the Supreme Court Police, and I just wanted you to tell us, is that adequate? And, for instance, if you hear a or are going to hear maybe a highly charged case, do you have to increase security during the time those hearings takes place?

Just give us an overall view of how you see—because I was just in Jacksonville this morning with the folks in the Federal courthouse, and that is a concern to them in these difficult economic times to make sure we have adequate security for a lot of people that are in public service. But give us a little update on how—is that all being funded? Is that all being taken care of in terms of security?

Justice KENNEDY. It has been. A few years ago, we projected that we needed more than we ultimately asked for, but we are now satisfied that we have the right number.



Yes, of course, in high-profile cases or when threat assessments are going up, we have increased security, but we can do it all within our existing staff.

Mr. CRENSHAW. Thank you.

Mr. Bishop is recognized.

Mr. BISHOP. Thank you very much.

When you were last here, we discussed the very real impact of sequestration. Unfortunately, we still need to discuss that. I think most people think of Federal grants and programs where you are able to dial back operations. But it is not the case with the Federal judiciary. Courts have a constitutional responsibility, and you cannot control the scope of your jurisdiction, and you have already undertaken strict cost-cutting measures prior to sequestration.

I know you can't answer for the entire judiciary, but what do you see as the continued effects of sequestration? What concerns do you have if sequestration is continued?

Justice KENNEDY. I have not heard the testimony for the other agencies that come before you, and maybe they all say that we are all unique; you can not have any sequester for us. So I do not want to just repeat the argument that you hear all the time.

But a few things. Number one, we can not control our workload. It is controlled by forces and factors that are beyond our direction.

Number two, we have a tradition, as the chairman indicated, of being very prudent and very cautious. With us, if there were cut-backs, it would mean delayed processing time of cases, and it could mean compromises in security. With the courts in general, it is much more significant. As I indicated, we have 7,900 probation officers, and if they are laid off, that means more people are in prison at a greater cost. So sequestration actually works backwards.

Justice BREYER. Yeah, I agree. At some point, you cut back enough and keep going, you will discover that, unfortunately in the United States, there are crimes. And people are arrested, and they are supposed to be tried. And you need a judge, and you need a jury, and you need a courtroom. And the alternative is not to have the trial. If you don't have the trial, the person has to be released, and there we are. And so there is a minimum. And if you go toward that minimum and beyond it, you will deprive the country of the services that basically are needed to run the Government of the United States in this area.

Mr. BISHOP. Thank you.

I applaud the Court's ability to find savings in its budget. Your total fiscal year 2016 request for salaries and expenses and buildings and grounds does represent a discretionary decrease of 1.1 percent from fiscal year 2015. It looks like this is a combination of the construction work being completed and savings from non-recurring costs that are associated with implementation of your new financial system.

Are there program increases you are delaying but you still feel would be beneficial at some point?

With regard to implementation of your new financial system, I understand you are leveraging resources from the executive branch and the Department of Interior, specifically in the area of payroll and financial tracking. I understand that this move has reduced your reliance on contract employees, and it seems to be a great step

toward efficiency. Do you find that you are getting the same level or an improved level of service? Would you recommend this to other agencies that are looking to reduce their costs?

Justice KENNEDY. Well, I am not enough of an expert to recommend it to other agencies, but our staff tells us it is working very, very well. They like it. They like it better than the outside contractors, and it is much cheaper. We are in partnership with an agency in the Department of Interior, and it—which has some similarities to us, and it has been—it has been the source of—it has generated most of the savings that we have had over the last few years.

Mr. BISHOP. Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Justice KENNEDY. Part of the question, Congressman Bishop, we are not holding back on anything other than we do have this projection that we may need two more people because of the electronic filing that we are going to put in place in 2016.

Mr. BISHOP. I must remark, thank you very much, Mr. Chairman, that the answers from our witnesses are so succinct and to the point and concise.

Mr. CRENSHAW. Yeah. We don't—not only do we not get people requesting less money; we don't get people that speak clearly and concisely. So congratulations on both fronts.

Now I would like to recognize Mr. Womack.

Mr. WOMACK. I wish they were all this way.

Justices, once again, it is a great honor to have you before us. We always look forward to hearing your commentary. And I am specifically interested in the IT piece of what is going on at the Supreme Court. These technology changes are happening so fast, so fast that we get further and further behind, I think, in trying to keep up with what technology ought to be able to do for us. And so I am interested in knowing just how well the IT upgrades are going.

In listening to your testimony, Justice Kennedy, I got to thinking about our friends over at the VA and the DOD. They are having such a difficult time coming up with a platform that can serve a very special group of people to our country, our veterans, and being able to get these two systems to talk to one another—do you encounter any of that kind of conflict within the judicial realm in dealing with matters of information technology?

Justice KENNEDY. My guess is, and Justice Breyer is much more—is more well versed in this than I am, my guess is that, by comparison with many other agencies, our problems are predictable. We know there is going to be a trial with a plaintiff and a defendant. We know there is going to be an appeal with an appellant and an appellee. We know there may be a petition with a petitioner and a respondent. So the universe of problems is rather well-known and rather predictable. We do not have to project for uncertainties to the extent—nearly to the extent that other agencies do—and our system, the legal system, lends itself very well to the electronic technology.

Justice BREYER. In my own mind, I classify three different things this technology can do.

One that you heard about, and that is the budgeting, for example, and things that are technological, and there they have made advances in getting together with other agencies.

The second, which is coming along and is slower to develop, is the ability to file briefs and opinions and other things electronically, which is helpful to the lawyers and it is helpful to the public because they can get it instantaneously. Now, that takes some time, but I think it is going along satisfactorily. And I think that most of the other court systems, we have this already in many forms. So it can plug into ours without too much trouble.

The third, which is a little more open-ended—and I put more weight on it—is, can we use our technology to inform the public about what we are doing, particularly through our Web site. And I was talking to people from SCOTUS Blog. I mean, they do the same kind of thing, and that is not so easy to do, and we put in a Web site, but the question is, will they use it. Will people find out? Will schoolchildren find out? Will some teacher say, Hey, I want to know about this case. I know how to do it. I get on the Web, and I tell my class. Fabulous, if we can do that. I got some figures, and we don't—it is hard to calculate what it is.

We had, according to this, we have in a year 271,530,850 hits, but I wasn't sure what that meant. I mean, is that a lot or a little? It sounds like a lot to me. It said 75 million a month, but how do you measure it? And then we tried to get some comparative figures. It says, well, the White House is way up there, maybe with 1,000, whatever they are. Rank 1,000, 2,000, maybe. And you are about, you know, maybe 8,000 or 5,000. And we are about like 10,000. And the inspector general is like 2 million or something. So it seemed that there is interest in getting this information.

And how to develop that in a way that is useable over time and encourages the average American to find out, I think that is a big project. And I think it will require a lot of experiment back and fourth, and I think, as I said, you are in it as much as we are.

Mr. WOMACK. No question.

Justice KENNEDY. I think also, Congressman, it is just anecdotal, it is only a tentative hypothesis. But I think electronic information has reduced the number of appeals that we have because lawyers who are trying a case can just push in Batson rule, who has presumption, and immediately comes up an answer, the latest cases. If there is a conflict, it comes up. I think that this is easier for lawyers and judges to find the law.

Mr. WOMACK. With the time that I have remaining, and I know I am about out of time, at the risk of getting into a philosophical discussion, I have some very strong feelings about our capacity to deal with people given our current prison and local jail overcrowding. It goes all the way from our county levels to the Federal system, and it seems to me that our country continues to struggle with what to do and how to manage—you just can't build enough incarcerating facilities to deal with the population. It is such an expensive thing. I was at an event Saturday night in my own district and one of the county judges remarked to me that there is a chance that their jail is going to be shut down. The opportunities or the solutions to these problems seem to be fewer and fewer. So I kind

of consider myself in the camp of we are going to have to start prioritizing how we deal with this.

And the supervised piece that you spoke of, Justice Kennedy, about the probations and those kinds of programs is just a very invaluable tool to our country in helping manage just how many people we have behind bars at a given time. So I will just throw it out on the table and yield back my time.

Justice KENNEDY. I think, Mr. Chairman, that the corrections system is one of the most overlooked, misunderstood institutions and functions that we have in our entire government.

In law school, I never heard about corrections. Lawyers are fascinated with the guilt/innocence/adjudication process, and once the adjudication process is over, we have no interest in corrections. Doctors know more about the correction system—and psychiatrists—than we do. Nobody looks at it.

California, my home State, had 187,000 people in jail at a cost of over \$30,000 a prisoner. Compare the amount that they gave to schoolchildren, it was about \$3,500 a year. Now, it is a difference. This is 24-hour care, and so this is apples and oranges in a way.

And this idea of total incarceration just is not working. And it is not humane. The Federal Government built—what do they call them—supermax prisons with isolation cells. Prisoners—we had a case come before our court a few weeks ago, the prisoner had been in an isolation cell, according to the attorney—I haven't checked it out—for 25 years. Solitary confinement literally drives men mad. Even Dr. Manette had his workbench and his cobbler's tools in Tower 105 North—and even he lost his mind. And we simply have to look at this system that we have.

The Europeans have systems for difficult, recalcitrant prisoners in which they have them in a group of three or four. And they can stay together as a group of three or four, and they have human contact. And it seems to work much better, but we haven't given nearly enough study, nearly enough thought, nearly enough investigative resources to looking at our corrections system. In many respects, I think it is broken.

Justice BREYER. Just one thing because I want to focus on one word that I think you said, which to my mind is the direction of an answer, and that is the word “prioritize.” Fine. Who will do the prioritizing? Do you think you can do it here? You proceed crime by crime. I mean, no matter what crime you chose, you will find individuals who committed it in a way that seems to deserve little and some maybe who deserve a lot. And you can't look at it individually.

You want to have mandatory minimums? I have said publicly many times that I think that is a terrible idea. And I have given reasons, which I will spare you. If you want individual judges to do it—always, completely—you run the risk of non-uniformity. And, therefore, we have set up rule commissions, sentencing commissions, and then mandatory minimums.

So it a huge topic. And is it worth your time and effort or mine to try to work out ways of prioritizing? I think it is. I think it is a big problem for the country. And so I can't do anything more in the next minute or 30 seconds or 2 seconds, than just say I like the word “prioritize.” I hope you follow up it up, and I hope you

do examine the variety of ways that there are of trying to prioritize and then work out one that is pretty good.

Mr. WOMACK. I thank the gentlemen.

Mr. CRENSHAW. Thank you.

Mr. Rigell.

Mr. RIGELL. Thank you, Mr. Chairman.

And, Justices, I join my colleagues, all of my colleagues in expressing our appreciation for the work that you do, for serving on the Court, and for your being here today. This is going into my fifth year serving in the House of Representatives. It is my first year on Appropriations. And, really, to have seen this on my calendar and to know this was coming up, I considered it, as Mr. Womack said, just an honor to be here and have you here with us today.

I would like to visit the topic of the electronic case filing system. I would suppose, now, I am not familiar with it, but if we are going to electronic, that that would mean that at present it is a physical document that is being received by the Court? You can elaborate on that if you would like, but then was any of this commercially available? Or was this like written exclusively for the Supreme Court, the software that we will be pivoting to? Justice Kennedy?

Justice KENNEDY. I can not answer that. The lawyers have available to them commercial systems for filing their—for filing their briefs and so forth. So they are out there, and there is some competition. There is some competition there.

So far as the court side, how does the court manage it, I am not sure that there were outside contractors or not.

Justice BREYER. I just learned from Jeff Minear, he said we developed it all in-house.

Mr. RIGELL. Okay. All right. That is helpful.

Justice Breyer, I noted and was intrigued and appreciative of your comments discussing your desire and really the Court's desire to get the work of the Court out to the American people and to engage them in this.

Is there a designated effort, a continued effort, and to the extent that you are familiar with it—and, by the way, I actually thought it would be your staff—some of your staff would actually—and I see that they are here with us—but to see the two of you actually engaging the committee, I think, is laudable. I respect and appreciate that.

You may not be dialed in on all the nuances of it, but the effort to revisit the Web site to keep it fresh and perhaps, to use the term that is so often being used now, to develop an app, you know, for the Supreme Court, and maybe there is one and I just need to be educated about it, but this idea of engaging the American public, I applaud you for this. It needs to be done because we only have a healthy republic if our fellow citizens are engaged and knowledgeable about what is taking place.

So could you comment on that just a little bit? And you can run with it if you would like to. Either one of you.

Justice BREYER. Well, I mean, it is my favorite topic.

Mr. RIGELL. Okay.

Justice BREYER. But it is particularly hard for us. You at least can say, you know, we disagree about a lot of stuff in Congress, but

there are elections to resolve it. We have to say, why should nine unelected people be making decisions that affect you in an important way? And, by the way, half the time we are divided; half the time we are unanimous. But when we are divided, say, 5/4, 20 percent of the time, somebody is wrong. So these decisions might not be right, and they affect you, and they are important. Why should you support an institution like that? We have answers, and so did James Madison. So did Alexander Hamilton. So did John Marshall. Okay? So there are answers, but people are busy, and will they take the time to listen? Okay.

Annenberg Foundation has a whole series of films and teaching devices. Justice Kennedy gave a speech about this years ago which, in part, led to Justice O'Connor developing iCivics, and iCivics has millions of hits and is trying to do the same thing. They are trying to, in Boston, at this moment—well, in one week—they will open Senator Kennedy's Institute. And what that is is a model of the Senate. And there are little handheld computers, which will make you the Senator, if you are a school kid, and will then give you problems, and you will learn how the Senate works. And maybe that will go out over the Internet to classrooms, and they need one for the House.

Mr. RIGELL. Outstanding.

Justice BREYER. And so, gradually, I think, and am very enthusiastic, that it is possible to use the devices that we have now—

Mr. RIGELL. Oh, yes.

Justice BREYER [continuing]. To teach. When Antonin Scalia and I have, as we have done, go to Texas and talk to a large number of school kids and they get interested and they see that we have differences of opinion that are not personal, and they see that the agreement is more important than the differences, fabulous.

Mr. RIGELL. Yes.

Justice BREYER. And so there you see the enthusiasm in my voice, but—

Mr. RIGELL. I love seeing the passion.

Justice BREYER. I think it is a great and necessary task.

Justice KENNEDY. One of the things we found, Congressman, is that the information revolution has put law professors back into the fore. It used to be that we relied on law reviews to comment on cases. And the law review would take about a year for the law review article to come out.

But now we have commentary within 24, 48, 72 hours of a Supreme Court case by experts in cybersecurity law, in criminal law, in constitutional law. And these are available, first of all, to the legal profession and the academy, but, second, to people that are generally interested. There are blogs on the Supreme Court. And there are, as I indicated, blogs on different subjects. They are quite detailed. They are quite interesting. My law clerks read them a lot. I, frankly, don't read them, but the availability of information, and, as Justice Breyer indicated, the interest of the citizen and the ability of the citizen to get it is really increasing remarkable because of the information revolution.

Mr. RIGELL. Yes. Thank you both. Mr. Chairman.

Mr. CRENSHAW. Well, thank you.

You know, when you talked about educating the public, the question always comes up, people suggest that maybe the Court should televise oral arguments. That people could see firsthand what goes on. And I know the Court has historically rejected that. I think it was Justice Sotomayor, before she went on the Bench, thought it would be a good idea to televise oral arguments. And then, once she was on the Bench, she changed her mind and thinks it is not a good idea.

So I just wondered, do you sense any change? Do you think there will be a day when oral arguments will be on the television? Do you think that is good or that is not good in the context of educating the folks? Could you all comment on that.

Justice KENNEDY. The question, do I think there will be the day, it sounds as if we are more or less behind the times.

Mr. CRENSHAW. No. It is just a matter of, you know, history. I mean, today you would probably reject that.

Justice KENNEDY. If you had English-style debating, debate and you were handed the topic and you had to be either pro or con, you could make a lot of good arguments for television in the courtroom. Number one, it teaches. We teach. We teach what the Constitution is. We teach what rights are. We teach what responsibilities are. We are teachers. So why don't we go on the television?

And it would be very good for lawyers who are preparing to—have not been before us before, who want to see the dynamic of an argument.

And it is open. The public could see that we spend a lot of time on patent cases and railroad reorganization cases and so forth and so that we have a technical commitment. And they could see, we hope, an argument that is rational and respectful.

When we are in disagreement, our institution—our institutional tradition—is not to make our colleagues look bad. It is to make the institution look good. And part of that is the way we conduct oral arguments. We are concerned that the presence of a TV camera, the knowledge that we are going to be on TV, would affect the way that we behave. And it is an insidious dynamic for me to think that one of my colleagues has asked a question just so that he or she could look good on TV. I don't want that dynamic. We would prefer the dynamic where we have a discussion in which we are listening to each other, in which we are listening to counsel, and we think the television would detract from that.

So you could make good arguments either way, but we—I think I can speak for most of my colleagues—do not think television should be in the courtroom. We have audio available, and the transcripts are available.

The press does a very good job of covering us. The press has the advantage. They know 3, 4, 6 months in advance what the issues are. They can prepare the background. They can have pictures of the litigants and so forth. And then they are all ready to write the story depending on what we write. So we have good press coverage as well, but I think the cameras in the courtroom are not a good idea.

Mr. CRENSHAW. Justice Breyer?

Justice BREYER. No. He states the problem. But, by the way, the oral argument is like 2 percent. I mean, most of what we take in

and most of the decisionmaking is on the basis of written briefs. Now, the first thing that if the public saw that on television, they would think that was the whole story. It is not. It is a tiny part.

Second thing they would think—and because it is true of human nature and it is a good thing about human nature—we relate to people we see. We relate to them more than a word on paper or a statistic. That is nice. It is good. But in the two people who are having their case in the Court, there isn't like one is a bad one; one is a good one. And we are not deciding, really, on the basis for them. We are deciding a rule of law that applies to 300 million people who aren't in the courtroom. That is invisible on television.

But then when you come down to it, I am fairly, I guess, impervious to making myself look ridiculous to getting an answer to a question that I can best focus by giving some ridiculous example. And he knows that I do, he is saying. All right, and they do, and the reporters are used to it, and they say, Oh, God, but nonetheless, I will do it.

Now, my friends in the press, some of them tell me, You see if you do that the first time that somebody takes that ridiculous thing out of context and puts it on the evening news, particularly someone who is not one of our regulars and doesn't really understand what is going on.

Now, all of that kind of thing is the kind of thing, despite the good arguments the other way, that make us cautious and that make us conservative a small "c." We are trustees for an institution that had a long existence before us, and we sincerely hope will have a long existence after. And the worst thing that any of us feels he or she could do is to hurt that institution, and that makes us awfully cautious.

Now, all that is the psychology at play. And you say, will it eventually happen? Yeah. Sure. Because a generation will grow up that just, unlike me and unlike him, doesn't even know what it was like before things like that took place, but I think that is the best explanation that is in my mind as we both—

Mr. CRENSHAW. Well, thank you for that. And I am not one who has called for having TVs in the courtroom, but I know somebody wanted to ask that question. So I thought I would just ask it.

But let me ask you about the Web site just real quick. You mentioned all those hits that you are getting, and I know when you had the healthcare arguments, I understand there was just a whole lot of interest in that. Did the Web site hold up pretty well? Did it ever crash like some of these other Web sites from time to time?

Justice BREYER. Just as we have occasional problems like anyone does, but they are not that many, and they are few and far between.

Mr. CRENSHAW. Thank you.

Mr. Bishop.

Mr. BISHOP. Thank you very much. Thank you, Mr. Chairman, for asking the question that I wanted to ask about transparency in the Court and televising the proceedings, and I appreciate your answer very much.

As in past years, our ranking member Mr. Serrano and I continue to be interested in the increase in the number of minorities that are selected for Supreme Court clerkships. Those are prized



positions for youngsters coming out of law school. I know that there has been an initiative in place at the Federal judiciary to help recruit minorities into clerkship positions. Do you think that those efforts are beginning to bear fruit at the district and appellate levels? And are there similar efforts under way at the Supreme Court?

Justice KENNEDY. I think they are beginning to bear fruit, and we are conscious of it. The district courts and the courts of appeals are a little bit more open in part because they are around the country and they take from local schools. Some of us tend to take from the Ivy League schools. And not that they are without their pool of—

Mr. BISHOP. Minorities.

Justice KENNEDY [continuing]. Of minority applicants, but we are conscious of it. And it is important, and it is a valid, valid question.

Justice BREYER. When I started on the Court, I don't know the figures in lower courts, but, I mean, in my own case, it might have started out that I had to look, you know, especially hard. I don't now. I mean, it is just—it is not a problem. I don't think it is—I mean, at least in my case. Maybe that has been luck. I don't know, but it seems to me if it is at all—if I am at all typical, the problem has diminished significantly, really significantly. And I could try to do some counting, but I can't in my head. You know, I think of the individual people.

Justice KENNEDY. In 2014, we had 15 percent minority clerks on the Supreme Court.

Mr. BISHOP. Thank you.

Let me move to another subject area. I know that, at previous hearings, we have discussed the possibility of applying the Judicial Conferences Code of Judicial Conduct to the Supreme Court Justices to make recusal decisions by the Justices more transparent for the public.

Currently the Code of Judicial Conduct applies to all of the Federal judges but is only advisory for Supreme Court Justices.

Do you have any thoughts on the proposals for changes to that since we last discussed the issue, I think last year? Do you believe that the Code of Judicial Conduct should apply to Supreme Court Justices and that recusals should be more transparent?

Justice KENNEDY. You prompt me to go back and do some research, but my first response to your question is that recusals are largely governed by statute and by principles that are not necessarily part of the Code of Conduct.

Now, there is an argument that the reason for recusals should be more apparent. I am not sure about that. In the rare cases when I recuse, I never tell my colleagues, Oh, I am recusing because my son works for this company, and it is a very important case for my son. Well, why should I say that? That is almost like lobbying. So, in my view, the reason for recusal should never be discussed. It is obvious sometimes when company A is before the Court and our financial disclosure indicates that a Judge owns a stock in company A, and so that is fairly obvious.

Justice BREYER. Add one thing—two things.

One is, we all have or access to the volumes of the Judicial Code of Ethics. And having been there for some time now, 20 years, I would say I have not seen an instance of recusal by me or anybody

else where the Judge doesn't make sure it is consistent with the—you know, the problem is consistent with the Judicial Code of Ethics. So it did say—well, it is advisory as opposed to compulsory in words. It doesn't really show—make a difference in practice. Now, well, why not? What is it I am nervous about? Why not just say, Hey? I am nervous about this: The Supreme Court is different from a court of appeals and a district court, and that is true, by the way, with television, too, interestingly enough. Why is it different here? Because in the court of appeals, if I recuse myself—or in the district court—they can get another judge. Judges are fungible. They are not in the Supreme Court. You can't get a substitute. And I wouldn't say there is any lawyer in the country who would do this, but it is logically conceivable that a lawyer might sometime think of the idea of bringing up an issue in order to have a panel that is more favorable. I know no such lawyer. But it is conceivable. And, therefore, I think we have to be careful because, unlike those in the lower courts, I can't think, Well, in case of doubt, just recuse yourself if it is a close case. No. I have a duty to sit as well as a duty not to sit.

And, moreover, I have a lot on my schedule. I have a lot to do, as do you, as do others, and trying to make this into some kind of big issue I would prefer not because, I mean, I would think no is the answer. I have to make those decisions. I will make them as best I can. I will do it according to the code of ethics. And, so far, I have been able to that, and I don't want it to become an issue. And all that leads me to say, No, I don't want to have to give my answers if I don't want to, and I have to—it is a personal decision. I will follow the code and that, I think, is the best way to run this institution.

Mr. BISHOP. Thank you.

Mr. CRENSHAW. Thank you.

Mr. WOMACK.

Mr. WOMACK. Only one more question, looking for insight here.

To the credit of the Justices, they get out in our country and they speak quite frequently to different organizations. I know Justice Scalia has been in my district once already this year and I think he is coming back in a month for another presentation as a guest lecturer.

In many cases, you gentlemen are talking to law students and people that aspire someday maybe to sit where you sit. What trends are you seeing? In the medical community, I understand that we are having trouble finding private care physicians, just the general type of family practice physician. Most medical students now are specializing, because that is where a lot of the money is. But what trends are you seeing in our law schools with regard to the new lawyer as it were? Is the legal community blessed with a pretty good crop of young talented minds, or are there any trends there that you can share with me that would raise any concerns?

Justice KENNEDY. I am not sure. My own background was private practice in a small town, which I found immensely rewarding. Now the paradigm for most law students is they think of their career as a huge firm where they specialize, and the idea of counseling and meeting with clients and taking individual cases one by one is no longer the paradigm that they look forward to.

I sense a change in this. The law schools are concerned about costs. There is a big argument whether there should be 3 years of law school; maybe cut it back to 2 years, which I would not applaud. I think that would be a bad idea. But there is a real cost factor. And I try to tell students that law can be immensely rewarding as an ethical undertaking, not just as a way to make a living. And I think these young students are beginning to be conscious of that. I hope.

Mr. WOMACK. Any insights, Justice Breyer?

Justice BREYER. I don't have a lot of insight into that. You have to ask the dean of the law school.

Judging from my law clerks, there is no deterioration of quality. I mean, they are great, and I hear the same complaints from the deans that Justice Kennedy does. Money. Suddenly, maybe in certain areas, they price themselves out of the market. And maybe that means that you have fewer people who are applying, and overall things like that adjust over time.

Specialization, major problem. Major. It is so complicated.

When my dad went to law school, he studied contracts, torts, property. You know, the five traditional subjects, and they may have added tax and con law by the time I got there. And now they have everything under the sun, and that is because there is a demand for everything under the sun. So there we are. How do we do that? Luckily, I do not have the difficult job of being a dean of a law school. I have probably what is an easier job.

Justice KENNEDY. One of the things that is happening in law schools is they do have almost custom-made programs, so that you can take a degree in law and astronomy, law and medicine, law and the press, law and music, law and the performing arts. And this is good. This enables other disciplines to influence what is being taught in the law school, but it is a complicated world out there.

Justice BREYER. I mean, I say personally, because having now grandchildren, I mean, the cost of this stuff is amazing. And what are we going to do about that? I don't know. I don't know. It is a problem.

Mr. WOMACK. Finally, Mr. Chairman, I think I say this every year these two gentleman are before us, but having a wife that has been a trial court assistant at the state level for 30, gosh, I don't know, 34, 35 years now, I have a great amount of respect for the enterprise that these gentlemen represent.

And once again it is a great honor to have you back before us here today.

And I yield back.

Mr. CRENSHAW. Thank you.

Mr. Rigell.

Mr. RIGELL. Thank you, Mr. Chairman.

And my final question, I am going to take us back just a little bit. Justice Kennedy, I was intrigued by your remarks early on, and you referenced, I am not sure if it is an organization or a process like a dinner that has really had an impact perhaps on the staff or the Court itself or those who are around the Court, and I don't know anything about it.

But I do know that where we are as a Nation that in some ways we are off the track, and as much as caustic tone often has overtaken the public square, and it makes it difficult to discern and identify the facts, and then to come to some common solutions for some of these challenges that we face as a country.

You seemed excited about it, and I would like to hear more about it. Civility is not weakness. And so I would like to hear more about it because you are really bullish on it.

Justice KENNEDY. The Inns of Court were the specific subject that the chairman had mentioned, and these exist in most major cities and small towns around the country, and they consist of a group of lawyers, judges, law students, law professors. They get together and they put on programs, how to cross-examine an expert, a medical expert, how to give a closing argument in a criminal case, and so forth; how to make an argument to a court of appeals.

And then the judges and the attorneys and the law professors and the students sit down and have dinner together, so the judge isn't some remote person. He is telling the attorneys how they can do a better job. The attorneys are telling the judge how the judge can do a better job

Mr. RIGELL. Okay.

Justice KENNEDY. And it has been a remarkable influence for more civility in our profession.

Mr. RIGELL. Is this a relatively recent development or has it been around decades and decades?

Justice KENNEDY. I would say 30 years. I would say for 30 years. When Chief Justice Burger mentioned it I thought, well, it is a good idea, a little bit visionary. But it took off like a rocket. He was right.

But this whole idea of civility. We are judged around the world as the guardians and the trustees of freedom, and the verdict of freedom is still out. People are looking at us. They are looking at our democracy. They are looking at our civic discourse. They are looking at our commitment to rationality and to progress. And I am not sure they always see the right thing.

Mr. RIGELL. I share that.

Justice KENNEDY. The Athenians, ancient Athens, Periclean Athens, took an oath, Athenian citizens took an oath. And the oath was that they would participate in civic affairs in a rational way so that Athens will be more beautiful, more splendid, and more free for our children than it is for us. And Athens failed because they failed to obey that oath.

Mr. RIGELL. It is instructive.

Justice BREYER. One, I have been there for a period of 20 years. I have probably attended an awful lot of Conferences of the Court, and we have had some pretty controversial cases, and I will tell the law students, whoever listens, I would say in that time, I have never once, never once heard a voice raised in anger in that Conference. I have never once heard any judge in that Conference say something mean or denigrating of somebody else. It is highly professional.

I say to law student, "We get on well personally, and we disagree about things. So you want to win your case, don't get emotional."

"Oh, why not?"

“Why not? You will lose it, you know.”

People say, “Oh, how emotional you are.” But that is the law. That is lawyers. And maybe it actually works better when you treat people as individuals who have different ideas.

Okay. So that is the general. Then the question is, how do you get that across? How do you get that across? Well, if you are being very practical, I have already said, we have Annenberg trying to do that through storage, we have iCivics, we have the Carnegie Institute for Education, we have the Kennedy Institute, we have probably dozens of others. So you get behind them.

And what can you do with those films? Get Ken Burns. Say, Ken Burns, why don't we have a set of 10 films, and the first is the story of the Cherokee Indians where, contrary to law, they are driven into Georgia, out of Georgia and into Oklahoma, the President of the United States doing that despite the Supreme Court.

Let's have General Eisenhower, President of the United States at that moment, taking those 1,000 paratroopers from Fort Bragg and flying them into Little Rock so those black children can go into that white school.

Let's go through a few cases that illustrate very dramatically and visually what it means to live in a society of 310 million different people who help stick together because they believe in a rule of law. And a rule of law means the opposite of the arbitrary. And you are part of that just as much as we, all right, and so are they. You say part, yes, all right.

So there is a lot that can be said, and there is a lot that can be done, and I could not agree with you more on the importance of doing it.

Mr. RIGELL. I thank you both.

My time has expired.

Justice KENNEDY. We tell people—

Mr. RIGELL. Yes.

Justice KENNEDY [continuing]. Congressman, when Justice Breyer and my colleagues go to events with students, we say, “Look, the Constitution doesn't belong to a bunch of judges and lawyers and law professors. It is yours. It is yours.” Some of the great Presidents weren't lawyers. They were great guardians of the Constitution.

And institutions have to remember this. Institutions have their own visibility, their own reputation, their own duty to inspire others to believe in the system of democracy, these three branches of government we have. And as my remarks indicated earlier, when we have disagreements in difficult cases our mission is to make the court look good, not to make our colleagues look bad.

Mr. RIGELL. Thank you very much. I do appreciate the comments.

And, Mr. Chairman, I yield back.

Mr. CRENSHAW. It reminds me of what Benjamin Franklin supposedly said after the meetings were taking place as our country was getting started. And I understand a lady asked, “Sir, what have you given us?” And Benjamin Franklin said, “I have given you a republic, if you can keep it.” And here we are 200 years later.

Let me ask a quick question. I have read, Justice Kennedy, from time to time, and I don't know if it is still the case, but you had

expressed some concern about the increasingly politically charged issues that are now being heard and decided by the Supreme Court. Can you explain what that concern is? And does Justice Breyer share that concern?

Justice KENNEDY. It is not novel or new for Justices to be concerned that they are making so many decisions that affect a democracy. And we think a responsible, efficient, responsive legislative and executive branch in the political system will alleviate some of that pressure.

We routinely decide cases involving federal statutes, and we say, "Well, if this is wrong, the Congress will fix it." But then we hear that Congress can't pass a bill one way or the other, that there is gridlock.

And some people say, "Well, that should affect the way we interpret the statutes." That seems to me a wrong proposition. We have to assume that we have three fully functioning branches of the government that are committed to proceed in good faith and with good will toward one another to resolve the problems of this Republic.

Mr. CRENSHAW. Kind of the same thing.

Mr. Bishop, you have another question.

Mr. BISHOP. Thank you very much, Mr. Chairman. I will be brief. I notice that the Court's caseload is much lower compared to previous years. The current range of cases is literally half of what it was 10 years ago. Does the Court have a target number of cases that you target each year?

And let me just go back to another subject. You talked about the new crop of young lawyers coming out of law school. I went to law school because I saw the law as an effective way of promoting social change. I came out of law school in 1971, and I was a part of the civil rights movement in interpreting the Civil Rights Act of 1964. And so I am very sensitive to the way that the law can be used to perfect social change and has been in the way the Constitution has evolved.

But there are reports from judges all across the country that the recession has not only caused a spike in the number of pro se litigants in civil cases, but has negatively affected the parties themselves and the courts.

Do you believe that our justice system loses its effectiveness when citizens are unable to afford legal counsel in cases with stakes involving family, shelter, and livelihood? If so, can you perhaps give us some thoughts of how the problem can be remedied with more resources being allocated to pro bono or to legal aid services?

My major piece of litigation of civil rights was on behalf of 6,000 African American inmates in the Georgia State Prison who were in a desegregated system occupying the same space as 4,000 white inmates, and it was certified as a Rule 23 class action case. Judge Alaimo decided it in the Southern District of Georgia back in the 1970s, which resulted in a total change of the criminal justice housing system and the system as a whole, relieving overcrowding.

It was brought pro se, and I happened to be a cooperating attorney associated with the NAACP Legal Defense Fund. I handled that case, and the NAACP Legal Defense Fund, as a pro bono firm, backed it up. So it was at no charge to the litigants. But there are

not that many of those kinds of opportunities in there with the economic recession and with pro se litigants, particularly on civil cases.

How do we deal with that in terms of making sure that our justice system really is not turning on the capacity and the financial resources of the litigants?

Justice KENNEDY. As to just number of cases, the first part of your question, is there an optimal amount that we strive for. We take the cases where we think our guidance is needed. As you know, we wait for courts of appeals or state supreme courts to be in conflict. And optimally we probably should have about 100 cases a year. When I first came, we had something, 160, 180. It was just far too many.

The cases we do get now, I think anecdotally, I haven't seen studies on it, are somewhat more difficult. Patent cases, we had a case, I think it was two terms ago, on the patentability of DNA. I read all summer long about it to try to understand it. It ended up Justice Thomas wrote the opinion, a very good opinion.

So I think our cases are more technical. And the 78 cases that we had last year exhausted us. But optimally we could handle, I think, about 100. But we wait, because we wait until our guidance is needed.

On the broader question of representation in civil cases, I saw some numbers in which the number of unrepresented parties in civil litigation is actually increasing because of some of the factors you mentioned. The Congress has enacted bankruptcy laws which are, I think, well suited to a modern society. The bankruptcy reform statutes are good. And so I don't think there is any real problem in the bankruptcy area. Our bankruptcy judges are just very, very good. So that system, I think, is working.

But in the area of standard civil litigation, I think there is a problem with unrepresented parties, and law schools can and probably should do more, and they should focus again on the small cases, not big firm stuff.

Justice BREYER. I had a couple of things.

On the number of cases, there is a big decline beginning really in the late 1980s. Now, the way we select cases, almost, almost entirely, almost, not completely, but almost entirely is you look to see if the lower courts have come to different conclusions on the same question of federal law. Now, they do or they don't. And if they do, we will probably hear it. And if they are not, we probably won't.

Now, there are other things, holding a law unconstitutional, et cetera, but that is the main thing. So I have not noticed any tendency whatsoever to try not to take cases. Rather, Sandra used to sit there, O'Connor, and say, "We have got to take cases." Now he does it, "Can't we take some more cases?"

So the conflicts are less. Now, why? And my own explanation, which has no particular validity, is that you have seen in the 1970s and 1980s, what you saw, from the 1960s when I was a law clerk, 1960s, 1970s, 1980s, on, tremendous civil rights laws, statutes of all kinds, Title VII, a civil rights revolution, a revolution beyond that in the way that the first 10 Amendments apply to the States.

Well, for a lawyer every word in a statute and every new major case is a subject of new argument. You pass statutes with 50,000 words, you will get 50,000 cases.

Now, suddenly there has been in Congress a kind of increased legislation and major statutes, and those statutes are long and they have many words. So we can predict whether I am right or not, because if I am right—there is a lag, you see there is a lag because they all have to—5 years, 7 years from now we will see the number of cases in the Supreme Court growing because those words will be capable of different definitions and judges will have reached different conclusions. Now, I don't know if that is right. It is a theory, okay.

On the representation, I did look at some numbers a few years ago. We are way behind compared, say, to England or to France. And part of it is in England there is an appropriation, and I don't know where it is on your list, and that is a problem. And in England, by the way, where they had a very good legal representation system in civil matters, they are running under budget pressure, and the lawyers who are in this field are all worried that there are cuts, and there are.

In France, they have a different idea, which is sort of interesting. The bar itself provides a lot more free representation than here, but there is a price to be paid. The price to be paid is that the individual lawyers and the bar will be ruthless in segregating the sheep from the goats.

So if you go to a lawyer you will get your free representation if you can't afford it at the cost of having him and/or her and his colleagues, you see, going through your case and making a ruthless decision about whether they think they really can win it. But the result of that is the people they think they have a good shot, they will get the free representation, much more even than in England.

Mr. BISHOP. Thank you.

Mr. CRENSHAW. Well, thank you.

And I think it is important to recognize that the significance of the work that you all do is certainly not proportionate to the budget that you submit every year. But we do thank you for the work that you do to make sure that you are spending the money wisely.

And thank you for being here. I think we all appreciate your wisdom and your insight. I know I always learn something.

And on a personal note, I want to thank you publicly. A couple of years ago, when we had concluded most of the business, I was troubled by a quote that I had read in law school that I didn't know who the author of the statement. It always struck me as interesting because it went like this: Versatility of circumstance often mocks a natural desire for definitiveness.

And I asked, since we didn't have anything else to do, I asked you two gentlemen who said that and where, and I think Justice Breyer said, "Why don't you google it?" And I said, "I already did."

But when you think about that statement, I think Bob Dylan might have said it differently. He wrote a song called, "Things Have Changed," and I can understand that a little better.

But the good news is that because of the cooperation of you two gentlemen, I now know that Felix Frankfurter said that, and he said in the case called *Wiener v. U.S.* or *U.S. v. Wiener*. That was



interesting because I think President Eisenhower was the President and he wasn't supposed to do something, but he did it anyway, and therefore Felix Frankfurter said that versatility of circumstance often mocks a natural desire. So he did what he wasn't supposed to do, and Justice Frankfurter said it very well, things have changed.

So I always learn something. We thank you so much. It is an honor for us to have you before us. Thank you for the work that you do for this country. And this meeting is now adjourned.

**Financial Services and General Government Subcommittee**  
**Hearing on United States Supreme Court Budget**

**Questions for the Record Submitted by Congressman Mike Quigley**

*Camera in the Courtroom*

**Question:** Why shouldn't oral arguments before the Supreme Court be broadcast live on television so the American public can form their own opinion about the Court without the media filter?

Now I know there is some concern with the possibility that having cameras in the courtroom will lead to the media taking soundbites out of context. But, as we all know, the media is already pretty good about seizing on soundbites.

*The question whether the federal courts should televise, live-stream, or provide video recordings of their courtroom proceedings has generated divergent views among judges, lawyers, and the public. The Supreme Court appreciates the sensitivity of the matter and is therefore proceeding carefully in evaluating whether it should make changes to its current practices. The Court is especially sensitive to ensuring the fairness and efficiency of the decision-making process. Just as the Court respects Congress's determination of what practices and procedures work best for the conduct of its proceedings, Congress has traditionally respected the Court's prerogatives in determining what practices and procedures best serve its different institutional responsibilities.*

**Question:** Audio of arguments are already available for the public to hear, why are television cameras any different?

*The Court introduced audio recording to aid in the preparation of written transcripts of the oral arguments. The written transcripts have always functioned as the Court's official record of the oral argument proceedings. The Court has no similar history of using video recordings, and the introduction of video recordings would not assist in preparation of the written transcripts that the Court uses as its official record of the arguments.*

***Making Court More Accessible***

Beyond cameras in the court, most Americans have no idea how Supreme Court proceedings even work.

**Question:** What is the Court doing now and what could it be doing beyond to ensure that the Court is more accessible to the public?

We hear most about cameras in the courtroom, and three bills that would allow for cameras have been introduced in Congress so far this year

*The Court welcomes more than 300,000 public visitors each year. The Court also maintains a Website that provides a wealth of information about the Court. The Court is implementing an electronic filing system that will allow access to all documents filed with the Court. The Court's decisions, which should be of greatest interest to the public, are currently posted on the Supreme Court's Website within moments of their announcement in the courtroom. The Court's argument sessions are just one relatively small step in the Court's decision-making process. Nevertheless, the Court makes argument transcripts available on its Website on the same day of argument, and it posts audio recordings of the sessions at the end of each week. And of course, more than 21,000 Court visitors observe oral arguments each year.*

**Question:** What is the justices' reasons against implementing other pro-transparency measures, including posting annual financial disclosures online, announcing public appearances and speaking engagements, announcing reasons for periodic recusals and live-streaming the audio of Supreme Court hearings online?

Financial Disclosures

*The Chief Justice's 2011 Year-End Report on the Federal Judiciary is responsive to this inquiry:*

*"The Justices file the same financial disclosure reports as other federal judges. Those reports disclose, among other things, the Justices' non-governmental income, investments, liabilities, gifts, and reimbursements from third parties. For purposes of sound administration, the Justices, like lower court judges, file those reports through the Judicial Conference's Committee on Financial Disclosure. That committee provides guidance on the sometimes complex reporting requirements."*

*"The Justices also observe the same limitations on gifts and outside income as apply to other federal judges. To provide additional guidance for lower court judges, the Judicial Conference has promulgated regulations governing both of those subjects. In 1991, the Members of the Court adopted an internal resolution in which they agreed to follow the Judicial Conference regulations as a matter of internal practice. As a result, the Justices follow the very same practices on those subjects as their lower court colleagues."*

*In addition, annual Financial Disclosure Reports for each Justice, and any other federal judicial officer, are accessible to the public pursuant to the procedures set forth in the Guide to Judiciary Policy, Volume 2, Section 450. Thus, Financial Disclosure Reports are available from the Administrative Office upon request, and media outlets are free to post the reports publicly. Finally, the Justices may call upon staff in the Office of Legal Counsel at the Supreme Court for assistance with any questions related to compliance with the disclosure requirements.*

Recusal

*The Chief Justice's 2011 Year-End Report on the Federal Judiciary is also responsive to this inquiry:*

*"Congress has directed that federal judicial officers must disqualify themselves from hearing cases in specified circumstances. As in the case of financial reporting and gift requirements, the limits of Congress's power to require recusal have never been tested. The Justices follow the same general principles respecting recusal as other federal judges, but the application of those principles can differ due to the unique circumstances of the Supreme Court."*

*“The governing statute, which is set out in Title 28, Section 455, of the United States Code, states, as a general principle, that a judge shall recuse in any case in which the judge’s impartiality might reasonably be questioned. That objective standard focuses the recusal inquiry on the perspective of a reasonable person who is knowledgeable about the legal process and familiar with the relevant facts. Section 455 also identifies a number of more specific circumstances when a judge must recuse.”*

*“All of the federal courts follow essentially the same process in resolving recusal questions. In the lower courts, individual judges decide for themselves whether recusal is warranted, sometimes in response to a formal written motion from a party, and sometimes at the judge’s own initiative. In applying the Section 455 standard, the judge may consult precedent, consider treatises and scholarly publications, and seek advice from other sources, including judicial colleagues and the Judicial Conference’s Committee on Codes of Conduct. A trial judge’s decision not to recuse is reviewable by a court of appeals, and a court of appeals judge’s decision not to recuse is reviewable by the Supreme Court. A court normally does not sit in judgment of one of its own members’ recusal decision in the course of deciding a case.”*

*“The process within the Supreme Court is similar. Like lower court judges, the individual Justices decide for themselves whether recusal is warranted under Section 455. They may consider recusal in response to a request from a party in a pending case, or on their own initiative. They may also examine precedent and scholarly publications, seek advice from the Court’s Legal Office, consult colleagues, and even seek counsel from the Committee on Codes of Conduct. There is only one major difference in the recusal process: There is no higher court to review a Justice’s decision not to recuse in a particular case. This is a consequence of the Constitution’s command that there be only ‘one supreme Court.’ The Justices serve on the Nation’s court of last resort.”*

*“As in the case of the lower courts, the Supreme Court does not sit in judgment of one of its own Members’ decision whether to recuse in the course of deciding a case. Indeed, if the Supreme Court reviewed those decisions, it would create an undesirable situation in which the Court could affect the outcome of a case by selecting who among its Members may participate.”*

*“Although a Justice’s process for considering recusal is similar to that of the lower court judges, the Justice must consider an important factor that is not present in the lower courts. Lower court judges can freely substitute for one another. If an appeals court or district court judge withdraws from a case, there is another federal judge who can serve in that recused judge’s place. But the Supreme Court consists of nine Members who always sit together, and if a Justice withdraws from a case, the Court must sit without its full membership. A Justice accordingly cannot withdraw from a case as a matter of convenience or simply to avoid controversy. Rather, each Justice has an obligation to the Court to be sure of the need to recuse before deciding to withdraw from a case.”*

*“As with other ethical questions, Justices and lower federal court judges contemplating recusal can take good counsel from the principles set forth in Canon 14 of the original 1924 Canons of Judicial Ethics. That Canon addresses judicial independence. It provides that a judge ‘should not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.’ Such concerns have no role to play in deciding a question of recusal.”*

#### Public Engagements

*From time to time, Justices participate in public engagements. The organizations sponsoring the events generally handle the details regarding scheduling, attendance, and announcement of those engagements.*

#### Live-Streaming Audio

*This question is addressed in the response to the first question in the section entitled “Camera in the Courtroom.”*

*Disclosure Requirements for the Supreme Court*

The American public's confidence in the Court is based on the Court's independence.

**Question:** Can you tell us about the disclosure requirements for the Supreme Court?

*This question is addressed in the response to the previous question.*

**Question:** Are there internal systems to ensure that Justices comply fully with disclosure requirements, or to provide assistance to Justices as they do so in order to ensure completeness and accuracy?

*This question is addressed in the response to the second question in the section entitled "Making Court More Accessible."*



WEDNESDAY, MARCH 25, 2015.

## THE JUDICIARY

### WITNESSES

**HON. JULIA S. GIBBONS, CHAIR, COMMITTEE ON THE BUDGET, JUDICIAL CONFERENCE OF THE UNITED STATES**

**HON. JAMES C. DUFF, DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS**

### CHAIRMAN CRENSHAW'S OPENING STATEMENT

Mr. CRENSHAW. The hearing will come to order.

And, first, let me welcome some judges and managers from the court units around the country, sitting out back there somewhere. You are here, and we appreciate you all being here.

And I will announce to our witnesses today that I have spent some time in Jacksonville, Florida, with some of your colleagues on the Federal court, so they paved the way for your testimony today, and we look forward to that.

But let me just say good morning to Judge Gibbons, good morning to Director Duff, and thank you for appearing before the subcommittee today.

Mr. SERRANO. Mr. Chairman?

Mr. CRENSHAW. Go ahead.

Mr. SERRANO. I also want to join you in welcoming the judges, because I understand there is one here from the Eastern District of New York, Judge Italiano. Incredible name for a Puerto Rican, "Italiano." But I just wanted to say hello.

Mr. CRENSHAW. Great. Great.

Judge Gibbons, this is the 11th time that you have appeared before this subcommittee. That is an impressive batting average, and we appreciate your service and willingness to meet with us.

Now, Director Duff, welcome back to you. This is your second stint as Director of the Administrative Office of the U.S. Courts, but this is your first appearance before the subcommittee since your appointment in January.

So we are glad you are both here, and we thank you for being here.

The work of the judiciary is critical to the preservation of our Nation's fabric, where each of the three branches have different responsibilities and checks on each other. Americans depend on an open, accessible, well-functioning Federal court system to resolve criminal, civil, and bankruptcy disputes. Now, the courts must have the trust and respect of the citizens of our country; that is the way the Founding Fathers set it up.

In addition to the judiciary's other work, you have probation and pretrial officers. They are performing critical public safety missions

by supervising more than 200,000 offenders that are living in our communities and defendants as well.

As you know, the Federal Government continues to operate in an environment of limited resources. However, we will try to ensure you have the resources needed to accomplish your important mission. Over the past few years, you and your staff have worked closely with us to make sure that the judiciary receives increases to address only your most critical needs. And I thank you for your efforts to reduce costs during these challenging financial times.

The judiciary's fiscal year 2016 budget request proposes a discretionary spending increase of \$264 million. That is a little less than 4 percent. And I can tell you, that is a whole lot less than the IRS when they ask for 18 percent or GSA when they ask for 12 percent. So we appreciate your stewardship.

But the budget resolution reported by the House Budget Committee just last week only contemplates about a one-quarter-of-1-percent increase in total discretionary spending. But that is the job of the Appropriations Committee, to take the money we have and make the right choices, right priorities. So we want to work with you, want to work with the Ranking Member Serrano to make sure that we can identify any savings and then still provide you with the resources you need to fulfill your constitutional duties.

So I appreciate the important work that you do. Glad you are here today.

And now I would like to recognize my good friend, the ranking member, Mr. Serrano, for any comments he might have.

#### RANKING MEMBER SERRANO'S OPENING STATEMENT

Mr. SERRANO. Thank you, Mr. Chairman.

I would like to join you in welcoming Judge Gibbons and Director Duff back before the subcommittee. As you said, Judge Gibbons may hold the record for appearing before us or any subcommittee in Congress. And while Director Duff was away for a while, he couldn't stay away. We just drew him back, and here he is again.

So welcome back to both of you.

The Federal judiciary as a third branch is an integral part of our constitutional democracy, but it cannot properly function without the support of this committee. We have all seen the problems that sequestration caused for our Federal court system, our pretrial and post-release probationary services, and for our Federal defenders, among others.

Thankfully, Members of both sides of the aisle have realized this and have worked to restore the services and personnel lost by the Federal judiciary due to sequestration. Last year's appropriations bill, for instance, included an increase of \$182 million over the prior year's appropriations. And your budget request for fiscal year 2016 continues to work to rebuild and invest in the future of our court system.

However, as we consider this request, we are confronted with the same problem which caused such difficulties for the Federal judiciary just a few years ago: sequestration. It is in the best interest of the Federal court system, the American public, and our constitutional protections that we avoid repeating the damaging impact it had.

As you know, I am also interested in ensuring that our Federal defenders have sufficient funding to perform their important constitutional role that has been assigned to them. Most defendants in Federal criminal trials depend upon the assistance of Federal defenders, but the FD offices were highly impacted by the last round of sequestration, with numerous days off and staffing cuts. I understand that the Federal judiciary has been in the process of reviewing the appropriate funding levels for our defenders, and I hope that we will see the results of that analysis soon.

I am a strong believer in the procedural guarantees that our Constitution provides: access to a fair and speedy trial and the availability of counsel in criminal cases for those unable to afford it, to mention just two. But beyond that, the Federal judiciary plays an important role in pretrial services, in determining sentencing guidelines, and in reducing recidivism through probationary services. It is up to this committee to ensure these promises and protections, constitutional and statutory, have meaning.

Once again, we welcome you, and I look forward to your testimony.

And let me just ask you to consider this. Since I played a judge on "Law and Order" once, am I a member of the bar now or—okay. Don't answer.

Mr. CRENSHAW. You are not eligible for the pension. I know that.

Mr. SERRANO. I am not sure I am eligible for this pension either.

Thank you, Mr. Chair.

Mr. CRENSHAW. Thank you, Mr. Serrano.

And now, Judge Gibbons, we will turn to you for your opening statement. If you could keep it in the range of 5 minutes, that will give us some time for questions. The floor is yours.

#### JUDGE GIBBONS' OPENING STATEMENT

Judge GIBBONS. Chairman Crenshaw, Representative Serrano, Representative Bishop, in view of the scheduled votes and limited time availability today, I think I can do better than 5 minutes. I am going to dispense with a conventional opening statement and give you more of a laundry list of priorities for 2016 and the high points of ongoing cost-containment efforts.

Thank you for recognizing the group of court executives here today for a meeting of the Budget and Finance Advisory Council. They make budget recommendations to the Director, and back home they do a great job of running the courts smoothly.

I also want to say a big thank you for the 2.8 percent increase we received for 2015, one that is enabling us to put the effects of sequestration behind us.

For 2016, we ask for a 3.9 percent increase. A 3.2 percent increase is required to maintain current services. The rest of the request is for limited, targeted enhancements that will help us contain costs down the road or meet other important judiciary and public goals.

We strongly endorse GSA's requests for \$181.5 million to build a new courthouse in Nashville, the judiciary's top space priority, and \$20 million for the Capital Security Program.

Among our ongoing cost-containment efforts are space reduction that will reduce our space footprint 3 percent by the end of 2018,

our progress in promoting shared administrative services in the courts, and certain ongoing IT efforts.

Our requested enhancements include \$19 million to pursue national hosting of IT systems that should save local courts money. Enhancements that serve the public good include a \$6-per-hour rate increase for panel attorneys representing indigent defendants and \$15 million to enhance public safety by training more probation officers in evidence-based practices.

In conclusion, as always, I emphasize to the Committee the unique constitutional role of the courts in our free society and that all of our duties are derived from the Constitution and statute.

I ask that you make part of the record the statements of other judiciary entities on whose behalf we submit budget requests.

I look forward to answering your questions.

[The information follows:]

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

March 25, 2015

**INTRODUCTION**

Chairman Crenshaw, Representative Serrano, and members of the Committee, I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals. Our court sits in Cincinnati, Ohio, and my resident chambers are in Memphis, Tennessee. As the Chair of the Judicial Conference Committee on the Budget, I will testify on the Judiciary's appropriations requirements for fiscal year 2016. I believe our fiscal year 2016 request of \$7.0 billion in discretionary appropriations achieves our goal of holding down cost growth across the Judiciary where possible while also investing in several important new information technology and program initiatives that will improve Judiciary operations. My testimony will provide details on those initiatives, discuss recently enacted fiscal year 2015 Judiciary appropriations, and provide an update on our cost-containment program, including a detailed discussion of efforts underway to reduce the Judiciary's space footprint. This is my eleventh year testifying before an appropriations subcommittee on behalf of the federal Judiciary and my ninth appearance before this Financial Services and General Government panel. Appearing with me today is James C. Duff, Director of the Administrative Office of the United States Courts.

**STATEMENTS FOR THE RECORD**

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

**FISCAL YEAR 2015 FUNDING FOR THE JUDICIARY**

Chairman Crenshaw and Representative Serrano, I begin today by thanking the Committee for the funding the Judiciary received in the "Consolidated and Further Continuing Appropriations Act of 2015," the omnibus spending measure that funds most of the federal government for fiscal year 2015. The omnibus bill provided the Judiciary with a 2.8 percent overall increase in discretionary appropriations above fiscal year 2014, essentially equal to the Judiciary's re-estimated request and sufficient to meet our full funding needs. The 2.8 percent increase builds on the 5.1 percent appropriations increase Congress provided the Judiciary for fiscal year 2014 and will enable the courts to recover from the harmful effects of the 2013 sequestration cuts. It will allow us to backfill some vacancies in clerks of court, probation and pretrial services offices, and federal defender organizations, and will provide sufficient funding

to meet operational costs, juror expenses, and court security requirements for fiscal year 2015. We are aware that this Subcommittee had a 1 percent cut in its allocation below fiscal year 2014 for constructing a final fiscal year 2015 bill, and we are greatly appreciative that you again made the Judiciary a funding priority by providing us with a 2.8 percent overall increase.

### **ROLE OF THE JUDICIAL BRANCH**

Each year in my appearance before this Committee, I ask that, as you consider funding levels for the upcoming fiscal year, you take into account the nature and importance of the work of the federal courts, and I do so again this year. This plea takes on a greater urgency as the federal budget tightens and as proposals for further deficit reduction for fiscal year 2016 and beyond are considered that make cuts to non-defense discretionary spending below the current spending caps.

The Judiciary performs Constitutionally-mandated core government functions that are a pillar of our democratic system of government. The scope and volume of our work is dictated by the functions assigned to us by the Constitution and by statute. We must adjudicate all criminal, bankruptcy, civil, and appellate cases that are filed with the courts; we must protect the community by supervising defendants awaiting trial and offenders on post-conviction release; we must provide qualified defense counsel for defendants who cannot afford representation; we must pay jurors for costs associated with performing their civic duty; and we must ensure the safety and security of judges, court staff, litigants, and the public in federal court facilities. We look to Congress to provide us with the resources we need to accomplish this broad mission.

While the Committee has made the Judiciary a funding priority in fiscal years 2014 and 2015, we remain concerned about the longer-term funding prospects for the Judiciary in what will be a constrained federal budget environment for the foreseeable future. As you know, the overall discretionary spending cap provides essentially no growth from fiscal year 2015 to 2016, increasing only about \$2.0 billion (0.2 percent) to \$1.017 trillion. Beyond fiscal year 2016, assuming the continuation of current law, the spending caps will rise by only about 2.4 percent annually through fiscal year 2021, which may not be sufficient to keep pace with inflation and to meet other critical requirements. This may be a best-case scenario, given some of the additional deficit reduction proposals being discussed. Sequestration cuts in 2013 had a devastating impact on federal court operations, and we fear a return to sharply reduced funding levels and the cutbacks it would necessitate. As I mentioned at the outset of my testimony, this Committee has made it possible for the Judiciary to recover from sequestration and we ask you to take into account the nature and importance of our work and to make the Judicial Branch a funding priority again in fiscal year 2016, as well as in future years.

### **COST CONTAINMENT**

For more than 10 years we have been focused on containing costs in the Judiciary's budget and we have achieved significant success. In fact, since the beginning of our formal cost containment program in 2005, the Judiciary has realized a cost avoidance of nearly \$1.5 billion relative to our projected requirements, attributable primarily to cost-containment policies put in place, as well as other factors. Changes made to date have reduced current and future costs for:

rent, information technology, magistrate judges, compensation of court staff and law clerks, law books, probation and pretrial services supervision work, and other areas. And we have achieved this cost containment without harming court operations. But we recognize there is more work to be done.

We are now working on a new round of cost-containment initiatives that may be more controversial within the Judiciary, more difficult to implement quickly, and could result in significant change within the Judiciary. But we believe these new initiatives are essential to positioning the Judiciary for what likely will continue to be a constrained federal budget environment going forward. We continue to expand the use of shared administrative services among the courts of appeals, district courts, bankruptcy courts, probation and pretrial services offices, and federal defender organizations to reduce duplicative human resources, procurement, financial management, and information technology activities. Forty-two percent of all courts have formal sharing arrangements of some kind, and many others have informal or temporary arrangements. The decision to migrate to a shared administrative services model is up to each circuit or district, and we are exploring ways in which we can increase shared administrative services, including offering incentives. We also are exploring voluntary consolidation of offices and other longer-term changes that would further reduce growth in personnel and operational costs.

As we continue our efforts to reduce cost growth in the Judiciary's budget, I emphasize that no amount of cost containment will offset budget cuts or even flat funding in fiscal year 2016. Our budget request is reflective of the cost-containment policies we have put in place and is the amount we require to fulfill our mission.

### **REDUCING THE JUDICIARY'S SPACE FOOTPRINT**

With strong controls in place to limit the growth in our space rent costs, including revamping our courthouse planning process and instituting new procedures to identify billing errors, we are now focusing on reducing the Judiciary's overall space footprint and we are making real progress in this area. At its September 2013 session, the Judicial Conference approved three new initiatives to facilitate space reduction: (1) a 3 percent space reduction target by the end of fiscal year 2018 subject to certain exclusions such as new courthouse construction, renovation, or alterations projects approved by Congress; (2) a "no net new" policy in which any increase in square footage within a circuit must be offset by an equivalent reduction in square footage identified within that circuit in the same fiscal year; and (3) requiring each of the 12 judicial councils to formulate a space management plan articulating how the new space reduction policy will be implemented.

I am pleased to report to the Committee significant progress on our space reduction efforts. The Judiciary's 3 percent space reduction goal aims to reduce our space footprint by 870,305 square feet by the end of fiscal year 2018, which is 3 percent of the 2013 space baseline level of 29,010,183 square feet. The space reduction target was prorated among the 12 regional circuits nationwide to ensure space reduction is fair and equitable across the country. As of October 2014, the Judiciary has reduced space on a national basis by nearly 1 percent – that is 242,403 square feet of space that has been removed from the courts' rent bill, resulting in an

annual rent cost avoidance of \$5.8 million to the Judiciary. We are on track to accomplish the full 3 percent reduction by the end of fiscal year 2018.

The Judiciary appreciates the funding provided by Congress to support our cost-containment efforts, particularly those related to space reduction. Up-front costs to support construction, renovation, and information technology are critical to the success of this effort. Our fiscal year 2016 request includes \$25.0 million for space reduction efforts. Space reduction projects requiring renovations each undergo a two-step process: first, an architectural and engineering analysis is completed on potential projects to determine if space reduction is feasible and cost effective; and second, if the architectural and engineering analysis identifies reasonable savings, funding is made available for the implementation phase to design and construct the new space. It is important to note that not all projects make it beyond the architectural and engineering analysis step to implementation. The Judiciary pursues projects that yield the greatest savings with the quickest return on investment.

A key component of our space reduction effort is our Integrated Workplace Initiative (IWI), which seeks to create a smaller and more efficient workplace that reflects changing work practices, such as mobile work or telework for some court employees. An example of an area where an IWI project would be especially useful is a probation or pretrial services office. Some probation officers require less space now because they use mobile devices while visiting clients and working in the field. As a result, some probation offices can reduce the amount of commercial leased space that they occupy, or they could move out of commercial leased space and into government owned courthouses and federal buildings, while occupying less space than previously needed. This is just one example. We currently have 10 IWI projects in the design phase in the courts and an eleventh in the implementation phase.

In addition, we have an IWI project underway right here in Washington, DC, at the AO. This is a national demonstration project that involves co-locating the nearly 70 staff from four Facilities and Security Office divisions into one space on the first floor of the Thurgood Marshall Federal Judiciary Building. The total occupied space will be reduced by up to 25 percent and the design fully incorporates IWI mobility concepts. The space will include systems furniture and movable walls to allow for flexible space configuration. The design process for this project is now underway. The project will serve as a working example for judges and court unit executives who travel to Washington, DC to experience first-hand what an IWI project looks like and to then consider something similar for their court.

I will close on this topic by assuring the Committee that we take seriously your concerns regarding the Judiciary's space inventory. The General Services Administration's (GSA) cooperation is essential to our ability to reduce space and to date GSA has been working collaboratively with us on our space reduction efforts.

#### **NASHVILLE COURTHOUSE AND CAPITAL SECURITY FUNDING**

Director Duff addresses these topics in more detail in his written testimony, but I want to add my strong support for two items included in the President's 2016 Budget under the General Services Administration. First, the President's Budget includes \$181.5 million for constructing a



new courthouse in Nashville, Tennessee, the Judicial Conference's top space priority. The Nashville courthouse project has been on the Judiciary's *Five-Year Courthouse Construction Project Plan* for nearly 20 years and a new courthouse is needed to address severe security, space, and operational deficiencies in the existing facility.

The second item is the \$20 million in the President's Budget for the Judiciary Capital Security Program. This program was designed to address serious security deficiencies in existing courthouse buildings where physical renovations are viable alternatives to new courthouse construction. Eight Capital Security Program projects have been funded with appropriations provided in fiscal years 2012, 2013, and 2015. Fiscal year 2016 funding would be utilized to address security deficiencies at federal courthouses in Raleigh, North Carolina and Alexandria, Louisiana. The Capital Security Program has been a valuable, cost-effective solution to achieving greater security at courthouses with significant security deficiencies.

I respectfully ask that the Committee fund these two items in fiscal year 2016.

### **JUDICIARY'S FISCAL YEAR 2016 BUDGET REQUEST**

The Judiciary's fiscal year 2016 budget request of \$7.0 billion in discretionary appropriations reflects an overall 3.9 percent increase above fiscal year 2015 to support the Constitutional and statutory mission of the federal courts. As I mentioned at the outset of my testimony, we believe the request achieves our goal of holding down cost growth across the Judiciary where possible, while also investing in several important new information technology and program initiatives that will improve Judiciary operations. With the sequestration cuts of 2013 behind us and our financial position now on more solid footing, we believe it is the right time to make these investments. The Judiciary's requested increase of \$264.5 million includes \$209.0 million for adjustments to base for standard pay and non-pay changes, and a total of \$55.5 million for program enhancements. I will now summarize the fiscal year 2016 requests for our four major accounts and discuss base adjustments needed to maintain current services. In the next section of my testimony I discuss in detail our program enhancements. A more detailed summary of our fiscal year 2016 request is provided in Appendix A.

The Judiciary's largest account, courts' Salaries and Expenses, funds the bulk of federal court operations nationwide, including the regional courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. For this account, we are requesting a 3.9 percent increase in fiscal year 2016 to \$5.0 billion in discretionary appropriations. I note that we are not requesting funding to increase the number of staff in clerks of court or probation and pretrial services offices, but those offices will have the ability to continue backfilling some vacancies in fiscal year 2016. The request includes \$136.2 million for standard pay and non-pay inflationary adjustments for court staff. In addition, we are requesting an increase of \$11.0 million for additional chambers staff associated with projected changes in filled judgeships. We also seek \$8.9 million in net adjustments in our space program.

The Defender Services program, which provides court-appointed criminal defense representation under the Criminal Justice Act to financially eligible defendants, requires a 4.0 percent increase to \$1.06 billion in fiscal year 2016 to handle an estimated 200,000

representations. The fiscal year 2016 request includes \$39.3 million for inflationary pay and benefits adjustments for federal defender organizations, changes in projected federal defender and panel attorney caseload, and payments to panel attorneys, including a 1 percent cost-of-living adjustment to panel attorney hourly rates.

Our Court Security account funds protective guard services and security systems and equipment at federal courthouses and requires a 5.5 percent increase to \$542.4 million for fiscal year 2016. Adjustments to base total \$22.1 million and include \$11.7 million for a required 3 percent wage rate increase for contract court security officers (CSOs), \$4.9 million for additional security systems and equipment costs, \$2.4 million in higher Federal Protective Service charges, and \$3.1 million in other standard pay and non-pay adjustments.

The Fees of Jurors and Commissioners account funds statutory fees and allowances for grand and petit jurors and land commissioners appointed by a court to determine just compensation in federal eminent domain cases. This includes the daily compensation paid to jurors as well as related costs for meals and incidental expenses. This account requires \$52.4 million in fiscal year 2016, a 0.4 percent increase above fiscal year 2015, a net increase of \$220,000 comprised of downward adjustments to base totaling \$3.8 million primarily due to lower petit juror projections, and a \$4.0 million program enhancement to increase daily juror pay, which I discuss in the next section of my testimony.

## **PROGRAM ENHANCEMENTS TO IMPROVE JUDICIARY OPERATIONS**

### **Implementing Centralized IT Hosting Services for the Courts**

The Judiciary's fiscal year 2016 request for the Salaries and Expenses account includes \$19.0 million for the first year costs of a multi-year national IT hosting initiative. Over the past decade, the Judiciary has pursued an incremental path toward consolidating both its national systems and court hosting environments. Previously, courts were responsible for locally hosting mission-essential systems and providing the necessary infrastructure for those systems. Most courts now access their national case management, jury management, e-mail, telephone service, and other systems over the Judiciary's data network from one of two national data centers, one on each coast.

The remaining systems in the local courts' server rooms are primarily focused on managing courts' desktop computers and providing file servers for court staff. Yet even these systems are capable of being hosted centrally. There are four primary benefits to doing so: (1) economy-of-scale savings of as much as 40 percent in lower hardware and software costs as local courts would no longer have to maintain separate hosting infrastructure; (2) improved continuity of operations because a regional disaster or outage would not impact data/applications that are centrally hosted (the national data centers on each coast provide failure backup to each other); (3) standardized security for court systems versus the various security models that exist today; and (4) reduced space needs as rooms previously dedicated to local computer servers could be given up or repurposed for other uses. As an example of the benefits of providing centralized IT services, several years ago the Judiciary implemented a national phone system to replace individual court phone systems across the country. Since implementation of the new

phone system we have seen lower aggregate telecommunications costs, reduced equipment costs, better security, and improved reliability.

Currently, 17 court units participate in a pilot program for national hosting of their local IT systems. The pilot has confirmed that while the reasons an individual court might decide to adopt enterprise hosting and cloud computing services for its systems may vary, the basic benefits across the judiciary are the same: reduce the total cost-of-ownership for hosting systems; achieve true continuity-of-operations; and improve IT security. The success of the pilot drove, in part, the Judiciary's decision to seek funding in fiscal year 2016 to make centralized hosting available to all courts nationwide. The initial implementation will employ a Judiciary private "cloud" technology that will address our specific and unique security requirements. Funding requested in fiscal year 2016 would enable the judiciary to move beyond the pilot with implementation in a number of additional courts. Locally, courts will be able to accrue savings by not having to spend funds for hardware and related systems administration and will benefit from enhanced reliability, redundancy, and security. In addition, providing a national solution reduces the need for courts to maintain large computer rooms, thus reducing space and utilities requirements.

#### **Replacing Outdated and Inefficient Email and Messaging System**

We request \$7.0 million in the courts' Salaries and Expenses account to begin replacement of the Judiciary's 14-year old email and messaging system that is inadequate to meet the Judiciary's current workload demands. While email and calendaring were the primary needs in 2000, today's email platform includes advanced features and functionality, such as instant messaging, collaboration, document sharing, integration with mobile device platforms, and more. This initial investment will fund the development of a unified Judiciary-wide email and messaging system that incorporates advanced features and functionality required for mobile computing, document sharing, and improved security. The judiciary is examining several key issues, such as whether to migrate legacy email data and alternatives for doing so, that will determine the ultimate cost. It is anticipated such decisions will be made this summer so that the project can move forward, subject to available funding in fiscal year 2016.

#### **Reducing Offender Recidivism**

Our probation and pretrial services program strives to employ the most proven strategies for supervising offenders awaiting trial or released from prison and living in the community. Our fiscal year 2016 request includes \$15.0 million in the courts' Salaries and Expenses account to expand evidence-based offender supervision practices to further reduce recidivism rates.

To begin, the federal system's recidivism rate has been half that of many states. The three-year felony re-arrest rate for persons under federal supervision is 24 percent, and the revocation rate hovers at 30 percent. In contrast, a Bureau of Justice Statistics study looking at 15 state parole systems found a recidivism rate of 67.5 percent. Similarly, while supervision violators constituted 33 percent of all new prison admissions in the states in 2011, violators constituted only 8 percent of the new admissions in federal prisons during the same period.

Past supervision approaches have focused on frequency of probation officer/offender contacts and compliance with conditions of supervision imposed by the judge. While compliance with conditions still remains a major component of supervision, working with the offender to change his behavior will provide the best long-term value to the offender and the community. "Evidence-based practices" (EBP) are the supervision practices proven to produce specific, intended results. EBP is an outcome-based approach that focuses on specific supervision and treatment strategies versus the more traditional contact-driven supervision approach. One of the Judiciary's EBP programs, called Staff Training Aimed at Re-Arrest Reduction (STARR), involves exercises and instructions designed to alter the dysfunctional thinking patterns exhibited by many offenders and improves the quality and nature of the relationship between the offender and the officer. STARR builds on officers' existing communication skills, use of authority, and ability to impart cognitive restructuring strategies to offenders. Since STARR was implemented in 2012, 1,139 officers have been trained in 57 of the 94 judicial districts nationwide. The \$15 million requested for fiscal year 2016 will expand access to programs like STARR that target dynamic risks posed by offenders.

We believe that the modest cost for the Judiciary's evidence-based approach to offender reentry into society will reduce the high costs associated with recidivism. It costs the Bureau of Prisons about \$80 per day to incarcerate an offender in a federal prison. It costs the Judiciary on average less than \$10 per day for a probation officer to supervise an offender in the community. If that offender succeeds, the costs of further incarceration are avoided and the offender can become a productive member of society – gain employment, pay taxes, make restitution, pay fines, etc. This may not be possible in every case, but we believe there are ways to improve the chances that many more offenders will remain law-abiding, and through our STARR program we are proactively seeking to identify and implement supervision practices that will assist offenders.

#### **Adding Magistrate Judges to Meet Workload Demands**

Our request also includes a program increase of \$1.9 million in the courts' Salaries and Expenses account for three additional magistrate judges and associated staff to address workload demands in three judicial districts. The Judicial Conference authorizes new magistrate judge positions based upon a demonstration of need by a requesting court. The Judicial Conference has approved three new magistrate judge positions in the following locations: San Francisco or San Jose, California (California-Northern); Tacoma, Washington (Washington-Western); and Tampa, Florida (Florida-Middle).

#### **Providing Adequate Compensation to Court-Appointed Counsel**

We request your support for a program enhancement in our budget that will ensure effective representation for criminal defendants who cannot afford to retain their own counsel. We are requesting \$1.8 million in the Defender Services program to increase the non-capital (non-death penalty) panel attorney rate by \$6 per hour above the cost-of-living adjustment (COLA) level, effective January 1, 2016. If the Judiciary's budget request is fully funded, the new effective non-capital hourly rate would be \$134. The annualized cost of the \$6 increase is \$14.4 million. A panel attorney is a private attorney who serves on a panel of attorneys maintained by the district or appellate court and is assigned by the court to represent financially-

eligible defendants in federal court in accordance with the Criminal Justice Act (CJA). There are more than 10,000 panel attorneys accepting CJA appointments in federal court and most are solo or small law firm practitioners.

Panel attorneys currently are paid \$127 per hour for non-capital work and \$181 per hour for capital (death penalty) work. The CJA authorized the Judicial Conference to implement annual cost-of-living adjustments (COLAs) to panel attorney rates, subject to congressional funding. The COLA requested in our fiscal year 2016 budget would increase the current rate by \$1 to \$128 per hour. If the statutory COLAs provided to federal employees (the base employment cost index component only) had been provided to panel attorneys on a recurring, annual basis since 1986, the authorized non-capital hourly rate for fiscal year 2016 would be \$144. As a result, we are also seeking a \$6 “catch up” increase to \$134 in fiscal year 2016 to close the gap between the current rate and the authorized hourly rate of \$144.

Panel attorneys are small business owners who pay their own salary, as well as rent, staff salaries, health insurance, and other overhead expenses from the CJA hourly rate. The rate is intended to cover both overhead and a fair hourly fee. According to a 2009 nationwide survey conducted by the Judiciary, panel attorneys earned on average \$246 per hour for their non-CJA cases and incurred overhead expenses of \$70 per hour. The current CJA non-capital rate is not competitive with even these out-of-date figures. For comparison, the Department of Justice pays \$200 per hour to retain private counsel to represent current or former federal employees in civil, congressional, or criminal proceedings. The Judiciary is in the process of completing another nationwide survey of panel attorneys and judges to assess the effect of the current hourly rate on CJA representations and will share that information with the Committee once the survey data has been compiled.

Although the Judiciary’s goal is to eventually attain the full non-capital rate authorized by statute, we are cognizant of pressures on the federal budget and seek only a partial catch-up increase in fiscal year 2016. We must, however, remain mindful that ensuring the Sixth Amendment right to effective counsel depends on the quality and competence of these CJA panel attorneys, and a fair hourly rate is essential to meeting this Constitutional mandate.

### **Improving Security at Federal Courthouses**

The Judiciary’s fiscal year 2016 request for Court Security includes \$4.6 million to improve security at federal courthouses nationwide. One of the U.S. Marshals Service’s (USMS) primary missions is to provide security for the federal courts. Congress appropriates funding to the Judiciary and we transfer about 85 percent of that funding to the USMS for it to manage the Judicial Facility Security Program, which includes contracting for 4,200 court security officer (CSO) positions to protect federal courthouses, and procuring court security systems and equipment, such as magnetometers, to deploy at federal court facilities.

The USMS currently allocates CSOs to judicial districts based on a staffing formula that was developed in 1994. The USMS commissioned a review in September 2011 to assess CSO staffing levels to determine if they were sufficient to meet current security requirements. Based on the results of the review, the USMS recommends that 346 additional CSOs be posted at

federal courthouses during business hours. The updated standard strengthens security at court facilities by adding CSOs in security control rooms and at garage/loading docks at large court facilities. The updated standard also includes a crucial exterior "forward watch" position outside courthouse entrances to identify and address threats earlier, before they gain entry to the courthouse.

Hiring 346 additional CSOs in a single year would cost an estimated \$33.8 million. Mindful of federal budget constraints, the Judiciary and the USMS propose phasing in the new staffing standard over five years, with 69 additional CSO positions being hired in fiscal year 2016 at a cost of \$4.6 million, and a similar number each succeeding year, through full implementation in fiscal year 2020.

Additional program enhancements for Court Security include \$780,000 to increase the class size for in-depth CSO training at the Federal Law Enforcement Training Center in Glynco, Georgia from 24 to 30 students, and extending the training from three to five days, and \$1.0 million to reimburse the USMS for security-related IT support services it provides but has not previously charged to the Judiciary.

#### **Increasing the Daily Pay for Federal Jury Service**

The Judiciary's fiscal year 2016 request includes \$4.0 million in the Fees of Jurors and Commissioners account to increase petit and grand juror daily attendance pay by \$10, from \$40 to \$50. Although inflation and the cost-of-living have increased, juror pay has not changed since December 1990. If basic inflationary increases were applied each year since 1990, the current rate would be \$72 per day. In order to compensate jurors more fairly for performing their civic duty, we are requesting a modest \$10 increase to \$50 per day. We would appreciate the Committee's support of this proposal.

#### **CONCLUSION**

Chairman Crenshaw and Representative Serrano, I hope that my testimony today provides you with some insight into the fiscal year 2016 funding needs of the federal courts, particularly the information technology and other program initiatives that I just described. You both have been tremendous supporters of the Judiciary, and I am hopeful that support will continue. As you make decisions on fiscal year 2016 funding for the agencies under the Committee's jurisdiction, we ask that you take into account the Judiciary's unique Constitutional role in our system of government. In return, we commit to you that we will continue to be good fiscal stewards, cutting costs where possible, spending each dollar wisely, and making smart investments to achieve long-term savings.

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

### **SUMMARY OF THE JUDICIARY'S FISCAL YEAR 2016 BUDGET REQUEST**

The Judiciary's fiscal year 2016 budget request of \$7.0 billion in discretionary appropriations reflects a 3.9 percent increase above fiscal year 2015 to support the Constitutional and statutory mission of the federal courts.

The Judiciary's fiscal year 2016 request will maintain current services across the Judiciary, continue the recovery and restoration of activities that were disrupted because of sequestration, and enable investment in important new or upgraded program initiatives needed to support judicial operations.

The Judiciary's budget request does not include funding for additional staff in clerks of court or probation and pretrial services offices, but those offices will have the ability to continue backfilling some vacancies in fiscal year 2016. The request fully funds the Judiciary's defender services program which provides court-appointed counsel to indigent defendants, and includes a \$6 rate increase above inflation to the non-capital panel attorney hourly rate, from \$128 to \$134. The requested level also provides for a sufficient level of security at federal court facilities nationwide. Lastly, the Judiciary's request will ensure that funds are available for criminal and civil jury trials, and will allow for an increase in the daily juror attendance fee by \$10, from \$40 to \$50, the first such increase since 1990.

#### **Details of the Fiscal Year 2016 Budget Request**

- The Judiciary's fiscal year 2016 appropriations request totals \$7.5 billion. The request includes \$7.0 billion in discretionary appropriations, an increase of \$264.5 million (3.9 percent) over the fiscal year 2015 enacted level. The request also includes \$571.1 million in mandatory appropriations, an increase of \$20.7 million above fiscal year 2015.

#### **Discretionary Appropriations**

- A total of \$209.0 million (79 percent) of the \$264.5 million increase requested will provide for pay adjustments, inflation, and other adjustments to base necessary to maintain current services. Of this amount:
  - An increase of \$132.0 million provides for inflationary pay and benefit rate increases for magistrate and claims judges and support personnel, including annualization of fiscal year 2015 pay adjustments, expected January 2016 pay adjustments (e.g. 1.0% ECI adjustment for federal workers), changes in benefits costs, a cost-of-living adjustment for panel attorneys, and a wage rate adjustment for court security officers.
  - An increase of \$50.2 million is necessary to replace non-appropriated sources of funds used to support base requirements in fiscal year 2015 with direct appropriations, due to lower fee collections and carryforward balances projected for fiscal year 2016 versus fiscal year 2015.

- An increase of \$15.7 million provides for increases in contract rates and other standard inflationary increases.
- An increase of \$13.8 million is necessary to maintain on-going information technology requirements.
- An increase of \$11.0 million is associated with additional chambers staff for newly confirmed judges and judges taking senior status.
- An increase of \$9.7 million provides for space-related adjustments.
- An increase of \$7.3 million funds security-related adjustments.
- A net decrease of \$30.7 million is associated with fiscal year 2015 non-recurring requirements, projected changes in Defender Services caseload, and other minor adjustments.
- A total of \$55.5 million (21.0 percent) of the \$264.5 million increase requested will provide for program enhancements. Of this amount,
  - An increase of \$26.0 million provides initial funding for a national enterprise hosting and cloud computing initiative and to upgrade the Judiciary's email and messaging system.
  - An increase of \$15.0 million expands evidence-based supervision practices in the probation and pretrial services program to further reduce recidivism rates.
  - An increase of \$6.3 million funds security-related enhancements, including the initial implementation of a new court security officer staffing standard recommended by the U.S. Marshals Service.
  - An increase of \$4.0 million raises the daily juror attendance fee by \$10 – from \$40 to \$50 – for grand and petit jurors, the first such increase since 1990.
  - An increase of \$1.9 million funds three additional magistrate judges and staff.
  - An increase of \$1.8 million provides for a \$6 per hour panel attorney rate increase above inflation, from \$128 to \$134, for non-capital cases.
  - An increase of \$0.5 million funds higher Supreme Court facility maintenance costs.

#### Mandatory Appropriations

- A \$20.7 million increase is requested for Judiciary mandatory appropriations, as follows:
  - An increase of \$4.1 million provides for pay adjustments for Article III and bankruptcy



judges' salaries, including annualization of the fiscal year 2015 pay adjustment, the proposed January 2016 pay adjustment (e.g. 1.0% ECI adjustment for federal workers), and changes in benefits costs.

- An increase of \$4.8 million funds salary costs associated with 45 projected judge confirmations and 30 judges taking senior status in fiscal year 2016, and changes in the number of filled bankruptcy judgeships.
- An increase of \$11.8 million provides for the Judiciary retirement trust funds accounts based on requirements calculated by an independent actuary.

## Judiciary Appropriations

Discretionary Appropriations Account	FY 2015 Enacted	FY 2016 Request	\$ Change FY 2016 vs. FY 2015	% Change FY 2016 vs. FY 2015
U.S. Supreme Court				
Salaries & Expenses	\$74,967	\$75,717	\$750	1.0%
Care of Building and Grounds	\$11,640	\$9,953	(\$1,687)	-14.5%
Total	\$86,607	\$85,670	(\$937)	-1.1%
U.S. Court of Appeals for the Federal Circuit	\$30,212	\$30,841	\$629	2.1%
U.S. Court of International Trade	\$17,807	\$18,145	\$338	1.9%
Courts of Appeals, District Courts, and Other Judicial Services				
Salaries & Expenses - Direct	\$4,846,818	\$5,036,338	\$189,520	
Vaccine Injury Trust Fund	\$5,423	\$6,045	\$622	
Total	\$4,852,241	\$5,042,383	\$190,142	3.9%
Defender Services	\$1,016,499	\$1,057,616	\$41,117	4.0%
Fees of Jurors & Commissioners	\$52,191	\$52,411	\$220	0.4%
Court Security	\$513,975	\$542,390	\$28,415	5.5%
Subtotal	\$6,434,906	\$6,694,800	\$259,894	4.0%
Administrative Office of the U.S. Courts	\$84,399	\$87,590	\$3,191	3.8%
Federal Judicial Center	\$26,959	\$27,679	\$720	2.7%
U.S. Sentencing Commission	\$16,894	\$17,540	\$646	3.8%
<b>Direct</b>	<b>\$6,692,361</b>	<b>\$6,956,220</b>	<b>\$263,859</b>	
<b>Vaccine Injury Trust Fund</b>	<b>\$5,423</b>	<b>\$6,045</b>	<b>\$622</b>	
<b>Total Discretionary Appropriations</b>	<b>\$6,697,784</b>	<b>\$6,962,265</b>	<b>\$264,481</b>	<b>3.9%</b>

## Mandatory Appropriations:

Salaries of Judges <sup>1</sup>	\$406,762	\$415,699	\$8,937
Judiciary Retirement Trust Funds	\$143,600	\$155,400	\$11,800
<b>Total Mandatory Appropriations</b>	<b>\$550,362</b>	<b>\$571,099</b>	<b>\$20,737</b>

<b>Total Judiciary Appropriations</b>	<b>\$7,248,146</b>	<b>\$7,533,364</b>	<b>\$285,218</b>
---------------------------------------	--------------------	--------------------	------------------

<sup>1</sup> Mandatory salaries include the salaries of justices of the Supreme Court, judges of the Court of Appeals for the Federal Circuit and Court of International Trade, and Article III and bankruptcy judges funded in the Courts' Salaries and Expenses account. (Magistrate judges and Court of Federal Claims judges are funded by discretionary appropriations.)

STATEMENT OF HON. JEREMY D. FOGEL, DIRECTOR  
FEDERAL JUDICIAL CENTER  
BEFORE THE HOUSE APPROPRIATIONS SUBCOMMITTEE ON  
FINANCIAL SERVICES AND GENERAL GOVERNMENT

March 25, 2015

Chairman Crenshaw, Representative Serrano, and members of the Committee:

My name is Jeremy Fogel. I have been a United States District Judge in the Northern District of California since 1998 and the Director of the Federal Judicial Center since October 2011. I appreciate the opportunity to provide you with this statement in support of our 2016 appropriations request. Because our request is modest, this statement is brief. The Center's Board, which the Chief Justice chairs and on which the Director of the Administrative Office of the U. S. Courts serves, approved this request in October 2014.

Our request for 2016 is \$27,679,000--an increase of \$720,000 (or 2.7%) above our fiscal year 2015 appropriations level (\$26,959,000). The \$720,000 increase is entirely for standard adjustments to our 2015 base. We are not requesting any funds for program growth or enhancements.

I would like to provide you with a brief description of the Center and its activities. I hope to convey to you the important contribution that the Center makes to the effective and efficient functioning of the federal courts.

The Center's Contribution to the Courts

Speaking not only as the Center's director but also as a judge, I can attest to the importance of the Center to the courts and the people who work in them. The Center's statutory mission is to further the development and adoption of improved judicial administration in the federal courts. We carry out our mission through educational programs for judges to help them dispose of complex litigation effectively and fairly, and for court managers and staff to help them operate efficiently and to maintain services to the public, including supervision of federal criminal defendants and offenders. Our independent, impartial, empirical research on federal litigation and judicial administration contributes directly to changes in

procedures and policies that make litigation and court operations more user-friendly and efficient.

### Education and Training

Center education programs are vital to judges and court staff. Orientation programs enable new judges to assume their responsibilities quickly. Continuing education programs educate judges on topics ranging from case-management techniques to new statutes and case law and emerging trends and practices.

Court staff, who play a critical role in supporting judges and ensuring the efficient operation of the courts, rely on the Center for educational programs and materials that help them do their jobs well. Our multi-year leadership programs help court employees do their current jobs even better and prepare them for positions of greater responsibility.

The need for education and training remains great. Educating judges about new legal developments, ethical requirements and effective case management practices always has been and will continue to be necessary. Judges and court managers also seek additional education in effective court management to help address the challenging fiscal climate, use technology effectively and maintain a productive workforce.

The Center delivers education through in-person programs and a variety of media to provide education and information to judges and staff efficiently. The delivery tools we use include hard-copy publications, and an array of technologies, including our internal and external web sites, web applications, teleconferencing, web-conferencing, and streaming video. All these delivery means help us meet the diverse needs of a diverse population of judges, managers, and staff in a cost-effective way.

### Center Research

The courts, and particularly the Judicial Conference of the United States, as well as Congress and the public, are regular consumers of the Center's research projects. They rely on the Center for thorough, unbiased, well-documented research. Most of the approximately fifty major research projects under way in 2015 were requested

Statement of Hon. Jeremy D. Fogel, Director, FJC, March 25, 2015

by the Judicial Conference and its committees. The Center's research not only helps judges decide cases efficiently and fairly but also helps the judiciary and Congress make better-informed decisions about policies and procedures affecting the courts.

Thank you for your careful consideration of our request. I hope that the brevity of this statement does not minimize in any way the vital contribution the Center makes to support the work of the federal courts. I respectfully urge you to provide the Center with the modest 2.7% increase --- simply a current services funding level --- it needs in 2016. I would be pleased to respond to any questions you may have.

**STATEMENT OF SHARON PROST  
CHIEF JUDGE, UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT  
BEFORE THE SUBCOMMITTEE  
ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
OF THE COMMITTEE ON APPROPRIATIONS  
OF THE UNITED STATES HOUSE OF REPRESENTATIVES**

**March 25, 2015**

Chairman Crenshaw, Representative Serrano, and members of the Committee, thank you for affording me the opportunity to submit this statement in support of the United States Court of Appeals for the Federal Circuit's fiscal year 2016 budget request. I am Sharon Prost, and my tenure as Chief Judge began on May 31, 2014. This is my first budget statement to you on behalf of the court.

As you know, the United States Court of Appeals for the Federal Circuit is located in Washington, D.C., and the court has exclusive nationwide jurisdiction over a large and diverse subject area. The Federal Circuit's jurisdiction includes appeals in all patent cases nationwide, all government contract cases, all international trade cases, all government personnel cases, all cases involving monetary claims against the United States under the Tucker Acts, veterans' cases, and many others.

Appeals to the Federal Circuit come from all of the 94 United States District Courts, the United States Court of Federal Claims, the United States Court of International Trade, and the United States Court of Appeals for Veterans Claims. The court also hears appeals from certain administrative agency decisions, including the United States Merit Systems Protection Board, the Board of Contract Appeals, the Patent Trial and Appeal Board, and the Trademark Trial and Appeals Board. In addition, the court reviews decisions of the United States International Trade Commission, the Office of Compliance, and the Government Accountability Office Personnel Appeals Board.

At the outset, let me say that our court fully appreciates and embraces the need to reduce the federal deficit and contain federal spending. The Federal Circuit has worked diligently to do its part by finding cost-effective

ways to meet its national mission. During my tenure as Chief Judge of the Federal Circuit, I pledge to continue to find new ways to control the court's operating expenses. Under my leadership, the Federal Circuit will be a vigilant steward of its appropriation, applying not only sound fiscal, procurement and personnel practices, but innovative ones as well. Indeed, these principals have consistently guided the court.

In fiscal year 2013, the court managed through the sequestration and rescission of funds without resorting to the staff furloughs that many other courts imposed. This was accomplished by a hiring freeze and the leveraging of funding from staff and chambers vacancies. Understanding that this was only a short-term strategy, the court prepared to meet the need for continuing fiscal austerity by reconstructing our Mediation Services by increasing our reliance on expert volunteer mediators. We were then able to close our mediation satellite office in the Kluczynski Federal Building in Chicago and permanently release three full-time employees. Last fiscal year, the court began a reorganization to address further staff attrition caused by the retirement of a number of our retirement-eligible staff, trying like many courts and other organizations to do more work with fewer people. In the course of this reorganization, we determined that the level of staff reduction we experienced over the past two years is not permanently sustainable. We need to fill our remaining vacancies by the end of fiscal year 2015. In doing so, however, we will remain below our historic staffing level. This occurs at a time when our case load is demonstrably rising due to structural changes in the court's caseload, principally because of recent amendments in the law relating to patent litigation.

Before I continue with my fiscal year 2016 statement, let me extend my sincere appreciation to the Committee for recognizing the Federal Circuit's needs in the enacted appropriation for the court in fiscal year 2015. The court will be able to fulfill its mission of timely adjudication of cases during this fiscal year because the funds you appropriated will allow us to proceed with recovering from the sequestration's impact.

For fiscal year 2016, I respectfully ask that Congress provide the funds I have identified as necessary for the court to sustain current services and to continue to operate in an efficient and effective manner. With this goal in mind, the Federal Circuit's 2016 budget request totals \$33,763,000, which

includes \$2,922,000 for mandatory expenses and \$30,841,000 for discretionary expenses. The discretionary request of \$30,841,000 is slightly less than a 2.1 percent increase over the fiscal year 2015 enacted appropriation for discretionary expenses of \$30,212,000.

For the fifth fiscal year in a row, the Federal Circuit's budget request includes no request for programmatic or staff increases. I am requesting only sufficient funds to provide for the essential, ongoing operations of the court. One hundred percent of the 2.1 percent budget increase requested for 2016 is to pay for adjustments to the base budget needed to maintain current services. These adjustments include projected salaries and benefits increases for staff, staff promotions and within-grade increases, general inflationary adjustments, and the increasing cost of library services and computer-assisted legal research.

I recognize and fully appreciate the relentless pressure on Congress to contain and reduce government spending. At the same time, the court also recognizes that the administration of justice and this court's unique impact on the economy and on those veterans and federal employees who seek relief from this court, would suffer if funds are insufficient to keep the court properly staffed and fully functional. In this regard, I note further that our judges are aging and three are now eligible to elect senior status. As you know, when a judge opts for senior status, this court must provide two staff positions to support the judge's continuing work. In recent years, we have used vacant positions within the court's staff to fill senior judge needs. Having already absorbed a permanent staff reduction, we will no longer have this flexibility when all of our current vacancies are filled later this year. If one or more judges elect senior status, I may need to request funding sufficient to fill existing, but currently vacant, Full-Time Equivalent (FTE) positions, or be forced to release two permanent employees in order to hire staff for any new senior judge. I will closely monitor this situation, and will notify you of any emergent need as soon as I am able.

For fiscal year 2015, the Federal Circuit currently has sufficient resources to address the caseload. As I noted previously, however, structural changes have occurred in litigation within the jurisdiction of the court that have begun to increase the Federal Circuit's caseload. Last year, the court experienced its highest caseload in five years. Early indications are that this



year will equal or surpass last year. Moreover, the predominant increase is in complex patent cases, so the impact is larger than any raw numeric increase might support.

The context of what appears to be a permanent, structural increase in our caseload begins with the *Leahy-Smith America Invents Act*, Pub. L. No. 112-29 (the AIA) enacted on September 16, 2011. As a result of changes to patent practice in the AIA, the Federal Circuit has begun to see what we expect to be a significant and long-term increase in the patent appellate caseload. The U.S. Patent and Trademark Office (USPTO) is implementing the America Invents Act (AIA) in a manner that makes it easier for American entrepreneurs and businesses to bring their inventions to the marketplace sooner, converting their ideas into new products and new jobs. As you know, the intent of the AIA is to help companies and inventors avoid costly delays and unnecessary litigation, and allow them focus instead on innovation and job creation. A number of important provisions of the law went into effect in September, 2012, twelve months after the law was enacted.

The success of the AIA depends on the Federal Circuit, which will have to resolve each of the many statutory interpretation questions posed by the new law. The AIA provides for patentability trials before the USPTO at the newly created Patent Trial and Appeal Board (PTAB), which is also tasked with working through a substantial backlog of appeals from conventional patent examination decisions. The statute provides that all of the appealed cases of the new PTAB come to the Federal Circuit for review. Only one AIA trial decision was rendered by the PTAB in 2013. In comparison, however, by early February of 2015, the PTAB had generated 254 final written decisions from the more than 800 pending trials. The AIA trial work of the PTAB is expected to combine with other USPTO appeals to produce a very significant increase in cases in fiscal year 2016 for review by the Federal Circuit. We have already begun to see the impact. This past year USPTO patent appeals nearly doubled over the preceding year, from 110 to 212. This was accompanied by an increase in patent appeals from the United States District Courts, for a total increase of about 176 patent cases. While the numeric rise in cases does not yet appear unmanageable, the district court and PTAB patent cases are typically the most complicated and time consuming cases on the court's docket because the patents at issue are technically complex.

Thus, the actual increase in appellate work is under-represented by last year's statistical increase of cases viewed in isolation.

Based on the complexity of patent practice under the AIA, and the case load evidence to date, it is clear that there will be a sustained and progressive increase in our patent caseload. This is further confirmed by the fact that the USPTO has increased the number of administrative judges threefold, as well as attorneys in its solicitor's office. While facing the potential for a permanent increase in our caseload will be a challenge, it would be premature to request additional resources at this time. As a result, in our fiscal year 2016 budget, I have not requested any additional funding to address the already increasing patent case load.

At the same time, however, I am keenly aware that the Federal Circuit would be defeating the purpose of the AIA if delays occur in the appeal process that impede American inventors and businesses from bringing their products to market and resolving their disputes as swiftly as possible. It would indeed be unfortunate if the Federal Circuit is unable to process appeals from the PTAB expeditiously due to a lack of well-qualified staff resulting from insufficient funds. I will monitor the Federal Circuit's patent caseload carefully and I will not hesitate to notify you of any need for additional resources.

Just as the AIA has apparently resulted in a structural increase in the Federal Circuit's caseload, the United States Department of Veterans Affairs (VA) is accelerating the processing of disability cases and pension claims that is also likely to result in a long-term increase in our caseload. Of 380,000 backlogged veterans' appeals, 67,000 have reached the Board of Veterans' Appeals, and approximately 200,000 of the remainder are expected to follow. With the benefit of 60 veterans law judges and more than 400 supporting counsel because of increased funding by Congress, the Board decided 55,000 cases in fiscal year 2014 and is expected to decide approximately 57,000 cases in fiscal year 2015. While backlogs at the Board will continue, it is clear that decisions by the Board are accelerating.

Despite the fact that the Board significantly increased the number of decisions in 2014, the number of appeals to the United States Court of Appeals for Veterans Claims (the Veterans Court) increased by just over 200 cases. This relatively small increase, however, does not readily reflect that

the appeals rate that generated the increase occurred largely in the last six months of fiscal year 2014. Should appeals through fiscal year 2015 continue at the same rate, the Veterans Court will receive more than 1,000 additional appeals this year and as many as 1,000 more in 2016. As you know, this increasing pool of cases will ultimately result in decisions that are appealable to the Federal Circuit, and this number does not include several hundred decisions the Veterans Court will issue on petitions.

Thus far, the Federal Circuit has not seen a marked increase in appeals from the Veterans Court. Nevertheless, with the mechanisms in place to dispose of increasingly large numbers of cases by the Veterans Court, I fully expect that the number of appeals to the Federal Circuit will increase this year and continue in fiscal year 2016. Prudence, therefore, dictates that this source of the Federal Circuit's caseload be carefully monitored as a potential structural change in our caseload. It is, however, too early to assess with specificity the magnitude of that increase, and as a result, I have not requested any increase in resources to address it. Recognizing that delayed justice for our veterans and their families is unacceptable, I will monitor the caseload increases from the Veterans Court, and I will notify you as soon as I believe additional resources are needed by the Federal Circuit.

Last year's budget statement cited a third source of caseload increase at the Federal Circuit, characterized as being imminent, though likely temporary. The sequestration in fiscal year 2013 resulted in a flood of furlough appeals being filed with the Merit Systems Protection Board (MSPB) by federal employees who were furloughed because of automatic spending cuts. As of September of 2013, more than 32,000 furlough appeals had been filed at the MSPB. This was in addition to the average of 6,000 appeals received annually on other matters that are appealable to MSPB under the law. While MSPB is poised to make significant progress in processing the existing inventory of appeals in fiscal year 2015, it is likely MSPB will start fiscal year 2016 with a significant number of appeals in the regional offices and petitions for review at headquarters. As these appeals and petitions result in decisions, if a federal employee's case fails at the MSPB, that employee may appeal to the Federal Circuit.

The Federal Circuit has yet not received a significant portion of MSPB furlough cases and it is impossible to predict with certainty how many of these

appeals might survive MSPB review. Nevertheless, it is prudent to plan for a significant number of these cases to be appealed to the Federal Circuit and, given the permanent increase in staff at the MSPB and its view that its caseload will be at historic levels in 2015 and beyond due to changes in the law, I cannot discount that these circumstances do, indeed, portend a third structural change that will drive an increase in the Federal Circuit's caseload. In acknowledging this, however, I do not anticipate such a large increase in MSPB cases in 2016 that would require resources beyond those I have requested in our annual appropriation. I will rely on prudent management of the resources you provide, recognizing that it will be my duty to request more, if it becomes clear that more is needed. In the interim, the impending furlough cases serve to reinforce the need for the Federal Circuit to complete filling current staff vacancies and training those new employees so that they are able to respond to the organizational stress an increase in MSPB cases seems likely to impose in the foreseeable future.

Finally, I would like to address the court's plan to reduce facilities costs. House Report 113-172 required this court to report on a plan by July of 2014. That report was developed in consultation with the Judicial Conference of the United States and the General Services Administration and was delivered on time. Consistent with that plan, the court is pursuing actionable alternatives to reduce, reallocate and reconfigure existing space that will support a reduction in facilities costs. I note that we have already met the 3 percent reduction goal set by the Judicial Conference of the United States for the federal judiciary at large. While I believe there are still some prudent and achievable measures that the court can pursue on its own, ultimately, to make any further significant reduction in facilities costs, the Federal Circuit may have to request additional funding targeted for facilities alteration or perhaps new leases.

Chairman Crenshaw, I would be pleased to provide any additional information that the Committee may require or to meet with Committee members or staff to discuss our budget request in further detail. Thank you for this opportunity to present my views.

STATEMENT OF TIMOTHY C. STANCEU  
Chief Judge  
UNITED STATES COURT OF INTERNATIONAL TRADE  
before  
The Subcommittee on  
Financial Services and General Government of the  
Committee on Appropriations of the  
United States House of Representatives

March 25, 2015

Chairman Crenshaw, Representative Serrano, and Members of the Committee:

Thank you for providing me the opportunity to submit this statement on behalf of the United States Court of International Trade, which is established under Article III of the Constitution with exclusive nationwide jurisdiction over civil actions arising out of the administration and enforcement of the customs and international trade laws of the United States. As you know, the Court has its roots in the uniformity requirement of Article I, Section 8 of the Constitution ("all duties, imposts and excises shall be uniform throughout the United States") and in that way serves a vital role that contributes to the nation's economic strength.

The Court's Fiscal Year 2016 budget request is \$20,150,000, which is comprised of \$2,005,000 for mandatory appropriations and \$18,145,000 for discretionary appropriations. The discretionary portion of the appropriations request represents an increase of \$338,000, or 1.9 percent, from the Fiscal Year 2015 enacted discretionary appropriations of \$17,807,000. This modest increase reflects the necessary adjustments to the base in order to maintain current services, fund essential on-going operations and initiatives, and provide for adjustments in pay and benefits. It also accounts for other inflationary factors applied to the base, including an increase in pro-rata costs paid to the Federal Protective Service (FPS) for the critical and necessary security of the Federal Complex (including the Court) in lower Manhattan. Further, it reflects adjustments for security costs paid to the U.S. Marshals Service for the Court's internal security officers.

The Court remains committed to the efficient and conservative management of its resources through sound fiscal practices. The Court continues to utilize cost

containment strategies in keeping with the overall administrative policies and practices of the Judicial Conference, particularly regarding security costs, equipment costs, technology, contractual obligations, and personnel. This is consistent with the Court's long-standing policy of requesting only funds that are absolutely needed for fulfilling the Court's judicial responsibilities, such as increases for pay, benefits, and other inflationary factors, and for essential on-going operations and initiatives of the Court.

Currently, the Court is working actively with the General Services Administration to release space in the Courthouse to the U.S. Marshals Service. If this initiative is successful, it will reduce the Court's rent bill while simultaneously improving security. Additionally, I would like to note that in Fiscal Year 2014, the Court transferred \$1.15 million to the Judiciary's Court Security Program to address critical security needs.

The Court continues to meet the objectives set forth in its Strategic Plan through the use of its annual appropriation and the Judiciary Information Technology Fund. These objectives provide access to the Court through the effective and efficient delivery of services and information to litigants, the bar, the public, judges, and staff. For a national court, this access is critical to realizing the mission of resolving disputes by (1) providing cost effective, courteous, and timely service; (2) providing independent, consistent, fair, and impartial interpretation and application of the customs and international trade laws; and (3) fostering improvements in customs and international trade law and practice, as well as in the overall administration of justice.

Specifically, technology remains a critical component of the Court's commitment to high quality service to its various constituencies. To this end, the requested appropriation will enable the Court to support and maintain its information technology program. This entails cyclical maintenance and, when necessary, replacement, of hardware and software to ensure that the Court's infrastructure will continue to support its present and future technological and telecommunications needs. During Fiscal Year 2014, the Court used its Judiciary Information Technology Fund successfully to strengthen its technological capabilities by: (1) upgrading the Storage Area Network for the COOP site; (2) installing a secondary firewall for redundancy purposes; (3) executing maintenance agreements for computer hardware and software applications; (4) continuing its support of its video conferencing system, data network and voice connections, wireless infrastructure, and Virtual Private Network System (VPN); (5) installing hard drive encryption software for laptops; and (6) cyclically upgrading its laptops.

In Fiscal Year 2015, the Court plans to expend funds on essential information technology projects to: (1) add redundancy to the core switch for the network; (2) upgrade the Polycom conference phone system from analog to digital; (3) upgrade and support existing software applications; (4) purchase new software applications to ensure the continued operational efficiency of the Court; (5) install virtual desktop infrastructure; (6) purchase log management software for the Court's network;

(7) purchase document management software to streamline workflow for court staff; and (8) replace computer desktops, monitors and printers in accordance with the Judiciary's cyclical replacement program. Additionally, the Court will continue to support its long-standing commitment to provide developmental and educational programs for staff on subjects pertaining to technology and job-related skills.

In Fiscal Year 2016, the Court again will use its carry-forward balances in the Judiciary Information Technology Fund for information technology initiatives that support the Court's short-term and long-term information technology needs. Additionally, the Court will continue to maximize the use and functionality of common and individual office space. This effort is part of the Court's on-going rent review process. The Court also will continue its cyclical replacement and maintenance program for equipment, furniture, and offices to help extend the useful life of equipment and furnishings. Moreover, the Fiscal Year 2016 request once again includes funds for the continued upgrade, support, and maintenance of the Court's internal and perimeter security systems. Further, the Court will seek to continue its efforts to address the educational needs of the bar and Court staff. Finally, the Court, in Fiscal Year 2016, will build on its prior efforts in cost-saving negotiations of contracts with GSA, FPS, and public and private companies.

I personally extend my deepest appreciation to this Committee and the entire Congress for recognizing the needs of the Court by providing adequate funding in Fiscal Year 2015 to maintain current services so that the Court can fulfill its commitment to the administration of justice for all.

The Court's "General Statement and Information" and "Justification of Changes," which provide more detailed descriptions of each line item adjustment, were submitted as part of the Judiciary Fiscal Year 2016 Congressional Budget Justification. If the Committee requires any additional information, we will be pleased to provide it.

**STATEMENT OF HONORABLE PATTI B. SARIS, CHAIR  
UNITED STATES SENTENCING COMMISSION  
BEFORE THE SUBCOMMITTEE ON  
FINANCIAL SERVICES AND GENERAL GOVERNMENT  
OF THE COMMITTEE ON APPROPRIATIONS OF THE  
UNITED STATES HOUSE OF REPRESENTATIVES**

March 25, 2015

Chairman Crenshaw, Ranking Member Serrano, and members of the Subcommittee, the United States Sentencing Commission (Commission) thanks you for the opportunity to submit this statement in support of its appropriations request for fiscal year 2016. The Commission's statutory mission to ensure sound and just federal sentencing policy while prioritizing limited resources to best ensure public safety, as set forth in the Sentencing Reform Act of 1984, continues to be of tremendous importance.

**RESOURCES REQUESTED**

The Commission is requesting \$17,540,000 for fiscal year 2016, representing a 3.8 percent increase over the fiscal year 2015 appropriation of \$16,894,000. The Commission fully appreciates the serious budget constraints facing the nation and the need for government agencies to allocate their resources responsibly and has limited its requests accordingly.

**JUSTIFICATION FOR COMMISSION'S APPROPRIATIONS REQUEST**

The statutory duties of the United States Sentencing Commission include (1) promulgating sentencing guidelines to be determined, calculated, and considered in all federal criminal cases; (2) collecting sentencing data systematically to detect new criminal trends, to determine if federal crime policies are achieving their goals, and to serve as a clearinghouse for federal sentencing statistics; (3) conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and (4) providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community on federal sentencing issues, including application of the guidelines.

The Commission sits at the intersection of all three branches of government and synthesizes the interests of the three branches to effectuate sound federal sentencing policy. Consistent with statutory guidance and Supreme Court case law, the Commission continues its core mission to promulgate new guidelines and guideline amendments in response to legislation, sentencing data, and information and feedback from sentencing courts, Congress, the Executive Branch, Federal Public Defenders, and others in the federal criminal justice system. The Commission continues to expand its specialized training on federal sentencing issues, including application of the guidelines to federal judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and others.



In fiscal year 2014, the Commission has taken a leading role in reducing costs associated with rising prison populations, increasing the fairness and efficiency of sentencing, and improving recidivism outcomes, thereby saving additional funds. The Commission's efforts are calibrated to ensure public safety and provide that the statutory purposes of sentencing are achieved. The Commission will continue these efforts in fiscal years 2015 and 2016 and is also prioritizing finding ways to make the guidelines work better, promoting efficiency and effectiveness and reducing unnecessary litigation.

Furthermore, the Commission continues to refine its data collection, analysis, and reporting efforts to provide up-to-date data about federal sentencing practices and trends. The Commission continues to disseminate sentencing information in real time and in new ways to fulfill its statutory duties to monitor the operation of the guidelines and to advise Congress on federal sentencing policy. The Commission also continues to analyze major sentencing issues and report its findings and recommendations to Congress, as well as to respond to requests from Congress for data and analysis.

Even as the demand for Commission work-product, information, and services is increasing, the Commission is not requesting program increases for fiscal year 2016 because it continues to maximize existing resources. The Commission appreciates the funding Congress has provided for the Commission's fulfillment of its statutory duties.

#### **SENTENCING POLICY DEVELOPMENT**

In light of the increasing costs of incarceration and the ongoing overcapacity of the federal prison system, since fiscal year 2014 the Commission has made implementing its mandate at Section 994(g) of the Sentencing Reform Act, which requires that the guidelines "minimize the likelihood that the federal prison population will exceed the capacity of the federal prisons," an overarching policy priority. Consistent with that goal, in fiscal year 2014 the Commission reexamined the guideline covering federal drug trafficking offenses since federal drug offenders account for more than half of the federal prison population.

The Commission conducted hearings on how the guidelines account for the quantity of drugs involved in federal drug trafficking offenses, analyzed sentencing and recidivism data, considered legislative and guideline developments, reviewed tens of thousands of letters from the public, and carefully considered input from members of Congress and other key stakeholders, and other relevant information. The Commission's exhaustive re-examination resulted in the promulgation of an amendment that somewhat reduces the guideline penalties based on the quantity of drugs involved in an offense. The amendment is anticipated to affect approximately 70 percent of federal drug trafficking defendants, with their sentences decreasing an average of 11 months, or 17 percent, from 62 to 51 months. In addition to addressing prison populations and costs, these changes to the drug guidelines respond appropriately to statutory changes Congress has made and developments in the guidelines in the years since the drug guideline levels were originally set.

The Commission carefully weighed public safety concerns and, based on past experience, existing statutory and guideline enhancements, and expert testimony, concluded that the amendment should not jeopardize public safety. To the contrary, the Commission received testimony from the Department of Justice and other stakeholders that the amendment would promote public safety by permitting resources otherwise dedicated to housing prisoners to be used to reduce overcrowding, enhance programming designed to reduce the risk of recidivism, and increase law enforcement and crime prevention efforts.

Section 994(u) of the Sentencing Reform Act also required that the Commission consider whether to make the drug amendment retroactive, and after extensive consideration, the Commission decided to make the amendment retroactive with a one-year delay in implementation. In reaching its decision, the Commission was informed by its study of recidivism following retroactive application of the 2007 crack cocaine amendment which suggests that modest reductions in drug penalties can be accomplished without an increase in recidivism. The one year delay in implementation will also help to ensure public safety by allowing judges time to carefully consider each case, providing time for the Probation and Pretrial Services Office to prepare to supervise more offenders, and ensuring that the Bureau of Prisons can provide offenders with transitional services before they are released.

Retroactive application of the amendment is anticipated to have a significant impact on reducing prison costs and overcapacity, and the impact will come much more quickly than from a prospective change alone. More than 40,000 offenders may be eligible for reduced sentences, and these offenders are eligible to have their sentences reduced by an average of 25 months or 18.8 percent. This reduction is estimated to result over time in a savings of more than 70,000 prison bed years.

The Commission believes that the 2014 drug amendment and its retroactive application are important first steps toward addressing prison costs and populations with proportionate guidelines, without negatively impacting public safety. The Commission hopes the amendment will lay the groundwork for more comprehensive action by Congress in the future, and the Commission's Chair testified to that effect before the House Judiciary Committee's Over-Criminalization Task Force in June 2014.

In fiscal year 2014, the Commission also implemented the Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, a major piece of legislation impacting a variety of offenses in Indian Country and beyond. It also resolved circuit conflicts in Courts of Appeals relating to the guidelines, including differences in calculating tax loss under the guidelines and the circumstances under which a defendant receives full credit for acceptance of responsibility.

In fiscal year 2015 and looking forward to fiscal year 2016, the Commission has prioritized examining ways the guidelines can be made fairer, more efficient, and more effective. In furtherance of this goal, the Commission expects to promulgate guideline amendments resulting from its multi-year review of economic crimes that target specific areas of ongoing concern, such as cases involving particularly high loss amounts and fraud on the market offenses.

In addition, the Commission is prepared to respond to recent rescheduling by the Drug Enforcement Administration for the drug hydrocodone.

Furthermore, the Commission convened an expert roundtable discussion on application issues caused by differing statutory, guideline, and case law definitions of crimes of violence. Differing and complex statutory and guideline definitions have caused significant litigation in federal sentencing, draining judicial resources and causing increased uncertainty and lack of uniformity in sentencing.

The Commission also continued work on a multi-year study on recidivism of federal offenders. In fiscal year 2013, the Commission held a recidivism roundtable where it heard from a variety of experts on methodology, quantitative statistical analysis, and program evaluation. The recidivism study will draw on partnerships across the federal criminal justice system and will combine data from the Commission, the Department of Justice, and the Administrative Office of the U.S. Courts to develop a comprehensive trajectory of offenders prior to incarceration, during incarceration, and following reentry into the community. The Commission believes this research will contribute significantly to the consideration of federal sentencing policy by Congress and others in fiscal year 2015 and beyond.

In addition, in fiscal year 2014, the Commission undertook a study of federal sentencing practices pertaining to imposition and violations of conditions of probation and supervised release, including possible consideration of amending the relevant provisions in the *Guidelines Manual*. The Commission believes this research may inform congressional consideration of issues including identification of conditions of supervised release that are correlated with lower recidivism.

Also in fiscal year 2014, the Commission began work on a review of the use of risk-assessment instruments in the federal criminal justice system in order to be able to provide the Commission's data and expertise to Congress, the Probation and Pretrial Services Office of the Administrative Office of the U.S. Courts, and researchers at the Federal Judicial Center. The Commission's study is aimed at considering these tools in the context of the goals and requirements of the Sentencing Reform Act of 1984 that sentences remain neutral with respect to race, gender, and socioeconomic status, among other consideration.

In fiscal year 2014, the Commission focused on making its data and research more readily accessible in more easily understood ways to Congress, the courts, the public, and the press. To this end, the Commission expanded its Quick Facts series first introduced in fiscal year 2013. The Quick Facts series is designed to provide concise facts about a single area of federal crime in an easy-to-read, two-page format. The Commission released fourteen publications in the Quick Facts series in fiscal year 2014 covering topics including illicit drugs, Native American offenders, female offenders, alien smuggling, and national defense offenses. The Commission will release new publications in fiscal year 2015 and update them regularly.

In fiscal year 2014, the Commission also introduced a series of relatively short reports on various topics of interest. For example, the Commission released a brief publication about

recidivism in connection with 2007 amendments that reduced sentences for crack offenders. The Commission will continue this short publication series in fiscal year 2015 and beyond.

The Commission has also continued to work with Congress on its reports from fiscal years 2011 and 2012 on mandatory minimum penalties, child pornography offenses, and disparity in sentencing. These comprehensive reports provide policy-makers with relevant and important sentencing information and data, as well as the most relevant social science research and case law.

The information and data contained in these reports has contributed to the consideration of federal sentencing policy by Congress and others in fiscal years 2013 and 2014 and will likely continue to do so. In particular, during the 113th Congress the Commission worked to implement recommendations from its report on statutory mandatory minimum penalties and updated its recommendations on mandatory minimum penalties to address legislation before both the House and Senate. The Commission stands ready to work with the 114th Congress and others on steps that can be taken regarding the findings and recommendations in those reports.

### **COLLECTING AND REPORTING SENTENCING DATA**

Each year the Commission collects data regarding every felony and class A misdemeanor offense sentenced during that year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case: the charging document, the plea agreement, the presentence investigation report, the judgment and commitment order, and the statement of reasons form. The Commission analyzes these documents and collects information of interest and importance to policy-makers and the federal criminal justice community.

The Commission's data collection, analysis, and reporting requirements are impacted by the high volume of cases sentenced in the federal system annually. The Commission will receive documentation on more than 350,000 documents for more than 76,000 original sentencings for fiscal year 2014. To put this caseload in perspective, in fiscal year 1995, the Commission received documentation for 38,500 cases sentenced under the guidelines.

The Commission also collects real-time data from the courts on retroactive application of its permanent amendment implementing the Fair Sentencing Act of 2010, Pub. L. No. 110-220. The guideline amendment took effect on November 1, 2011.

As of December 2014, the Commission has collected data on approximately 14,000 cases in which a modification of the sentence imposed was sought under the 2011 amendment to the sentencing guidelines that implemented the provisions of the Fair Sentencing Act and which the Commission voted to retroactively apply to persons sentenced before the date of that amendment. The Commission anticipates eventually receiving documentation on more than 15,000 motions for retroactive application of the 2011 crack cocaine amendment. These documents and original research will form the basis for a study on implementation of the Fair Sentencing Act in fiscal year 2015 as contemplated by the Act, which requires the Commission to submit a report to Congress five years after its enactment (August 3, 2010).

The Commission has also begun collecting data on retroactive application of the 2014 drug amendment. Beginning November 1, 2014, judges were able to review sentences imposed prior to that date to determine if offenders' sentences should be reduced consistent with the 2014 drug amendment. Offenders will not be eligible for release from Bureau of Prisons custody until November 1, 2015. The Commission anticipates receiving documentation on more than 40,000 motions for retroactive application of the 2014 drug amendment.

The Commission's sustained investment in modernization and refinement of data collection and analysis have kept pace with demands placed on it, but full funding of the Commission's fiscal year 2016 budget request is necessary to ensure efficient and effective performance of its data responsibilities given the number of federal cases.

The Commission continually updates and modernizes the system that enables sentencing courts to submit documentation directly to the Commission electronically. In recent years, the Commission advanced from an internal electronic data transmission submission system to a web-based system and improved its processes related to the receipt and analysis of sentencing data. By the end of fiscal year 2014, 79 districts were using the web-based system.

The Commission continues to work to develop means to automatically extract some data fields from the court documents to improve the efficiency of its data collection and to expand the type of information the Commission can collect and analyze on a routine basis. The Commission began to collect some data through this automated means in fiscal year 2014, and will continue to do so in fiscal year 2015 and beyond.

The Commission makes its sentencing data available to the public in several ways. Analyses of the data extracted from the sentencing documents it receives are reported in the Commission's Annual Report and Sourcebook of Federal Sentencing Statistics, which is available in print and on its website. In order to provide the most timely information on national sentencing trends and practices, the Commission also disseminates on its website key aspects of this data on a quarterly basis and provides trend analyses of the changes in federal sentencing practices over time.

The Commission continued to improve and expand use of its Interactive Sourcebook. The Interactive Sourcebook allows users to re-create and customize tables and figures, for example by circuit, district, or state and has improved the transparency and accessibility of its sentencing data to the public. Additionally, the Interactive Sourcebook provides analyses not found elsewhere, including analyses of sentence length by the primary guideline the court used at sentencing, amount of loss in fraud cases, and age of offenders in drug cases for each major drug type. In fiscal year 2014, additional analyses were added to this resource, including several new figures that examine trends in sentencing data over time.

As required by 28 U.S.C. § 994(g) and 18 U.S.C. § 4047, when the Commission considers amendments to the guidelines, it considers the impact of these amendments on the federal prison population. In addition, the Commission is asked often by Congress to complete prison and sentencing impact assessments for proposed legislation. Since fiscal year 2012, the

Commission makes its prison and sentencing impact analyses available to the public on its website.

The Commission often is asked by Congress to complete prison and sentencing impact assessments using real-time data of sentencing trends related to proposed and pending legislation. These assessments are often complex and time-sensitive and require highly-specialized Commission resources. In addition, the Commission responds to more general data requests from Congress on issues such as drugs, immigration, fraud, and sex offenses and provides district, state-wide, and circuit data analyses to House and Senate Judiciary Committee members and, on an as-requested basis, to other members of Congress.

The Commission also responds to requests for data analyses from federal judges, including specific data requests relating to pending cases. In fiscal year 2014, the Commission responded to 77 such requests from the courts. The Commission's ability to provide these analyses on demand and with real-time data provides a unique and helpful resource to judges.

### **CONDUCTING RESEARCH**

Research is a critical part of the Commission's overall mission. The Commission's research staff regularly analyzes the current and prior fiscal years' data to identify the manner in which the courts are sentencing offenders and using the guidelines. The Commission routinely uses these analyses when considering proposed changes to the guidelines. Similarly, some analyses are published by the Commission as a resource for policy-makers and the criminal justice community.

In May 2014, the Commission published an updated study on the recidivism of offenders whose sentences were reduced as a result of changes to the 2007 crack cocaine sentencing guidelines. The study compared the recidivism rates for offenders who were released early as a result of retroactive application of the 2007 crack cocaine amendment with a control group of offenders who served their full terms of imprisonment. The Commission detected no statistically significant difference in the rates of recidivism for the two groups of offenders over five years. This information represents some of the first high-quality, quasi-experimental, federal recidivism data that uses sentence length as a dependent variable. This data was crucial to the Commission in making its fiscal year 2014 changes to the drug quantity table. It has also been used by members of Congress in their own evaluations of proposed sentencing legislation.

Since fiscal year 2013, the Commission makes individual offender datafiles available on its website. Datafiles from fiscal years 2002 through 2013 are now available.

### **TRAINING AND OUTREACH**

The Commission continues to fulfill its statutory duty to provide training and specialized technical assistance on federal sentencing issues, including application of the guidelines, to federal judges, probation officers, staff attorneys, law clerks, prosecutors, and defense attorneys by providing educational programs around the country throughout the year. In fiscal year 2014, Commissioners and Commission staff conducted training programs in all twelve circuits and

approximately half of the 94 judicial districts providing instruction and guidance to more than 6000 judges, probation officers, prosecutors, defense attorneys and others throughout the year.

In September 2014, the Commission held its annual national training program in Philadelphia, Pennsylvania with more than 900 attendees, including many federal district court judges. The Commission also participated in training an unusually large number of new federal district judges, many of whom were unfamiliar with the federal sentencing system prior to their appointments.

Commissioners and Commission staff also participated in numerous academic programs, symposia, and circuit conferences as part of the ongoing discussion of federal sentencing issues. The Commission anticipates that these expanded efforts and requests for training will continue throughout fiscal years 2015 and 2016.

The Commission also is relying on a more robust program of distance and online learning as part of cost containment efforts. The Commission has increased the number of sentencing-related webinars and training videos on its website throughout fiscal year 2014 and will continue to do so in 2015 and 2016. In October 2014, the Commission released its first training video focused at addressing the needs of federal crime victims. The video informs victims of the federal sentencing process and prepares them to participate more fully in the process.

#### SUMMARY

The Commission remains uniquely positioned to assist the federal criminal justice community, including Congress, in ensuring sound and just federal sentencing policy and prioritizing limited resources to best protect the public safety. Located in the judicial branch and composed of federal judges, individuals with diverse experience in the federal criminal justice community, and *ex officio* representatives of the Executive Branch, the Commission is an expert, bipartisan body that works collaboratively with all three branches of government on matters of federal sentencing policy.

As evidenced from the discussion above, demand for the Commission's various work products continues to increase. The Commission has responded in recent years by placing a high priority on increasing public access to its sentencing data, information, analyses, and training. The Commission has achieved this increased public access in great part by expanding the availability of resources on its website, and the Commission plans to continue this trend in fiscal year 2016 and beyond.

The Commission appreciates the funding it has received from Congress and respectfully submits that full funding of its fiscal year 2016 appropriations request of \$17,540,000 will ensure that the Commission can continue to fulfill its various statutory missions efficiently and effectively.

Mr. CRENSHAW. Thank you very much.  
Director Duff, the floor is yours.

#### DIRECTOR DUFF'S OPENING STATEMENT

Mr. DUFF. Thank you, Chairman Crenshaw, Representative Serrano, Congressman Bishop. I, too, will provide very brief opening remarks in light of the time constraints. Our extended remarks we would submit for the record, please.

In January, I did return to be Director of the Administrative Office. I want to publicly thank Chief Justice Roberts for the privilege of working with our Federal judiciary again and the privilege of working with you again on the problems and the challenges that confront the judiciary.

The Administrative Office of the U.S. Courts was created by Congress in 1939, and it was created to assist the Federal courts in fulfilling their mission to provide equal justice under the law. The AO provides support to the Judicial Conference and its 25 committees as well as to more than 30,000 judicial officers and court employees, some of whom are in the audience here today.

I join Judge Gibbons in thanking the committee for the 2.8 percent appropriations increase we received in 2015.

We are also very appreciative that the 2015 omnibus bill included 1-year extensions for 10 temporary district judgeships whose authorizations expired in 2015. If Congress does not take action on the judiciary's comprehensive judgeship needs, we urge you once again to include 1-year extensions for these temporary judgeships in your 2016 bill.

I echo Judge Gibbons' support for funding that is included in GSA's 2016 request for a new courthouse in Nashville and \$20 million for the Judiciary Capital Security Program.

Cost containment continues to be a primary focus of the judiciary. We are very grateful that your committee recognized the judiciary's efforts in that regard in last year's appropriations, and we hope you will recognize it again this year.

Some cost-containment initiatives, however, do require changes to existing law, which we have suggested, and we appreciate that the 2015 omnibus bill included one of those provisions. There are several additional reforms—perhaps we will address some of those in questions this afternoon—that have been endorsed by the Judicial Conference, as well, that, if enacted, would produce additional savings in the long run.

For 2016, the Administrative Office's appropriation request totals \$87.6 million, which is a 3.8 percent increase over 2015. This represents a current services budget only. There are no additional staff or program increases requested by the Administrative Office of the U.S. Courts.

That concludes my opening remarks, and we would be happy to answer any questions that you may have.

[The information follows:]



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

March 25, 2015

**INTRODUCTION**

Chairman Crenshaw, Representative Serrano, and members of the Committee, I am pleased to appear before you to present the fiscal year 2016 budget request for the Administrative Office of the United States Courts (AO), and to support the overall request for the entire Judicial Branch.

I join Judge Gibbons in thanking you and the Committee for the support you continue to provide the Judiciary. We fully recognize the funding constraints you have had in recent years in writing the annual Financial Services and General Government Appropriation bill. We know that you had difficult choices to make and greatly appreciate the priority you placed on the funding requirements of the Judiciary. We have a practice of refining our request throughout the year with the goal of seeking the minimum amount necessary to meet the needs of the courts. You can be assured that we will continue to provide you with re-estimates of our fiscal year 2016 request throughout the year.

**RETURN TO THE AO**

On January 5, 2015, I returned to the Administrative Office to serve a second appointment as Director. I am grateful to Chief Justice Roberts for the privilege of working with our federal Judiciary again. From my first job in Chief Justice Burger's office 40 years ago, through later years as Counselor to Chief Justice Rehnquist, and then five years as Director of the Administrative Office, from 2006 to 2011, my respect and admiration for the federal Judiciary has only grown. I look forward to working on the challenges that face the Judiciary – from its operations to its administration, and I especially look forward to working closely with this Committee.

**TEMPORARY DISTRICT JUDGESHIPS**

Once again, the Judicial Conference is indebted to this Committee for authorizing extensions of expiring temporary Article III judgeships in the annual appropriations bill. Without your action, the authorization of all ten existing temporary Article III judgeships would

have expired and we would have risked losing judgeships in these courts upon the first vacancy – through death, retirement, or elevation to a higher court – occurring after their lapse date

In fiscal year 2016, we face the same fate. Without further action the temporary judgeships will expire beginning in April, 2016. If the House and Senate Judiciary Committees are unable to preserve these expiring judgeships, I urge this Committee to include the necessary one-year extensions for the following judicial districts: Alabama-Northern, Arizona, California-Central, Florida-Southern, Kansas, Missouri-Eastern, New Mexico, North Carolina-Western, and Texas-Eastern. The workload in these districts is too great to risk losing judgeships that in all likelihood will take years to create and fill again.

### **CAPITAL SECURITY PROGRAM**

I also would like to thank the Committee for its support of the Judiciary’s Capital Security Program (CSP), funded as a special emphasis program within the General Services Administration’s (GSA) Federal Buildings Fund. CSP was designed to address serious security deficiencies in existing courthouse buildings where physical renovations are viable alternatives to new construction. This program has been a valuable, cost-effective solution to achieving greater security at existing courthouses nationwide.

Five projects are currently underway using fiscal year 2012 and fiscal year 2013 funding – in Brunswick, GA; Benton, IL; Lexington, KY; San Juan, PR; and St. Thomas, VI. Fiscal year 2015 funding will support projects in Columbus, GA; Monroe, LA; and Texarkana, TX/AR. For fiscal year 2016, the President’s budget request for GSA includes \$20 million for the Judiciary’s Capital Security Program which will support projects at courthouses in Raleigh, NC and Alexandria, LA. We hope you will continue to support this successful program that improves the security provided to occupants and visitors at federal courthouses.

### **COURTHOUSE CONSTRUCTION**

Funding of the Judiciary’s Capital Security Program should not, however, be a substitute for new courthouse construction when it is otherwise needed. That is, while the CSP may address a court’s immediate security deficiencies, it does nothing to address other courts that not only have severe security deficiencies, but also have a serious lack of space, and deteriorated building infrastructure. In these latter circumstances, the only feasible and economically viable resolution is to build a new courthouse or annex to meet the operational needs of the court.

We very much appreciate the Administration’s support of new courthouse construction funding in its fiscal year 2016 budget request for the GSA. The President’s Budget requests \$181.5 million for a new courthouse in Nashville, Tennessee, which is the Judicial Conference’s top space priority. This is only the second time in six years that the President’s budget has included funding for a project on the Judicial Conference’s *Five Year Courthouse Construction Project Plan (Five-Year Plan)*. Because GSA builds our facilities, these monies come under the jurisdiction of the Executive Branch. In some years this has worked fine, when the President’s budget represented the space priorities of the Judicial Conference as outlined in its *Five-Year Plan*. But too often this has not been the case. Without stable and consistent funding of

courthouse construction by the GSA, the ability of the Judiciary to carry out its constitutional mission of administering justice is significantly impaired.

Over the last ten years, the Judiciary has taken strategic steps to improve its courthouse facilities planning process, with a focus on cost containment and development of an objective, consistently applied methodology. This effort has been significant and has resulted in only the most important project recommendations going forward, and at a reduced cost. The designs of courthouses on the *Five-Year Plan* will result in lower cost buildings due to the adoption of courtroom sharing policies as well as the removal of projected judgeships from courtrooms and chambers construction plans.

The Nashville courthouse project has been on the *Five-Year Plan* for nearly 20 years and a total of \$25.1 million already has been spent to acquire the site and design the building. The construction of the Nashville courthouse is requested to resolve severe security, space, and operational deficiencies in the existing facility. The Estes Kefauver Federal Building in downtown Nashville was built more than 60 years ago, has an insufficient number of courtrooms for district judges, and due to space shortages all magistrate judges must use hearing rooms instead of courtrooms. This exacerbates issues related to security and safety. Further, the building houses seventeen different federal entities and there are no separate circulation patterns for judges, the public, and prisoners. We respectfully urge you to support the funding of the new Nashville courthouse in your Fiscal Year 2016 Appropriations Bill.

#### **LEGISLATIVE INITIATIVES TO INCREASE COST CONTAINMENT**

Cost containment continues to be a primary focus of the Judiciary, as Judge Gibbons describes in her testimony. AO staff, through their support of the Judicial Conference and its committees, is heavily involved in these cost-containment efforts. While there are many policies and practices that the Judiciary has been able to implement to achieve savings, some require changes to existing law. Absent a general "*Courts Improvement Bill*" or similar legislative vehicle, last year we sought the assistance of this Committee to include several legislative provisions in the annual appropriations bill that would result in savings to the Judiciary's Probation and Pretrial Services program without any loss in the quality of services. We appreciate that the fiscal year 2015 conference agreement included one of our requested provisions that removed from law an unnecessary reporting requirement; however, there are still several reforms endorsed by the Judicial Conference that, if enacted, would produce additional cost savings.

For example, the Judicial Conference has endorsed the sharing of probation officers among federal judicial districts. Section 3602 of title 18, United States Code, requires a probation officer to work "within the jurisdiction and under the direction of the court making the appointment." Amending this statute to allow an officer to serve in another district with the consent of the appointing court, would facilitate the sharing across district lines of officer positions requiring special knowledge, such as sex-offender specialists, cyber-crime specialists, and search team members. Such a sharing arrangement will conserve resources by allowing the districts to avoid the higher salary costs associated with these specialized officers, which can be as much as \$15,000 more than a typical probation officer. For instance, a probation officer in the

Eastern District of New York who has been trained in supervising sex offenders with computer monitoring conditions might also be able to handle those types of cases in the Southern District of New York or in the District of New Jersey, thereby relieving those districts from the obligation of hiring and training their own specialists.

In addition, this change could lower travel costs by allowing officers who work in one district to supervise offenders who reside in a neighboring district, which has its probation office farther from where offenders live. This option may be especially useful in supervising offenders from Indian reservations, which may straddle multiple judicial districts. For example, the Districts of Arizona and New Mexico both include the Navajo Indian reservation. Currently, officers from both districts must supervise cases on the reservation, which means duplicating efforts to learn the territory, develop relationships with tribal officials, and foster resources for offenders. If, however, officers in one of the districts were authorized to work across district boundaries, officers from one district could assume responsibility for supervising all of the offenders on the reservation, regardless of which district the offender resides. Alternatively, such arrangements could result in officers being assigned to cases not based on the district of supervision, but based on proximity to the closest probation office. For instance, officers from the Flagstaff probation office in the District of Arizona must travel 223 miles to visit offenders from the Round Rock region of the reservation. If probation officers from the Farmington probation office in the District of New Mexico were authorized to work across district boundaries, however, they would only need to travel 118 miles to visit the same offenders. I hope you will consider the inclusion of this provision in your Fiscal Year 2016 Appropriations Bill.

### **ROLE OF THE ADMINISTRATIVE OFFICE**

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

Unlike most Executive Branch entities in Washington, the AO does not operate as a headquarters for the courts. The federal court system is decentralized, although the AO does have management oversight responsibilities over the court security program, the probation and pretrial services program, the defender services program, and our national information technology programs.

AO support to the Judicial Conference and its 25 committees is a cornerstone of this structure. The Conference committees, which we staff, not only deal with important issues of judicial administration and policy, but they are constantly exploring ways to cut costs, work more efficiently in their program areas, and oversee auditing functions for the branch. The AO develops and supports the application of new technology for the courts; provides financial management services, and personnel and payroll support; and conducts audits and reviews to ensure the continued quality and integrity of federal court operations. The AO has evolved over the years to meet the changing needs of the Judicial Branch, but service to the courts has been and remains our basic mission.

## IMPROVING JUDICIAL ADMINISTRATION

The AO is working in coordination with the courts to implement several national technology solutions that will improve judicial administration. A major initiative is a "next generation" case management/electronic case filing (CM/ECF) system we are deploying nationwide to harness improved technologies to meet the evolving needs of judges, clerks of court offices, the bar, debtors, litigants, and other users. CM/ECF next generation is currently deployed in two circuit courts and implementation nationwide will occur over the next several years. We are also implementing the Judiciary Integrated Financial Management System (JIFMS), which will provide a single system of record for financial and procurement processes throughout the Judiciary, including all federal court units, federal defender offices, and the Administrative Office. JIFMS is currently deployed to the national courts, the AO and several circuit court units, and its full deployment should be completed by December 2017. In addition, a Judiciary Electronic Travel System (JETS) will provide a user-friendly, paperless, web-based travel system that will reduce errors and streamline travel planning and vouchering. JETS will be available to court units and federal defender offices beginning in the Fall of 2015. Finally, eVoucher is a new system for issuing payments electronically to Criminal Justice Act court-appointed counsel, replacing the current paper-based system, and streamlining the submission and review of vouchers and improving efficiency and oversight by providing automatic error checks. Currently, eVoucher is deployed in 75 of 106 court units and full implementation is expected in early calendar year 2016.

## AO RESTRUCTURING

When I first became Director of the AO in July 2006, I launched a review of the organization and its mission to ensure that the structure and services provided by the AO were appropriate and cost-effective, and that they addressed the changing needs of the courts.

That review resulted in a 2007 report providing recommendations to enhance AO services to the courts. During FY 2008, improvement initiatives were pursued through the development of the *Strategic Direction of the AO: Fiscal Years 2009-2013* to guide the AO's activities. We then began to integrate the Strategic Plan into our major initiatives process, focusing on short- and long-term objectives to help the AO support the Judiciary through the economic downturn and future constrained budgets. In January 2011, I formed a cost-containment task force that reviewed AO organizational, policy, and process alternatives, and developed specific actions to contain costs in fiscal years 2012, 2013, and beyond. Finally, in June 2013, then-Director Judge Thomas Hogan announced a major restructuring of the AO to be implemented by the end of fiscal year 2013. The new organizational structure is now fully in place.

I offer this as background to demonstrate that organizational change focused on meeting the needs of the courts requires a thoughtful and strategic approach to achieve continuous improvement in service. The positive results of the restructuring are evident throughout the AO, and the improvements make the AO's service to the courts more effective and efficient.

## **EFFORTS TO INCREASE DIVERSITY IN THE FEDERAL COURTS**

Since my first tenure as Director of the AO, I served for slightly more than three years as the chief executive officer of the Freedom Forum, the Newseum Institute, and the Newseum. The Freedom Forum is a non-profit, non-partisan foundation devoted to promoting a better understanding of our constitutional freedoms and the First Amendment. Newseum Institute programs include the Chips Quinn Scholars Program for Diversity in Journalism, which is dedicated to recruiting, training, mentoring and retaining a diverse workforce in newsrooms across this country that reflect the multi-cultural makeup of the communities they serve. More than 1,300 men and women have been named Chips Quinn Scholars since 1991.

Returning to the AO, I am eager to increase workforce diversity through the expansion of diversity program recruitment, education, and training. Our numbers are showing some progress, but there is room for improvement.

As part of the AO's recent reorganization, a newly-structured Office of Fair Employment Practices (OFEP) was established. This Office serves both the AO and the Judiciary, including the Judicial Conference Committee on Judicial Resources. During the last year, the OFEP and the Judicial Resources Committee have continued to expand and strengthen the Judiciary's Diversity Recruiting and Outreach Program, which we launched in 2010. To date, the program has facilitated the involvement of local court participation at 88 career fairs and legal recruiting events (up from 73 last year), resulting in direct contact with 8,000 students in 33 districts in all circuits (up from 7,300 students in 32 districts last year). By working with undergraduate institutions, law schools, bar associations, and other groups across the country, the Diversity Recruiting and Outreach Program aims to increase awareness by students of diverse backgrounds of the breadth and scope of legal and non-legal positions within the Judiciary.

Through this outreach, we have continued to build a strategic network of partnerships with various program offices, local courts, and working groups of judges and court staff, as well as external organizations such as Congressional Caucuses (Black, Asian, and Hispanic), the Hispanic National Bar Association, and the Minority Corporate Counsel Association.

Of particular success has been our partnership with the Just the Beginning Foundation – A Pipeline Organization (JTB), a diverse nonprofit organization comprised of lawyers, judges, and educators. For the last twenty years, JTB has been dedicated to developing and nurturing interest in the law among young people from various socioeconomic, ethnic, and cultural backgrounds underrepresented in the legal profession.

In 2010, the Judicial Resources Committee and JTB collaborated to create an annual summer program, the "Judicial Internship Diversity Project" that strives to provide highly qualified law students from minority, underrepresented, or disadvantaged groups the opportunity to work in a federal judge's chambers as a judicial intern. Since its inception four years ago, nearly 300 minority law students have been placed in the chambers of federal judges – up from 150 as of last year. In 2014, the Project yielded 99 law students for judicial internships with 67 federal judges, an increase from the previous year (61 internships with 52 federal judges). This summer, we expect over 100 judges to participate and place law students from the Judicial

Internship Diversity Project in summer internships in their chambers. The skills gained during the summer internship can increase a student's chance of ultimately being selected for a federal clerkship following law school.

In addition, the OFEP, in collaboration with the AO's Office of Human Resources, recently put into place a new strategic initiative to diversify and expand the pool of qualified applicants to include more JTB students and other individuals from underrepresented and underserved groups competing for paid internship positions at the AO.

We are committed to promoting diversity throughout the federal courts.

### **AO FISCAL YEAR 2016 BUDGET REQUEST**

The Administrative Office appropriation request for fiscal year 2016 totals \$87,590,000. This is an increase of \$3.2 million, or 3.8 percent, over the 2015 enacted level and represents a current services budget – there are no additional staff or program increases requested.

Specifically, the requested increase is necessary to support adjustments to base for salaries and benefits, and recurring requirements such as the cost of travel, communications, service agreements, and supplies. The AO account is financed through direct appropriations, reimbursements from other Judiciary accounts, and the use of non-appropriated funds. In fiscal year 2016, the Judiciary expects to have fewer non-appropriated funds available than it did in fiscal year 2015. As a result, in order to maintain current services, the increase also includes \$500,000 to replace the slightly lower estimate of non-appropriated funds available to the AO in 2016.

### **CONCLUSION**

Chairman Crenshaw, Representative Serrano, and members of the Committee, the work performed by the AO is critical to the efficient and effective operation of the U.S. courts. The AO provides administrative support to 25 Judicial Conference Committees, 2,352 judicial officers, and more than 28,500 court employees. In addition to our service to the courts, the AO works closely with our colleagues in the Executive Branch and especially with the Congress, in particular the Appropriations Committee and its staff, to provide accurate and responsive information about the federal Judiciary.

I fully recognize that fiscal year 2016 will be another difficult year for you and your colleagues as you struggle to meet the funding needs of the agencies and programs under your purview. I urge you, however, to consider the significant role the AO plays in supporting the courts and the mission of the Judiciary. Our budget request for the AO does not seek new resources for additional staff or programs; instead, our request represents the minimum investment needed simply to maintain the organization's current activities and services. We urge you to support this funding.

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

Mr. CRENSHAW. Well, thank you very much.

SPACE REDUCTION

Thank you all for your sensitivity to the timing of the votes that may occur. Please don't let the lack of attendance here reflect on the importance of the work that you do. This is a very, very busy time, and there are lots of committee meetings going on at the same time.

I think you do such a good job of preparing your budget and dealing with some of the fiscal issues and the cost containment, that you don't generate a whole lot of controversy. You should have been here yesterday when the Federal Communications Commission was here, and it was a very lively discussion, a lot of controversy. I think they should take it on the road and sign up with MSNBC and probably increase their ratings, you know, after yesterday.

But the Supreme Court was here earlier this week, and I complimented them, we all did, because they submitted a request that is less than last year's. And I told them, we don't often get people requesting less than they got the year before. We also don't get that many witnesses that are clear and concise in their answers. So I think you fall in that category, as well. And so I think this could be certainly a very important hearing, but we appreciate the work that you have done ahead of time.

So let me just start talking about the rent. I think it is a billion dollars that you have to pay in rent. I had a conversation with the folks in Jacksonville, and they have a Federal building, courthouse that was built for \$84 million. And times have changed, and now a new courthouse costs almost three times that much.

But they are working on their space reduction, and you are doing it, as well. Give us an idea of some of the things you are doing to kind of decrease the need for all that space.

Judge GIBBONS. Well, currently, we have a national policy in place. It is a 3 percent space reduction goal by the end of 2018. At the end of the first year of that, we are basically on target to meet our goal.

Mr. CRENSHAW. Now, how do you achieve that? How do you make that happen?

Judge GIBBONS. Well, the other part of our national policy is a "no-net-new" rule. In other words, if you acquire space, you have to give up space. That doesn't apply to something like a new courthouse, but it applies otherwise.

Third, each circuit has had to submit a plan for space reduction. They have all done that. That is the blueprint for how each circuit is going to get to the reduction goal.

We are mindful, of course, that at the same time we are reducing space our rent goes up. So where we end up at the end of the day is a bit uncertain. But we will be better off than we would have been if we hadn't done it.

There are many things that a court or a circuit might identify as ways in which it could reduce its rent bill. One is through the Integrated Workplace Initiative, which really designs new workplaces that occupy less space and that take advantage of the reality of technology and the reality of telecommuting. Probation and pre-



trial services officers, for example, can use technology and be away from the office much more than they used to be.

Courts have done some creative things. I am really proud of the fact that, in my circuit, the library gave up all its space and moved into space that the clerk of court had previously occupied, which was vacated due to electronic filing. As it worked out, the floors were already reinforced because of all those heavy files that they used to hold.

That is just an example of all the creative kinds of things courts are doing. They have been unbelievably cooperative. We are really fortunate that everybody appears to be on board and working toward a common goal.

Mr. CRENSHAW. Well, that is great to hear. And we oversee and fund the GSA, so maybe we will talk to them about the high rent that they have been charging you, see if we can help you there.

#### BUDGET DRIVERS AND COST CONTAINMENT FOR DEFENDER SERVICES

One other quick question, on defender services. I know that is expensive, and there is a \$41 million increase there. Tell us, why does that—I mean, there has always been an increase there—why does that happen? And are there things that we can do, you all can do to kind of save in that area?

Judge GIBBONS. We are working on some things. The increase in the Defender Services account is really based on the same things, for the most part, that drive the increase in the Salaries and Expenses account: rent, increased benefit costs, COLAs if there is a COLA for the executive branch, general inflation, just all the things that are cost drivers.

[The information follows:]

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

The fiscal year 2016 appropriations request for Defender Services is a net increase of \$41.1 million over the fiscal year 2015 appropriated level. The increase is composed of two elements: a \$1.8 million program increase to raise the non-capital panel attorney hourly rate by \$6 per hour and a net increase of \$39.3 million for various adjustments to base needed to maintain current services. The adjustments to base can be further broken down into the following components:

- +\$15.8 million for standard adjustments to pay and benefits;
- +\$3.2 million for increases in space rental costs and other inflationary adjustments;
- +\$5.0 million for high threat trial requirements;
- +\$40.0 million needed to maintain FY 2015 service levels due to an anticipated decline in non-appropriated funding (i.e., unobligated balances); and
- -\$24.7 million to reflect a small increase in projected federal defender organization caseload and a larger decrease in projected panel attorney caseload.

Of course, if there is a panel rate increase, that would increase the cost in that area. But panel attorney representations are projected to decline. Caseload affects defenders and will affect them more so when the new work measurement formula is in place.

In terms of things we are trying to do in that area to contain costs, we are implementing electronic vouchering, which ought to really enable us to keep a better handle on requests for panel attorney payments. We are encouraging the defenders to do some of the same sorts of things we are encouraging courts to do, such as look at space reduction, shared services, and those kinds of things.

They have done some things independently that involve working with the Justice Department to decrease the cost of electronically maintained discovery. We have case budgeting positions, and we will have them pretty soon in nine of the circuits. They help with budgeting on mega cases, but, in my circuit, our case budgeting attorney is also enormously helpful in reviewing vouchers that aren't mega cases but just seem kind of high for one reason or another.

So those are some of the things that we are doing in that area.

Mr. CRENSHAW. Great. Well, thank you very much.

Mr. Serrano.

#### IMPACT OF SEQUESTRATION ON THE JUDICIARY

Mr. SERRANO. Thank you, Mr. Chairman.

I was taken by your comments about taking the FCC show on the road. I can tell you, as a strong supporter of net neutrality, that it may be playing at a court near you pretty soon, you know. I suspect that it will be taken up that way.

As brief as you can because of the time restraints—first of all, let me say that what you saw last year is the respect that we have for the third branch. We may disagree on things, but when it comes to the judiciary, I believe both parties understand the constitutional role you play and how you have to be protected and helped in every way to accomplish that role.

Judge GIBBONS. We are deeply appreciative of that and the support both of you have given.

Mr. SERRANO. That is why I said it, so you could say that again.

Judge GIBBONS. We are deeply appreciative.

Mr. DUFF. I echo Judge Gibbons' comment.

Mr. SERRANO. Next year she will say it in Spanish too.

Very briefly, the hit that everyone took with sequestration, notwithstanding what happened last year, if sequestration stays around, what effect did it have, very briefly, and what effect will it have?

Judge GIBBONS. If sequestration occurs again, of course, we are not sure at what level it would be, but let's assume a level that is commensurate with the 2013 levels. I have some figures here that tell us what the impact would be.

We would have to reduce staffing by 520 positions, or a total of 260 FTE. We would have to defer paying panel attorneys for a month. We would have to defer about half of our equipment purchases that we would make for court security. That would be a reduction of about \$22 million. There is another cost in the court security account, which I am a little fuzzy on right now. It must have to do with reducing court security officer hours.

So those are some of the things that would occur. We could continue to pay fees of jurors, we believe.

The reason it is so devastating is because we need 3.2 percent for current services. If you take us back not only to a hard freeze but back beyond that, the effect is pretty quickly devastating.

Mr. SERRANO. Uh-huh.

Mr. DUFF. I would just add, Congressman Serrano, that the courts perform extraordinarily well in a crisis. They respond to crisis very well. We are very well equipped to do that. But a sequestration impact has the effect of a constant crisis. I don't think the

courts really could sustain the workload that would be imposed on them under those kinds of annual constraints.

Judge GIBBONS. Actually, Representative Serrano, I think it would be even worse than I just told you because I think what I just gave you were the hard freeze figures, not the sequestration figures.

So, we are talking about funding levels way below a hard freeze. I think it would be something like \$700 million in total below a 2016 current services appropriation, which doesn't give you the specific account figures.

[The information follows:]

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

As indicated in the transcript, the impacts cited in Judge Gibbons' remarks are those associated with freezing fiscal year 2016 funding at the fiscal year 2015 level. A return to the fiscal year 2013 post-sequestration funding level would represent a cut of \$500 million (7.4 percent) below the judiciary's fiscal year 2015 enacted level and a cut of \$700 million (10.2 percent) below a fiscal year 2016 current services level.

The Salaries and Expenses account would be reduced by \$552 million (11 percent) below a current services level, resulting in the projected loss of 5,000 judiciary employees—25 percent of current on-board staff—in clerks of court and probation and pretrial services offices, or the furlough of employees in those offices for 63 days per person (or some combination of both). Further, non-salary operating costs would be slashed 33 percent.

The Defender Services account would be cut by \$70 million (6.6 percent) below a current services level, forcing the judiciary to defer panel attorney payments for approximately two months.

The Court Security account would be cut by \$62 million (11.6 percent) below a current services level, resulting in cuts of \$22 million (50 percent) to security systems and equipment and \$40 million to contract guard services, equal to a reduction of 26 work days per court security officer position.

#### IMPACT OF FISCAL YEAR 2015 FUNDING ON DEFENDERS

Mr. SERRANO. Let me briefly, just because my time is going to run out—on the public defenders, one of my favorite folks that I talk about, how much did the 2015 budget make up some of the pain they have suffered before?

Judge GIBBONS. They have not hired this many, but we have the funds for them to hire within a few employees of the number they had at the end of 2012. They had something like 2,763 FTE, and we can get them back to 2,713, I think.

[The information follows:]

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

Federal Public Defender Organizations (FPDOs) ended fiscal year 2012 with 2,764 FTE. Then sequestration occurred, and FPDOs lost about 400 FTE as a result. There were substantial additional losses among the grantees in the Community Defender Organizations (CDOs).

Since reaching their lowest staffing level of 2,358 FTE in March 2014, FPDOs have hired a net increase of 198 FTE, reaching a total of 2,556 FTE as of March 8, 2015. While this is still below the staffing levels assumed in the fiscal year 2015 financial plan, hiring will continue throughout the fiscal year and FTE levels will continue to increase accordingly. The financial plan assumes that FPDOs will utilize 2,713 FTE in fiscal year 2015.

Funding provided by Congress in fiscal years 2014 and 2015 made these staffing increases possible (as well as staffing increases at the CDOs). In addition, new funding has allowed the judiciary to avoid deferrals of panel attorney payments and to discontinue the temporary, emergency panel attorney rate cut that went into effect after sequestration.

Mr. SERRANO. Thank you, Mr. Chairman.  
 Mr. CRENSHAW. Thank you.  
 Mr. Bishop is recognized.  
 Mr. BISHOP. Thank you very much.

#### COOPERATION BETWEEN THE JUDICIARY AND GSA

The President's budget requests \$181.5 million for a new courthouse in Nashville. It is only the second time in 6 years that the President's budget has included funding for a project in the Judicial Conference's 5-year courthouse construction plan. The Nashville project has been on the 5-year plan for nearly 20 years, and there seems to be a disconnect between the judiciary and the executive branch in this regard.

How does the judiciary work with GSA to identify funding priorities and to ensure that these funds are requested and, if appropriated, are utilized in the most reasonable and efficient manner? Does there need to be a shift in jurisdiction to ensure maximum effectiveness and efficiency in that regard?

Judge GIBBONS. Well, I think if you asked most judges if they think the current system is an ideal one for good government, the answer would be no. On the other hand, we do work well with GSA on a day-to-day basis on many, many fronts. We have to. They have to work well with us.

But it is sometimes hard to get our priorities to the top of the list of their priorities because they have many other priorities. It took a great deal of effort and a great deal of working together to get the Nashville courthouse as the first courthouse construction project requested since 2010.

So there would have been a time when we might have answered your question about restructuring with, "Oh, yes, we would like to have authority to build and maintain our own courthouses." We are smart enough today to know that, with limited resources and with the fact that we don't have personnel or other capabilities to go into the building management business, restructuring it is just not realistic for anybody in light of the circumstances.

Mr. BISHOP. Thank you.

#### CAPITAL SECURITY PROGRAM

In my district, the Federal courthouse in Columbus, Georgia, has been ranked one of the worst Federal courthouses with respect to safety over the past several years. In fiscal year 2015, \$20 million was appropriated to fund the Judiciary Court Security Program. I understand that this funding will support projects in Columbus as well as in Monroe, Louisiana, and Texarkana in Texas and Arkansas.

When are these projects expected to be completed? Can you elaborate on the progress that has already been made on improving the security at some of our older courthouses using this funding? What do you expect to accomplish in this area over the next year? How will you prioritize the projects in order to make the best use of the appropriated funds?

Mr. DUFF. In part, the security initiatives that we have undertaken have been in recognition that courthouse construction is going to be limited in these times of budget constraints.

Recognizing that some courthouses face security challenges that need to be addressed whether or not a new courthouse can be constructed, we have reprioritized and carved out instances, such as the courthouse in Columbus, Georgia, for special attention on security needs. We are working very closely with GSA to identify those courthouses that have security needs above and beyond new courthouse construction needs.

[The information follows:]

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

Security deficiencies at court occupied facilities are identified as part of the judiciary's Asset Management Planning process and also through security evaluation site visits conducted by AO staff.

AO staff develops a preliminary list of court occupied facilities where alterations and construction of building-specific security items in a Capital Security Program (CSP) project would improve the level of security provided for judges, employees, and the public. A Capital Security Study that identifies possible solutions to address those security needs is then developed in coordination with GSA and the U.S. Marshals Service. A Capital Security Study provides the preferred security improvement plan and a cost estimate for the project. Funding for approved projects is provided through the GSA budget.

While the CSP may address the security deficiencies in a building, it does not address situations where a facility has both security deficiencies and insufficient functional operational space. In those circumstances, the only resolution is to build a new courthouse or annex that satisfies the court's needs.

Again, I will reiterate that we are very pleased that the President included in his budget funding for the construction of the Nashville courthouse. That is needed on every front.

But the security challenges that are faced in specific courthouses are being addressed in a prioritized way. We are fairly pleased with the progress that is being made on renovations to improve security. We have worked closely with GSA in that regard.

Judge GIBBONS. Representative Bishop, my information shows that the Columbus courthouse, in particular, is a project for this fiscal year. It is to cost \$6.7 million. The security deficiencies that would be addressed have to do with enclosing a sally port, adding elevators for prisoners and judges, and reconfiguring and constructing new corridors.

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

In addition to the CSP project in Columbus, Georgia, the judiciary has several other CSP projects either planned or underway.

- **Federal Building and U.S. Courthouse, Monroe, Louisiana.** \$6.1 million (FY 2015 funding). Security deficiencies at this courthouse would be addressed by enclosing a sally port, adding one or two elevators (for prisoners and judges), and reconfiguring/constructing new corridors.
- **U.S. Courthouse and Post Office Building, Texarkana, Texas/Arkansas.** \$7.2 million (FY 2015 funding). A number of security deficiencies at this courthouse will be addressed by this Capital Security project. It will provide secure, covered parking for judges. It will consolidate U.S. Marshals space from two locations to one location within the courthouse, and enclose a sally port. The project will also add elevators and enhance building corridors to create separate circulation patterns for judges and prisoners.
- **Ron De Lugo Federal Building, St. Thomas, U.S. Virgin Islands.** \$20 million (FY 2013 funding). The scope of this capital security project includes new judge and prisoner elevators, a judges' garage, a U.S. Marshals Service sally port, and other security improvements to the site. An architecture/engineering contract was awarded and the project entered the design phase in February 2015.
- **Frank M. Scarlett Building, Brunswick, Georgia.** \$5.5 million (FY 2012 funding). Security deficiencies at this courthouse are being addressed by building entry improvements, reconfiguring corridors, adding elevators, enclosing a sally port, and creating secure parking for judges. The design is underway, with anticipated completion of construction in January 2016.
- **Federal Building and U.S. Courthouse, Benton, Illinois.** \$4.7 million (FY 2012 funding). Security deficiencies at this courthouse are being addressed by reconfiguring/constructing new corridors, adding an elevator, enclosing a sally port, and constructing visual barriers. Construction was completed in January 2015 and the court is currently occupying the renovated space.
- **U.S. Courthouse and Post Office, Lexington, Kentucky.** \$6.7 million (FY 2012 funding). Security deficiencies at this courthouse are being addressed by reconfiguring/constructing new corridors, adding elevators, enclosing a sally port, and constructing visual barriers. The design-build contract for this project is in the process of being awarded, with the anticipated completion of construction in September 2016.

- **Hato Rey Complex, Clemente Ruiz-Nazario U.S. Courthouse and Federico Degetau Federal Building, San Juan, Puerto Rico.** \$3.1 million (FY 2012 funding). Security deficiencies at this courthouse are being addressed by reconfiguring/constructing new corridors and adding elevators for prisoners. The project is currently under construction and is on time and under budget. The anticipated completion of construction is May 2015. A CSP study is currently underway in Puerto Rico to evaluate additional significant security concerns not addressed by the fiscal year 2012 project.

In addition, the judiciary has requested \$20 million for CSP projects in FY 2016. Funds are requested for the following locations (with project cost estimates subject to verification by GSA):

- **Terry Sanford Federal Building, Raleigh, North Carolina.** \$11 million. Security deficiencies at this courthouse could be addressed by adding and/or reconfiguring two or three elevators and constructing additional secure corridors.
- **U.S. Post Office and Courthouse, Alexandria, Louisiana.** \$9 million. Security deficiencies at this courthouse could be addressed by enclosing judges parking and providing an elevator and a corridor addition to allow the judges secure circulation. The U.S. Marshals Service would have new space that includes operations, an enclosed sally port, holding cells, a prisoner elevator and an interlock corridor for secure prisoner transport.

Judge GIBBONS. Before a project like this is approved, we do a study to determine the most feasible alternative and the preferred plan and cost. We do a prioritization, working closely with GSA and the Marshals.

Mr. BISHOP. Thank you.

I think my time has expired, Mr. Chairman.

Mr. CRENSHAW. Mr. Serrano has a quick comment.

Mr. SERRANO. Yes, Mr. Chairman. I want to clarify something. I can't believe that I misread the note in front of me that was given to me, and they were talking about Judge Vitaliano, who is a person that I have known all 41 years that I have been in public office. And I wanted to make sure that he understood that, when I saw the face, I said, oh, my God, it is my friend from 41 years ago.

Thank you.

Mr. CRENSHAW. Now Mr. Yoder is recognized.

Do you see any friendly faces out there?

Mr. YODER. Thank you, Mr. Chairman. I appreciate the latitude.

Mr. SERRANO. I don't think he is 41 himself.

#### TEMPORARY JUDGESHIPS

Mr. YODER. I wanted to highlight—first of all, thank you for coming to the committee.

Good to see Judge Gibbons. I know you have been before us a number of times.

Administrator Duff, thank you for being here, as well.

Each year, we deal with the issue related to temporary judgeships. And I noted in your testimony you highlighted this issue again. One of these temporary judgeships happens to be in my district, and so we are always watchful and concerned and worried and making sure that the committee and chairman and everyone is aware of the importance of these temporary judgeships.

And should we not extend them in the appropriations bill and a vacancy were to occur, the position would evaporate. The caseload wouldn't evaporate, the workload wouldn't evaporate, but the position would overnight. And so it is a tenuous situation to be in.

And I note there are maybe nine districts total, positions like that, that are around. You might clarify. But I just think it is a tremendous stress to put on these folks to have to worry about this and to come up each year and for our committee to keep doing this work.

And so I thought if you might just expound upon that point a bit—I wanted to highlight it for the committee; I know it was in your testimony—and maybe suggest what probably is an obvious long-term solution to this issue.

Mr. DUFF. Well, the ultimate long-term solution is the creation of a new judgeship. Where we have temporary judgeships, we have asked for permanent judgeships in 9 of those 10 districts.

We also recognize the budget constraints that accompany the creation of a new judgeship. So, in the short term, what we would ask the Committee is, if the funding is not available for the creation of new judgeships where our statistics demonstrate they are clearly justified, that the temporary judgeships be extended. Because, as you pointed out correctly, if they are not extended, the workload



doesn't go away. It just doubles up the work for the other judges in that particular district.

So, in 9 of the 10 districts with temporary judgeships, we have asked for permanent judgeships. By "we," I mean the Judicial Conference of the United States at its March conference, just a couple of weeks ago. If permanent judgeships can't be created, we would ask that the temporary judgeships be extended.

You also correctly point out that it is difficult for staff to wonder what is going to happen. So for planning purposes, it is good to know whether these temporary judgeships are going to be extended as soon as we can.

Mr. YODER. It seems to me that the only reason we haven't been able to fix this is internal scoring rules that Congress uses that would say if you extend them permanently, now it has a 10-year budget impact, but if you extend it year to year, it only has a 1-year impact, which is a budgetary gimmick that occurs in Washington that has little relevance to people outside of these rooms that we debate policy in, and it does have an impact on people who are doing the work back home. So it has a negative impact on people at home, and it has no benefit here, other than a scoring issue, which is created by our own interior rules.

So I would love to see those extended. And I believe the committee will keep extending the temporary ones, therefore having the same budget impact if we made them permanent anyway.

#### COSTS OF LITIGATING NEW LEGISLATION

The other issue I wanted to raise is one that sort of came up yesterday. And my good friend of at least 39 years, Mr. Serrano—I am 39 years old—brought up earlier that he is a strong proponent of net neutrality. And one of the issues that came up yesterday is the cost to government and the system to defend net neutrality and an estimate of what that might be, litigation costs.

And I just wonder, you know, we have had Dodd-Frank, we have had the Affordable Care Act, we have had a number of bills that are being litigated extensively in the courts. And I wondered if the court ever looks at the cost of litigating a new law and if we could estimate how much traffic we create with legislation that either isn't written properly or isn't, you know, well established or just has a lot of things that need to be sorted out by the courts.

Judge GIBBONS. We do, of course, look at workload figures and weighted caseloads, and we, of course, know that certain kinds of litigation create a great deal of work for the courts.

Some legislation we do get involved in opposing if it has a direct impact on us. For example, we have a position with respect to immigration reform legislation, in that we don't want additional resources given to the Department of Justice that will impose many additional burdens on the judiciary.

But for legislation where the impact is less apparent, we don't want to involve ourselves politically by saying, this is going to cause us a lot of hassle. Another area we have had some thoughts is sentencing reform.

We are affected by whatever litigation occurs, but we don't get involved on that basis. It is very selective. It tends to be legislation that we could take a position on appropriately.

Mr. DUFF. I would add, Congressman Yoder, that I was here 40 years ago, when I first started working in Chief Justice Burger's office. It is hard for me to believe it has been that long. But Chief Justice Burger at one time proposed a judiciary impact statement so that every law passed by Congress—much like an environmental impact statement—had to be accompanied by a judiciary impact statement just to show the budget impacts of new laws on the courts. I don't think it was embraced, but it is a good idea.

I appreciate your mindfulness about it, because legislation does have an impact on the courts and it affects our budgets in the long run. But Judge Gibbons is right as to our own analysis of that.

Mr. YODER. Well said. I appreciate your testimony.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. SERRANO. 39? I have ties older than you.

Mr. YODER. I didn't get a birthday card from you this year either, so—

#### ROLE OF THE JUDICIARY COMMITTEE IN JUDGESHIP CREATIONS AND EXTENSIONS

Mr. CRENSHAW. Mr. Rigell is gathering his thoughts.

Let me point out one thing is, in terms of temporary judgeships, we typically fund those, and we are from time to time criticized. That is kind of an authorizing issue. Ultimately, to create new judgeships, we have something called a Judiciary Committee, and they are the ones that have the jurisdiction to create those. And so those that think we need more judges, you direct your thoughts to them.

I think there is also the question of the confirmation of Federal judges that linger from time to time, and what that means is people that are there are doing a whole lot more work.

But I think that the temporary judgeships we recognize are important, and I think historically we have funded them on this committee. But to create those new ones, the Judiciary Committee is going to have to step up.

#### PRIORITIZATION OF SECURITY UPGRADES

Let me ask, we talked a little bit about security in the context of new courthouses, but there is \$20 million in your budget for security. And that is obviously very important. In today's world, you know, no telling who is watching on TV and decides they don't like one of the Federal judges.

But around the courthouses, the security that you put in, not so much a new courthouse, but if you are going to upgrade security, how do you go about deciding that? Because it is important. But do you look at that really closely to say these are things that we really need to do to make sure we have the security that we need?

Judge GIBBONS. When there is a capital security project, first, the Administrative Office identifies a list of needs based on surveys it has done of the courts. Then there is a plan that is done, an architectural and engineering plan, that shows the feasibility of using a smaller, less costly plan as opposed to building a new courthouse or an annex or something to take care of a problem.

They look at feasibility, how we go about doing it, and cost. Then there is a decision made about whether to implement that, and that is made by the judiciary in combination with GSA and recommendations of the Marshals. We have a list of the projects. The Columbus project that Representative Bishop referred to is one of those for 2015.

[The information follows:]

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

Security at federal courthouses is governed by a number of guidance documents and standards. For security systems and equipment, the U.S. Courts Design Guide and the U.S. Marshals Service Requirements and Specifications for Special Purpose and Support Space Manual discuss the planning and design of courthouse security and describe the types of security equipment that are necessary and appropriate for court facilities. For court security officers (CSOs), the Marshals Service maintains a CSO staffing standard that is the basis for determining how many CSOs a district needs and the specific guard posts that should be staffed in a facility. Within these guidelines and the available financial resources, the Marshals Service has the responsibility to prioritize requirements and make operational decisions about the adequate level of security at each federal court facility.

Mr. CRENSHAW. Gotcha. And I notice in the budget request there is \$7 million for, I guess, security systems, and there was a \$2 million savings that you all had kind of realized, which helps a lot. And, again, we appreciate your efforts to be effective and efficient.

#### GSA RENT VALIDATION

Let me ask you, we kidded about the GSA; you know, they charge you rent. You are one of the biggest tenants that GSA has. Do you ever kind of wonder how they decide what the rent is? How do you see that relationship with GSA in terms of what they charge you?

Judge GIBBONS. This is not the product of a formal Conference position. It is not the product of anything the Budget Committee has formally considered.

Many within the judiciary do question whether the rates charged by GSA are not far above market rates, and—

Mr. CRENSHAW. Do people actually do market studies from time to time and say, gee—

Judge GIBBONS. We may have done some. Jim would be aware of that.

I will say we, from time to time, move people into leased space, partly because of cost. Now, as we are vacating space in courthouses, we are seeking to move some people from leased space back into courthouses. But I am not sure whether the savings comes from the lesser rent or from the fact that we are reducing the space.

Director Duff can probably tell you more about the—

Mr. CRENSHAW. Well, and, also, how do they deal with you all? Do they explain—I mean, you have to prepare your budget, and you have to know what your rent is going to be. Are they good about communicating with you in terms of what is going on from day to day?

Mr. DUFF. Mr. Chairman, we have developed much-improved relations with GSA over this very issue, because we did expose what we thought were overcharges. GSA admitted to those on further re-

flection and study. They are cooperating with us right now on an overall review of rents charged to make sure that they are indeed market rate and not inflated rates over the market rate.

So we have come a long way on those very issues. We did expose some overcharges, frankly, which they graciously admitted, and we are working better with them now.

Mr. CRENSHAW. Well, keep it up, because we want you to get your money's worth.

Judge GIBBONS. One of our early cost containment efforts on space was our rent validation effort. We are now doing a much broader effort in full cooperation with GSA to validate services in every area. It is going very well.

Mr. CRENSHAW. Great.

Mr. Serrano.

Mr. SERRANO. Mr. Chairman, that is a great point you bring up. And I had a personal experience where I wanted to lower my district office rent so I thought of moving to a GSA building. They were going to charge me more than I was paying where I am, so I didn't move. And I had no way of arguing with them.

#### STUDIES OF THE DEFENDERS PROGRAM

On the issue, again, of defender services, I also understand that you are undertaking a study of the defender system and developing a rigorous database assessment of staffing needs. Is there a timeline for the release of that analysis?

I assume that you will support any needed funding to implement the recommendations of the staffing study so that whatever the data requires can be employed properly.

Judge GIBBONS. That really encompasses two things: one, the work measurement study that is underway, and two, a larger study we are undertaking of all programs under the Criminal Justice Act.

As for work measurement, the study will be complete this summer. This is the only information we have at this time, but initial indications are that it will not reflect that staff would need to be reduced nationally.

When the Judicial Resources Committee is ready to take it up in June, they will figure out what to do about implementation and what their recommendation will be. That will be approved by the Judicial Conference in September.

We will have to make a decision in July about whether the new formula should be incorporated into the 2017 budget request. That is also subject to conference approval. Then the Executive Committee of the conference, which approves the financial plan, will have to make a decision whenever an annual budget is enacted about how, if at all, to incorporate the new formula.

So that is where we are on that. I would expect that we will use the new formula, but it is premature to say exactly how the implementation will play out or what the full results will be.

Jim can address the study.

Mr. DUFF. The second part of this is a Criminal Justice Act review that we are undertaking. The last such review of the Criminal Justice Act was conducted between 1991 and 1993, so it has been quite a while since we have done this.

The Chief Justice is appointing a committee, and it will be composed of judges, defenders, and criminal justice attorneys. That committee is being assembled right now, as a matter of fact, to take a full review of how we might make improvements or suggest improvements to be made in defender services. Defenders are going to be very involved in this study.

That has a 2-year timeframe built into it. We hope to have conclusions and recommendations to the Congress at the end of 2 years.

Mr. SERRANO. Okay. Thank you.

#### THREATS AGAINST JUDGES AND COURT PERSONNEL

Let me take a little time here. When I was chairman of this committee, when my party was in the majority—it seems like a million years ago. And we have a great chairman now. We get along very well.

One of the big issues that he brought up was the security issue. I would like to take that to another step. At that time, there seemed to be a lot of threats going on and so on. Has that decreased? Has it remained the same, the threats against judges or attacks on court personnel which were taking place in those days? I mean, it wasn't a very safe place to be, in many places, for the judiciary.

Mr. DUFF. We are always mindful of security, and we are not immune to attacks. We are, I think, in the same category as Members of Congress and other high-profile public figures. We have taken steps. We have coordinated very carefully with all relevant security agencies. We are doing the best we can with the funds that we have and—

Mr. SERRANO. But if we were to ask you, give us a report, you know, a written statement on what the conditions are, are there more threats now? Are there more attacks by people who, you know, are angry in a courthouse or something?

Judge GIBBONS. The U.S. Marshals could tell us that. I think they keep up with it. It seems to me, during the 30-plus years I have been a Federal judge, that it has been pretty much constant that there are some threats. I don't know if I could identify a time when I feel like the threats have been more or less, but the Marshals might have a different view.

[The information follows:]

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

Threats against federal judges are addressed by the U.S. Marshals Service. As a result, the judiciary does not maintain its own data on such threats and cannot draw independent conclusions about trends in the threat level over time.

Upon request, the Marshals Service reviewed the threat environment over the last five years and reported that, in its assessment, threats against Marshals-protected judges have remained stable over that period.

Mr. SERRANO. All right.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you.

Mr. Rigell.

Mr. RIGELL. Thank you, Mr. Chairman.

## CHOOSING BETWEEN GSA SPACE AND THE COMMERCIAL MARKET

Judge Gibbons, Mr. Duff, thank you very much for being here today. And, you know, our judicial branch is widely respected, certainly far more than the institution that I am privileged to serve in and even, indeed, the Executive branch. So I appreciate the good work that you are doing.

And I was a bit late here today, but I had five Gold Star Moms come by my office. And they were invited by House leadership because the President of Afghanistan was here and these mothers lost their sons in Afghanistan.

And so it was just a poignant reminder to me, of course, of the heavy price that has been paid for our freedom and just really the privilege that we have to be here today and to work out our differences and try to resolve these problems in our representative republic here.

So I thank you for being here and for your testimony.

Now, to the point, let's pick up on the commercial real estate. Do you feel like, Mr. Duff, that you have the running room that you need, the flexibility to choose GSA space or to go outside into the commercial market? And could you walk us through that concisely and let us know if you got the type of decisionmaking authority that you need?

Mr. DUFF. I think our relations with GSA are improving. I think the leadership within GSA is working hard with us to recognize where we have difficulties and challenges.

We are undertaking, as Judge Gibbons testified earlier, space reduction initiatives to reduce our rent. If you look at our overall budget of approximately \$7 billion, about \$1 billion of that is in rent. If the trends continue on rent increases, that is going to eat up more of our budget.

Mr. RIGELL. Right.

Mr. DUFF. We are trying to avoid that happening, and that is really what is driving our initiatives to reduce our footprint within the buildings.

We have looked elsewhere, where we have needed to and where we think it is untenable or unsustainable to work under the GSA rent configurations.

[The information follows:]

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

Under the terms of the Public Buildings Act, GSA has the authority to lease space on behalf of the judiciary. As a result, the judiciary does not and cannot lease space independently in the commercial market.

In terms of flexibility, I would say it is fine for now, given the improving relations with GSA. That wasn't the case in my first tenure, although we worked on it.

Mr. RIGELL. I am encouraged to hear this, and I applaud—I am sure it is a result, in part at least, of constructive engagement with them and talking to them, communication, right?

Mr. DUFF. Exactly right.

Mr. RIGELL. Okay.

Mr. DUFF. I think that the key to successful government, frankly, is communication.

Mr. RIGELL. Right. And so I applaud that.

And I know this is a shared value of the ranking member and others, and so if we can make a dollar go further and help you out in any practical way, please let us know.

#### SENTENCING REFORM

I want to transition to Judge Gibbons, and I am actually going to toss you a softball here. And it is not for lack of preparation, it is not, but it is more to really understand how we might make some constructive changes here in Washington that will help us to be a safe society and, at the same time, not incarcerate any more people for any 1 day longer than we need to.

And it is a wide topic with the time that I have remaining, but if you would, just—and I am sure you have some thoughts on this. What would you want us to consider on these larger issues about corrections generally, which, of course, don't get the attention generally that is needed? Please. I think you understand the question. I hope so.

Judge GIBBONS. Well, I gather that what you are asking goes really to the various proposals about sentencing reform—

Mr. RIGELL. Yes.

Judge GIBBONS [continuing]. And correctional policy.

The judiciary has positions on a number of the various proposals that have been introduced. There is a group of initiatives we support, coupled with some we oppose, plus a set of resource concerns. I am going to try to run through those quickly.

Mr. RIGELL. And let me know if there is one on there that you really like.

Judge GIBBONS. Well—

Mr. RIGELL. I mean that. It would be helpful to me.

Judge GIBBONS. Well, the judiciary has for a long time strongly supported the elimination or reduction of mandatory minimum sentences. We have supported a modest expansion of the safety valve, which provides the ability to go below a mandatory minimum in certain situations.

We have supported the reduction of the difference between the way crack and powder cocaine are treated, and we have supported retroactivity of that change.

Mr. RIGELL. Let me pause for a moment.

Judge GIBBONS. Okay.

Mr. RIGELL. The crack and powdered issue. Now, I thought that we had done some work—

Judge GIBBONS. You have.

Mr. RIGELL. Okay.

Judge GIBBONS. And we supported that.

Mr. RIGELL. Is that not enough?

Judge GIBBONS. Well, there is a retroactivity bill that I don't think has passed, and so that is still a remaining issue.

Mr. RIGELL. Are you willing to kind of go out there and let us know what your personal view is on that? I am going to press you just a little bit, but if you are willing.

Judge GIBBONS. I am not one of the judges who chafes most at a deprivation of some discretion in sentencing. It is up to Congress to make the rules. But I think it has been demonstrated over a pe-

riod of time that the original congressional assessment of the adverse impact of crack cocaine as opposed to powder just didn't turn out the way Congress thought.

Mr. RIGELL. And I share that view. Okay.

Judge GIBBONS. So that is my personal take on it.

Mr. RIGELL. Okay. So that might lead us to at least reconsider with maybe a bias in favor of this legislation and——

Judge GIBBONS. You have already reduced the crack-powder disparity to some extent.

Mr. RIGELL. That is right.

Judge GIBBONS. Whether there would be another reduction appropriate, I am not really prepared to say without reviewing the issue again. In terms of applying the reduction retroactively, the Judicial Conference has supported retroactivity.

Mr. RIGELL. Thank you.

Judge GIBBONS. The final thing we support is the amendment that precludes stacking of Title 18, Section 924(c) violations. That is carrying or using a firearm during or in connection with a drug trafficking crime or a crime of violence.

Mr. RIGELL. Okay. You have answered my question directly, and I appreciate it. And you have given me enough that I can wrestle with this on my own privately and perhaps, you know, with some followup to your offices.

[The information follows:]



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

As discussed in the transcript, the Judicial Conference supports a number of potential sentencing reform proposals and other changes to correctional policy.

At the same time, there are several legislative proposals that the Conference opposes. Those proposals fall into three main categories:

The first is proposals that involve judges in deciding whether prisoners can serve portions of their sentences outside of the prison on either home confinement or community supervision. Such parole-type decisions have traditionally been made by the Executive Branch, based on its direct contact with the inmates and more accurate, up-to-date information about their conduct and condition. Because Executive Branch officials are best suited to make these decisions, involving judges in the process could have adverse public safety consequences. Further, requiring the judiciary to take over the supervision of these prisoners while they remain in the formal custody of BOP presents inherent logistical issues, and, to the extent that the judiciary had difficulty in implementing such a hybrid approach, could create a public safety concern if not appropriately structured and coordinated.

The second category of proposals to which the Conference objects is those that impose new duties on the judiciary without providing the necessary resources to execute those duties. Examples of new duties for which the judiciary requires resources are the supervision of additional offenders in community or home confinement, new reporting requirements on recidivism, new demonstration or pilot projects and new requirements for presentence reports. The failure to adequately provide for the funding of these duties will stretch existing judiciary resources. This could lead to delays in the judicial process or could sufficiently strain courts and probation and pretrial services offices to the point that public safety would be adversely impacted.

A final category of proposals to which the Conference is opposed is those that lead to the over-federalization of offenses. The Conference objects to the prosecution of offenses at the federal level where a strong federal interest has not been implicated and believes that federal prosecutions should complement, not supplant, the jurisdiction of the state court systems. The result of over-federalizing crimes is an increase in overcrowding among the federal prison population. The Conference has encouraged the conservation of the federal courts as a forum of limited jurisdiction and supports the review of existing statutes with the goal of eliminating provisions that no longer serve an essential federal purpose.

Judge GIBBONS. Well——

Mr. RIGELL. But I think that there is a sense within Congress just generally—it is not the top of the list. We have the budget and other things that we are struggling with, but something has to give here, I think, in a constructive way. I mean, thoughtful and wise reform on the corrections side. And I think that at least the Members that I know are open to this conversation. So what you have shared with me today has been helpful.

Mr. Chairman, I see a red light over there, so I thank you, and I yield back what time I don't have. Thank you.

Mr. CRENSHAW. Thank you.

#### CONCLUDING REMARKS

We are getting ready to vote, but because of the clear and concise answers as well as the clear and concise questions, we are able to finish our work here today.

Let me thank you all for being here. And a special word of thanks to the folks that are here for the Budget and Financial Advisory meeting. You are doing a good job of advising these folks, because you have been very efficient and effective. We all know that government needs money to provide services, but right now being efficient is more important than ever before.

So thank you for what you all do as an advisory group. Thank you for bringing that message to us and the work that you do. It is very, very important.

And I know Mr. Serrano wants to say goodbye to somebody.

Mr. SERRANO. No.

I just want to thank you for the work that you do, for coming here, all of you for the work that you do.

But I did hear something today, Mr. Chairman, that I can't end the hearing without saying that it troubles me a little bit. I don't think we, as Members of Congress, should legislate with any concern about how much litigation may cost. Our role is to legislate, and if people don't like it, then they can sue. Or you can go along with the President's program and don't sue on anything, which is not going to happen.

But I think it may have a chilling effect. To give you an example, we have a rule, as you know, in the House that says that when you put in a bill you have to say what part of the Constitution that bill will affect. I was tempted once to write "that part that says that I am a legislator, and I can legislate," but that would have been sarcastic to some people.

So I appreciate what the courts go through. I appreciate that lately a lot of what has been legislated will be litigated. But let's be thankful that we live in a democracy where I can legislate and then the courts can decide whether it is right or wrong. That makes sense, rather than say, it is going to cost too much, so don't do that.

But thank you so much.

Thank you, Mr. Chairman.

Mr. CRENSHAW. Thank you all.

This hearing is adjourned.

**Financial Services and General Government Subcommittee**  
**Hearing on the Judiciary FY2016 Budget**  
**for The Honorable Julia S. Gibbons, Chair, Committee on the**  
**Budget of the Judicial Conference of the United States**

**Questions for the Record Submitted by Ranking Member José Serrano**

*Impact of No Courthouse Construction Funding*

As you are aware, in FY 15 the Administration proposed zero funding for the new construction of courthouses; however, in FY 16 there is a request for one courthouse—in Nashville.

**Question:** How will that help make up for lost time and how the Judiciary is being affected by the slowdown in construction?

**Answer:** The Judiciary is very grateful for the Administration’s support of new courthouse construction funding in its fiscal year (FY) 2016 budget request for the GSA. The President’s Budget requests \$181.5 million for a new courthouse in Nashville, Tennessee, which is the Judicial Conference’s top space priority. This is only the second time in six years that the President’s budget has included funding for a project on the Judicial Conference’s *Five Year Courthouse Construction Project Plan (Five-Year Plan)*. Because GSA builds our facilities, these monies come under the jurisdiction of the Executive Branch. Without stable and consistent funding of courthouse construction by the GSA, the ability of the Judiciary to carry out its constitutional mission of administering justice is significantly impaired.

The construction of the Nashville courthouse is requested to resolve severe security, space, and operational deficiencies in the existing facility. The Estes Kefauver Federal Building in downtown Nashville was built more than 60 years ago, has an insufficient number of courtrooms for district judges, and due to space shortages all magistrate judges must use hearing rooms instead of courtrooms. This exacerbates issues related to security and safety. Further, the building houses seventeen different federal entities and there are no separate circulation patterns for judges, the public, and prisoners.

The Nashville courthouse project has been on the *Five-Year Plan* for nearly 20 years. The lack of full funding to construct the new courthouse has prolonged the period of time during which judicial officers, court staff and the general public in the Middle District of Tennessee have been negatively impacted by the functional and security problems described above, and it has prevented the Judiciary from addressing similar problems at other courthouses that follow Nashville on the *Five-Year Plan*.

Currently, the design of the new courthouse is approximately 80% complete, the site has been acquired, and more than 95% of the funding appropriated by Congress for this project has been obligated. Further, last Fall, two vacant structures on the site were demolished to further ready the new location for construction. The requested FY 2016 funding will complete design services,

support construction and allow for appropriate project management.

### *Law Clerk Diversity*

As you know, I am interested in the diversity of law clerks in the federal court system.

**Question:** What are your efforts to improve the diversity of law clerks in the Federal Judiciary? Please provide for the record the diversity breakdown of law clerks by race and gender, for appellate and district judges for the last five years.

**Answer:** The Federal Judiciary has long recognized the importance of diversity in its workforce, particularly among law clerks in federal trial and appellate courts. We are committed to improving the diversity of our law clerks.

In 2010, the Judicial Resources Committee and Just the Beginning – A Pipeline Organization (JTB-APO) collaborated to create an annual summer program, the “Judicial Internship Diversity Project” that strives to provide highly qualified law students from minority, underrepresented, or disadvantaged groups the opportunity to work in a federal judge’s chambers as a judicial intern. Since its inception four years ago, nearly 300 minority law students served internships – up from 150 as of last year. In 2014, the Project yielded 99 law students for judicial internships with 67 federal judges, an increase from the previous year (61 internships with 52 federal judges). This summer, we expect over 100 judges to participate and place law students from the Judicial Internship Diversity Project in summer internships in their chambers. The skills gained during the summer internship can increase a student’s chance of ultimately being selected for a federal clerkship following law school.

The Administrative Office of the U.S. Courts’ (AO) recent reorganization created a newly-structured Office of Fair Employment Practices (OFEP), both the AO and the Judiciary, including providing staff support to the Judicial Resources Committee of the Judicial Conference of the United States. OFEP and the Judicial Resources Committee have continued to expand and strengthen the Diversity Recruiting and Outreach Program. To date, the program has facilitated the involvement of local court participation at 88 career fairs and legal recruiting events (up from 73 as of last year), resulting in direct contact with 8,000 students in 33 districts in all circuits (up from 7,300 students in 32 districts as of last year).

During its fourth year, the Diversity Recruiting and Outreach Program continued to build a strategic network of partnerships between various program offices, local courts, and working groups of judges and court staff, as well as external organizations such as JTB-APO, Congressional Caucuses (Black, Asian, and Hispanic), Hispanic National Bar Association, and Minority Corporate Counsel Association.

### **LAW CLERK DIVERSITY**

**Chambers Law Clerks (Appellate) by Race/Ethnicity: FY 2009 – 2013**

(percentages are calculated based on the total number of law clerks who reported race and ethnicity)

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
<b>FY 2009</b>	87.6%	2.5%	2.0%	7.6%	0.1%	0.2%
<b>FY 2010</b>	88.2%	2.7%	2.5%	6.4%	0%	0.2%
<b>FY 2011</b>	83.6%	3.8%	6.1%	6.3%	0.1%	0.1%
<b>FY 2012</b>	84.1%	3.9%	6.3%	6.4%	0.1%	0.1%
<b>FY 2013</b>	86.2%	3.0%	3.1%	7.6%	0.1%	0.0%

**Chambers Law Clerks (District) by Race/Ethnicity: FY 2009 – 2013**

(percentages are calculated based on the total number of law clerks who reported race and ethnicity)

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
<b>FY 2009</b>	86.1%	3.9%	4.4%	5.4%	0.1%	0.1%
<b>FY 2010</b>	87.5%	3.7%	4.5%	4.9%	0.3%	0.1%
<b>FY 2011</b>	86.0%	4.0%	4.8%	5.1%	0.2%	0.1%
<b>FY 2012</b>	87.0%	3.6%	5.7%	3.4%	0.2%	0.1%
<b>FY 2013</b>	86.3%	4.0%	3.5%	5.0%	0.2%	0.1%

**Chambers Law Clerks by Gender: FY 2009 – 2013**

(percentages are calculated based on the total number of law clerks who reported gender)

	APPELLATE		DISTRICT	
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>
<b>FY 2009</b>	57.8%	42.2%	42.1%	57.9%
<b>FY 2010</b>	55.8%	44.2%	39.4%	60.6%
<b>FY 2011</b>	55.8%	44.2%	38.8%	61.2%
<b>FY 2012</b>	55.4%	44.6%	36.9%	63.1%
<b>FY 2013</b>	56.8%	43.2%	39.7%	60.3%

***Diversity of Judiciary Staff***

I am also interested in the diversity of Judiciary staff.

**Question:** What efforts are you making to improve that diversity and please, again, provide for the record the diversity breakdown of the clerks and support staff in the Federal Judiciary by race and gender, in total and separated by job title, seniority or pay scales as best may characterize the makeup of the Judiciary's workforce.

**Answer:** The Federal Judiciary also recognizes the importance of diversity in its workforce, taking informed steps to promote equal employment opportunity and to attract and retain candidates from underrepresented groups for judiciary staff positions. Our numbers indicate a more diverse workforce among some occupational categories than others, and we have a number of efforts underway to increase workforce diversity:

As indicated in the previous response, OFEP and the Judicial Resources Committee have continued to expand and strengthen the Diversity Recruiting and Outreach Program. By working with undergraduate institutions, law schools, bar associations, and other groups across the country, the Diversity Recruiting and Outreach Program aims to increase awareness by students

## Judiciary Staff by Gender, Race/Ethnicity, and Occupational Category, FY 2013

OCCUPATIONAL CATEGORY	Total	Male	Female	RACE/ETHNICITY						
				Cauc	AfrAm	Hisp	Asian	NatAm	Pacls	No Rept
Executive	735	426	309	618	62	32	10	5	3	5
	100.0%	58.0%	42.0%	84.1%	8.4%	4.4%	1.4%	0.7%	0.4%	0.7%
Legal Professional	6,777	2,943	3,834	5,615	290	310	358	11	8	185
	100.0%	43.4%	56.6%	82.9%	4.3%	4.6%	5.3%	0.2%	0.1%	2.7%
General Professional	10,898	4,919	5,979	7,314	1,349	1,698	398	58	41	40
	100.0%	45.1%	54.9%	67.1%	12.4%	15.6%	3.7%	0.5%	0.4%	0.4%
Legal Secretary	1,619	35	1,584	1,145	159	237	46	4	5	23
	100.0%	2.2%	97.8%	70.7%	9.8%	14.6%	2.8%	0.2%	0.3%	1.4%
Technical	6,461	1,301	5,160	4,022	1,193	864	286	24	19	53
	100.0%	20.1%	79.9%	62.3%	18.5%	13.4%	4.4%	0.4%	0.3%	0.8%
Office Clerical	1,931	250	1,681	987	361	493	62	10	8	10
	100.0%	12.9%	87.1%	51.1%	18.7%	25.5%	3.2%	0.5%	0.4%	0.5%
Total	28,421	9,874	18,547	19,701	3,414	3,634	1,160	112	84	316
	100.0%	34.7%	65.3%	69.3%	12.0%	12.8%	4.1%	0.4%	0.3%	1.1%

**Questions for the Record Submitted by Congressman Mike Quigley**

*Federal Defenders*

I know how highly you regard the work of the federal defenders, and by now you're well aware of how important funding for the defenders is to me.

Federal defenders serve as the backbone of the Sixth Amendment right to effective counsel, representing 60 percent of all criminal defendants in the federal court system.

We've seen much progress on the federal defenders work measurement study since we last saw each other.

**Question:** Can you give us an update on where we are in the process and when you anticipate you will know the results?

**Answer:** After an extensive period of data collection and analysis, federal defender staffing formula options have been developed and will be presented to the Defender Services Committee (DSC) and Judicial Resources Committee (JRC) of the Judicial Conference this summer. After a recommendation from the JRC, in consultation with the DSC, the full Judicial Conference will consider and approve a federal defender staffing formula (or set of formulas) at its September 2015 meeting. It is anticipated that the approved formula(s) will then be available for use in the FY 2016 financial plan.

**Question:** It is my understanding that the defenders' staffing remains significantly suppressed from pre-sequestration levels due in part to the defenders' uncertainty about the results of the Work Measurement Study.

If the data shows that defenders generally need to be staffed at or above pre-sequestration levels, do you anticipate informing our Committee of that result?

**Answer:** The data suggest that, at a national level, there will not be a reduction in defender staffing. Staffing levels at both the national and individual office levels will be finalized after the Judicial Conference approves both the new formula and an implementation strategy for the formula.

The Committee will be informed of any changes in defenders staffing levels resulting from formula implementation via the Judiciary's budget re-estimate or financial plan, as appropriate.

**Question:** From what I hear, the results of the study will almost certainly show that the defenders are understaffed overall.

If the formula shows the need for additional resources, is the Judiciary willing to seek additional resources to support that result?



**Answer:** We will not know the budgetary impact of work measurement for the defenders until the Judicial Conference has approved the formula and an implementation strategy. As with all of the Judiciary's staffing formulas, how much of the formula is funded will depend on a variety of factors, including the amount of resources needed to fully fund the formula, the amount of resources available in the defender services account and projections on whether the federal defender organizations could realistically execute full formula funding in a given fiscal year.

These factors will be evaluated by the Judicial Conference's Executive Committee, the Defender Services Committee, the Budget Committee and others as the Judiciary prepares its FY 2016 budget re-estimate, FY 2016 financial plan and FY 2017 budget request.

**Question:** The judiciary has been given the important task of protecting the independent federal defense function in our justice system. I believe we need to find a way to give the federal defender program more independence, but I worry that more independence may lead to less resources and support from the AO.

How do we find the right balance between those two goals?

**Answer:** The Judiciary recently initiated a comprehensive and impartial review of the Defender Services program under the Criminal Justice Act (CJA) that will examine, among other topics, the independence of the program.

This review will be based on a previous CJA program study, which was undertaken pursuant to the Judicial Improvements Act of 1990. Subsequent to that review, the Judicial Conference in March 1993 adopted the policy that "the Judiciary should arrange for a comprehensive, impartial review of the CJA program every seven years." Other than a 2005 internal assessment by the Judicial Conference Committee on Defender Services, a "comprehensive, impartial review" has not occurred since 1993.

The new review began on April 13, 2015, when Chief Justice Roberts announced the members of the ad hoc committee who will conduct the study. The committee includes federal judges, federal defenders, a CJA panel attorney representative, members of the bar and a representative from academia. The committee's scope of work encompasses more than a dozen separate topics and issues, including the impact of judicial involvement in the selection and compensation of federal defenders and panel attorneys on the independence of federal defender organizations and the adequacy of the national structure and administration of the defender services program. The work of the review is expected to take 18-24 months to complete.

**Financial Services and General Government Subcommittee**  
**Hearing on the Judiciary FY2016 Budget**  
**for The Honorable James C. Duff, Director, Administrative Office**  
**of the United States Courts**

**Questions for the Record Submitted by Ranking Member José Serrano**

*Impact of No Courthouse Construction Funding*

As you are aware, in FY 15 the Administration proposed zero funding for the new construction of courthouses; however, in FY 16 there is a request for one courthouse—in Nashville.

**Question:** How will that help make up for lost time and how the Judiciary is being affected by the slowdown in construction?

**Answer:** The Judiciary is very grateful for the Administration’s support of new courthouse construction funding in its fiscal year (FY) 2016 budget request for the GSA. The President’s Budget requests \$181.5 million for a new courthouse in Nashville, Tennessee, which is the Judicial Conference’s top space priority. This is only the second time in six years that the President’s budget has included funding for a project on the Judicial Conference’s *Five Year Courthouse Construction Project Plan (Five-Year Plan)*. Because GSA builds our facilities, these monies come under the jurisdiction of the Executive Branch. Without stable and consistent funding of courthouse construction by the GSA, the ability of the Judiciary to carry out its constitutional mission of administering justice is significantly impaired.

The construction of the Nashville courthouse is requested to resolve severe security, space, and operational deficiencies in the existing facility. The Estes Kefauver Federal Building in downtown Nashville was built more than 60 years ago, has an insufficient number of courtrooms for district judges, and due to space shortages all magistrate judges must use hearing rooms instead of courtrooms. This exacerbates issues related to security and safety. Further, the building houses seventeen different federal entities and there are no separate circulation patterns for judges, the public, and prisoners.

The Nashville courthouse project has been on the *Five-Year Plan* for nearly 20 years. The lack of full funding to construct the new courthouse has prolonged the period of time during which judicial officers, court staff and the general public in the Middle District of Tennessee have been negatively impacted by the functional and security problems described above, and it has prevented the Judiciary from addressing similar problems at other courthouses that follow Nashville on the *Five-Year Plan*.

Currently, the design of the new courthouse is approximately 80% complete, the site has been acquired, and more than 95% of the funding appropriated by Congress for this project has been obligated. Further, last Fall, two vacant structures on the site were demolished to further ready the new location for construction. The requested FY 2016 funding will complete design services, support construction and allow for appropriate project management.

*Law Clerk Diversity*

As you know, I am interested in the diversity of law clerks in the federal court system.

**Question:** What are your efforts to improve the diversity of law clerks in the Federal Judiciary? Please provide for the record the diversity breakdown of law clerks by race and gender, for appellate and district judges for the last five years.

**Answer:** The Federal Judiciary has long recognized the importance of diversity in its workforce, particularly among law clerks in federal trial and appellate courts. We are committed to improving the diversity of our law clerks.

In 2010, the Judicial Resources Committee and Just the Beginning – A Pipeline Organization (JTB-APO) collaborated to create an annual summer program, the “Judicial Internship Diversity Project” that strives to provide highly qualified law students from minority, underrepresented, or disadvantaged groups the opportunity to work in a federal judge’s chambers as a judicial intern. Since its inception four years ago, nearly 300 minority law students served internships – up from 150 as of last year. In 2014, the Project yielded 99 law students for judicial internships with 67 federal judges, an increase from the previous year (61 internships with 52 federal judges). This summer, we expect over 100 judges to participate and place law students from the Judicial Internship Diversity Project in summer internships in their chambers. The skills gained during the summer internship can increase a student’s chance of ultimately being selected for a federal clerkship following law school.

The Administrative Office of the U.S. Courts’ (AO) recent reorganization created a newly-structured Office of Fair Employment Practices (OFEP), both the AO and the Judiciary, including providing staff support to the Judicial Resources Committee of the Judicial Conference of the United States. OFEP and the Judicial Resources Committee have continued to expand and strengthen the Diversity Recruiting and Outreach Program. To date, the program has facilitated the involvement of local court participation at 88 career fairs and legal recruiting events (up from 73 as of last year), resulting in direct contact with 8,000 students in 33 districts in all circuits (up from 7,300 students in 32 districts as of last year).

During its fourth year, the Diversity Recruiting and Outreach Program continued to build a strategic network of partnerships between various program offices, local courts, and working groups of judges and court staff, as well as external organizations such as JTB-APO, Congressional Caucuses (Black, Asian, and Hispanic), Hispanic National Bar Association, and Minority Corporate Counsel Association.

## LAW CLERK DIVERSITY

**Chambers Law Clerks (Appellate) by Race/Ethnicity: FY 2009 – 2013**

(percentages are calculated based on the total number of law clerks who reported race and ethnicity)

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
<b>FY 2009</b>	87.6%	2.5%	2.0%	7.6%	0.1%	0.2%
<b>FY 2010</b>	88.2%	2.7%	2.5%	6.4%	0%	0.2%
<b>FY 2011</b>	83.6%	3.8%	6.1%	6.3%	0.1%	0.1%
<b>FY 2012</b>	84.1%	3.9%	6.3%	6.4%	0.1%	0.1%
<b>FY 2013</b>	86.2%	3.0%	3.1%	7.6%	0.1%	0.0%

**Chambers Law Clerks (District) by Race/Ethnicity: FY 2009 – 2013**

(percentages are calculated based on the total number of law clerks who reported race and ethnicity)

	Caucasian	African American	Hispanic	Asian American	Native American	Pacific Islander
<b>FY 2009</b>	86.1%	3.9%	4.4%	5.4%	0.1%	0.1%
<b>FY 2010</b>	87.5%	3.7%	4.5%	4.9%	0.3%	0.1%
<b>FY 2011</b>	86.0%	4.0%	4.8%	5.1%	0.2%	0.1%
<b>FY 2012</b>	87.0%	3.6%	5.7%	3.4%	0.2%	0.1%

**Chambers Law Clerks by Gender: FY 2009 – 2013**

(percentages are calculated based on the total number of law clerks who reported gender)

	APPELLATE		DISTRICT	
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>
<b>FY 2009</b>	57.8%	42.2%	42.1%	57.9%
<b>FY 2010</b>	55.8%	44.2%	39.4%	60.6%
<b>FY 2011</b>	55.8%	44.2%	38.8%	61.2%
<b>FY 2012</b>	55.4%	44.6%	36.9%	63.1%
<b>FY 2013</b>	56.8%	43.2%	39.7%	60.3%

***Diversity of Judiciary Staff***

I am also interested in the diversity of Judiciary staff.

**Question:** What efforts are you making to improve that diversity and please, again, provide for the record the diversity breakdown of the clerks and support staff in the Federal Judiciary by race and gender, in total and separated by job title, seniority or pay scales as best may characterize the makeup of the Judiciary's workforce.

**Answer:** The Federal Judiciary also recognizes the importance of diversity in its workforce, taking informed steps to promote equal employment opportunity and to attract and retain candidates from underrepresented groups for judiciary staff positions. Our numbers indicate a more diverse workforce among some occupational categories than others, and we have a number of efforts underway to increase workforce diversity:

As indicated in the previous response, OFEP and the Judicial Resources Committee have continued to expand and strengthen the Diversity Recruiting and Outreach Program. By working with undergraduate institutions, law schools, bar associations, and other groups across the country, the Diversity Recruiting and Outreach Program aims to increase awareness by students

## Judiciary Staff by Gender, Race/Ethnicity, and Occupational Category, FY 2013

OCCUPATIONAL CATEGORY	Total	Male	Female	RACE/ETHNICITY						
				Cauc	AfrAm	Hisp	Asian	NatAm	Pacts	No Rept
Executive	735	426	309	618	62	32	10	5	3	5
	100.0%	58.0%	42.0%	84.1%	8.4%	4.4%	1.4%	0.7%	0.4%	0.7%
Legal Professional	6,777	2,943	3,834	5,615	290	310	358	11	8	185
	100.0%	43.4%	56.6%	82.9%	4.3%	4.6%	5.3%	0.2%	0.1%	2.7%
General Professional	10,898	4,919	5,979	7,314	1,349	1,698	398	58	41	40
	100.0%	45.1%	54.9%	67.1%	12.4%	15.6%	3.7%	0.5%	0.4%	0.4%
Legal Secretary	1,619	35	1,584	1,145	159	237	46	4	5	23
	100.0%	2.2%	97.8%	70.7%	9.8%	14.6%	2.8%	0.2%	0.3%	1.4%
Technical	6,461	1,301	5,160	4,022	1,193	864	286	24	19	53
	100.0%	20.1%	79.9%	62.3%	18.5%	13.4%	4.4%	0.4%	0.3%	0.8%
Office Clerical	1,931	250	1,681	987	361	493	62	10	8	10
	100.0%	12.9%	87.1%	51.1%	18.7%	25.5%	3.2%	0.5%	0.4%	0.5%
Total	28,421	9,874	18,547	19,701	3,414	3,634	1,160	112	84	316
	100.0%	34.7%	65.3%	69.3%	12.0%	12.8%	4.1%	0.4%	0.3%	1.1%

**Questions for the Record Submitted by Congressman Mike Quigley*****PACER***

I applaud your efforts to make final court opinions more freely accessible online. It is important that the American public is able to access not only final opinions, but to observe the judicial process as it unfolds. The right to access court proceedings has long been guaranteed in our country, and this access has been made available through the technology of the time. At first, it was a right to physically enter the courtroom to witness the proceedings. Then, it was the right to examine the written records recorded by the clerk as cases unfolded. Now, you provide access through the fee-based PACER web site. You have justified the fees as necessary to pay the costs of the service. Despite your effort to offer partial fee waivers and other concessions, I am concerned that the public does not have timely and modern access to public records.

**Question:** Given improvements in technology and the steps the Administrative Office toward greater access to some PACER records, what are your thoughts on providing greater no-fee public access to PACER?

**Answer:** The Judiciary is committed to ensuring that the authority provided by Congress in 1991, to provide the public with electronic access to federal court records and information through reasonable user fees, is exercised in an effective and appropriate manner that does not create undue barriers or obstacles to accessing court records.

Ninety five percent of PACER accounts incur less than \$500 in fees – or no fee at all – over the course of the year. This is due to a number of policies. First, many court records, including opinions, local rules, court forms, news items and court calendars, are provided free of charge. Parties to a court case also receive copies of the filings for their case free of charge.

For those records that do cost money, many users are eligible to receive a fee exemption. In FY 2014, about 15% of PACER usage was performed by users that are fee exempt, including federal agencies and programs funded from Judiciary appropriations as well as court-exempted indigents, bankruptcy case trustees, individual researchers associated with educational institutions, Section 501(c)(3) not-for-profit organizations, pro bono attorneys, and pro bono alternative dispute resolution neutrals (mediators).

In addition, any individual account holder who does not exceed \$15 in fees in any given quarter receives a waiver for that quarter's fees. In FY 2014, there were over 305,000 accounts in this status; 66% of all active accounts had a fee waiver for at least one quarter, and 57% of active accounts paid no fees at all.

More than 80% of PACER fee revenue comes from only 1.5% of accounts. These accounts do not belong to individual members of the public attempting to participate in the judicial process; rather, they are large institutional users conducting government or commercial business. The largest account belongs to the Department of Justice, with approximately 14,500 users and a bill of \$4.7 million for FY 2014. The other top users are major commercial enterprises, large law

firms and financial institutions. These users collect massive amounts of data, often for aggregation and resale.

Given the low cost and effective access to PACER records enjoyed by the vast majority of current users, the Judiciary does not believe that an expansion of no-fee access to the system is necessary at this time.



# WITNESSES

---

	Page
Breyer, Hon. Stephen G., Associate Justice of the Supreme Court .....	107
Donovan, Hon. Shaun .....	1
Kennedy, Hon. Anthony M., Associate Justice of the Supreme Court .....	107
Roth, Denise, Turner .....	55