Judicial Security Funding Proposals, Legislation Introduced

The tragic incident involving the murder of the son of United States District Judge Esther Salas and the critical wounding of her husband at the judge’s home in North Brunswick, New Jersey on July 19 has driven efforts within the Judiciary and on Capitol Hill to improve and expand security at judges’ homes and at federal courthouses.

The Salas tragedy immediately set off within the Judiciary a reassessment of current judicial security arrangements, resulting in the Judiciary’s September 4 transmittal of requests to Congress for additional funding for added protections and statutory changes to prevent the release of judges’ personally identifiable information. Correspondence from Judge David W. McKeague, chair of the Judicial Conference’s Committee on Judicial Security, and James Duff, Secretary of the Judicial Conference, asked House and Senate Appropriations committees for additional FY 2021 funding for the U.S. Marshals Service and Federal Protective Service to improve judicial security. The Judicial Conference asked House and Senate appropriators to approve:

- A one-time appropriation of $7.2 million for the U.S. Marshals Service to install modern home intrusion security systems in judges’ homes, and $2 million annually to keep the systems current. The existing government-funded alarm systems are badly outdated, lacking any video capabilities to identify who is on a judge’s property.
- Increased appropriations for the U.S. Marshals Service to hire 1,000 additional Deputy U.S. Marshals in expand the protection provided to judges and federal courthouses.
- A one-time direct appropriation to the Federal Protective Service of $267 million to replace and upgrade exterior perimeter security cameras at 650 U.S. courthouses and federal buildings that house judicial activities.

On October 14, 2020, FBA President W. West Allen urged Congress to promptly approve the Judicial Conference’s funding requests. In correspondence to Senate and House leaders, President Allen said:

The personal tragedy that has befallen Judge Salas and her family unfortunately is not confined to only them. The murders of United States District Judge John Wood (1979), United States District Judge Richard Daronco (1988), United States Circuit Judge Robert Vance (1989), United States District Judge John Roll (2011), and family members of United States District Judge Joan Lefkow (2005), all represented targeted attacks. It is imperative that Congress respond with the necessary security resources to prevent another tragedy involving judges and their families.
In addition, Judge McKeague and Secretary Duff in separate correspondence asked the House and Senate Judiciary committees to approve statutory protections that would:

- Better prevent the unauthorized release of judges’ personally identifiable information, particularly on the internet, including restrictions on posting or sharing judges’ personal information by private or public entities.
- Give federal judges permanent authority to redact personally identifiable information from financial disclosure reports.

On September 24, a bipartisan group of Senators introduced “The Daniel Anderl Judicial Security and Privacy Act of 2020” (S. 4711) to safeguard judges’ personally identifiable information on the internet and provide incentives for states to take similar action. The bill was introduced by Sen. Robert Menendez (D-NJ), Sen. Cory Booker (D-NJ) and Sen. Lindsey Graham (R-SC). The measure would prohibit government agencies from posting personal information about judges and would authorize a grant program to help state and local governments prevent online publication of that information. Also, commercial data collectors would be prohibited from selling or purchasing personally identifiable information of federal judges. The bill also would permit injunctive relief and a private right-of-action if a person or group violates the law, if enacted.

The Federal Judiciary supports S. 4711. The Federal Bar Association also has endorsed S. 4711 and called upon Congress to swiftly enact the measure. In correspondence to Sen. Lindsey Graham, chairman of the Senate Judiciary Committee, President W. West Allen said:

As the foremost national bar association devoted to the practice of Federal law and the vitality of the Federal court system, the Federal Bar Association is committed to the safety and protection of the Federal Judiciary. Our association was instrumental in the passage of the Court Security Improvement of 2007 (Public Law 110-177), and today we call upon Congress to enlarge the safeguards provided for the protection of the Federal Judiciary under statute.

Sen. Robert Menendez, the primary sponsor of the measure, said he was hopeful the legislation could be approved by the lame duck Congress following the November 3 election. The judicial security issue continues to receive national media attention, particularly through Judge Salas' impassioned pleas (here and here) for greater restrictions on internet disclosure of personally identifiable information.

At this point on the funding front, the Judiciary’s request for additional Marshals Service and Federal Protective Service resources remains pending before Congressional appropriations committees with no action expected until after the election. Congress could provide funds within the final version of the FY2001 budget. On the legislative front, Congressional consideration of measures to tighten the release of judges’ personally identifiable information could occur during the lame duck session or more likely extend into the next Congress. Protective actions also will require attention by state and local authorities, which control the disclosure of property, tax, election and other internet public records containing sensitive home address and other personally identifiable information about judges.

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Federal Judicial Vacancies and Confirmations

**Current Article III Vacancies (As of October 14, 2020)**
Court Vacancies Nominees Pending
Supreme Court 1 1
Courts of Appeal 0 0
District Courts 56 33
US Ct of International Trade 2 1
Total 59 35

With the inclusion of the United States Court of Federal Claims and the United States territorial courts, 64 of 890 active federal judicial positions are vacant.

Judicial Confirmations

The Senate confirmed one judicial nominee in August and sixteen nominees in September:

<table>
<thead>
<tr>
<th>Nominee</th>
<th>Confirmation Date</th>
<th>Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Peter Cronan</td>
<td>August 6, 2020</td>
<td>Southern District of New York</td>
</tr>
<tr>
<td>Christy Criswell Weigand</td>
<td>September 9, 2020</td>
<td>Western District of Pennsylvania</td>
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<tr>
<td>Brett H. Ludwig</td>
<td>September 9, 2020</td>
<td>Eastern District of Wisconsin</td>
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<tr>
<td>Diane Gujarati</td>
<td>September 10, 2020</td>
<td>Eastern District of New York</td>
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<tr>
<td>Thomas T. Cullen</td>
<td>September 10, 2020</td>
<td>Western District of Virginia</td>
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<tr>
<td>Hala Y. Jarbou</td>
<td>September 10, 2020</td>
<td>Western District of Michigan</td>
</tr>
<tr>
<td>Stanley Blumenfeld, Jr.</td>
<td>September 15, 2020</td>
<td>Central District of California</td>
</tr>
<tr>
<td>John W. Holcomb</td>
<td>September 15, 2020</td>
<td>Central District of California</td>
</tr>
<tr>
<td>Mark C. Scarsi</td>
<td>September 15, 2020</td>
<td>Central District of California</td>
</tr>
<tr>
<td>David W. Dugan</td>
<td>September 16, 2020</td>
<td>Southern District of Illinois</td>
</tr>
<tr>
<td>Todd Wallace Robinson</td>
<td>September 16, 2020</td>
<td>Southern District of California</td>
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<tr>
<td>Iain D. Johnston</td>
<td>September 17, 2020</td>
<td>Northern District of Illinois</td>
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<tr>
<td>Franklin Ulyses Valderrama</td>
<td>September 17, 2020</td>
<td>Northern District of Illinois</td>
</tr>
<tr>
<td>Edward Hulvey Meyers</td>
<td>September 22, 2020</td>
<td>Court of Claims</td>
</tr>
<tr>
<td>John Charles Hinderaker</td>
<td>September 23, 2020</td>
<td>District of Arizona</td>
</tr>
<tr>
<td>Roderick C. Young</td>
<td>September 23, 2020</td>
<td>Eastern District of Virginia</td>
</tr>
</tbody>
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Nominations and Confirmations. Four days of Senate hearings began on October 12 on the nomination of Hon. Amy Coney Barrett to fill the vacancy on the Supreme Court created last month by the death of the iconic Associate Justice Ruth Bader Ginsburg. Senate confirmation could occur during the week of October 19. Senate confirmation of district nominees may also continue, with action on nominees cleared by the Senate Judiciary Committee on September 17, 2020:
• Michael Jay Newman to be United States District Judge for the Southern District of Ohio
• J. Philip Calabrese to be United States District Judge for the Northern District of Ohio
• James Ray Knepp II to be United States District Judge for the Northern District of Ohio
• Aileen Mercedes Cannon to be United States District Judge for the Southern District of Florida
• Toby Crouse to be United States District Judge for the District of Kansas

All three Ohio nominees (Judges Newman, Calabrese and Knepp) have served in national and chapter leadership positions within the Federal Bar Association.

Federal Judgeships Legislation Introduced

Senator Todd Young (R-IN) on October 1 introduced legislation that would largely implement the Federal judiciary's 2019 recommendations for new judgeships in the nation's busiest district courts, with half of the new 65 district judgeships added next year and the other half in 2025. The bill, the “Judicial Understaffing Delays Getting Emergencies Solved Act” (S. 4779) faces partisan divisions and little time remaining in the 116th Congress.

FY2021 Funding for the Judiciary

The Federal Judiciary’s funding outlook for the next year remains uncertain. The current stopgap Continuing Resolution extends funding for the Judiciary and the rest of the federal government at FY2020 levels until December 13, after the November elections. The lame duck session could produce final FY 2021 funding numbers, depending on the outcome of the elections.

On July 31, 2020, the House of Representatives passed the FY 2021 Financial Services and General Government (FSGG) appropriations bill as part of a larger six-bill package (H.R. 7617). The House-passed bill provides the Judiciary with $7.8 billion in discretionary appropriations, a $287 million (3.8 percent) increase above the FY 2020 enacted level and $54 million below the Judiciary’s FY 2021 re-estimated budget request. The FBA has devoted advocacy in support of the Judiciary’s request, as well as for a larger FY 2021 appropriation to the General Services Administration. The bill passed by the House on July 31 contains a bump-up in the FY 2021 GSA appropriation, including increased funding courthouse repair and alternation projects.

Problematic PACER Legislation Cleared by House Panel

On September 15, 2020, the House Judiciary Committee reported out “The Open Courts Act” (H.R. 8235), legislation that directs the Judicial Conference to impose additional PACER fees to the system’s heaviest users and would require additional court filing fees to fund the creation of a new consolidated system of court records and, after three years, eliminate PACER user fees altogether.

The Judicial Conference, the policy-making body of the Federal Judiciary, previously had advised the House Judiciary Committee of its concerns about similar House and Senate PACER overhaul bills that would rely
upon additional filing fees. In late September the Conference again sent letters to the House Judiciary Committee and House Leadership, expressing the Judiciary’s concerns toward any approach that would increase filing fees to offset the elimination of PACER user fees and create unnecessary barriers to access to justice. The Conference also said it would be impossible to impose filing fees on litigants based on the complexity of the case, as The Open Courts Act proposes. According to the Conference, the bill would provide windfall profits to large commercial users of PACER who access PACER data and sell it for profit. Those large commercial users of PACER currently fund 87 percent of PACER costs. Most individual users of PACER currently obtain the data for free or very little cost.

FBA Consultative Status with the United Nations

The FBA Board of Directors on September 9, 2020 approved Policy 1-17 to implement FBA’s non-governmental organization consultative status, as conferred in June 2020 by the United Nations Economic and Social Council (ECOSOC). FBA implementation efforts are underway, including briefings to pertinent FBA chapters and sections about the meaning of consultative status and potential opportunities for participation. The Washington Watch column in the September-October issue of The Federal Lawyer is devoted to the subject and FBA’s tireless campaign to acquire consultative status. Additional materials are posted on the FBA website.