



*Office of Compliance*

*advancing safety, health, and workplace rights in the legislative branch*

# **Biennial Report on Occupational Safety and Health Inspections**

**Conducted in the legislative branch during the 110th Congress pursuant to the Congressional Accountability Act of 1995**

*June 2009*



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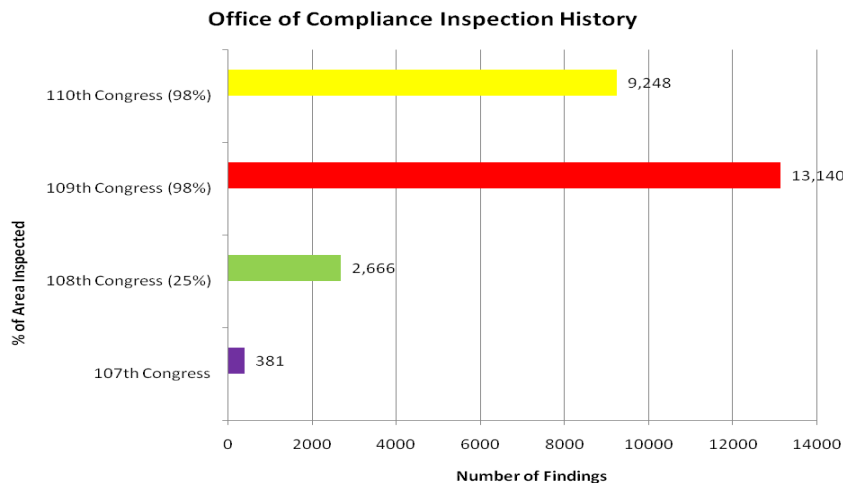
# Report on Occupational Safety and Health Inspections Conducted during the 110<sup>th</sup> Congress

## Overview

### *The 110th Congress Biennial Inspection*

The Congressional Accountability Act (CAA) requires the General Counsel of the Office of Compliance (OOC) to inspect legislative branch facilities for compliance with occupational safety and health standards at least once each Congress. Thereafter, the General Counsel is required to report the results to the Speaker of the House, President pro tempore of the Senate and employing offices responsible for correcting violations. CAA Section 215(e), 2 U.S.C. 1341(e). This Report provides an overview of our findings for the 110<sup>th</sup> Congress. Individual hazard findings for each facility are included in Appendix A; highlights for each facility appear in Appendix B.

During our inspection, we covered over 96% of the 17 million square feet of space occupied by Congress and other legislative branch facilities in the metropolitan Washington, D.C. area. The remaining areas were either not accessible to the OGC inspectors or undergoing renovation. Our inspection identified roughly 9,200 hazards – a reduction of over 30% compared to the previous Congress.<sup>1</sup>



### Number of Findings during Previous Inspections

We attribute this decline principally to an intensified emphasis on workplace safety in our covered community. For example, Senate and House Employment Counsel, along with representatives from the CAO and the AOC, instituted a new pre-inspection process in their jurisdictions. This approach included accompanying safety and health professionals on visits to offices in the Senate and House, notifying Congressional staff of hazards commonly found in such spaces, and encouraging staff to look for and correct hazardous conditions before the biennial inspection. These efforts paid off. During the 110<sup>th</sup> Congress, we found just half the number of hazards in Member and Committee offices as we had identified in the previous Congress. As discussed below, thirty-seven Members achieved hazard-free offices in the

<sup>1</sup> Because the area inspected exceeded that covered during the 109<sup>th</sup> biennial inspection, the reduction of hazards on a per square foot inspected basis is even greater.

110<sup>th</sup>, and were recognized for this accomplishment with the OGC's Safe Office Award in April 2008. The number of Safe Office Award recipients increased fivefold between the 109<sup>th</sup> and 110<sup>th</sup> Congresses – a real tribute to Members' attention to workplace safety.

Consistent with the Architect's commitment to make safety a "primary focus,"<sup>2</sup> the AOC has made a concerted effort to reduce the number of unabated citations. Thus, as a recent Government Accountability Office (GAO) study found,<sup>3</sup> "more than three-fourths of the funds requested for line item projects in AOC's fiscal year 2009 budget are associated with 10 projects to address OOC's [utility tunnel] complaint, citations, or [hazard] findings.... The hazards that they are intended to abate were largely identified through [the fire safety] inspections in 2000 and 2001." See [Fire Safety Citations](#) discussion below. In addition, the AOC has continued to work cooperatively with the OGC to pursue abatement and closure of OSHA cases.<sup>4</sup>

The comprehensiveness of our biennial inspections had a significant impact on the reduction in hazards: hazards cannot be abated until they are identified. During the 109<sup>th</sup> Congress, we were able to conduct for the first time during a single Congress a full "baseline" inspection due to an increase in appropriations for additional inspectors provided by Congress in FY 2006. This enabled the OGC to inspect 15.3 million square feet in 2006 and 2007, representing nearly 98% of the space over which the OGC has jurisdiction on Capitol Hill and in suburban Washington, D.C. During that inspection, we identified in excess of 13,000 hazards. See *Biennial Report on Occupational Safety and Health Inspections* for the 109<sup>th</sup> Congress, p. 2 (April 2008). During the 110<sup>th</sup> Congress, we conducted a second comprehensive inspection of the physical hazards present in Member and staff offices, shops, warehouses, garages, mechanical rooms and other facilities.<sup>5</sup> It covered approximately 16.3 million square feet or 96% of the covered 17 million square feet under our jurisdiction within the Washington, D.C. metropolitan area. Comparing the results of this inspection with the previous biennial inspection provided a benchmark for identifying persistent and high risk hazards in the covered facilities.

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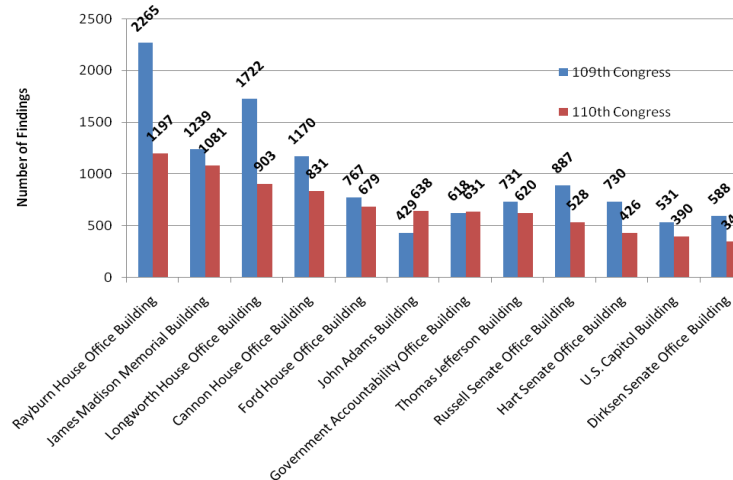
<sup>2</sup> Testimony of Stephen T. Ayers, AIA, Acting Architect of the Capitol, Hearings before the Committee on Appropriations, House of Representatives, Subcommittee on Legislative Branch, Fiscal Year 2009 Legislative Branch Appropriations Requests, Part 2, p. 76, February 7, 2008.

<sup>3</sup> See GAO Study, *AOC's Process for Prioritizing Capital Projects*, p.4 (No. 545076, September 2008).

<sup>4</sup> For a comprehensive listing of AOC's efforts to improve safety and health in the Legislative Branch see Appendix F, Letter of Stephen T. Ayers, AIA, LEED AP to Peter Ames Eveleth, May 12, 2009.

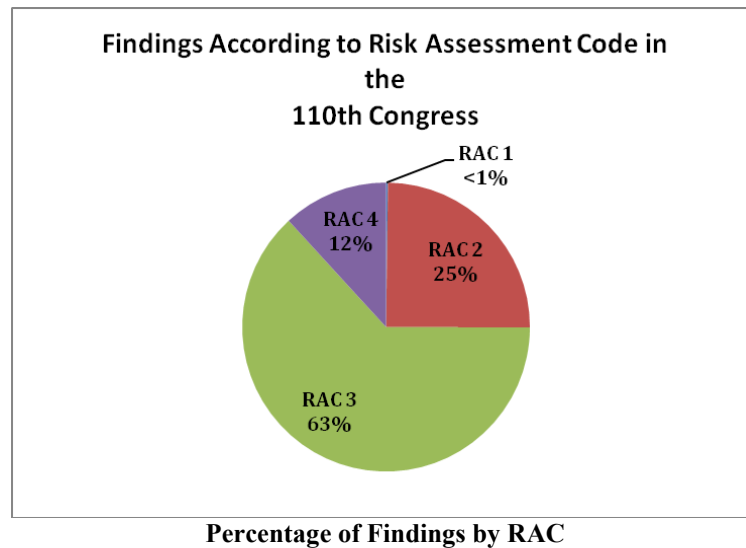
<sup>5</sup> At the request of Congress and the Architect of the Capitol, the OGC also conducted a "pre-inspection" of the Capitol Visitor Center during the 110<sup>th</sup> Congress, covering 580,000 square feet. Since this was a pre-inspection, rather than a part of the regular biennial inspection, hazards identified are not included in this report. The vast majority of those hazards were abated during the 110<sup>th</sup> Congress.

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**Number of Findings per Building**

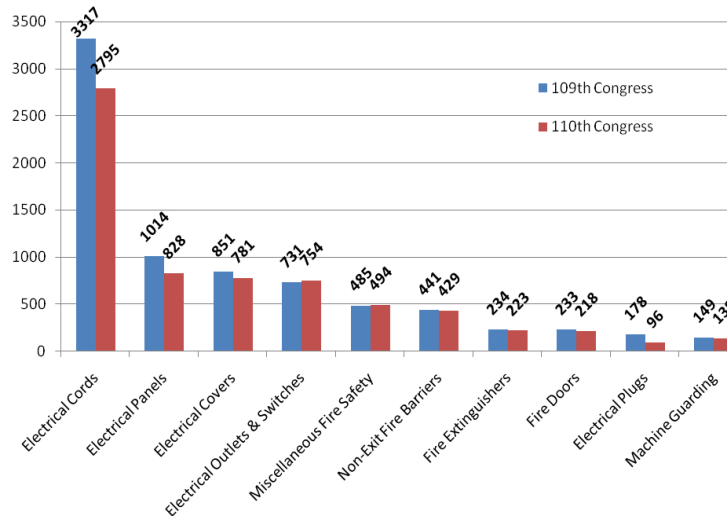
The good news from this inspection is that the total number of hazards has dropped and, as of June 2009, the employing offices reported that 62.6% had been abated. Work is still being done and more hazards continue to be abated. See App. F. The bad news is that the hazards we found pose a substantial continuing danger: roughly 25% of the hazards are classified as high risk<sup>6</sup>, which have the potential to cause death or serious injury and/or have a very high likelihood of occurrence if not abated.



Electrical, fire safety, and fall protection threats remain the most common hazards identified during the inspection. The hazards in the chart below present a wide range of risk: some represent death or extremely serious injury and/or a very high likelihood of occurrence, while others indicate less serious injury and/or a lower likelihood of occurrence. However, the sheer number of hazards – even if each is comparatively low-risk standing alone -- increases the risk of injury to employees and damage to the

<sup>6</sup> The OGC uses a Risk Assessment Code (RAC) system to classify hazards. RACs are classified in descending order of severity and likelihood of occurrence, with RAC I representing the potential for death or extremely serious injury and/or a very high likelihood of occurrence, and RAC IV indicating the potential for less serious injury and/or a lower likelihood of occurrence. As used in the text, “high risk” refers to hazards rated RAC I or II. For further explanation, please see Appendix D of this report.

facility. Accordingly, employing offices should address lower risk levels promptly in order to prevent serious injuries.



**Common Types of Hazards Identified During OOC Inspections**

*Requestor-Initiated Inspections*

Requestor-initiated inspections are handled differently. Under the CAA, covered employees, employing offices, and bargaining unit representatives of covered employees may request the General Counsel to inspect and investigate places of employment under the jurisdiction of employing offices to ascertain whether there are violations of the Occupational Safety and Health Act. 2 U.S.C. §1341(c)(1). Upon receipt of such requests, the OGC conducts inspections of these allegations, and when hazards are found to exist, the General Counsel issues a report and directs that appropriate abatement be made by the employing office responsible for correction of the violation. The inspector also may make recommendations based upon “best practices” used in the private sector which, while not required to be followed, would enhance the level of safety and health in legislative branch facilities. The employing office may submit comments, agree to abate the hazard, or contest the findings. In the vast majority of cases where a hazard is found, the employing office agrees to abatement. Apart from biennial inspections, these requests are the single most important source of information to the OGC concerning health and safety violations, since they are most often filed by employees who are familiar with, or exposed to, hazardous conditions in the legislative branch.

To provide the covered community with a better understanding of how the OGC conducts such inspections, the OGC developed a manual, *Procedures Applicable to Requested Occupational Safety and Health Inspections*. The manual, containing operational guidelines for office use, outlines a step-by-step process for receiving requests for inspections, conduct of investigations, analysis of inspection data, reporting findings, tracking the status of violations found until final resolution, and closing of cases. The manual was shared with employing offices and representatives for comment.

At the beginning of FY 2007, the Office had 67 open requestor-initiated inspections. By the end of FY 2008, this number had been reduced to 17. During the same two fiscal years, the OGC received 33 new requests for inspection, 13 of which were closed by September 30, 2008. The OGC continues to work with the employing offices -- particularly the AOC -- to accelerate the resolution of these cases in order to

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protect employees and visitors in legislative branch facilities.<sup>7</sup> As the table below indicates, the OGC has improved its process for resolving cases.

Number of OSH Cases		
Fiscal Year	FY 2007	FY 2008
Cases open at start of FY	67	38
New Cases	22	11
Cases Closed (Cases older than 1 year from the start of the FY)	33	5
Total Closed during FY	51	12

**OSH Case Progress during 110th Congress**

Unlike the biennial inspection process, requestor-initiated inspections entail a much closer examination of a hazard's root causes, as well as the safety programs, practices and procedures, or lack thereof, which may have contributed to the violation. During the 110<sup>th</sup> Congress the OGC dealt with a wide variety of issues, as shown in the following table:

Topic and Number of Relevant Requests	Number of Requests Filed	Location
Indoor Air Quality (5)	1	USCP
	3	Senate Office Buildings
	1	LOC
Unknown Substance exposure (2)	2	USCP
	2	LOC
Asbestos (2)	2	LOC
Personal Injury Investigation (1)	1	USCP
Lockout/Tagout (1)	1	USBG
Hazardous Materials (1)	1	LOC
Mold/Fungus (1)	1	House Office Buildings
Lead contamination (2)	1	USBG
	1	U.S. Capitol
Fire incident (1)	1	LOC
	1	CPP
Subway accident	1	House Office Buildings
	1	Senate Office Buildings
Fall Protection	1	Senate Office Buildings
Radon	1	LOC

**Types of Requests for OSH Inspections**

<sup>7</sup> The OGC tracks cases based on a fiscal year basis, which does not coincide with Congressional terms. The OGC established in its *Office of Compliance Strategic Plan* (fiscal years 2007-2009) as one standard for measuring its success in making the legislative branch workplace safer and healthier, a 25% reduction in the number of requestor-initiated cases that are open for 12 months or more. The OGC exceeded this measure by 81% in FY 2007. *Office of Compliance FY 2007 Annual Report*, p. 12 (March 2008).



### *Capitol Power Plant Utility Tunnel Complaint*

In February 2006, during the 109<sup>th</sup> Congress the General Counsel filed a first-ever formal complaint regarding potentially life-threatening conditions in the U.S. Capitol Power Plant utility tunnels. The complaint alleged that the AOC had failed to correct citations dating from 2000 and 2001, relating to falling concrete, lack of a reliable communications system to enable monitoring the status of employees working in the tunnels, and insufficient egress points in the tunnels to assure prompt rescue of workers in emergency situations.

A comprehensive settlement was approved in June 2007 by a hearing officer appointed by the Executive Director of the Office of Compliance. It requires the AOC to abate all high risk (RAC I and RAC II) hazards in the tunnel system by 2012. Further, it mandates regular inspections and quarterly reports by the AOC, and monitoring by the OGC.



**General Counsel, Peter Ames Eveleth in the Utility Tunnels**

During the 110<sup>th</sup> Congress, our monitoring revealed significant progress in reducing hazards by means of asbestos abatement and removal, concrete repairs, egress improvements, and heat stress reduction. However, substantial work remains. Many design projects are underway for work to be performed during the 111<sup>th</sup> Congress, including steam distribution service improvement, egress installations, asbestos removal and others. If full funding for the Architect's abatement plan continues, we anticipate that the necessary work can be completed by June 2012.<sup>8</sup>

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<sup>8</sup> Testimony of Stephen T. Ayers, AIA, Acting Architect of the Capitol, Hearings before the Committee on Appropriations, House of Representatives, Subcommittee on Legislative Branch, Fiscal Year 2009 Legislative Branch Appropriations Requests, Part 2, p. 97, February 7, 2008 ("We are on schedule; we are on budget to finish the utility tunnel reconstruction at the end of 5 years, which I think is June 2012.").

### Fire Safety Citations

During the 109<sup>th</sup> and 110<sup>th</sup> Congresses, substantial progress has been made in completing the abatement of outstanding health and safety citations, particularly those involving the AOC.<sup>9</sup>

Number of OSH Citations		
Fiscal Year	FY 2007	FY 2008
Citations open at the start of the FY	34	27
New Citations	4	1
Citations Closed (Citations older than 1 year from the start of FY)	11	7
Total Citations Closed in FY	11	8

OSH Citation Progress in 110th Congress

However, the most serious and longstanding open citations involving fire safety hazards remain unabated. In 2000 and 2001, the OGC issued a series of citations regarding open stairwells, lack of properly rated fire doors and other fire safety issues in the three House Office Buildings, the Russell Senate Office Building, the Capitol, and the Adams and Jefferson buildings of the Library of Congress. As noted in the *Biennial Report on Occupational Safety and Health Inspections* for the 109th Congress, pp. 3-4, these citations remained substantially unabated although the time for abating these hazards had long since expired.<sup>10</sup> Accordingly, during the 110th Congress, our office focused on the abatement of these fire hazards and worked collaboratively with the AOC to that end. *See 110th Congress Progress Report on Occupational Safety and Health Inspections*, pp. 5-6. For its part, the AOC has worked closely with our office in developing acceptable abatement measures, and, as detailed below, has developed proposed plans to abate these outstanding citation hazards as well as correct several other non-citation fire safety deficiencies. The AOC is to be credited for creatively developing – and requesting funding for -- plans that assure adequate protection for Congressional staff and visitors while at the same time preserve the architectural integrity of these historic structures. Both the Chairman of the Committee on Appropriations, House of Representatives, Subcommittee on Legislative Branch and the Architect of the Capitol have affirmed their strong support for devoting needed resources to abating these hazards.<sup>11</sup>

Specifically, the AOC has certified that all exit stairways in the Rayburn House Office Building (Citation 20) have been fitted with code-compliant fire doors, closing mechanisms, and panic hardware

<sup>9</sup> Testimony of Stephen T. Ayers, AIA, Acting Architect of the Capitol, Hearings before the Committee on Appropriations, House of Representatives, Subcommittee on Legislative Branch, Fiscal Year 2009 Legislative Branch Appropriations Requests, Part 2, p. 69, February 7, 2008; see also Letter of Susan P. Adams to Peter Ames Eveleth, February 27, 2009, App. F

<sup>10</sup> See GAO Study, *AOC's Process for Prioritizing Capital Projects*, p.4 (No. 545,076, September 2008). “While it is clear that AOC is statutorily required to correct violations of health and safety standards, it is not clear as to when the statutory compliance requirement begins if new appropriated funds are needed because of the statutory enforcement framework regarding the OOC process for citations, complaints, and orders. While 2U.S.C. §1341(c)(6) sets a deadline using ‘the end of the fiscal year following the fiscal year in which the citation is issued or the order requiring correction becomes final and not subject to further review,’ the OOC GC sets a time limit for corrective action consistent with OOC’s regulations in its citations, complaints, and orders, which could be longer than the statutory timeframe.... AOC must take steps to obtain sufficient funding to correct the violations, such as including amounts in its budget request; however, Congress is not required to appropriate funds to cover the corrective actions.” In the event the AOC or any other employing office responsible for correcting a hazard requires an extension of time to comply with the citation, the “OOC GC must approve any AOC [or other office] Request for Modification of Abatement (RFMA).” *Id.*

<sup>11</sup> Committee on Appropriations, House of Representatives, Subcommittee on Legislative Branch, Fiscal Year 2009 Legislative Branch Appropriations Requests, Part 2, Chair Debbie Wasserman Schultz, pp.93-94; See also, testimony of Stephen T. Ayers, AIA, Acting Architect of the Capitol, *id.* at 68: “[A]s fire and life-safety standards have become more stringent since these buildings were constructed, we face significant requirements to abate Office of Compliance citations and improve fire safety conditions throughout the Capitol complex. We are committed to ensuring that these deficiencies are corrected and that significant resources are put toward these issues.”

from the basement level to the top floor. AOC has certified all stairway doors in the Rayburn House Office Building, as of June 2009. Construction on stairway enclosures in the Longworth House Office Building (Citation 17) is expected to begin during FY 2009, with an estimated completion date of July 2011. A new egress point was completed during the 110<sup>th</sup> Congress, which adds needed exit capacity to the building. With respect to the Cannon House and Russell Senate Office Buildings (Citations 18 and 19, respectively), the AOC submitted plans to divide both buildings into fire zones and design barriers between each zone capable of serving as horizontal exits.<sup>12</sup> The AOC intends to begin the Cannon abatement in 2012 or 2013.<sup>13</sup> The OGC approved the plans because they appear to create acceptable exit pathways within the buildings – with or without stairway enclosures.<sup>14</sup> Furthermore, the plans, through the use of horizontal exits, will also address the existing egress capacity deficits within both buildings.<sup>15</sup>

With respect to the Capitol (Citation 16), several exit stairways have been enclosed, although others remain incomplete. However, while measures to address the exit capacity deficits, reduce travel time to reach exits, and offset the dangers posed by unenclosed stairways have been identified, they have yet to be approved by Congress. The primary issue is the division of the Capitol into three fire zones. This proposed action would create additional (horizontal) exits, substantially reduce exit travel distances on the third floors of the House and Senate chambers, and serve a vital smoke control function that would lessen the impact of the unenclosed stairways. We have been advised by the AOC that the installation of fire barriers would not adversely affect the historic features of the Capitol.

Further, the AOC has expressed its intention to correct fire safety hazards in the Adams and Jefferson Buildings (Citations 30 and 31), as well as related exit capacity deficits. The OGC reviewed abatement plans for these issues late in the 110<sup>th</sup> Congress. Due to the complexity of the Library of Congress buildings, the many visitors they attract, and always-limited resources, the AOC proposed to phase in its remedial efforts which would delay full abatement to as late as 2015. We will continue our discussions with the AOC and LOC to explore whether there are ways to accelerate abatement and identify interim protective measures designed to reduce the risk of serious harm in the period before full abatement is accomplished.

In addition to improving measures that permit occupants to escape safely from fire-affected areas and prevent fires from spreading, the OGC continues to emphasize the use of mechanisms to detect fires when they do occur. During the 110<sup>th</sup> Congress, the AOC installed new smoke detectors and sprinklers within several legislative branch facilities. The Rayburn building is fully covered by smoke detection equipment; the Adams building decks are fully protected; the Longworth and Cannon buildings are 95% covered; the Russell building is 80% covered; 95% of the Jefferson building is covered. The Capitol is

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<sup>12</sup> A “horizontal exit” protects building occupants during a fire by erecting fireproof barriers between so-called “fire zones” inside the building. During a fire emergency, occupants of the zone where the fire is burning retreat for protection to a fire-free zone within the facility. A “vertical exit”, by contrast, consists of a safe area such as a stairway through which occupants can evacuate a burning building to reach the outdoors.

<sup>13</sup> Testimony of Stephen T. Ayers, AIA, Acting Architect of the Capitol, Hearings before the Committee on Appropriations, House of Representatives, Subcommittee on Legislative Branch, Fiscal Year 2009 Legislative Branch Appropriations Requests, Part 2, p. 87, February 7, 2008.

<sup>14</sup> With respect to the planned abatement of the Longworth Building exit stairwells and the compartmentalization of the Russell and Cannon House Office Buildings, the OGC engaged in extensive discussions with the AOC to develop pragmatic, effective, and cost-saving solutions. Our office suggested to the AOC that, in the Longworth Building, AOC consider working on two stairwells at once instead of just one. Not only will this cut in half the time of abatement but it will also save money due to economies of scale: It will cost the AOC less to custom-build two sets of fire doors simultaneously than to do one at a time. Further, while the design of the compartmentalization for the Russell and Cannon Buildings does not meet the prescriptive requirements of the Life Safety Code, it does offer the same level of protection for building occupants. The approach the AOC is taking is far less costly than trying to meet the prescriptive code. In developing these plans, OGC staff met with the AOC numerous times to discuss differing approaches and the strengths and weaknesses of each design.

<sup>15</sup> “Egress capacity deficit” means that there are not enough exits to allow a building to be emptied safely and quickly during an emergency, such as a fire, because of the number of building occupants.

roughly 17% covered by sprinklers; design work is ongoing to cover the remaining spaces, most of which are historically significant. We understand that the AOC intends to provide complete smoke detection capability in all legislative branch facilities.

Finally, staff of the House of Representatives' Office of Emergency Planning, Preparedness and Operations and the Senate's Office of Security and Emergency Preparedness assembled templates for Emergency Action Plans for Member and Committee Offices; the OGC reviewed and provided comments on these EAPs, which are essential for the quick and orderly response of building occupants during emergencies. We will continue to work with legislative branch employers to abate all fire safety hazards as quickly and efficiently as possible.

### *OGC Inspection Procedures*

During the 110th Congress, a question arose concerning whether the OGC was authorized to inspect a hazard affecting legislative branch employees in a facility operated by an executive branch agency. In that case, a Capitol Police officer stationed at the Department of Homeland Security's (DHS) Federal Law Enforcement Training Center (FLETC) facility in Cheltenham, Maryland asked us to investigate noise levels at the firing range there. The request asserted that the noise level was far greater than that at other firing ranges, and the excessive noise was causing headaches, ringing ears, and possible hearing damage as well as posing a safety hazard because it impeded communications between instructors and shooters at the range. The USCP took the position that the OGC did not have jurisdiction under the Congressional Accountability Act to investigate the FLETC facility because the facility was not a "place of employment under the jurisdiction of the employing office." Rather, it was under the jurisdiction of DHS. Senate Appropriations Committee staff requested that the Government Accountability Office (GAO) provide an informal opinion regarding whether the OGC had jurisdiction under 215(c)(1) of the CAA to conduct this inspection.

In its informal opinion, GAO concluded that "[t]he FLETC facilities used by the USCP are under the jurisdiction of the USCP for purposes of OGC's enforcement authorities because the USCP controls the time, frequency, location, and manner of the work performed there by USCP employees. The USCP falls under the Capitol Police Board, which is an 'employing office' under the Act." Email from Jacquelyn N. Hamilton, Dep. Asst. Gen. Counsel, GAO to Carrie Apostolou, U.S. Senate Appropriations Committee, Legislative Branch Subcommittee (September 21, 2007). Accordingly, "Section 215 of the Congressional Accountability Act (2 USC 1341(c)(1)) authorizes the OGC to inspect those FLETC facilities used by the USCP in its firearms training program." *Id.*<sup>16</sup>

### **Making Safety a Priority**

During the 110<sup>th</sup> Congress, this office placed increased emphasis on education, outreach, and the provision of technical assistance to employing offices. As a consequence, legislative branch employing offices and employees increasingly turned to the OGC for assistance in addressing workplace health, safety and Americans with Disabilities Act (ADA) issues. Our efforts on this front ranged from our months-long, labor-intensive participation in ensuring that most serious hazards in the Capitol Visitor Center were fixed before it opened for occupancy, to answering inquiries from staffers about the use of space heaters. We have become an important source of technical information across the legislative branch – and beyond.

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<sup>16</sup> The USCP disputes the analysis in the GAO informal opinion. See Letter from Frederick M. Herrera to Susan M. Green, February 17, 2009 (Appendix F hereto).

### *Requests for Technical Assistance*

During the 110<sup>th</sup> Congress, the OGC fielded an increasing number of requests for technical assistance from Members of Congress, their staff, and other employing agencies. We received dozens of requests ranging from whether portable space heaters are approved for use -- some are, provided they are equipped with an automatic turnoff switch in case the heater tips over -- to a Member of the House of Representatives asking the inspection team about emergency preparedness procedures. Other agencies posed questions about fall protection requirements at loading docks; standards applicable to arc welding; electrical code requirements governing battery backup systems; and a host of other issues. Employing offices also have asked about their obligations under the Americans with Disabilities Act, including whether motorized vehicles such as Segways must be permitted in legislative branch facilities; standards governing the accessibility of communication devices for emergency use by people with disabilities; and how to ensure that signage is accessible to all members of the public in legislative branch facilities. We even received a few inquiries from private sector firms, seeking to follow up on the safety guidance “*Fast Facts*” posted on our website.

### *Government Accountability Office*

The OGC also received several requests for assistance from the Government Accountability Office involving ADA accessibility issues, fire alarm testing procedures and other concerns within GAO’s building. We worked with GAO safety officers to ensure that entrance ramps were fully compliant with applicable requirements, and that turnstiles at the building entrances would not bar entry to people with disabilities. We also accepted a request to participate in a GAO fire drill and assess its evacuation procedures. Further, we helped to evaluate the fire alarm and elevator recall systems activated during the fire drill and provided guidance on compliance.

### *Member Office Requests*

Members of Congress requested our assistance on a number of occasions during the 110<sup>th</sup> Congress. Several Senators and Representatives asked for pre-inspections to identify hazards in their offices and permit abatement before the regular biennial inspection. In one instance, a Member of the House of Representatives sought information about emergency evacuation procedures. In other instances, Members and staff asked our advice about how to abate specific hazards, and sought guidance regarding the types of office equipment permitted by applicable standards. In each of these circumstances the OGC dispatched one or more inspectors to provide the appropriate assistance.

### *Capitol Visitor Center*

The House of Representatives Subcommittee on Legislative Branch Appropriations, along with the AOC, asked the OGC to help prepare the Capitol Visitor Center (CVC) for its scheduled public opening on December 2, 2008. The CVC encompasses 580,000 square feet on three levels – all underground. It is expected to attract as many as 13,000 tourists a day and provide auxiliary space for House and Senate Committees, Congressional staff and the press, among others. The OGC was asked to provide assistance in three principal areas: fire alarm system acceptance testing; compliance with applicable safety and health standards; and adherence to ADA requirements.

First, given its size, underground location, design and scope, the CVC requires significant life safety systems, including fire safety measures. The CVC’s fire alarm system is more complex than any other system within the Capitol Complex. When acceptance testing of this system began in the fall of 2007, serious questions were raised regarding the level and scope of acceptance testing chosen by the AOC. Accordingly, the AOC asked us to review its proposed acceptance testing plans together with alternative,

less comprehensive plans advocated by outside contractors and others. After review and analysis, we concluded that the AOC Fire Marshal's plan not only was the better choice, but that deviation from this plan could result in significant, and in all likelihood, costly deficiencies within the CVC's fire alarm and security system. The AOC's plan was implemented and the OGC continued to monitor that testing throughout 2008.

With respect to safety and health and ADA issues, we were asked to conduct a comprehensive pre-inspection of the CVC during its final stages of construction to identify any OSH hazards and ADA barriers – before legislative branch employees and members of the public were granted full access to the facility. The early identification and correction of these deficiencies was necessary to assure that the CVC is a safe facility, fully accessible to visitors and staff with disabilities. Beginning in February 2008, our inspectors and attorneys devoted well in excess of 2,000 hours to the CVC pre-inspections. Working together with the AOC and other stakeholders, OGC conducted a comprehensive pre-inspection throughout the entire facility. The inspections covered such issues as electrical hazards, slip and trip hazards, radon, fire safety, hand rails, emergency action plans, wayfaring signage, emergency lighting, and fire door compliance. In addition, the CVC's multiple doors, ramps, restrooms, dining areas and other public facilities required inspection to ensure ADA compliance. We identified hundreds of safety hazards and barriers to public access and egress early enough that they could be successfully resolved permanently or through temporary interim measures prior to the official opening date of the CVC.

### *Education and Outreach*

We enhanced our outreach to Congressional stakeholders through briefings and publications, including *Fast Facts*, pamphlets and other materials describing safety and health concerns and remedies. During the 108<sup>th</sup> Congress, the OGC instituted its quarterly Legislative Branch OSH/ADA Working Group meetings with participants from safety offices and employment counsels, as well as from Member and Committee offices. These meetings provide continuing education by emphasizing issues with special relevance to the legislative branch.

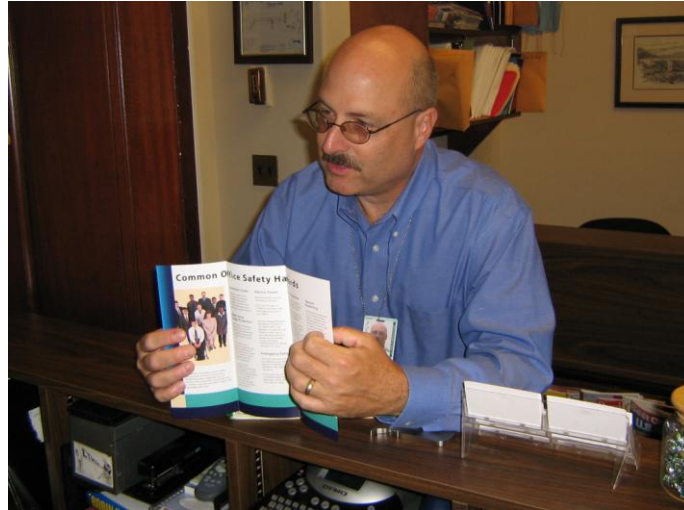
Our meetings during the 110<sup>th</sup> Congress maintained this focus. Experts from within the legislative and executive branches, as well as from private industry, presented materials on a wide array of topics. These included the Capitol Police and Library of Congress' presentations on emergency evacuation procedures for people with mobility impairments; pandemic flu preparations by government entities and for public employees, presented by experts from the Office of the Attending Physician and federal Occupational Safety and Health Administration; and guidance on compliance with OSHA standards requiring written safety procedures, offered by a consultant to our office.

### *Fast Facts*

The OGC continues to publish its monthly *Fast Facts* on the OOC website, [www.compliance.gov](http://www.compliance.gov). These short publications are designed for both a general audience and safety and health professionals; they describe common hazards and suggest practical ways to prevent or abate problems. During the 110<sup>th</sup> Congress, new *Fast Facts* were posted concerning such matters as Indoor Air Quality, Occupational Exposure to Radon, and an ADA Checklist for Office Managers, among others. We continue to hear from legislative branch stakeholders expressing their appreciation for this ongoing series. Recently, people in the private sector have begun to contact us, commending the user-friendly format and utility of the series in workplaces across the country. We are pleased at the growing success of this tool and look forward to continuing its cost-effective approach to educating employees and employers alike.

### *Employing Office Activities*

Employing offices are not only using the products that OGC generates, but are instituting their own safety enhancement efforts as well. We are very pleased to see that these offices are initiating such forward-looking measures.



**Mike Garrett (CAO) displays CAO and AOC safety pamphlet to House Member Offices**

In the House, staff from the AOC's Superintendent's Office collaborated with the CAO's Safety Officer to develop and distribute to all Members a pamphlet titled, *Working Together for a Safe Workplace*. AOC and CAO staff followed up by visiting Member and Committee offices that requested assistance to review safety requirements, including electrical issues, emergency exits, fire protection and trip hazards. In the Senate, staff from the Senate Chief Counsel for Employment (SCCE) and the Senate Sergeant at Arms visited Member offices to cement ongoing relationships with staff and establish contact with new employees to facilitate communication regarding safety and health matters. Further, the SCCE offered safety advice and training, pre-inspections of offices and coordination of abatement activities and responses to offices within the Senate.

These efforts helped to halve the number of hazards in Member and Committee offices during the 110<sup>th</sup> Congress. This, in turn, greatly increased the number of Members receiving Congressional Safe Office Awards, which the OGC presented jointly with the National Safety Council in April 2008. We recognized thirty-seven Senators and Members of the House of Representatives for maintaining hazard-free offices during the 110<sup>th</sup> Congress, (1<sup>st</sup> Session). We were especially pleased that the number of recipients increased fivefold since our first such ceremony during the 109<sup>th</sup> Congress. In addition, the Office presented two employees of the House of Representatives with our first-ever Advocate of Workplace Safety Award for their impressive efforts to advance workplace safety and health in the legislative branch. Representative Debbie Wasserman Schultz, Chair of the House Appropriations Subcommittee on the Legislative Branch, conferred the awards on the two outstanding Advocates and served as keynote speaker at the ceremony.





**Rep. Debbie Wasserman Schultz (D-FL), Tim Blodgett (CAO), Mike Garrott (CAO), Stephen Ayers (AOC), and Michele Caras (AOC) at the Safe Office Awards Ceremony**

The recipients of the awards were:

Senators:

Jeff Bingaman	Barbara Boxer	Sherrod Brown	Thomas Carper
Robert P. Casey	Tom Harkin	Tim Johnson	Amy Klobuchar
Blanche Lincoln	Claire McCaskill	Jon Tester	John Thune

Representatives:

Norman Dicks	Chaka Fattah	Vito Fossella	Elton Gallegly
Wayne Gilchrest	William Jefferson	Peter King	Ron Klein
Michael T. McCaul	Jim McCrery	James P. McGovern	Cathy McMorris-Rodgers
Jerry McNerney	Gary G. Miller	Christopher Murphy	Bill Pascrell, Jr.
John E. Peterson	Nick J. Rahall, II	Lucille Roybal-Allard	John T. Salazar
Ellen Tauscher	Bennie Thompson	Mac Thornberry	Niki Tsongas
Peter Welch			

Advocate of Workplace Safety Award Recipients:

Michelle Caras, AOC House Superintendent's Office	Mike Garrett, CAO Safety Office
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## Work to be Done

### *Deferred Maintenance Programs*

As the Acting Architect of the Capitol has stated, the AOC has a backlog of more than \$600 million in deferred maintenance, as well as \$800 million in Capital Renewal projects. The AOC is developing a comprehensive Capitol Complex Master Plan to help set maintenance and renewal priorities while simultaneously planning for major renewal projects. The OGC agrees that ongoing facility



maintenance is critical, both from a budgetary standpoint (as the Acting Architect acknowledged, “it is fiscally responsible to request the funding needed now instead of waiting until facilities are in crisis and beyond repair, thereby costing millions more to restore, renovate, and renew.”) and from a safety and health perspective. In fact, our Office has seen an increasing number of inspection requests that arise principally out of deferred maintenance issues.

During the 110<sup>th</sup> Congress, the OGC received five requests for inspection involving poor air quality. Our investigations revealed that inadequate preventive maintenance was the principal cause of all five incidents. These cases demonstrate that facility and equipment maintenance is critical, not only to their effective operation, but also to preserving workplace safety and health. Though these investigations presented fewer serious problems than those that prompted OGC’s utility tunnels complaint and, in certain instances, matters that caused discomfort to employees but did not violate OSHA standards --, these cases underscore the necessity of funding ongoing maintenance programs in the legislative branch.

These cases ranged from complaints about exposure to fumes from a diesel generator (resolved by substituting live power for the generator); inadequate ventilation in a Senate office building (we suggested prompt implementation of an existing preventive maintenance program); lead dust in workspaces apparently emanating from leaks through old walls and windows causing paint to blister on the floor above (OGC recommended routine maintenance of all walls in the building to ensure no buildup of lead dust or particles); and the accumulation of black particles near ventilation diffusers (we suggested a thorough analysis of the air quality, with special emphasis on the low level of outside air supplied to the workplace). In all cases, preventive maintenance would have mitigated or eliminated the problems.

### *Safety and Health Program Development*

Another preventive measure for employing offices consists of written safety and health programs. A number of OSHA standards expressly require an employer to develop and implement a written program detailing its plans to meet the requirements of the standard. These hazard-specific standards apply to workplaces containing asbestos, those presenting electrical, chemical or other specified hazards, and several others. To cite just one example, the asbestos standard requires an employer to establish and implement a written program to reduce employee exposure below permissible levels, and to maintain records of employee exposure, medical surveillance and training, among other requirements. 29 C.F.R. §1910.1001(f)(2) & (m).

In most instances, the written program requires the employer to assess the risk of the specified hazard and develop engineering, administrative or personal protective equipment controls for each. The program also details the training that employees must receive to enable them to recognize the associated hazards and how to implement the controls that the employer has devised for this purpose. Further, the program requires record-keeping regarding employer compliance and sets forth a method of amending the program to account for changes in conditions.

The AOC has developed and distributed a number of model programs that individual shops and offices must tailor to fit their particular circumstances. All legislative branch workplaces must implement a written Emergency Action Plan; see 29 C.F.R.1910.38. Most other safety program requirements apply only in shops and work areas that, for example, use high voltage electrical devices, hazardous chemicals, or the like. Because safety programs can help prevent occupational injuries and illnesses, during the 111<sup>th</sup> Congress the OGC plans to offer employing offices technical assistance in establishing, implementing and improving such programs. During the 112<sup>th</sup> Congress, the OGC will routinely inspect safety programs as part of its biennial inspections. As discussed below, agencies can reduce considerably the incidence and severity of on-the-job injuries by implementing effective safety programs. Because safety programs save money as well as workers, the OGC intends to place major emphasis on their use in coming years.

### *Worker Injury Reduction and Cost Avoidance*

Both Congress and the President have recognized the importance of reducing the occupational illness and injury rate in the federal government, as well as costs attendant thereto. In 2004, the President established the Safety and Health and Return to Employment (SHARE) Initiative, which was designed to reduce federal agency workers' compensation rates and costs. OSHA and the Office of Worker Compensation programs are responsible for implementing this initiative although its impact to date is uncertain. See *Workplace Safety and Health, OSHA Could Improve Federal Agencies' Safety Programs with a More Strategic Approach to Its Oversight*, Report to the Subcommittee on Labor, Health and Human Services, Education and Related Agencies, Committee on Appropriations, U.S. Senate, GAO-06-379, April 2006. Significant reductions have been achieved in the legislative branch. The AOC, which once had one of the highest accident rates in the government, reported that its rate had decreased for the eighth year in a row, from 17.9 cases per hundred employees in FY 2000 to 4.41 in FY 2007.<sup>17</sup>

The OGC is especially interested in pinpointing worksites with high numbers of injuries and illnesses, identifying and analyzing their causes, and examining the effects of targeted safety programs. During the 110<sup>th</sup> Congress, the OGC began to explore these questions. We examined injury rates and associated costs in the legislative branch by evaluating data from the Labor Department's Office of Workers Compensation (OWCP). In one noteworthy instance, we looked at the Library of Congress' systematic implementation of safety programs between 2000 and 2007. On-the-job injuries declined by almost 75% during those seven years. While further study is required, it appears that the Library's safety program interventions were a significant contributing factor. In addition, OWCP reported that the LOC's Lost Production Days<sup>18</sup> dropped almost 90%, from a high of 2,000 days per year to roughly 200. Among the entities that helped the Library to achieve these results was the labor-management joint occupational safety and health (JOSH) committee. The JOSH committee makes inspections and documents safety and health problems.<sup>19</sup> The LOC's Office of Safety Services inputs this information into a hazard data base and tracks all findings until the identified hazards are corrected. The staff of Safety Services also makes periodic inspections in areas it considers to be high hazard, such as at the main loading dock and in chemical laboratories and kitchens. Further, Safety Services devotes significant time to reviewing and approving renovations and new construction plans prior to the commencement of work.

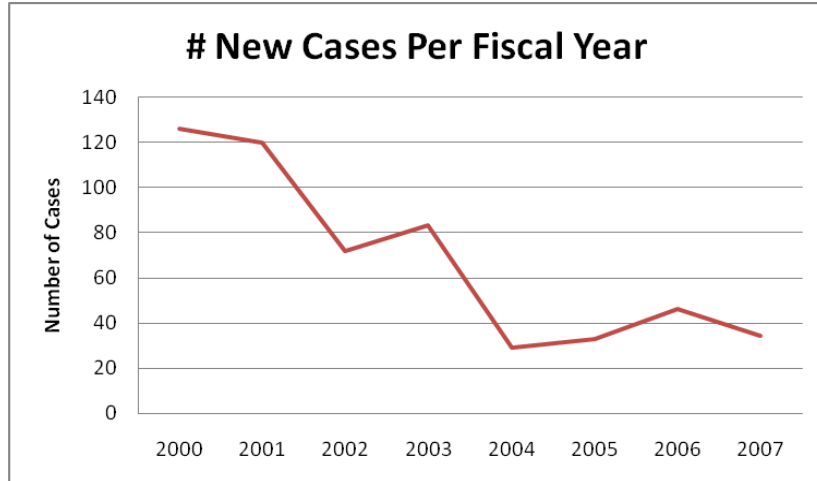
The Library's ongoing attention to safety matters has paid substantial dividends. Reducing new injuries causes expenses to drop. Both direct costs – the cost of treatment and salary payments to the worker during recovery – and indirect costs – money to train and pay a substitute during the injured worker's recovery – were avoided, saving money for the Library.

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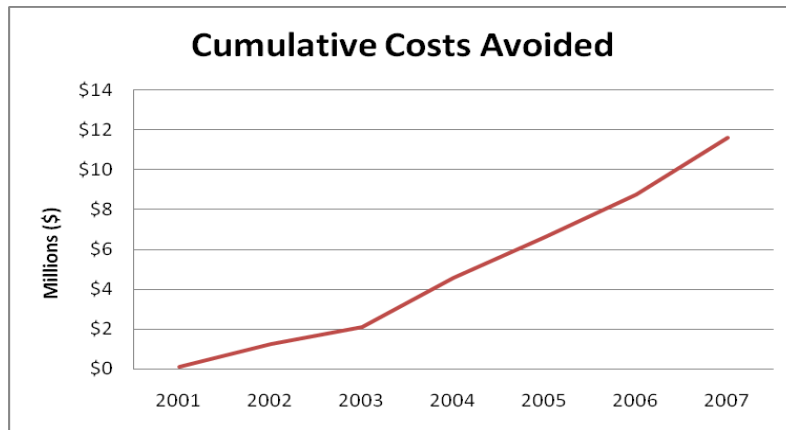
<sup>17</sup> Hearings before the Committee on Appropriations, House of Representatives, Subcommittee on Legislative Branch, Fiscal Year 2009 Legislative Branch Appropriations Requests, Part 2, p. 81, February 7, 2008.

<sup>18</sup> Lost Production Days are the days following an accident when the injured worker cannot return to normal duty.

<sup>19</sup> Members of the JOSH committee are trained in occupational safety and health, and take an OSHA course especially designed for employees performing such "collateral duties."



**Number of Workers Compensation Cases per Fiscal Year**



**Estimated Costs Avoided by Injury Prevention Program**

We calculated the savings by using injury cost information from the National Safety Council (NSC). The NSC distinguishes lost time injuries from those that do not require time away from the job and estimates average direct and indirect costs for both categories. We used 2001 as a baseline for injuries in the Library. Extrapolating from these figures for the years after the Library implemented its safety programs; we estimated the number and type of injuries that were prevented. Then we multiplied each avoided injury by the estimated average costs of that type of injury. We concluded that the LOC may have achieved injury cost avoidance in excess of \$11 million during this period. The preliminary results of this study were presented by our office at the quarterly meeting of the Legislative Branch OSH/ADA Working Group in September 2008.

Based on this limited study of the LOC experience, the OGC believes that employing office investments in injury prevention programs can result in substantial cost avoidance throughout the legislative branch. Unfortunately, some employing offices are not seeing a similar rate of injury reductions; indeed, one office reported a significant rise in injuries and in Lost Production Days due to these injuries.

We hope to expand our study and publish additional information on accident prevention programs and injury reduction data, together with estimated cost avoidance figures. We also plan to work closely with the employing offices to address operations within their organizations that have a high incidence of injuries, identifying contributing causes and steps that can be taken to reduce worker accidents. Depending

upon the availability of resources, we intend to make available technical assistance in creating effective injury reduction programs, and to advise Congress regarding the efficacy of such programs.

### **Challenges for the Future**

Like other legislative branch agencies, the Office of Compliance faces significant challenges in the years ahead. We are charged by Congress with advancing safe and healthful working conditions for over 30,000 employees in the legislative branch, as well as guaranteeing access to facilities and programs for the 1.3 million annual visitors to the Capitol complex. We must inspect a growing number of legislative branch facilities while also monitoring the abatement of previously identified hazards, conducting requestor-initiated inspections, and providing technical assistance to employing offices. We must meet these challenges despite limited resources. As described below, we are focused on accomplishing this task.

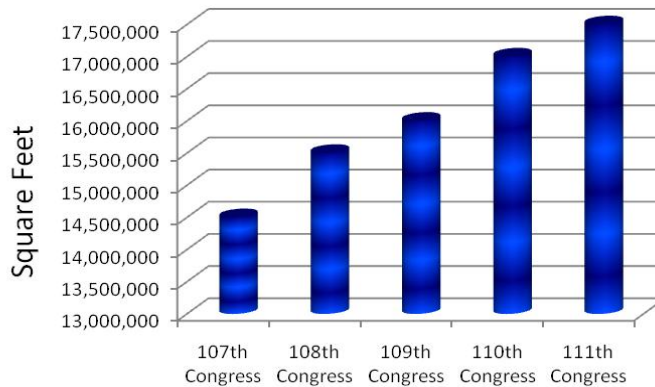
#### *Limited Resources and Increasing Workload*

From its inception, the OGC health and safety program -- including biennial and requestor-initiated inspections and technical assistance and outreach -- has been conducted with limited resources. During the 110<sup>th</sup> Congress, the inspection staff consisted of professional safety and health specialists - one FTE, one detailee from the Department of Labor, and three part-time and two full time inspection contractors, one of whom is responsible for monitoring hazard abatement under the utility tunnel Settlement Agreement, and a part-time student intern from the University of Maryland. The inspection team was augmented by a program management analyst/inspection scheduler, clerical staff, and attorneys. During this Congress, the inspection team inspected legislative branch facilities encompassing some 17 million square feet in the Washington, D.C. area alone. We are proud of what we have accomplished with these limited resources, but continue to recognize the difficulties of achieving our mission under such circumstances.

OGC's workload continues to grow, due to a substantial increase in facilities that we are required to inspect every Congress, as well as a rise in the number and complexity of requests for our technical assistance. During the 110<sup>th</sup> Congress, approximately one million square feet were added to the OGC's inspection responsibility. This included the Capitol Visitor Center<sup>20</sup> at which the OGC conducted a pre-inspection, and the Library of Congress' Packard Campus in Culpeper, VA, which was not yet ready to be inspected. Both facilities as well as new book modules for the Library of Congress at Fort Meade, MD, will be included in the 111<sup>th</sup> Congress biennial inspection.

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<sup>20</sup> An additional \$35,000 was appropriated in the FY 2008 budget to cover the OGC's pre-inspection of the CVC; unfortunately, we greatly underestimated the amount necessary to conduct this inspection, which consumed more than 2,000 staff hours to complete because of the numerous safety and ADA building deficiencies identified and the time needed to verify their correction.



**Increased Spaces to be Inspected by OOC**

The CVC and Congressional expansion space cover more than 580,000 square feet, all of which will require a full inspection. As discussed earlier in this report, the size, scope, nature and location of this facility render it uniquely challenging to review for safety and health compliance. The LOC's Packard Campus also creates new challenges. In a portion of this site, composed of an additional 415,000 square feet to be inspected, the Library stores cellulose nitrate film in vaults. Cellulose nitrate film is extremely flammable and requires highly sophisticated storage and handling systems. During the 110<sup>th</sup> Congress, OGC met with safety experts at the Packard Campus to review applicable OSHA standards and provide technical assistance to Library staff in complying with those requirements. The LOC has since developed a Hazard Communication Program and is training its employees on the procedures to follow when handling these very dangerous materials. We anticipate visiting the Packard Campus in 2010 during the 111<sup>th</sup> Congress to begin our initial inspection and review the campus' hazard communication program.

Several other projects are slated to come on line in future Congresses. With the AOC's projected "top to bottom" renovation of the Cannon House Office Building, potentially another 250,000 square feet of swing space in the former FDA Building may be subject to OSH and ADA inspection. Further, the Army Corps of Engineers is constructing the next two Book Storage Modules at Fort Meade, MD, which will further increase the amount of space under the OGC's jurisdiction. This increasing workload will create a further challenge to our safety team resources.

Given the large number of hazards identified during the 110<sup>th</sup> Congress biennial inspections, as well as unabated hazards from prior inspections and open citations, additional personnel is required in order to verify and track the abatement and provide technical assistance to employing offices. In its FY 2009 budget request, the OOC again sought funding for a Compliance Officer position. While authority to hire an FTE was granted in FY 2008, the position was not funded. Funding this position should enhance the quality of inspections and our ability to monitor, accelerate, and enhance the abatement process. The Office also is seeking funding for a fire safety contractor to oversee the ongoing abatement of all outstanding fire safety citations and fire safety-related hazards identified during inspections.

### *Safety and Health Program Development*

As discussed above, reducing occupational injuries through effective health and safety programs can help lower agency costs. Heretofore, the OGC has not conducted systematic inspections of such programs. However, while conducting requestor-initiated inspections, we have frequently discovered the absence of OSHA-required programs designed to prevent precisely the hazards that prompted the inspection request. Safety and health program requirements vary among employing offices depending on the nature of their operations, and may encompass such matters as emergency action plans, hazard

communication programs, and personal protective equipment programs; other critical programs address issues including Fall Protection, Permit-Required Confined Spaces and Control of Hazardous and/or Electrical Energy (Logout/Tagout).

In order to protect employees working in highly hazardous situations as well as reduce costs to the employing offices, the OGC believes that developing and implementing such programs should be a high priority for the employing offices during the coming Congress. Accordingly, the OGC is committed to working with employing offices, particularly shops and other high risk areas, to address safety and health program issues.

Initially, we advised employing offices that we intended to conduct inspections of certain OSHA-required health and safety programs during the 111<sup>th</sup> Congress – Emergency Action Plans, Hazard Communication, and Personal Protective Equipment, and targeted inspections of other programs based on the possible risk to employees. We offered to meet individually with each employing office, and held briefings to explain how the Office intended to structure the inspection process. At these meetings, employing offices raised several concerns, including the time required and their lack of readiness for such inspections, as well as legal issues regarding employing offices' obligations to maintain, and OGC's authority to inspect, safety and health procedures and programs. As a consequence, we decided to modify our approach.

We invited offices to participate in our technical assistance program, to help them develop safety programs during the 111<sup>th</sup> Congress and prepare for program inspections during the 112<sup>th</sup> Congress. In turn, we would expect that employing offices to advise us of the current status of their safety and health program procedures and identify and prioritize those programs where assistance is most needed. This will help us understand what progress has been made in the legislative branch respecting these programs, what work remains to be done in their development and implementation, and specific needs for technical resources. In this way, once we begin our standard biennial inspection of safety and health procedures during the 112<sup>th</sup> Congress, the employing offices will be better prepared for the inspections, and we can proceed with them more efficiently and productively.

Our goal is to provide practical assistance to agencies in implementing these effective preventive measures and to see that applicable OSHA procedures are fully implemented and ready for inspection during the 112<sup>th</sup> Congress biennial inspection. Given current inspector time and resource constraints, we do not expect that we can provide individualized technical assistance regarding all safety programs to all offices; instead, we will focus on programs that employing offices identify as high priority. Model programs developed in one shop can be shared with other shops in the same employing office and with other agencies, as appropriate. In the interim, the OGC will defer the formal inspection of, and withhold the issuance of citations respecting, safety programs of those offices that agree to participate in this technical assistance program. The only exception would involve high risk hazards caused by inadequate or nonexistent safety procedures coupled with inadequate abatement efforts.

### *FMA Database*

In order effectively to track information generated by our expanding responsibilities, we are continuing to work with employing offices to improve efficiencies in our data sharing operations. For example, we have been consulting with the AOC to enhance our system for recording and tracking hazards, known as Facility Management Assistant (FMA), a system similar to that used by the AOC. The system enhancement will allow inspectors while on-site during an inspection to enter data directly into a secure database. Employing offices, in turn, would gain immediate, secure access to data relating to their workplaces, and could enter abatement information directly into the system. This would eliminate the need for much time and labor in exchanging necessary hazard findings and abatement progress. We have

recently contracted with the FMA vendor to host a secure website that will accomplish these objectives. We are working to ensure that all security concerns are met, and hope that the upgraded system will be available during the 111<sup>th</sup> Congress biennial inspections.<sup>21</sup>

### **Acknowledgments**



**OGC Inspection Team (partial)**

The 110<sup>th</sup> Congress Biennial Inspection was led by Stephen Mallinger, C.I.H., who has served since 1997 as Special Assistant to the General Counsel, on a long-term detail from the Occupational Safety and Health Administration. His dedication to advancing safety and health in the legislative branch is unparalleled in our experience. He ably supervised the inspection team, which consisted of Luis Guzman, our office’s first-ever safety and health professional employee; Mark McGowan, C.I.H., a consultant to the Office with over 30 years’ experience; Thomas H. Seymour, a part-time consultant to the General Counsel since 1999 and a registered Professional Safety and Fire Protection Engineer; Terry Wigfall, A.S.P., a safety professional with over 21 years’ experience in the field; and David K. Young, Management/Program Analyst. David Young also scheduled inspections and prepared reports of hazard findings and abatement information for distribution to the employing offices. Requester-initiated inspections were conducted principally by Steve Mallinger, Tom Seymour and Henry C. Woodcock, C.I.H., a consultant to the Office since 1999.

Susan Green, Deputy General Counsel, was the primary author of this Report, with substantial production assistance from David Young. The entire inspection team participated in drafting the Report. Kathy Schluter, Administrative Assistant, and Joseph Loomis, a case officer, helped produce and distribute the Report.

June 2009

Peter Ames Eveleth  
General Counsel

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<sup>21</sup> As the GAO reported in its *Briefing for Congressional Staff, AOC’s Process for Prioritizing Capital Projects*” (GAO engagement 545076, p. 4, August 2008), the efficiency and accuracy of the FMA OSH findings reports should be substantially enhanced, and cost savings realized, if the OGC and other employing offices acquire “a single integrated tracking system for sharing and reporting on the status of abatement actions taken.” We are working closely with the AOC and our database contractor to create such a system, and are hopeful that we can bring it online in FY 2009.