THE JUDICIARY'S ABILITY TO PAY FOR CURRENT AND FUTURE SPACE NEEDS

(109–25)

HEARING

BEFORE THE

SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND
EMERGENCY MANAGEMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

JUNE 21, 2005

Printed for the use of the
Committee on Transportation and Infrastructure

U.S. GOVERNMENT PRINTING OFFICE

22–504 PDF WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
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CONTENTS

TESTIMONY

	Page
Goldstein, Mark L., Director of Physical Infrastructure Issues, U.S. Government Accontability Office	9
Mecham, Leonidas Ralph, Director, Administrative Office of the U.S. Courts and Secretary to the Judicial Conference of the United States	9
Moravec, F. Joseph, Commissioner, Public Building Services, U.S. General Services Administration	9
Roth, Hon. Jane R., Judge, U.S. Court of Appeals for the Third Circuit, and Chair, Judicial Conference Committee on Security and Facilities	9

PREPARED STATEMENT SUBMITTED BY A MEMBER OF CONGRESS

Oberstar, Hon. James L., of Minnesota	89

PREPARED STATEMENTS SUBMITTED BY WITNESSES

Goldstein, Mark	39
Mecham, Leonidas Ralph	56
Moravec, F. Joseph	79
Roth, Hon. Jane	92

SUBMISSIONS FOR THE RECORD

Mecham, Leonidas Ralph, Director, Administrative Office of the U.S. Courts and Secretary to the Judicial Conference of the United States:	
How the Judiciary Budgets for its Needs, report	67
GSA Rent as a Percentage of the FY 2004 Budget, chart	69
FY 2004 Rent Cost Comparison (in millions), chart	70
Owned and Leased Office Area by Agency Within the United States, September 2003, chart	71
Response to a question from Rep. Shuster	72
Clerks' Offices Reporting a Schedule of Reduced Hours in Effect, chart	75
Unscheduled Temporary Office Closings and Other Reduced Hours Reported by Clerks, chart	77
Roth, Hon. Jane R., Judge, U.S. Court of Appeals for the Third Circuit, and Chair, Judicial Conference Committee on Security and Facilities, response to a question from Rep. Norton concerning the Design Guide	33

ADDITIONS TO THE RECORD

Letters	99
Present Value Analysis of West Palm Beach/Ft. Lauderdale Combined Courthouse, chart	105

THE JUDICIARY'S ABILITY TO PAY FOR CURRENT AND FUTURE SPACE NEEDS

Tuesday, June 21, 2005

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, WASHINGTON, D.C.

The subcommittee met, pursuant to call, at 1:00 p.m., in Room 2167, Rayburn House Office Building, Hon. Bill Shuster [chairman of the subcommittee] presiding.

Mr. SHUSTER. The Subcommittee will come to order.

I would like to welcome you all here today. Before we begin today's topic, I want to express concerns that I have with the events of last week. Our hearing and markup was canceled for one significant reason, and that is the apparent inability of GSA to deliver the capital investment and leasing program in a timely and accurate fashion. This includes the late delivery of the capital program itself, answers to written questions, and the agency's testimony.

About half of the program was officially submitted to the Committee on May 13, 2005. According to GSA's own records, this is the second latest submission in the last ten years. This is unacceptable, especially when you consider that those projects were identified in the President's budget submission in February. We only just received the leasing portion of the capital program last week and there are still going to be more lease prospectuses sent up later this summer.

On May 26, members of our staff met with GSA to review the capital program. And following this meeting, a number of questions were submitted to the agency to clarify the scope, cost, and need for several projects, as well as to clarify some apparent errors and omissions. The answers to these questions were slow in coming, were in some instances incomplete or themselves inaccurate, and in one instance an answer was not received until just yesterday morning, nearly three and a half weeks after the initial request was made.

Finally, the testimony we were supposed to receive for last week's hearing was not submitted until the day before the Subcommittee was to meet. This, despite the fact that GSA was notified of the hearing informally more than three weeks before the hearing and formally over a week before the hearing.

We do not take our role in this process lightly. It is very important that we have sufficient time to review information submitted to the Committee before we act, and before we ask others to act.

The system of checks and balances begins to break down when this Committee is not afforded full opportunity to conduct oversight and become fully acquainted with the business before it.

I am very concerned over what is happening at the GSA that would allow such a late submission of basic information. We should not have to hound the agency for answers to very simple questions, like how much space is in a proposed building project, or how much is the project going to cost. While I am aware that there is a bureaucratic process that must be followed for information to be submitted formally, it seems that when the issue is one that is important to the GSA you can turn it around very quickly.

I am going to work with Ms. Norton, whom I know is just as upset about this as I am, to see if we cannot figure out a solution that will ensure that we receive this important information much earlier in the year which will give us ample time to review proposed projects, ask questions, and have our questions answered in time to act on them.

I would now like to turn to the topic of today's hearing, which is the ability of the judiciary to pay for its current and future space needs.

Historically, this Committee has been very accommodating to the judiciary. It has been, and continues to be, a priority for this Subcommittee to build and maintain courthouses to ensure that the judiciary has the space it needs to fulfill its mission. We have worked with the judiciary and the GSA to bring 46 new courthouses and annexes on line in the last 10 years, at a cost of $3.4 billion. We also have 14 projects funded or in progress, at an additional cost of nearly $2 billion. We have done so with the firm expectation that the judiciary, like every other Federal tenant, will continue to pay for the space that they occupy so that we may meet the space needs of every participant in the Federal Buildings Fund.

The Federal Buildings Fund was created not only to maximize efficiencies in construction and maintenance of buildings, but also to ensure that the occupants acquired new space in a responsible manner. By requiring tenant agencies to pay for the space that they occupy, we encourage the kinds of hard choices that the judiciary and the Committee are discussing today. In this fashion, the Federal Buildings Fund is designed to balance the desire for more and nicer space with the financial interests of the taxpayer.

We are here today to discuss the judiciary's request to GSA for a waiver of nearly $500 million in annual rental payments. The judiciary is making this request based on the argument that it is facing a financial crisis. However, unlike many other Federal agencies that have had to endure actual cuts over the last several years, the judiciary has continued to receive annual increases in its budget. According to its own testimony, the judiciary received a 4.7 percent increase for fiscal year 2005, including specific money to ensure that the judiciary could meet its obligations to GSA.

To me, a fiscal crisis is a situation where you cannot pay your bills. That does not seem to be the case here. Over each of the last four fiscal years, the judiciary has continued to receive budgetary increases. While I am aware that you have been forced to let some staff go, I am also aware that you indicate in your testimony that you have brought back a significant number of those employees.

The relevant appropriations subcommittee marked up your budget last week and it appears that you have received a 5.4 percent increase over your fiscal year 2005 levels. Additionally, this mark also included a specific increase in money to meet your obligations to GSA, reflecting a conscious decision by the appropriators to ensure that you can meet these obligations.

Over the last 30 years, the judiciary's rentable square footage, that is the space that it is actually charged rent for, has grown from 9.7 million square feet in 1976 to the current level of 39.5 million square feet, an increase of almost 400 percent. At the same time the amount of space occupied by you is increasing, the space of other agencies, while also increasing, has increased at a significantly lower rate.

Over the past five fiscal years, while the judiciary's space has increased over 17 percent, the seven other largest GSA tenants have seen a net increase of only 8.9 percent, and that includes Homeland Security which is just being stood up as an agency with large, new space needs. Without Homeland Security, the six other largest tenants have seen a net decrease of 6.9 percent.

Currently, the judiciary pays about $940 million for the space it occupies. While the judiciary is the second largest GSA tenant and pays the second highest amount in rent in absolute numbers, its average cost per rentable square foot is relatively low, only about $23.60, placing it 34th out of the 58 GSA tenant entities.

Without question, the continued construction of newer and larger courthouses has contributed significantly to the judiciary's escalating rental cost. I read with great interest Mr. Mecham's testimony where he mentioned that the judiciary's unusable space has increased by 250 percent over the last 20 years. Unfortunately, over the same time period the rentable space has increased by 280 percent.

I look forward to your testimony where, hopefully, you can provide more information on this. As I said before, it is not clear to me that this is an urgent crisis that requires us to take drastic action that endangers the health of the Federal Buildings Fund. Despite the written testimony and other information provided by you, the current budget situation is still not that clear. While the judiciary is facing some relatively lean times, it seems to be faring relatively well by continuing to receive annual increases in its appropriations.

I do believe that we must take our time and carefully examine what options are available to reduce the cost of space. While I applaud the initial efforts you have made, I believe that further changes may be necessary. I understand that GSA has offered a number of proposals, and while they do not solve the long term problem, they do provide some measure of temporary relief.

This cost-cutting review must occur with all the parties involved—the judiciary, the GSA, and Congress. Ultimately, the true drivers of Government's space costs for the judiciary are the amount and quality of space it occupies. I am concerned that the judiciary's rent waiver request does not address either of these root causes of its rent increases, but instead transfers the cost to other Federal entities.

In doing our part, we are holding this hearing, we have requested a GAO audit, and we will again examine measures that have previously been put on the table, including redesigning current projects, courtroom sharing, reforming the Design Guide, and closing additional under-utilized space. I do not put all the responsibility on the judiciary, however. I am also interested to hear from the GSA regarding what they can do to control the growth in rent costs which have increased dramatically during this most recent property market expansion. I support the notion of commercially equivalent rent, but it may still be appropriate to review the current rent pricing policy to determine if this is the most efficient way of achieving that goal.

This is a very important issue, and I look forward to hearing from our witnesses today.

And with that, I would like to recognize our Ranking Member, Ms. Norton from the District of Columbia, for any opening statement she might have.

Ms. NORTON. Thank you, Mr. Chairman. And I begin by associating myself entirely with your opening remarks. I would like to lay out my concerns as a member of this Committee, however, for 15 years.

I appreciate that you have been able finally to schedule this hearing because this topic is of concern to all Members of Congress, not simply to this Subcommittee, because it concerns the cost of running Government. At a time when the Administration and the Congress have put themselves under a very strict discipline that in fact is eliminating costs and cutting programs, about the last thing we would want to do, of course, is to do anything that would increase the deficit or bankrupt the Fund. It is difficult to imagine that the Fund itself would be viable if this huge amount of money were somehow exempted, this huge cost or amount was taken out of the Fund.

As members of this Committee, we authorize appropriations for the GSA for a variety of real estate transactions, including building operations, repairs, alterations, construction of public buildings, and leasing of projects to house the Federal workforce. The complaints are endless from Federal agencies about how backlogged the Federal Government is in dealing with precisely these concerns for Federal workers, 200,000 of them in my District, but spread throughout the United States of America. These expenditures created Federal obligations of almost $7.8 billion in fiscal year 2006.

To help fund these real estate expenditures, in 1975 Congress passed the Public Buildings Act Amendments of 1972 that created and established the Federal Buildings Fund. The Fund is the critical intergovernmental revolving fund that finances the cost of acquiring and managing Federal Government real estate and real property activities for those properties under the custody and control of the GSA.

The Fund receives its revenue from rental charges assessed to Federal Government occupants for space they occupy in public buildings. By law, the Administrator of GSA sets the rates to approximate commercial rates for comparable office space. It is a tremendous hardship on many Federal agencies but it applies across

the board. Tenants pay a user charge which reflects the value of the space.

While this approach may seem prudent and businesslike to us now, in 1975 it was considered revolutionary for the Government to adopt a way to pay for its space in a businesslike fashion that took into account the needs and the rising costs. By having each agency budget and pay for its own space, the Public Works and Transportation Committee brought to the House floor a bill that would establish more stringent controls over space usage. Thus, the Fund replaced direct appropriations.

Imagine, if you are paying for space out of your budget, then, of course, like paying for space in your home, you have an incentive to do what is necessary to conserve the space for the least cost; for example, sharing space. That is why families have two kids in one bedroom when they would really like to have every child with her own bedroom. Although a series of caps imposed both by Congress and various Administrations over the past 30 years have cost the Fund approximately $4 billion in loss of revenue, and thus impeded the Fund's ability to be as robust as envisioned by Congress when it passed the Act, in fact, the Fund has performed well and as intended under the circumstances.

To operate the Fund, GSA has established a system to appraise comparable properties, estimate rent, bill agencies, collect the rent, resolve rent problems, process the bills, and deposit revenues. The agency also established in its pricing policy for Government-owned space a rent guarantee. Further, GSA advises its tenants a full two years in advance of the agency's expected rent charges.

Mr. Chairman, I present this information in the context of today's hearing in which the Subcommittee will hear why the Administrative Office of the United States Courts has petitioned GSA to waive $483 million in real estate charges incurred by the courts. On December 3, 2004, Mr. Mecham and Judges Roth and King sent a letter to Administrator Perry requesting that the Administrator use his authority "to exempt the Judicial Branch from all rental payments except for those required to operate and maintain Federal Government buildings and related costs, to defray the cost of tenant improvements in buildings 25 years or older, and to defray any required lease payments for court facilities."

Since the December request, it is my understanding that both GSA and OMB has rejected the request for a waiver. Thus, it would be necessary, if the Committee were to act in favor of a waiver, for us to overcome extraordinary circumstances and continue a harmful precedent, which, according to GAO, is one of the primary reasons why the Federal Buildings Fund cannot meet its construction obligation requests for Federal buildings now.

The courts are concerned that their rent bill is excessive and growing. And since their salaries and expenses come out of the same account, employees are being laid off. Mr. Chairman, from 1983 until 2005 the court's rent bill has escalated from approximately $108.5 million to $938.5 million, and their space has increased over the same period from approximately 10.8 million square feet to 39.9 million square feet in 2005.

By way of comparison, if the Legislative Branch had increased its space as much, we would have about a dozen new Rayburn Build-

ings, including parking. The GSA will present information to justify why the agency has not granted the request and will discuss their suggestions for long term and short term solutions, and we welcome their testimony on these subjects.

The Committee did not hear or know about this extraordinary request until early January 2005. Chairman Shuster, I would like to point out that one of the inequities mentioned by the courts in their testimony in support of their request is that Congress does not pay rent to GSA. This is astonishing to me. As an eight term member of this Subcommittee and participate literally in dozens of AOC budget hearings, that the AOC does not know that the Public Buildings Act applies only to activities in the public buildings a defined by the Act under the custody and control of the General Services Administration.

Additionally, any member who leases space from GSA in Federal buildings in his or her district certainly knows that Members of Congress definitely do pay into the Fund. I pay into the Fund every year. We do not get a free ride, nor do we petition for exemptions.

Another notion introduced by the courts is the idea that somehow the rent payments are mortgage payments and at the end of a specified time the courts will "own the buildings." Nothing could be further from the intentions of the 1972 Act. Congress clearly intended for real property activities to be funded from a revolving fund, not funds appropriated to each agency. That is what we reformed from.

In fact, Congress intended that real property be owned and operated in the name of the Federal Government alone, not individual agencies. Moving away from individual ownership to a more general ownership was intended to create economies of scale and better management.

Mr. Chairman, as you are aware, in March 2005, you and I and Chairman Young and Ranking Member Oberstar wrote to GSA urging them not to grant any such waiver. Further, on April 4, 2005, we wrote to the General Accounting Office and requested that they conduct a review to determine how the AOUSC plans and accounts for rent, the reasons for the rent increase, including how GSA calculates rent, and the impact a permanent rent exemption would have on the Federal Buildings Fund. Committee staff has met with GAO and they are proceeding with the assignment.

Mr. Chairman, as I previously mentioned, I have served on this Subcommittee since being elected to Congress in 1990, I came in 1991. Prior to my congressional service, I served as chair of the United States Equal Employment Opportunity Commission. One of the first things I learned was not to budget by caseload. And one of the first things we got when I came to the Agency that was drowning in backlog was a one-time increase to deal with that backlog and with the institution of efficiencies.

I promised not to ask for another increase during my entire time in the Agency, and did not do so, because we then proceeded to wipe away the notion that increase in caseload produces the need for increase in space, which of course would be a never ending expense to the Federal Government and just the wrong way to force efficiencies on agencies and on branches of Government. With a growing population, expanding definition of Federal crimes, and

limited resources, the courts must quickly learn that there need to be other ways to be inventive and efficient.

Since coming to this Committee I have seen first-hand how involved the Committee has been with court issues. During the early 1990s the Committee was instrumental in forcing the AOC to change the statistical model it used to calculate its space requirements. The Committee supported and applauded GSA's effort when the agency set up an office devoted specifically to courts management. During the latter part of the Clinton Administration, when the courts received no Administration funding requests, we worked closely with the appropriators to maintain a modest level of funding to keep projects moving in the pipeline.

Over the last decade, we have tried mightily to correct and control spending on court projects. Gone are the projects that built private kitchens for judges, excessive chamber space and lavish interior finishes, and infamous private boat docks. However, this recent request for such a considerable rent waiver raises again significant policy issues of how much space GSA is building for the courts, how often courtrooms are in actual use, what the caseload justification is to acquire new space, how electronic filings and other technology have impacted on space requests, and how much space has been saved due to sharing of courtrooms.

This request raises again legitimate issues regarding checks and balances in processing requests for court construction. How often does the Administrative Office deny a request for deviation from the Design Guide to provide additional ceremonial courtrooms? Who views or reviews the Design Guide for reasonableness regarding space and interior finishes? Is there a series of checks and balances that can assure the taxpayers' money is well spent? And if I may say to the GSA, the GSA has a long history of giving special treatment to the courts and allowing the courts to essentially run itself. I wonder how much of this is due to the way GSA has handled, and perhaps continues to handle, the courts.

The courts are a separate branch of Government. My background is as a constitutional lawyer and as a law professor at Georgetown University Law Center who is fully tenured. I have very great appreciation for the separation of powers. I submit that the separation of powers has nothing to do with the rental of space. It has to do with policy matters and constitutional matters committed to courts in cases and case law, not on rent.

For example, Mr. Chairman, I regret to say, we have seen very little, if any, savings due to sharing. Because even after 15 years of bipartisan Committee support for this common-sense suggestion, there still is no support within the courts to implement it that we have been able to see.

In 1997, in a GAO report to this Committee, the GAO recommended that the judiciary establish criteria for determining effective courtroom utilization and a mechanism to collect data and then use this data and analysis to explore where the one judge, one courtroom practice is needed to promote efficient courtroom management. Again, in 2002, the GAO found that the judiciary's policies recognized that senior district judges with reduced caseloads were the most likely candidates to share courtroom. But, unfortunately, the courts decided to do nothing.

Judge Roth, in testimony on Page 4, links efficiency with the one judge courtroom concept. Yet, according to the GAO, the courts have no data to support the link. It is confounding to me to imagine any legitimate effort to control space will succeed if there is no effort to collect and analyze data on such an apparently simple but effective suggestion. In fact, some data suggests we are over-building with some courthouses having excess capacity the day they are occupied. Mr. Chairman, none of us want to see slippage back to the excesses of the past. But it does not take much to see links between the amount and quality of space and an increasing rent bill.

I am very eager to hear from our witnesses this afternoon. I especially want to hear from GSA about its suggestions to control court costs, and a reaction from the courts to these specific suggestions. I will have, Mr. Chairman, several suggestions of my own and documents I would like to insert into the record. I have some suggestions regarding remedial action.

I would finally like to note that I am disappointed that the Administrator did not see fit to appear before the Subcommittee today on this issue which is essential to the well-functioning of the Federal Buildings Fund. It is my understanding that the Administrator and the agency were notified almost a month in advance of this hearing, and I believe there was ample time for him to afford his schedule. Thank you, Mr. Chairman.

Mr. SHUSTER. I thank the Ranking Member. I appreciate your knowledge and experience and insight on the issue. I know we will be relying heavily on that as we move forward.

I just want to alert everybody that we are going to probably have a vote in five minutes. So we will have to take a recess when we do that, about a 15 minute recess. But I will finish up with the opening statements.

I recognize Mr. Michaud.

Mr. MICHAUD. Thank you very much, Mr. Chairman. I want to once again congratulate you on assuming the Chairmanship of this Subcommittee. I have the greatest confidence in your leadership, working with our Ranking Member, that we will have a very productive year and am anxiously awaiting working with both of you. I also want to say I associate myself with both your remarks and the Ranking Member's remarks, and would ask unanimous consent to have my opening statement submitted for the record.

Mr. SHUSTER. So ordered. Mr. Davis.

Mr. DAVIS OF TENNESSEE. I, too, applaud the accolades that my good friend Mike has given. We do have a different language that we speak, obviously, as you can tell, at least our dialect is somewhat different. Mr. Chairman, I look forward to your leadership of this Committee and have been very much pleased so far with your willingness to let each of us have our say during the Subcommittee meetings.

I look forward with great anticipation to the testimony that we are about to hear. I was a Federal employee once. I worked with the Soil Conservation Service and Farmer's Home and we rented office space. And I am just kind of waiting on the information you are about to give us and how you can relate to what my experience has been up until 1977, shortly after college in 1966, with eleven years that I worked with an agency of the Federal Government.

And now I work with another agency called the U.S. House. One of the reasons we do not lease from the local Federal courthouse, we find our space is much more reasonable, larger than some other area. So I look forward to hearing the comments that you make.

Mr. SHUSTER. Thank you, Mr. Davis.

They are saying we are going to have a vote momentarily. So what I would like to do is recess now. That would give us the opportunity to head over there and vote real quick and then come back. So we will take about a 15 or 20 minute recess and we should be right back. I would encourage the members to head over now so we can vote and get back here. Thank you.

[Recess.]

Mr. SHUSTER. The Subcommittee will come back to order.

First, I want to apologize to our witnesses. We got a miscommunication from the floor, so it obviously was not 15 minutes, it was about 45 minutes. So my apologies for delaying the continuation.

We will now turn to our witnesses for today's hearing. So that each witness will have the opportunity to both hear from and respond to everyone else, we will only have one panel of today's witnesses.

Appearing on our panel, we have Mr. Mark Goldstein, the Director of Physical Infrastructure Issues at the General Accounting Office; the Honorable Jane Roth, a judge who sits on the United States Court of Appeals for the Third Circuit, and also serves as the Chair of the Judicial Conference's Committee on Security and Facilities; and Mr. Joe Moravec, Commissioner of Public Buildings Service of the General Services Administration; and Mr. Ralph Mecham, Director of the Administrative Office of the United States Courts and Secretary to the Judicial Conference.

I would like to welcome Judge Roth, Mr. Goldstein, and Commissioner Moravec back, and also welcome Mr. Mecham, his first time before the Committee. I would ask unanimous consent that our witnesses' full statements be included in the record. And without objection, so ordered. And since your written testimony has been made part of the record, the Subcommittee requests that you limit your summary to five minutes.

We will proceed in order and we will start with Mr. Goldstein. You may proceed.

TESTIMONY OF MARK L. GOLDSTEIN, DIRECTOR OF PHYSICAL INFRASTRUCTURE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; HON. JANE R. ROTH, JUDGE, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT, AND CHAIR, JUDICIAL CONFERENCE COMMITTEE ON SECURITY AND FACILITIES; F. JOSEPH MORAVEC, COMMISSIONER, PUBLIC BUILDING SERVICES, GENERAL SERVICES ADMINISTRATION; AND LEONIDAS RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS AND SECRETARY TO THE JUDICIAL CONFERENCE OF THE UNITED STATES

Mr. GOLDSTEIN. Thank you, Mr. Chairman, Ranking Member Norton, and members of the Subcommittee. Thank you for the opportunity to testify on our work related to Federal courthouse construction. My testimony today will summarize some of our previous

work on this topic and provide information on the Federal Buildings Fund, and our ongoing work related to the Federal Judiciary's request for a permanent annual exemption of $483 million from rent that the General Services Administration charges to the judiciary to occupy space in courthouses.

GSA owns Federal courthouses and funds courthouse related expenses from the Fund, which is the revolving fund used for GSA real property services, including space acquisition and asset management activities for Federal facilities that are under GSA control. The exemption the judiciary is seeking would represent about half of its 2004 rent payment of $909 million. My testimony today will highlight the following points:

First, GAO's courthouse construction work to date has focused primarily on courthouse costs, planning, and courtroom sharing. In the 1990s, we found that the wide latitude in choices made by GSA and the judiciary often resulted in expensive features in some courthouse projects. Since then, the judiciary has placed greater emphasis on cost consciousness in its guidance for GSA.

In the 1990s we also found that the judiciary's long-term space projections were not sufficiently reliable, and that its five year plan did not reflect all urgently needed projects. Since then the judiciary has made some changes we recommended in an effort to improve projections and planning.

With regard to courtroom sharing that could help reduce cost by limiting space requirements, we found that the judiciary did not collect sufficient data to determine how much sharing could occur. The judiciary disagreed with this finding and the related recommendation.

Second, GSA has historically been unable to generate sufficient revenue through the Fund and has struggled to meet the requirements for repairs and alterations identified in its inventory of owned buildings. By 2002, the estimated backlog of repairs had reached $5.7 billion, and consequences included poor health and safety conditions, higher operating costs, restricted capacity for modern information technology, and continued structural deterioration.

GSA charges agencies rent for the space they occupy, and the receipts from the rent are deposited in the Fund and used for the purposes of the Fund. Restrictions imposed on the rent GSA could charge Federal agencies have compounded the agency's inability to address its backlog in the past. Consequently, we recommended in 1989 that Congress remove all rent restrictions and not mandate any further restrictions. And most rent restrictions have been lifted since that time.

The GSA Administrator has the authority to grant waivers, and all the current exemptions are limited to single buildings or were granted for a limited duration. Together, these current exemptions represent about $170 million, roughly one-third of the $483 million permanent exemption that the judiciary is requesting from GSA. The judiciary has requested the exemption because of budget problems that it believes its growing rent payments have caused. GSA data show that one reason the judiciary's rent is increasing is that owned space it occupies is also increasing, about 15 percent in just the last five years.

Since the early 1990s, GSA and the judiciary have been carrying out a multibillion dollar courthouse construction initiative to address the judiciary's growing needs. In 1993 the judiciary identified 160 court facilities that required either the construction of a new building or a major annex to an existing building. From fiscal year 1993 through fiscal year 2005, Congress appropriated approximately $4.5 billion for 78 courthouse construction projects. Since fiscal year 1996, the judiciary has used the five year plan to prioritize new courthouse construction projects. Its most recent five year plan, covering fiscal year 2005 through 2009, identifies 57 needed projects that are expected to cost $3.8 billion.

It is important to note that the Public Buildings Amendment of 1972 made several important revisions to the Federal Property Administrative Services Act. The 1972 law created a new revolving fund, later named the Federal Buildings Fund. Moreover, it required agencies that occupy GSA-controlled buildings to pay rent to GSA, which is to be deposited in the revolving fund to be used for GSA real property and services. GSA charges agencies for space based on commercial rents from appraisals of facilities it owns, and the actual lease amounts for facilities it leases on the tenant's behalf. Rent is not generally charged on a cost recovery basis in order to provide sufficient monies for the purposes of the Fund. The rent requirement is intended to reduce costs and encourage more efficient space utilization by making agencies accountable for the space they use.

GSA proposes spending from the Fund for courthouses as part of a President's annual budget request to Congress, and in most years Congress has also provided the Fund with additional funding to cover additional property portfolio needs, including construction, repairs and alterations, and other activities.

Courthouse projects continue to be costly, and increasing rents and budgetary constraints have given the judiciary further incentive to control its costs. According to the judiciary, rent currently accounts for just over 20 percent of its operating budget and it is expected to increase to over 25 percent of its operating budget in fiscal year 2009, when the rental of new court buildings are included. In September 2004, the judiciary announced a two year moratorium on new courthouse construction projects as part of an effort to address its increasing operating costs and budgetary constraints.

In February 2005, the GSA Administrator declined the judiciary's request for a rent exemption because GSA considered it unlikely that the agency could replace the lost income with direct appropriations to the Fund. In April of 2005, this Subcommittee requested that GAO examine issues associated with the judiciary's request for a rent exemption, including how rent payments are calculated by GSA and planned and accounted for by the judiciary, what changes, if any, has the judiciary experienced in rent payments in recent years, and what impact would a permanent rent exemption have on the Fund. Our work on this request is underway.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions that you or members of the Subcommittee may have. Thank you.

Mr. SHUSTER. Thank you, Mr. Goldstein.

Now, Judge Roth, you may proceed.

Judge ROTH. Thank you, Mr. Chairman, and members of the Subcommittee. I serve as a Judge on the Third Circuit Court of Appeals and as chairman of the Judicial Conference's Committee on Security and Facilities. I appreciate the opportunity to appear before the Subcommittee today to discuss the issue of the judiciary's ability to pay for current and future space needs.

Director Mecham will discuss the financial hardships facing the judiciary and the adverse impact of rent on court operations. I would like to focus on the multiple cost-containment initiatives being pursued by the Committee on Security and Facilities in order to control the building program and reduce the amount of rent the judiciary pays to GSA both now and in the future.

One of the major components of a cost-containment strategy approved by the Judicial Conference of the United States in September 2004 in an attempt to gain greater control over the judiciary's budget was to control space and facilities costs for the judiciary. The courts recognized the significant impact rent was having on the judiciary's overall budget. Several initiatives have been pursued by the Committee on Security and Facilities: a two-year moratorium on the courthouse construction program, including a request that the GSA cease the preparation of new feasibility studies; a review of the standards in the U.S. Courts Design Guide; a reevaluation of the long-range planning process; and a request to chief judges and circuit judicial councils to cancel pending space requests and to recommend the closure, whenever possible, of visiting facilities without a full-time resident judge.

First, let me explain the moratorium. In September 2004, the Judicial Conference approved a two-year moratorium on the planning, authorizing, and budgeting for courthouse construction projects and new prospectus-level repair and alteration projects to enable a reevaluation of the long-range planning process. This reevaluation includes an assessment of the underlying assumptions used to project space needs and how courts can satisfy those needs with minimal costs in a short-and long-term constrained budgetary environment.

The Judicial Conference applied the moratorium to 35 courthouse projects on the judiciary's five-year plan for courthouse construction that had not received any funding, and to 7 projects with congressional appropriations and authorizations that were not yet in design. Eight projects on the five-year plan were not subject to the moratorium because they were in the midst of design. They were permitted to proceed with design but only after the courts involved entered into discussions with their circuit judicial councils and the Administrative Office of the U.S. Courts about ways to reduce the scope of the projects. The only projects not subject to the moratorium are the four emergency projects—Los Angeles, California; El Paso, Texas; San Diego, California; and Las Cruces, New Mexico. The only one of these emergency projects for which the judiciary is seeking construction funding in fiscal year 2006 is San Diego, California.

In March of 2005, the Judicial Conference also voted to extend for one year a moratorium it had approved in March 2004 on nonprospectus space requests.

As to the Design Guide, the Committee on Security and Facilities is reviewing the space standards within the Design Guide with an emphasis on controlling costs, examining existing space standards to determine if they are still appropriate, meeting the functional space needs of the courts, and space- sharing arrangements. The Committee met last week and considered several initial amendments to the Design Guide. If approved by the Judicial Conference, these changes would save the judiciary rent on new buildings that would be designed according to these new design standards. In the months to come, the Committee will be examining technical aspects, such as lighting and acoustics, atrium sizes, and other areas that will save the judiciary additional money in rent.

Turning to long-range planning, in September 2004, the Committee on Security and Facilities began a reevaluation of the long-range planning process, including a reexamination of assumptions regarding staff and judgeship growth as well as the space standards used for estimating square footage needs. The Committee plans to review the current criteria for scoring new courthouse projects and develop new criteria, if needed. The current scoring process, which uses four Judicial Conference approved criteria—year out of space, security concerns, judges impacted, and operational concerns—will be reviewed to consider personnel, workload, operational hot spots, and extended occupancy.

Let me add that I think the incident yesterday in Seattle demonstrates very well the importance of the security requirements in building new courthouses. As reported in the Seattle Times today, from the cameras that detect visitors even before they enter the building to the bomb-proof glass in the lobby, to the redundant structural system that prevents collapse, Seattle's new federal courthouse was designed with threats in mind. Yesterday's incident, in which a man armed with an inactive hand grenade was fatally shot, was the first real test of the new building's security, and according to an initial review, the system worked.

Finally, we are considering the release of unneeded space and cancellation of pending space requests. In October 2004, in order to immediately contain space rental costs, I wrote all chief judges, requesting that they cancel pending space requests whenever possible. Recognizing the dire financial straits faced by the courts, chief judges did in fact cancel or defer $6 million in space requests. In addition, the Committee initiated its biennial review of nationwide space assignments that set forth specific criteria to examine the need for non-resident visiting judge facilities and release of space in probation and pretrial services offices.

As you can see from the litany of cost-containment initiatives currently being studied by the Committee on Security and Facilities, controlling the judiciary's current and future space costs is an issue that my committee takes very seriously. There is no question that the Judicial Conference recognizes the significant impact the buildings program is having on the judiciary's budget and the need to control rental costs both now and in the future. While the initiatives I have described are a good start, rental relief from GSA, which will be described more fully by Director Mecham, is critical to the continued functioning of the courts both now and in the future.

I thank you for the opportunity to testify before the Subcommittee today. I would be happy to answer any questions.

Mr. SHUSTER. Thank you, Judge.

Mr. Moravec, you may proceed.

Mr. MORAVEC. Thank you, Mr. Chairman, Ms. Norton, members of the Subcommittee. First, I want to apologize to you, Mr. Chairman, on behalf of the General Services Administration, for not living up to your expectations of us, and indeed, not living up to our own expectations of ourselves. We understand very well the vital importance of the due diligence process that the Committee engages in in connection with the prospectus review. We know that you need time to do your work and you need accurate answers and timely responses from us in order to do that. I agree that this is unacceptable and I personally pledge that we will do much better in the future.

Thank you for the invitation to speak with you for the record in response to the judiciary's request to reduce by more than half their rental obligation to the General Services Administration. Let me first say how proud GSA is of our historic institutional relationship with the courts. In general, it has been, especially in recent years, a highly productive and cordial relationship.

The courts are by space occupied among our largest and certainly our fastest growing customer. For the past ten years, we have supported the judiciary in the delivery of 46 new courthouses or annexes, representing 17 million square feet of new space. We have an additional 34 new courthouse projects representing an additional 10 million square feet in the pipeline, 11 under construction, 3 funded for construction, and 11 in design development. These structures are aesthetic, functional, secure, and sustainable additions to our inventory and a source of pride to their communities.

But along with growth and improved quality of space has come increased costs in the form of a higher rent bill, not just proportionately higher either in actual or relative terms, but higher. That is the way our market based system works. We are sympathetic to the spending constraints being placed on the judiciary by the present austere budget climate. But, of course, all of our Federal customers, given the current pressure on civilian discretionary spending, are experiencing their own form of this pain, and we are doing our best to respond to support them.

Although no one really loves their landlord, it is simply not fair to blame GSA for these circumstances, and we strongly oppose the judiciary's request for a permanent rent exemption. Insolvency in one branch of Government cannot be cured by creating it in another. If Congress directs us to grant the courts, as they have requested, unilateral relief of nearly half a billion dollars in the first year alone, it will seriously impair our ability to serve them and the dozens of other agencies that depend on us for their workplace.

The deterioration of Government housing stock will accelerate, agency missions will suffer, and the taxpayers' equity value in Government buildings will shrink. Additionally, other agencies would doubtless be encouraged to seek similar legislative relief or withdraw from the system completely, and the Federal Buildings Fund, which has served Government so well for over 30 years, would ulti-

mately collapse, leading to much higher costs for the taxpayer. A real mess.

We thank the Subcommittee for your support in urging appropriators to exercise extreme caution in evaluating this proposal, and for requesting that the GAO report on an independent analysis of the relevant issues. We welcome the study and we are confident that the results will support a denial of the judiciary's request.

The Federal Buildings Fund is an ingeniously conceived intergovernmental revolving fund created by Congress in the early 1970s that, by replicating the conditions of the open market, has served Government and the taxpayer very well. It is good public policy. It is the envy of governments of other industrialized democracies. The Federal Buildings Fund provides a consistent and sustainable source of funding for the construction, repair, operation, and lease of space, and it encourages agencies to hold down costs by enabling them to plan for their future needs and allocate resources more efficiently. By requiring GSA to charge our tenants commercially equivalent rents and fees, the Fund emulates best industry practice and enables a businesslike approach to life cycle real property asset management.

It is important to note that the Fund was intended by Congress to produce cash flow for reinvestment in the upkeep of Government buildings and the construction of new buildings, and to reduce, as it has over the years to under 5 percent, the need for direct appropriations to the Fund by Congress. It is specifically not a simple cost recovery system. It was intended by Congress to produce funds for reinvestment.

It is also important to note that the Federal Buildings Fund is not the real open marketplace. It is a quasi-market mechanism, a system that supports leveraging the entire Government's buying power, consolidation of real estate acquisition and management expertise, and the maintenance of some consistency across Government in the quality of the workplace. It must be remembered that it is a system that we are charged with operating with professionalism and integrity that requires 100 percent participation to be fully effective in delivering value. Because it is a system, it does not provide the full flexibility of the open market and customers cannot always see a direct benefit between what they are paying and what they are getting, which we understand can be frustrating to them.

We believe the GAO report when completed will attribute the growth in the court's rent primarily to their rapid growth in space occupied, to improvements in the quality of space, the amortization of their tenant improvement costs, and to market based increases in rent as the economy has recovered from the real estate depression of the early 1990s. Except for the increase in market rents, which we are required by law to charge, these factors are subject to management by the judiciary at their discretion. They pressure they are feeling in one sense simply proves that the system is working.

One of the ironies of the court's request is that the Federal Buildings Fund has been serving the judiciary, if anything, disproportionately well, especially in recent years. In the last 10 years, while the courts have paid about 12 percent of the rent flow-

ing into the Federal Buildings Fund, they have received, on average, over 40 percent of new obligational authority for new construction, and for major repair and alterations funding, sometimes as much as 60 percent in a single year, and about 20 percent, on average, of the minor repairs and alterations funding.

While we have been delivering four or five new courthouses a year, over a million square feet on average of new upgraded space, the courts' rent has been increasing by about 6 percent a year. Fairly modest, especially given the growth. On average, a pretty modest increase. The average rent for all the space we provide the judiciary, as noted in your opening remarks, both owned and leased, is $23.60, which is only about $1 a square foot more than the average of $22.58 which applies to all of our customers, which places them as an agency in the mid-range of rent paying tenants.

In fiscal year 2005, with no direct appropriation to the Fund, we were given authority to obligate $548 million for new courts construction and major repair and alterations, and another $65 million for minor repair and alterations. In fiscal year 2006, the President's budget requests $360 million for courts construction and another $65 million for minor alterations, again against no anticipated direct addition by Congress to the Fund. Over $1 billion in court construction funding straight out of the working fund for the benefit of the judiciary in two years. It would seem to me that the Federal Buildings Fund is working pretty well for the judiciary.

What can be done to reduce the rent pressure on the courts? A number of things. We are committed to doing everything in our power so long as it does not impair our ability to fulfill our mission to lower the courts' rent bill. Since last September when the courts declared a moratorium on new courthouse construction, we have been closely engaged with them in support of their effort to fundamentally reassess their facilities planning and budgeting process and to redefine their Design Guide, which governs the size, shape, and attributes of new courthouses. Judge Roth discussed these efforts in her testimony.

We have voluntarily hired a third party consultant to verify the accuracy of the rent we are charging them, an analysis of about 2,700 billing records, which will be complete this summer. And although we do not expect there to be much of an impact, we will immediately adjust for any errors or anomalies, and there are sure to be some. We have already detected some.

We have offered to aggressively dispose of unused or under-utilized courthouses, to consolidate courts requirements wherever feasible, reduce the scope of new projects, reduce the level of finishes, to spread out the impact of tenant improvement amortization costs, to renegotiate existing leases in buildings we lease from the private sector for the courts to take advantage of the favorable market trends, and to reduce our fees on lease space that the courts agree is non-cancelable. We estimate the savings to be obtained by these measures to be in the tens of millions of dollars. These are the kinds of activities which we are engaged with with our other customers.

These measures will not of course produce the immediate and massive reductions in rent that the courts are looking to Congress to provide them through legislation, but they are a start. We are

committed within our system to take every defensible measure to assist our customer. That has been the pattern of our relationship.

I will be pleased to answer any questions you may have for me this afternoon on this matter or on any other subject related to our operations. Thank you.

Mr. SHUSTER. Thank you, Mr. Moravec.

Mr. Mecham, you may proceed.

Mr. MECHAM. Thank you very much, Mr. Chairman, Representative Norton, members of the Committee. First of all, thank you for giving us this hearing. We consider this to be a great step forward and we appreciate it. This Committee has been a long-standing friend of the Judicial Branch of Government. Through your good efforts, when you recognized the Federal Buildings Fund was not working, in 1991 you got behind the effort to fund buildings through direct appropriations because there was only, according to GAO, about $90 million a year available for construction and there was a backlog of billions of dollarsin projects, including in the judiciary. So we thank you very much for your leadership in ensuring that from fiscal year 1991 through 2004 courthouse construction projects were funded largely from direct appropriations, not by Federal Buildings Fund revenue.

For the 20 to 30 years prior to 1991, we received virtually nothing from GSA for new buildings. It was only in fiscal year 1991 that we finally got the breakthrough, and we thank you for your help.

I would also join Congresswoamn Norton in expressing appreciation for the fact that your Committee worked with us and with others during four years when funds for new buildings were not included in the President's budget request. We worked very hard with the Appropriations Committees and worked in tandem with your Committee as well. During two of those years, no money was appropriated. During the other years, however, $680 million was appropriated for buildings through your good help, despite the opposition of GSA and the White House.

However, GSA still charges us rent on that $680 million even though they did not do a thing to raise it. The same is true with respect to the appropriations from fiscal years 1991 through 2004. Our appropriations during that period were a wonderful $5.2 billion, as I recall, of which virtually all of it was funded through direct appropriations, because of inadequate money in the Federal Buildings Fund.

Another thing I would like to thank this Committee for is the Thurgood Marshall Building, where I work. It was back in 1990 that I actually made my first appearance here, Mr. Chairman, before Mr. Boscoe of California, who was Chairman at the time, and Mr. Tom Petri of Wisconsin. We talked then about legislation on this very same subject, because Mr. Boscoe had introduced a bill to modify substantially our arrangement with GSA which would have, had it and Senator Moynihan's bill been approved, eliminated the problem we now have on rental costs. We would have been in much better shape.

But your Committee did authorize the Thurgood Marshall Building. It is one of the great buildings in Washington. We were in ten buildings before that time; seven for the AO, three for FJC and the

Sentencing Commission, which was grossly inefficient. But your Committee and your staff---I remember particularly Dick Sullivan and Nancy Vitale---played a very important role with regard to this building.

The financial crisis of the judiciary really began to hit in fiscal year 2002 rather than 2004, because at that time we were already running short of what we needed and we had to cut substantially that administrative portion of the budget that we could cut. We are labor intensive. Almost 62 percent of our budget goes to personnel and 22 percent goes to rent, the highest of anybody in Government. Congress pays about half a percent for rent.

The Executive Branch, on average, pays about two-tenths of one percent of its budget for space. We pay 22 percent. We pay 39 times more for rent on a percentage basis than Congress does. So rent is a big factor for us because of its sheer size. We recognize it is based upon buildings that have been built, and we are grateful for those buildings, which are really important to us.

By fiscal year 2004, we were really hit hard, because we had already cut our administrative areas---that 16 percent of our budget where we could really make cuts---right to the bone for three years in a row. That left us with only personnel to cut in order to pay for rent. As a result, we lost 1,350 people, or 6 percent of our staff in fiscal year 2004.

Because of the delay in Congress in passing a fiscal year 2005 appropriations bill, it took four months more before we had an appropriations bill, and we got it in an omnibus bill in late January 2005. Then, an across-the-board cut was made against us in our appropriations bill. So, in fact, we lost 8 percent of our court staff, amounting to 1,800 people. We are the only organization in the United States Government that took that kind of cut, according to Mr. Josh Bolten, the head of OMB. GSA was not cut. So it was a very serious matter.

Mr. Chairman, may I comment for one second on the statement that you made, correctly so, by the way, that our appropriations have been increasing at about 4.5 percent. That is quite true. The only trouble is we need over 5 percent just to stay even because of built-in costs, such as COLAs, new judges coming on, changes in judges, benefits costs, and substantial increases in GSA charges. They hit us with an inflationary increase almost every year of about 2 percent.

So all of these increases are built in and GSA money comes right off the top. We cannot cut a nickel of that. Then Congress hit us with about a 1 percent across-the-board cut in the fiscal tear 2004 appropriations bill, which took us down to where we had to start firing people. We really took a double hit on the across-the-board because the Congress insisted that we not cut the GSA appropriation for rent; we had to pay the full rent amount to GSA. So it is an unfortunate situation that occurred. And frankly, it is not getting much better.

We were very pleased that the House Appropriations Subcommittee approved about a 5.4 percent increase for us for fiscal rear 2006. Our experience in recent years has been that the House is the high water mark for us. That is where we do our best. We go down in the Senate. And lately we have been going down in con-

ference because of these across-the-board cuts. So we are going to work hard. What we do know right now is that $980 million in rent will come right off the top for GSA. We cannot do a thing about that.

So if we actually get down below our costs again, what are we going to cut? We are going to be cutting people. I will be pleased to show how many people were cut out of the staffs of each of your courts. For example, Ms. Norton lost 13 percent of the people out of her court because of the cuts that had to be made. And threr are similar figures for every one of you, up or down, most of them slightly below that, because we had to cut from personnel in order to stay within budget.

So the financial crisis is with us and it looks like it is still going to be with us. And even if it is not, the current Federal Buildings Fund system is fatally flawed and ought to be radically changed. It has never really worked. Back in 1980, all of our buildings were given as sort of a free gift to GSA and Congress said, okay, these are all fully paid for, but now you can charge rent on these anyway.

So then we had to start paying rents on buildings that had been fully paid for. This was a completely new charge for us. But despite that, there was not enough money available to take care of the Federal Buildings program. So we literally had no buildings built until fiscal year 1991 when you and the appropriators went to direct appropriations instead of using the Federal Buildings Fund revenue to fund these buildings.

As I say, it is a fatally flawed program because it is not yielding the revenue that is required to have a construction program. We might as well be going for our own direct appropriations as to have to go through GSA all the time because we can control that. We cannot control what GSA does. I say that as an admirer of Mr. Moravec and Mr. Perry, because we have had a good working relationship with them. We just happen to disagree on this particular issue.

As we look now at the rental relief required, it would come to about $483 million a year. If you compare that with the Federal Buildings Fund, that would be 6.2 percent of its budget. We just took an 8 percent cut in our staffing and had to fire people. So a 6.2 percent cut does not seem like a very big decrease to us. If you look at it in terms of the total budget of the GSA, it is only 2.0 percent. We took an 8 percent cut in staff. So I cannot develop too much sympathy for somebody who is taking less of a cut than we have had to take in order to get us back in the financial arena that we ought to be in.

As I say, we have to pay for buildings. We have to pay for amortization on these buildings---buildings that have been paid for one, two, three, four, five times---GSA still factors it into our rent. The latest thing we just discovered is that we are now charged the equivalent of state and local property taxes on our buildings. Even though GSA does not pay a nickel to those local governments, we are forced to pay the equivalent of taxes in our rental payment. We should not have to pay that. That costs us tens of millions of dollars a year for a fictitious payment for taxes because that is sought as part of the commercial equivalent of rent.

As I said, we have to pay 22 percent of our court's budget for rent, contrasted to the Executive Branch which pays, on average, less than 1 percent, and Congress, which pays less than 1 percent. We recognize that we have only two tenths of one percent of the frderal budget, yet we pay more money into the building fund than any agency of Government except for Justice. They beat us by a few million dollars, but that is only 3 percent of their budget. It is 22 percent of our budget. So the entire system is fundamentally unfair for the Judicial Branch.

We ought to change the program because the Federal Buildings Fund, while it may have worked in some areas, certainly has not worked for us and I do not think it is working for the system generally. We feel that the Federal Buildings fund needs to be radically changed. And certainly the Government Accountability Office statement would lead one to think that as well.

Mr. SHUSTER. Could I get you to sum up here because we want to get to the questions.

Mr. MECHAM. I am summing up right now. I get the signal. We hope you will approve our rental request and that you will reform the Federal Buildings Fund to really make it workable and fair for the Judicial Branch of Government and for the rest of the people who participate in it. Thank you.

Mr. SHUSTER. Thank you very much. That is what the hearing is all about is to try to figure out fact from fiction and which information is the best on which to make these decisions. I appreciate your talking about the Committee in years past. I, unfortunately or fortunately, was not here in the past, so I can take neither credit nor blame. I can only do that going forward.

I have several questions, as I am sure other members do, so we will do five minutes and then we can go back with another couple of rounds.

The first question that I have is to the GAO. Mr. Goldstein, could you please give us your perspective, the judiciary has done a number of things to reduce their costs, both good and bad, can you sort of give us your thoughts on what they have done. Has it been good? Has it been bad? Has it been a mixed bag?

Mr. GOLDSTEIN. Certainly, Mr. Chairman. To use your words, I would say it has probably been a mixed bag. The judiciary has over the years improved how they do some planning activities. They have instituted a five year plan; they have worked pretty closely with GSA in helping GSA understand its needs and working to improve the utilization of the Design Guide, which is how they determine finishes and that kind of thing; and they have become more cost-conscious in recent years as their budgets have become more constrained.

But there certainly are other things that have been left undone, based on the work that we have done in the past, including a development of information criteria and an analysis of data that would help them understand how to better utilize their space, including the possibility of sharing courtrooms.

Mr. SHUSTER. I am sorry, did you do a study on space utilization?

Mr. GOLDSTEIN. We have done a number of studies on courtroom sharing at the request of Congress over the years. We have had a number of conclusions from that. We have done four reports here,

one in 1997, one in 2000, and one in 2002, those are the principal ones.

In 1997, we indicated that the judiciary did not compile data on how often and for what purposes courtrooms are used. They did not have analytically based criteria for determining how and what types of courtrooms are needed. They did not have sufficient data to support their practice of providing a trial courtroom for every district judge. And we recommended that they fully examine the courtroom usage issue.

Mr. SHUSTER. Excuse me for interrupting you there. So you have not done an analysis on space utilization, is that what you are saying?

Mr. GOLDSTEIN. We went in in 1997 and we took a look at the kind of data that the judiciary did or did not have.

Mr. SHUSTER. Right. You attempted to do it but you did not have the data?

Mr. GOLDSTEIN. The data did not exist.

Mr. SHUSTER. Right. So what you are telling me is we need to get that data so that you can take a good look at space utilization. Is that a correct statement?

Mr. GOLDSTEIN. That would be helpful. In fact, Mr. Chairman, what we did is we recommended in 2000, after the courts did try to do a study, they used a private contractor to try to develop a study, but the study was not adequate, we disagreed generally with them, and we recommended at that time that they develop the data, and had recommended for Congress, actually a matter for consideration, that Congress require the courts to develop this data.

Mr. SHUSTER. Thank you. And either Judge Roth or Mr. Mecham, could you describe the changes to the Design Guide that are being proposed? And is the result going to be smaller courthouses or courtroom sharing? Is that in that review of the Design Guide?

Judge ROTH. The Design Guide of course is directed at building new courthouses, not the use of current courthouses. One of our concerns in building a new courthouse, particularly in a growing area, is to make sure there is going to be enough courtroom capacity in that building for ten years after the building is occupied and to ensure the building has a permanent presence in the community. To build a courthouse with insufficient courtrooms in it to last over a certain period of time would be a mistake. Another issue discussed in our meeting last week, for instance, was whether the number of conference rooms we are planning are needed.

The proposals will be presented to the Judicial Conference. We are looking at ways of using our space effectively and efficiently. Until, however, these are approved by the Judicial Conference, they would not be an official position of the courts.

Mr. SHUSTER. Judge, with all due respect, how can you determine the needs of your courthouses if we do not have a utilization study being done on the courtrooms? What I continue to hear out there is courtroom sharing is rejected by the judiciary. I have talked to some judges who have said that is something we have got to consider.

But once again, you are talking about the Design Guide and looking at effectively and efficiently using the courthouse space. It is impossible to make those kinds of decisions without having somebody come in and say our courtrooms are utilized 100 percent capacity, 40 percent capacity, or whatever the number is. So is that something that you are going to look at? I would encourage you not only to look at it but get the numbers or get the figures, and we have got to get the GAO in there to do a study on this. Because that is critical to what we are talking about.

We can talk about a whole lot of things, but the numbers do not bear out. We are spending more money for courthouses, I have got numbers here that I alluded to in my opening statement, the judiciary's personnel in 20 years has doubled, yet the total space you occupy has almost tripled, but the useable space has only gone up by 2.5 percent. That is an indication to me, and I am not an architect, I am not an engineer, I am not a guy from GAO who studies these things, but it says to me that we are building these grand courthouses and we are not utilizing them the way we should. So could you comment on that, Mr. Mecham or Judge Roth?

Judge ROTH. If I could, an approach to the assessment of courtroom needs, such as the use of a queuing theory, might suggest that one can simply add up the average number of hours that judges spend in the courtroom and then calculate the number of courtrooms needed if all of these courtroom hours were perfectly distributed among fewer courtrooms. However, there are fundamental flaws with this notion. The complexity of the judicial process and our adversarial system of justice, including very important unmeasurable factors such as the quality of justice, makes it virtually impossible to quantify a judge's need for a courtroom. Several studies have been attempted but none has reached a firm conclusion, and for good reason. The degree of independence and flexibility necessary for and inherent within the judicial process precludes an engineered solution.

When all the analysis is done, what remains is a fundamental requirement for judges to have ready access to a courtroom in order to carry out their mission. And our policy of providing a courtroom for every active judge is well-supported by scholars and others in the legal community. A 1998 study by an expert consultant entitled "Courtroom Sharing Practices Among State and Local Trial Courts" found that it was the policy in all 50 States to provide one trial courtroom for each judge. Studies, reports, and standards produced by the Rand Institute for Civil Justice, the Brookings Institute, the National Center for State Courts, and the American Bar Association support the idea that reducing the number of courtrooms would result in trial delays and increased costs.

Mr. SHUSTER. I understand what you are saying and I understand all these smart people have put together these theories. But the reality is we do not know how you are utilizing these courthouses today. That is a study we have to conduct to find out that information. That is the first thing.

Second is, we here in the United States Congress have an adversarial relationship, too, and on top of that, we do things inefficiently. They call votes and we have to walk out of here. This Committee started at 1:00, it is now 3:00, I had hoped to be out of here

by now but here we are. And we are going through this without anything terrible happening with our legislation moving forward to the floor.

I just do not buy that justice is going to be delayed or justice is going to be impeded in any way because we do a standard space analysis on utilization of courtrooms. Until you can give me that fact, I have got to sit up here and say I just do not buy it.

We have got to look at that. These are taxpayers' dollars and they are spending millions, billions of dollars on courthouses. We have got to make sure we are doing the right thing and using these buildings efficiently, because even in the judicial system we can still look at efficiency. And who knows, maybe the system will improve because we are causing people to sit down and manage time a little better and utilize their buildings and their time more wisely. I do not know the answer to that. But I cannot sit here and make a judgement unless I see an analysis done.

I have gone over my five minutes. I am going to come back to questions, but I am going to yield to the Ranking Member for her questions.

Ms. NORTON. Thank you, Mr. Chairman. My goodness, where to begin. Well, I guess I should begin, since Judge Roth just read so extensively about the fallacy of using how often the courtroom is used, her study was at least ten years old. Let me just say the notion of the flexibility a judge needs, who can predict about trials, who they will be assigned to, is something that, in that respect I want to associate myself with your remarks on that.

Unfortunately, in the real world all of us live with means averages, granting exceptions where necessary perhaps. But it is almost impossible to live any other way. A notion of a system so flexible that each woman is an island unto herself has never been the case in business, once was the case here, is no longer the case.

I just want to respond to your notion that you read so extensively from, because a more recent study of the American Bar Association looked at utilization and they found, for example, that in 1962 the average Federal judge had 39 trials a year, and that was if you put civil and criminal trials together. By 2003, this is a fall off that we rarely see in any statistic in the United States, by 2003, the number had fallen from 39 trials, civil and criminal, to 13.

And I congratulate the courts because I know exactly what you are doing. You are using alternative dispute resolution, you are settling cases. You are really making progress and moving caseload, and you deserve a great deal of credit for that.

You spend a lot of your time in that work; deciding pretrial motions, approving settlements, and I do not need to spell them out to you. This is a very steep decline. It shows what courts can do when efficiency becomes important to the courts. In light of that decline over a period of 40 years, very laudable decline, I would simply like to have you comment on the notion that, despite that decline, formal courtroom space on a judge by judge basis is still needed and indeed, in spite of this decline, should be expanded.

Judge ROTH. Yes, thank you. I was a district judge for five and a half years, so I have my own personal experience in the use of a courtroom. And the fact that a case does not actually go to trial

does not mean that the courtroom has not been used in fact or implicitly.

There are aspects of the settlement of a case that require a courtroom---arguments on motions and conferences with attorneys sometimes are held in courtrooms. In criminal cases, if the case does not go to trial, of course the plea will be taken in the courtroom. And so that aspect of the case, although it uses less courtroom time, is very much as important to the case as a full trial.

And one of the things that you never know ahead of time is whether a case is going to trial or not. The threat of a trial, the scheduling of a fixed trial date, is one of the most effective means to getting a case to settle or of getting a guilty plea.

So the availability of the courtroom is a very important aspect in caseload management by a district judge. And if you schedule a trial and the lawyers suspect that there will not be a courtroom available, they are not pushed to settle. You will not get the settlement of that case without a trial that you would have had if there were a courtroom available.

Ms. NORTON. I can understand the what-ifs. And Judge Roth, if I might say so, I clerked for a very distinguished judge on the Third Circuit

Judge ROTH. A colleague of mine with whom I enjoyed serving.

Ms. NORTON. And I liked nothing better than going to trial. I must say, I certainly would not want to put my experience as a recent graduate of law school clerking for a judge up against yours.

But frankly, the use of the formal courtroom was so rare that I relished it. You know, he was awfully good at doing precisely what you all have done so well, settling cases, not using the courtroom. At to the threat, the threat was awesome. But I think all Judge Higgenbotham had to say is now, if you want me to take this to trial, I would be happy to do that. He had been a distinguished trial lawyer and I think everybody recognized what that might mean.

Let me just ask you and Mr. Mecham—and Mr. Mecham, we are going to have your remarks, since we saw so many fallacies in the review, I do not want to take the time to go toe to toe with you on those, we are going to have your remarks submitted to real cross examination by giving them to GAO and others.

Mr. MECHAM. Please.

Ms. NORTON. But this is what I want to ask you and Judge Roth, with the preface that watch what you ask for. When I joined this Committee, I am trained the way you are as a lawyer, I did not know beans, and I am still learning beans. So the whole notion of let us do it, ask the Department of Homeland Security about let us do it. Congress gave them the right to do it, they came running back to GSA and said do it, please do it, take this out of our hands. All right.

But let us say you get what you ask for, and I can see this windfall, $400 million, we can use it to hire people in Congresswoman Norton's court here which had an 11 percent reduction. Of course, if you were in a Federal agency, you would have known how to keep that reduction from occurring because you would have been practiced at making efficiencies to maintain the most precious thing any agency can have, which is people.

But let us say you see this windfall. Let me tell you what the statistics show, since you complain about the fund. Over the past 10 years, the courts have contributed approximately 15 percent of the benefit. Now, understand what this means. The courts, with its kitchens, atriums, ceremonial courtrooms as big as you want to get, nevertheless, 15 percent is what you contributed. Benefit: 40 percent of the benefits.

Let us see did you get what you want. You take your $400 million. When it comes time to build you are subjected to the annual appropriations process. That is a discretionary process. You then have to trek up here and convince the appropriators when they are looking at the biggest deficit in memory, which makes the appropriations and this Committee be reluctant to do bricks and mortar at all, you are looking at the appropriators and asking for discretionary money to build courthouses.

And Judge Roth has been at this for some time. Judge Roth showed what one President by himself can do when he looks at his priorities and says you get nothing, what was it, for four years. Do you really believe that you would continue to build courthouses, that you would be able to do the repairs on these courthouses throughout the United States at various stages of disrepair, keep them going, keep them renovated all by yourself with sufficient appropriations from the Congress of the United States in which the Chairman and I now sit?

Judge ROTH. Let me say, if I could, I think our moratorium on courthouse construction demonstrates that we do have the sense of responsibility and of the need for constraint in an era when there are budget constraints. And yes, we could hold back when there are budget constraints.

Ms. NORTON. That is a moratorium. All that means is that it is going to happen. Are you willing to cut back on that altogether, say some of those just should not be built?

Judge ROTH. Absolutely. Absolutely.

Ms. NORTON. Why do you not tell us about those?

Judge ROTH. That is the process that I mentioned in our determination of the five year priority list—the factors that we consider in creating that list, the number of judges affected, the year out of space

Ms. NORTON. Judge Roth, my question was very specific. You would have to come here and ask for funds from the Congress to do things like build new courthouses or else take it out of your existing $400 million. And Mr. Mecham seems very anxious to say yes.

Mr. MECHAM. We have to do that now. We have to defend our buildings appropriations, both before the authorizing and the appropriations committees. We have had to do it as long as I have been here, for the 20 years that I have been here.

Ms. NORTON. I said you got 40 percent of the benefit from the fund. Perhaps you did not hear my figures—15 percent of what goes in, 40 percent of what comes out. You have benefitted extraordinarily from somebody else's money, sir, not your own.

Mr. MECHAM. We went for 40 years paying in, we have spent a lot of money on rent and we got virtually nothing from GSA.

Ms. NORTON. So has the rest of everybody spent all that time paying in. You are no different from people in the Justice Department and other people whose building has been there forever.

Mr. MECHAM. Back to your question. We are prepared to come to the Hill requesting appropriations for buildings. We think there would be $500 to $550 million available for construction for whatever had to be done in the building program. We do not particularly want to get out from under any responsibility with respect to GSA. We would anticipate paying them for operation and maintenance and repairs, and then seek our own appropriations for buildings.

This is precisely the kind of plan that we worked out with the former head of the General Services Administration. I think Terry Golden, whose chief of staff sits on your left, was the finest Administrator they ever had. We worked out an arrangement where we would go after the money for the buildings and GSA would take care of the operations and leasing. We would get the money for buildings, if our rent payments did not cover the construction costs, and then reimburse GSA for actual lease costs and for operation and maintenance.

Ms. NORTON. All of this money goes into the Building fund. Mr. Chairman, I do not want to go over my time.

Mr. SHUSTER. Let me ask a couple of questions. I will come back to you. You just seem like you are getting warmed up.

Commissioner Moravec, you have been sitting there quietly and patiently. Can you eliminate any of the confusion on the issue. Is the judiciary treated any differently than anybody else out there that is leasing buildings from GSA?

Mr. MORAVEC. No, Mr. Chairman, I do not believe they are. As I say, we have enjoyed a very good, even a model relationship with them, the kind of relationship which we really strive to have with all of our customer agencies. We have multiple points of contact with them. We have a very clear understanding of what their priorities are. We have a general agreement as to the kinds of facilities they are looking for. Our mission is to support the mission of other Government agencies.

So although we often disagree with them and have sometimes a very interactive and dynamic relationship and challenge each other, as we should in a good healthy process, at the end of the day we really are responsive, to the greatest extent possible, to their stated needs and we try to deliver the best results.

Mr. SHUSTER. But specifically, are they treated any differently than any other department that leases space from you? You calculate the leases the same way?

Mr. MORAVEC. Yes, sir.

Mr. SHUSTER. The question about taxes

Mr. MORAVEC. We are completely consistent, at least in theory, we are completely consistent in terms of how we charge rent to all of our tenants. As I have acknowledged earlier in my testimony, sometimes we do not do it as well as we should. I mentioned in connection with this court request, we are taking it upon ourselves to do in effect an internal due diligence of whether we are following our own rules in terms of the way we charge rent to the courts.

Mr. SHUSTER. What about the tax situation?

Mr. MORAVEC. Again, that is fundamental to the nature of the way the Federal Buildings Fund works.

Mr. SHUSTER. Everybody is charged taxes?

Mr. MORAVEC. Absolutely. In owned facilities. Not only do we not pay taxes, we do not pay depreciation, we do not pay liability insurance, we do not pay management fees, we do not service debt typically, but we also include the commercial equivalent of those charges in figuring the operating costs of rent in a federally-owned building.

The reason is, the fundamental driver there is to be commercially equivalent, to charge as best as we can determine, actually as best as an appraiser, an independent third party appraiser can determine, what a private landlord would charge the courts for exactly the same facility. That is the philosophy.

Mr. SHUSTER. And that is what enables the fund to build up. And as Ms. Norton pointed out, the courts have paid in 15 percent of the total and they get a 40 percent return or 40 percent of the benefit.

Mr. MORAVEC. Right. Because they have been the fastest growing of our tenants.

Mr. SHUSTER. What would happen if that $480 million was pulled out? How significantly would that affect the total program?

Mr. MORAVEC. As I say, it would have an almost immediate and deleterious impact on our operations. We would have to start cutting back across the board in every respect. Right now, the Federal Buildings Fund, as Congress intended, is generating a positive cash flow of about $1.5 to $1.6 billion a year and we are reinvesting that money directly in our inventory.

Our highest priority during this Administration has been reinvestment in our existing stock of owned buildings, to the tune of about $1 billion, and again this year that is our request. In the last few years, we have been spending about $500 to $700 million a year for new construction without direct appropriation from Congress.

Mr. SHUSTER. Mr. Mecham, you might want to get in on this. The $680 million, I did not quite follow that. I missed something there. You paid in $680 million for what?

Mr. MECHAM. There were four years during the Clinton Administration when the White House requested no money for court buildings. During two of those years, as Ms. Norton pointed out, Congress, and we soundly supported this---indeed we took the initiative on it---sought the funding for these buildings. Congress added money to the appropriations bill to the tune of $680 million over those two years and that money was then used to build court buildings. Essentially, that is pretty much what we have done from fiscal year 1991 up through 2004.

Also, we are treated much differently from most other agencies. At least 55 percent of major agencies' office space does not have to go through GSA. These agencies run their own building programs. They are out from under GSA's building program.

If you add in the embassies and military bases and so on, GSA control a lot smaller percentage than that. We would like to be treated the same as the 55 percent of the Executive Branch who are not paying rent to GSA. They are taking care of their own

building program out of direct appropriations. We would like to join them and Congress.

Mr. SHUSTER. Again, I think Ms. Norton makes a very good point, watch what you wish for. Because when those folks come up for appropriations, they are under great scrutiny. The numbers that I have shared with you, maybe you could respond to some of those numbers, your personnel in the last 20 years has doubled, you have tripled your total space, but you only have useable space of 2.5. What I am getting at is, are you building courthouses that are too big, that are too grand, too opulent?

Mr. MECHAM. I do not think so. Maybe you can find an exception here or there out of 90 or so new courthouses, but I do not think so.

Mr. SHUSTER. Again, I think we need to look at those numbers. I also come to the conclusion that if the judiciary is not willing to work with the GAO and do a space utilization analysis, then we are going to have to insist that that is the only way we can move forward.

And it has been reported to me, and I have not heard anything different here today, you have not stood up and said, by gosh, we are going to do that. Let us get together with GAO and figure out the information they need. Because every time we move forward, every time that you come to me I am going to say the same thing, I am going to sound like a broken record, tell me how you are utilizing your space.

Mr. GOLDSTEIN. Mr. Chairman, if I may, could I add one comment quickly?

Mr. SHUSTER. Yes.

Mr. GOLDSTEIN. I would add one thing. Even if the courts did receive funds, they would still have to create an organization that they really do not have today that would have to manage their facilities. That does not exist. So at any point in time, they are starting from square one.

The other point just goes to the one you made. I think it is important to note that there was a standing recommendation that the courts do evaluate their space utilization with respect to courtroom sharing. They declined to do so. They have never taken on that issue. We are not suggesting that is the approach. We are certainly not predetermining that they need to do it. But there is no data, unfortunately, to support even Judge Roth's contention that the approach they have taken is appropriate. There is simply no data to go in any direction.

Mr. SHUSTER. Do you agree with me that they need to do a space utilization to understand

Mr. GOLDSTEIN. It has been our standing recommendation for a number of years now.

Mr. SHUSTER. As I said, until I see those numbers, until you can make the case, I ran a business for 14 years, you run an organization, you run a business, you have a facility, you have to look at those things. You have to understand them whether you are pushing cattle through a barn or whether you are administering the justice in this country. At the end of the day, these are taxpayers' dollars, it is not your money, it is not my money, it is from hard-

working people and we have got to make sure that they are getting the most out of the money.

And once again, when I look at numbers like I see here, I see that number and I see also that when you took over the Design Guide the space for judges went up 23 percent. A judge ought to have nice quarters. But up here on the Hill, first of all this Committee room, there are five Subcommittees plus the full Committee, we have got to figure out how to all be in here and use this place.

The other point is that when you look at the average space a judge's chambers has it is 2,800 square feet. In Congress we have 1,200 square feet and I have got more people working out of my office. I can tell you it is pretty cramped quarters. Now, I am not suggesting that you go to 1,200 square feet. I am suggesting that you need to look at the space. That is the only way we can really move forward here in this situation.

Judge ROTH. Mr. Chairman, if I could simply add, this is one of the calculations that are made up of so many indeterminant factors that you cannot defelop an exact formula for the use of courtroom space. Case management is a judicial and not an administrative function. Courtroom scheduling is a dynamic part of a judge's case management activity to control hundreds of cases.

In our judicial system, individual judges are accountable for cases assigned to them and for the movement of their dockets. They need the availability of the courtroom but that does not necessarily result in so many minutes in the courtroom. And you cannot determine that ahead of time. You cannot with hindsight go back and say that you did not need the courtroom because the case did not go to trial.

I am not trying to push against what you are asking for. I am simply trying to say that research and practice have demonstrated the importance of setting a trial date, the importance of having the availability of a courtroom, that many court events are scheduled months in advance, and it is common for judges to schedule several trials for the same day, knowing that the availability of the courtroom is going to result in cases settling, in cases not going to trial. But it is an art, not a science.

Mr. SHUSTER. Judge, with all due respect, I understand what you are saying, but we do that here. It is not a science here either. We have to go through this process. And you can continue to make this argument to me, but until you can tell me your courtrooms are being utilized at 70 percent, and my guess is they are not being utilized over 50 percent, and that is a shot in the dark, but you have nothing to refute me.

I guess when you come into court you want your attorneys to argue their case with facts. So let us look at some facts and then you can sit here and say we are utilizing them at 70 percent or whatever, it is very difficult for us to do more than that, and I may buy that. But today, you are scheduling cases, you put down on paper when you are going to do it, when you are going to utilize them. And there are some courtrooms in this country that I know are built specifically for national security cases and things like that where they have got to have soundproofing and those types of technology. You are scheduling them.

We can go round and round, but until the judiciary stands up and says we will figure out if we are utilizing our facilities—again, the numbers I keep coming back to are you doubled your employees, you tripled your space, and you only have two and a half times more space utilized. That is telling me pretty clearly that you are building grand buildings. And when you get under those numbers and see what the utilization is, it is not going to be there. I have gone over my time.

Mr. MECHAM. Can I give you just one comment on that?

Mr. SHUSTER. Sure.

Mr. MECHAM. Our staffing has gone up just over 100 percent since 1984. The workload has gone up about 200 percent. It seems to me that ought to be weighed in the equation as well. And then with respect to the comment from Mr. Goldstein, we do not wish to set up a real estate business in the judiciary. We would like to contract the work out to GSA and pay them. If they do not want to do it, then we will go to the Army Corps of Engineers, the Postal Service, or we will contract it out. We simply do not want to set up a big staff but we do want to run our own show and be able to control it. Prior to 1939, the Justice Department told the judiciary how to run its affairs, the Bureau of the Budget did its budget. Congress got us out from under those two Executive Branch organizations. We would like to have the same privilege with GSA and it would be fair to do it because we are discriminated against now.

Mr. SHUSTER. And all I would say is be responsive. If you want to do something, you have got to show us the facts first.

I will yield to the Ranking Member.

Judge ROTH. Mr. Chairman, could I comment on the 70 percent?

Mr. SHUSTER. The Ranking Member might have a question that you might be able to answer her question.

Ms. NORTON. Mr. Mecham, look, do not talk workload to us. We are talking trials using formal courtroom space and you give us workload figures. It is not very helpful.

Judge Roth, you have got to understand this, both you and Mr. Mecham, coming to the Congress in the 21st century and arguing that there is no way to figure out using any statistical measures, any probability measures how to do space so that it does not in fact interfere with trials gets you from Congress go get yourself a better statistician, somebody who is better at probability. Let me just say, I did not even understand what you said—you have the trial a certain day, you tell them there is going to be a trial at a certain day, it has got to be a courtroom at a certain day. Nonsense. You tell them there is going to be a trial at a certain date. If the courtroom is not available, that trial date stands. And you say the courtroom is not available, given the figures that I quoted here and all the under-utilization, that does not in fact take away from the definite notion he got off by luck, that he did not have to go that he. He is going to have to go very soon. So the notion that somehow that has to be razor focused.

But what we are asking, which is simply to use probability and statistics to figure out if only X number of trials, cases go to trial, given the mean, given the average, use some other probability standard, it follows that with respect to courtroom space we can expect this. This kind of expectation of the use of resources is the way

the world operates today. Yes, even courts. Citing to us State courts which have to do with a self-contained system and not with a nationwide system is not very helpful to the Congress. I understand, for example, as a lawyer that there are certain kinds of trials that are so routine they could be scheduled just like this—bankruptcy, magistrates, it has been some time since I have been in the courtroom, senior judges who are sometimes, not always, given matters that are not as long as others. This is not beyond the capacity of the courts to do.

I want to say, because I think I am reflecting what the Chairman and I have been saying, there is no chance of changes if the courts do not come forward with at least some of what the Congress has asked you to do, but instead come forward with we are courts, what in the world can you expect of us, we are going to continue to do exactly what we have been doing, and by the way, give us control of our budget to boot. It is an amazing set of expectations you have.

Let me ask a question. I do not want to let GSA think that we think they have been hunky-dory here. We have tried to take GSA to task for the entire 15 years I have been in Congress. GSA is very responsible for the fact that courts thought that atriums were a part of rendering justice, that kitchens were a part of that. There were literally, and I do not exaggerate, there were chief judges that designed whole courthouses. And that is the fault of the GSA. I am not convinced that that is not happening now.

We said to GSA, hey, look, let me tell you what separation of powers means. It does not mean you give over your statutory responsibility which has nothing to do with cases and controversies to the Federal courts. In light of that, Mr. Moravec, I have to ask why you downgraded at least one tool you had, the court management group, which was an independent office established in 1995, reporting directly to the Commissioner no less, to now an office reporting to the chief architect. That is four levels removed, as far as I understand. I do not understand why, given the trouble we have had historically with the courts, I do not understand why you would not want to take more personal responsibility for what has happened here and why a less independent court management group helps you to make your case.

Mr. MORAVEC. I would not necessarily characterize the reorganization of the central office of the Public Buildings Service as having resulted in a downgrading of the courts management group. In fact, Ms. Norton, I take very personal and direct interest in our courts program because they are one of our largest and most important customers.

Ms. NORTON. Why is it an independent office now?

Mr. MORAVEC. Because, frankly, its work is important, and as broad an expanse as it has, it is not big enough to justify an independent office. It should be included, and this is consistent with the Chairman's question, it should be included as part of the way we deal with all of our customers. The Office of the Chief Architect is the source of design and construction expertise for our entire $10 billion construction program. So it makes logical sense to me that the courts management group, which is only one of the kinds of buildings that we are building these days, should be included there.

Ms. NORTON. Look, Mr. Moravec, I respectfully disagree. It seems to me the management folks ought to be in charge of the architects, not the other way around, sir. You tell me as an artist, I consider architects something of that kind, hey, here you control the management, I would think I had died and gone to Heaven. I do not understand your thinking here. You ought to be

Mr. MORAVEC. Ms. Norton, they are a technical resource to the Commissioner and to the Administrator. They do not control anything. What they do is they provide the benefit of their professional expertise in the creation of these very complex buildings.

Ms. NORTON. I do not want to get into a bureaucratic—I do not think it makes sense for the Chief Architect to control the managers rather than the other way around. He ought to have to make his

Mr. MORAVEC. With all due respect, I think you misunderstand. I would be delighted now or at some future point to come and talk to you about exactly what the role of the Chief Architect is. I think you have a misapprehension as to what the scope of that office's responsibilities are.

Ms. NORTON. I would be very glad to get that briefing.

Just let me say, Mr. Mecham, when you talk about DOD, yes, DoD can build bases, housing on bases, but surely you know that DoD comes to GSA for general office space the same way you do, and they have got lots of office space in lots of places. So I think as long as you talk about DoD you ought to separate out their function which has to do with what they do from the function that has to do with what GSA does.

Mr. MECHAM. Less than 1 percent of DOD's budget is paid in rent to GSA. It is 22 percent of ours.

Ms. NORTON. Yes. What does that tell us though? First of all, you have to look at the size.

Mr. MECHAM. It tells you we are taking it in the neck.

Ms. NORTON. You are going to get into a statistical dialogue. Let us get into it then. First of all, let us look at what the DoD budget goes for, and you certainly would expect, I would hope, that less than 1 percent goes to the GSA. And if it does not, I want to go to the Armed Services Committee and find out why. If they are spending anything more than a tiny amount for office space, I want to know why, especially in the middle of a war. But look, I just wanted to correct the record on that.

I have some questions that I need clarification on and I want to make sure I get that clarification. Judge Roth, for example, cites kind of going to do things here. We kept looking in your testimony for things that had been done to control costs. So I said to the staff go get me an example. Law professors are just hopeless, they reason from hypotheticals. So they found me one.

So perhaps I can put this to you and ask how you would respond to it. It is a proposal apparently by the GSA to consolidate the Ft. Lauderdale and the West Palm Beach courthouses. GSA comes with the notion of one consolidated facility. And they have one very good idea that this Committee loves, it would be constructed on a site that the Federal Government owns. So we did the math on that one. We found that if you looked over 30 years, you would get an almost $400 million saving.

And if you look right now in present value of money, and remember, you are talking about a windfall of almost $500 million, right now if you did it that way, you would have something over $221 million in savings. So I put that hypothetical to you, how will or how do you think the Administrative Office should treat the consolidation idea, especially given the budget constraints you have testified to this afternoon?

Judge ROTH. We very strongly support the idea. In fact, it was Judge Zloch and myself conferring together who initiated this idea. We have since then proposed it to GSA and we are working together now with GSA to accomplish this. Yes, we think is absolutely the sort of thing that should be done.

Ms. NORTON. So I am going to take that as a will happen. Or will the judges have a veto on that?

Judge ROTH. Oh, no, no, no. The judges are for it. It was initiated by the judges.

Ms. NORTON. They want to consolidate it?

Judge ROTH. They want to consolidate.

Ms. NORTON. I wish you had cited that. Because we think that is the kind of efficiency we are talking about.

Judge ROTH. We do too.

Ms. NORTON. Not only here we have a whole courthouse to share, we would like the sharing to occur with courtrooms as well. Let me ask a question about the Design Guide because that has interested me for some time. Judge Roth has testified that they want to review the Design Guide. I indicated earlier that I understand the position you are put in, you are put in the same position I am and Federal agencies are, you are looking at the Design Guide, you are a Federal judge looking at a Design Guide. Who is going to do this review? Tell me, who will do the review you have in mind?

Judge ROTH. The review is being done by the committee.

Ms. NORTON. And who is on that committee? I am trying to figure out who does this work.

Judge ROTH. There is a judge representative of every circuit in the country on the committee. We consult with staff at the AO, we consult with consultants, we use our own personal knowledge of court function to review the Design Guide and to determine where we think there can be effective savings made that will not impinge on the proper function of the courts but will permit us to be more economical.

Ms. NORTON. So they are using the very same criteria you outlined before about flexibility by a judge. Do you consult GSA or any third party not connected with you and the AO?

Judge ROTH. We have consulted with a number of third parties in the review.

Ms. NORTON. For example?

Judge ROTH. You know, I will have to get with you on that. I do not have it on the tip of my tongue. But I can supply that information.

[The information follows:]

The **Design Guide** review included comments and input received in October and November 2004 from the General Services Administration's (GSA) Center for Courthouse Programs and the GSA regions' Public Buildings Service court liasons. All GSA respondents have worked on planning, design and construction of new courthouse construction projects and repair and alteration projects. Com-

ments range from space programming changes and suggestions to updates based on current construction practices, building codes and new technology. The focus is on balancing cost containment with the functional space needs of the court.

In addition to GSA, we solicited comments (either orally or in writing) from private architectural and engineering firms (like Phillips Swager Associates, Gruzen Samton, LLP, H3 Hardy Collaboration Architecture), the US Marshals Service, and the Government Accountability Office (GAO) on the current **Design** Guide. Neither GAO nor the USMS have provided any comment to date. Based on the comments received, our Committee members thought further study into specific areas needed to be completed before considering them as revisions to the **Design Guide**. The National Institute of Building Sciences, with major assistance from Jacobs Facilities, Inc., coordinated this effort. The consultants had experience working with other government and private space planners and were required to compare current **Design Guide** standards with other public and private organizations. In addition, the consultants developed proposals for a collegial model where chambers and courtrooms are placed on separate floors; technical areas such as lighting, acoustics, heating, ventilation and air conditioning; the impact of electronic case filing on space; and ballistic glazing and other security design guidelines, among othe areas. GSA will review and comment on technical revisions to ensure there is no conflict in guidance between the judiciary's **Design Guide** and their Facilites Standards **Design Guide**.

The results of these independent studies on various aspects of the **Design Guide** will be considered by the Committee on Security and Facilities later this year.

Ms. NORTON. Let me just say, Judge, that also would increase the credibility of the executive office. We all profit by having somebody who is not in our own brain, and then if they come back with something that you disagree with, then of course you can say but have you factored in this, that, or the other. It is very important to us that the Design Guide mean something.

Mr. Moravec, I cannot understand what you have to do with the Design Guide any more, what GSA has to do with any of that. It just seems to me that if they have got the Design Guide and you get to build whatever they say, you are pretty much out of it.

Mr. MORAVEC. I would not necessarily agree with that, Ms. Norton. I would say that we are certainly one of the partners that are consulted with by the courts.

Ms. NORTON. You notice she did not put your name in there as to who she consulted, because she was being truthful. See, the Judge knows how to offer truthful testimony. She did not put GSA right up there at the top. She is under oath, or did we swear her in? We did not need to, she is a judge.

[Laughter.]

Ms. NORTON. But I did not hear her say, well, there is GSA, and then there is consultants. I just never heard your name. Nobody called your name. You ought to be insulted if you in fact have something to do with it.

Mr. MORAVEC. I am not in any way insulted.

Ms. NORTON. What do you have to do with it, Mr. Moravec?

Mr. MORAVEC. I know very well how intimately engaged GSA is, specifically the courts management group, in the process of reviewing the Design Guide. We have been encouraged by them to be a full participant in that review.

Ms. NORTON. I am trying to understand the specific nature of your involvement one, in the Design Guide; and two, particularly in this review, that the Judge does not quite know who will be the

outside third parties, dare I suggest that you might be one of those?

Mr. MORAVEC. I am affirming that we are.

Ms. NORTON. Well, she did not mention your name. And I have to tell you, if you are, then I have to ask you, where is the professionalism that you demand of other agencies in the way in which they have gone about the Design Guide process? If you have been involved, that means you are taking responsibility for some of the criticisms that have come forward here today.

Mr. MORAVEC. We accept that responsibility.

Ms. NORTON. What are you going to do about it? How are you going to get enough involved in the design process so that they can call your name out first rather than leave it off the list altogether the next time we ask?

Mr. MORAVEC. Well, as I say, we are involved. We continue to be involved. But at the end of the day, we are trying to be as responsive as we can to what we understand to be our customer's needs. We have and do attempt to respond to those needs as they are presented to us by our customer.

Ms. NORTON. Mr. Chairman, I have only one more question. It is really for Mr. Goldstein, because their report has been continually helpful to us. Mr. Goldstein has said that GAO, in doing its report, just had no data to work with, no data on the overall utilization of the courts. And Judge Roth has said she does not think that is appropriate, that is why you do not have any data. It looks like somebody is going to have to go around and do data but not through the courts.

On the data and the unavailability of the data, is it that it is just not gathered, that it is not available, does somebody have it, there was not enough available for you to extrapolate from? Because normally of course you do not do the data yourself, but most Federal agencies have enough so you can then proceed. What is the nature of the data deficit please?

Mr. GOLDSTEIN. I think there are a number of things, Ms. Norton. I think the first is that the judiciary did not, when we did our report in 1997 where we first brought this up, they did not compile data. They did not have data.

Ms. NORTON. When?

Mr. GOLDSTEIN. In 1997. They did not have data on how often and for what purposes courtrooms were actually used. They did not have criteria for determining how many and what type of courtrooms would be needed. They did not have sufficient data to support the practice of providing a trial courtroom for every district judge.

One of the things I think it is important to note in a report we did in 2002, there is some courtroom sharing, there is not a lot but there is some, it is mainly by senior judges.

But one of the things that is interesting is when we went out and we talked to a number of judges in different parts of the country a couple of things came up. While a number of judges cited negative experiences with courtroom sharing, a number of them had very positive things to say. A court in Sioux City, Iowa, had four judges that had been sharing three courtrooms for five years. They reserved courtrooms through computers.

In Nashville, Tennessee, you had three senior judges that effectively shared two courtrooms for a number of years without delays. And in Illinois, you had sharing that occurred without any problems for nine years. District judges used magistrate and bankruptcy courtrooms and things like that.

So again, it is something that it is possible that could be done. We are not saying that it should be done, but it is something that we feel that they ought to look at a lot more closely, and obviously there is some experience that shows that it can be successful.

Ms. NORTON. Finally, you talk about the need in your report for some kind of systematic oversight and management of court projects. From what exists at least now without creating something, how might that be done?

Mr. GOLDSTEIN. What we were talking about in that report, this was principally related to how the courts went about planning what their needs were and how they were projecting some of their space needs, and what we found at the time was that there were just disparate set of needs being put forward and there did not seem that there was a consistent approach by the executive office of the courts to examine across the board and provide any transparency for how courtrooms would be utilized, for how court building usage would be developed, even to the extent of you had at the time different uses of the Design Guide, you had finishes coming in in various ways at different places, you had something like Foley Square in Boston that had extremely expensive finishes and others that did not.

There was not any consistency how the courts were approaching their overall management of these kinds of things. Some of these things they have improved. They do have a five year plan. They do have a more consistent approach that they feel they have developed. They have discussed with us over the years in how we have looked at the recommendations we have put in place were followed. We have not gone back in to look at this holistically. At some point that may be a useful endeavor.

Ms. NORTON. So in terms of recognizing that this is an independent branch of Government, do you think that deeper involvement of GSA in what you call the systematic process of helping them to manage projects would be useful?

Mr. GOLDSTEIN. It might be. I think GSA is fairly involved. I would actually agree with Mr. Mecham. I think they have had a very good relationship over the last couple of years particularly.

Ms. NORTON. I am sure they love each other. I am trying now to find evidence of the professional hand of real estate people, of people who understand land and construction management on the courts, and we have a problem finding it.

Mr. MORAVEC. If I may respond to that. That is our responsibility. It is our responsibility to manage the site acquisition, the design, the project management of the construction, the delivery, and then ultimately the operation of every courthouse. That is not the courts' responsibility. That is our responsibility in service to their mission.

Ms. NORTON. Mr. Moravec, after they give you the design in one courthouse there are elaborate finishes, in another courthouse people are perhaps more considerate and there are not. Does the GSA

then say if you look across the board at the finishes that we have been using in courthouses around the country, we would strongly suggest, and we will certainly have to tell the Committee about this, that these finishes, these atriums be excluded from your project?

Mr. MORAVEC. Ms. Norton, that is a part of every process. That is part of every courthouse that we have been involved in the design of. We are very involved in that process.

Ms. NORTON. That is going to be the end of what I say because if we were to listen to Judge Roth and Mr. Moravec, what we got is that the system works pretty well. And since it works pretty well, then I think we better leave it just like it is and see if we can improve it from here.

Mr. SHUSTER. I agree with you, we probably should leave it the way it is. Although I agree with Ms. Norton that GSA, when you gave up the Design Guide control, when you see judges gaining 23 percent more space, I do not believe you were managing the process. You ought to look at the Federal courts not so much as customers, but your charge should be looking after the taxpayers' money and managing the taxpayers' money. Because when you see that kind of increase in office space, somebody was not watching the store.

Mr. MORAVEC. We take that responsibility very seriously. Our job is to provide a superior workplace for the Federal worker, including the judiciary, and superior value for the American taxpayer. I know that everybody on our staff takes that charge very seriously.

Mr. SHUSTER. I am not sure we got the superior value part of it.

The other thing that I would encourage, and I am going to sound like a broken record, but the Federal judiciary ought to figure out how you are going to get those numbers together so we in Congress can look at the utilization. I can assure you, Mr. Mecham, if you go before the Appropriations Committee and do not have some numbers to justify why you think you need to build, they are not going to give you the money. And I would just repeat what Ms. Norton said, watch what you wish for, because if it happens, I do not think it is going to be a happy day for the courts.

And finally, just a final question I have, and this is just a yes or no question to Mr. Goldstein, is the Federal court system in crisis as Mr. Mecham said, yes or no?

Mr. GOLDSTEIN. I cannot answer that, sir, not at this point. We have not done enough work. I do not know if they are in crisis.

Mr. SHUSTER. Then as a professional for the GAO, is it your sense that they are in crisis? Or is it your sense—I think what you are saying is you just do not have the facts, you have not been able to get at the facts to make a determination.

Mr. GOLDSTEIN. That is correct.

Mr. SHUSTER. Okay.

Ms. NORTON. Mr. Chairman, could I just leave for the record, because I think it is only fair to let you know, at least the kinds of potential remedial actions I would like to discuss with the Chairman. I do not hear a remedy coming from the judiciary except give us a budget. So these are the kinds of things I would like to discuss. This is not to say this is going to happen, but these are the kinds of issues I would like to discuss with the Chairman.

I do not think there should be any new starts until the GAO audit that the Committee has requested is in. I do think that the GSA should finish the design contracts in the pipeline of course, but I do not believe it would be prudent to sign any new contracts until we get some accountability. I am very reluctant, Mr. Chairman, and I will have to speak with you, to vote for a new authorization, including the fiscal year 2006 program, until the GAO report is done.

On the Design Guide, I believe a way must be found to formally insert the GSA into the guide revision process so that we can know that they are there by what they tell us as well as by what the courts tell us. I believe that the testimony on sharing policy has been what amounts to a defiance of this Committee and of the Congress of the United States.

And I believe by statute we should require senior judges to share a courtroom with available exceptions where necessary. There are senior judges, for example, who work virtually full time or who handle the most complicated cases. And I believe we should require the AOC, in consultation with the GAO and the GSA, to develop criteria to measure the utilization of courtrooms, as the Committee has endlessly asked for.

All of these are debatable, Mr. Chairman, and obviously subject to your ultimate approval or disapproval. But I did want to show just how troubled I am not only by today's testimony, but about the cumulative effect of having what Congress has asked both the administrative office, and if I may say so, Mr. Moravec, and the GSA, and has been ignored. And after a while when Congress is ignored enough, it seems to me that Congress has to take action to show that it means what it says. Thank you very much, Mr. Chairman.

Mr. SHUSTER. Thank you, Ms. Norton. We certainly will take those under serious consideration as we move forward.

I want to thank the witnesses for being here today.

I want to ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing. And I ask unanimous consent that during such time as the record remains open additional comments offered by individuals or groups may be included in the record of today's hearing. Without objection, so ordered.

With nothing further, the Committee stands in adjournment.

[Whereupon, at 3:58 p.m., the committee was adjourned.]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Economic Development, Public Buildings and Emergency Management, Committee on Transportation and Infrastructure, House of Representatives

For Release on Delivery
Expected at 1:00 p.m. EDT
June 21, 2005

COURTHOUSE CONSTRUCTION

Overview of Previous and Ongoing Work

Statement of Mark L. Goldstein, Director
Physical Infrastructure Issues

GAO-05-838T

June 21, 2005

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Highlights

Highlights of GAO-GAO-05-838T, a testimony before the Subcommittee on Economic Development, Public Buildings and Emergency Management, Committee on Transportation and Infrastructure, House of Representatives

COURTHOUSE CONSTRUCTION

Overview of Previous and Ongoing Work

Why GAO Did This Study

Over the last 20 years, GAO has compiled a large body of work on courthouse construction and federal real property. The General Services Administration (GSA) owns federal courthouses and funds related expenses from its Federal Buildings Fund (FBF)–a revolving fund used to finance GSA real property services, including the construction and maintenance of federal facilities under GSA control. The judiciary pays rent to GSA for the use of these courthouses, and the proportion of the judiciary's budget that goes to rent has increased as its space requirements have grown. In December 2004, the judiciary requested a $483 million permanent, annual exemption from rent payments to GSA to address budget shortfalls.

In this testimony, GAO (1) summarizes its previous work on courthouse construction and (2) provides information on FBF and GAO's ongoing work on the federal judiciary's request for a permanent, annual rent exemption of $483 million from rent to GSA.

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To view the full product, including the scope and methodology, click on the link above. For more information, contact Mark L. Goldstein at (202) 512-2834 or goldsteinm@gao.gov.

What GAO Found

GAO's courthouse construction work to date has focused primarily on courthouse costs, planning, and courtroom sharing. In the 1990s, GAO reported that wide latitude among judiciary and GSA decision makers in choices about location, design, construction, and finishes often resulted in expensive features in some courthouse projects. The judiciary has since placed greater emphasis on cost consciousness in the guidelines for courthouse construction that it provides to GSA. Related to planning, GAO also found in the 1990s that long-range space projections by the judiciary were not sufficiently reliable, and that the judiciary's 5-year plan did not reflect all of the its most urgently needed projects. The judiciary has made changes to improve its planning and data reliability. During previous work, GAO also found that the judiciary did not track sufficient courtroom use data to gauge the feasibility of courtroom sharing.

GSA has been unable to generate sufficient revenue through FBF over the years and thus has struggled to meet the requirements for repairs and alterations identified in its inventory of owned buildings. By 2002, the estimated backlog of repairs had reached $5.7 billion, and consequences included poor health and safety conditions, higher operating costs, restricted capacity for modern information technology, and continued structural deterioration. GSA's inability to generate sufficient revenue in the past has been compounded by restrictions imposed on the rent GSA could charge federal agencies. Consequently, GAO recommended in 1989 that Congress remove all rent restrictions and not mandate any further restrictions, and the most restrictions have been lifted. Some narrowly focused rent exemptions, many of limited duration, still exist today, but together they represent roughly a third of the $483 million permanent exemption the judiciary is currently requesting from GSA. The judiciary has requested the exemption, equaling about half of its annual rent payment, because of budget problems it believes that its growing rent payments have caused. GSA data show that GSA-owned space, occupied by the judiciary, has increased significantly. GAO is currently studying the potential impact of such an exemption on FBF, but past GAO work shows rent exemptions have been a principal reason why FBF has accumulated insufficient money for capital investment.

Mr. Chairman, Ranking Minority Member, and Members of the Subcommittee:

Thank you for the opportunity to testify before you today on our work related to federal courthouse construction. As you know, we have done considerable work on federal courthouse construction and other related federal real property issues over the past 20 years. My testimony today will (1) summarize our previous work on this topic and (2) provide information on the Federal Buildings Fund (FBF) and our ongoing congressionally requested work related to the federal judiciary's request for a permanent, annual exemption of $483 million from rent that the General Services Administration (GSA) charges the judiciary to occupy space in courthouses. GSA owns federal courthouses and funds courthouse-related expenses from FBF—a revolving fund used to fund GSA real property services, including space acquisition and asset management for federal facilities that are under GSA control. The exemption the judiciary is seeking would represent about half of the judiciary's 2004 rent payment of $909 million, and the judiciary represents one of GSA's largest tenants. My testimony today will highlight the following points:

- GAO's courthouse construction work to date has focused primarily on courthouse costs, planning, and courtroom sharing. In the 1990s, we found that wide latitude in choices made by GSA and the judiciary about location, design, construction, and finishes often resulted in expensive features in some courthouse projects. Since then, the judiciary has placed greater emphasis on cost consciousness in its courthouse construction guidance for GSA. In the 1990s, we also found that the judiciary's long-term space projections were not sufficiently reliable, and that the judiciary's 5-year plan did not reflect all of the judiciary's most urgently needed projects. Since then, the judiciary has made the changes we recommended. With regard to courtroom sharing that could help reduce costs, we found that the judiciary did not collect sufficient data to determine how much sharing could occur. The judiciary disagreed with this finding and the related recommendation.

- GSA has historically been unable to generate sufficient revenue through FBF and has thus struggled to meet the requirements for repairs and alterations identified in its inventory of owned buildings. By 2002, the estimated backlog of repairs had reached $5.7 billion, and consequences included poor health and safety conditions, higher operating costs, restricted capacity for modern information technology, and continued structural deterioration. GSA charges agencies rent for the space they occupy, and the receipts from the rent are deposited in FBF and are then available for the purposes of the fund. Restrictions imposed on the rent

GSA could charge federal agencies have compounded the agency's inability to address its backlog in the past. Consequently, we recommended in 1989 that Congress remove all rent restrictions and not mandate any further restrictions, and most rent restrictions have been lifted. The GSA Administrator has the authority to grant rent exemptions, and all of the current exemptions are limited to single buildings or were granted for a limited duration. Together, these current exemptions represent about a third of the $483 million permanent exemption the judiciary is requesting from GSA. The judiciary has requested the exemption, equal to about half of its annual rent payment, because of budget problems that it believes its growing rent payments have caused. GSA data show that one reason the judiciary's rent is increasing is that the space it occupies is also increasing. We are currently studying the potential impact of such an exemption on FBF, but our past work shows that rent exemptions were a principal reason why FBF has accumulated insufficient money for capital investment.

Background

Since the early 1990s, GSA and the federal judiciary have been carrying out a multibillion-dollar courthouse construction initiative to address the judiciary's growing needs. In 1993, the judiciary identified 160 court facilities that required either the construction of a new building or a major annex to an existing building. From fiscal year 1993 through fiscal year 2005, Congress appropriated approximately $4.5 billion for 78 courthouse construction projects. Since fiscal year 1996, the judiciary has used a 5-year plan to prioritize new courthouse construction projects, taking into account a court's need for space, security concerns, growth in judicial appointments, and any existing operational inefficiencies. The judiciary's most recent 5-year plan (covering fiscal years 2005 through 2009) identifies 57 needed projects that are expected to cost $3.8 billion. GSA and the judiciary are responsible for managing the multibillion-dollar federal courthouse construction program, which is designed to address the judiciary's long-term facility needs. The Administrative Office of the United States Courts (AOUSC), the judiciary's administrative agency, works with the nation's 94 judicial districts to identify and prioritize needs for new and expanded courthouses. The *U.S. Courts Design Guide (Design Guide)* specifies the judiciary's criteria for designing new court facilities and sets the space and design standards that GSA uses for courthouse construction. First published in 1991, the *Design Guide* has been revised several times to address budgetary considerations, technological advancements, and other issues, and the guide is currently undergoing another revision.

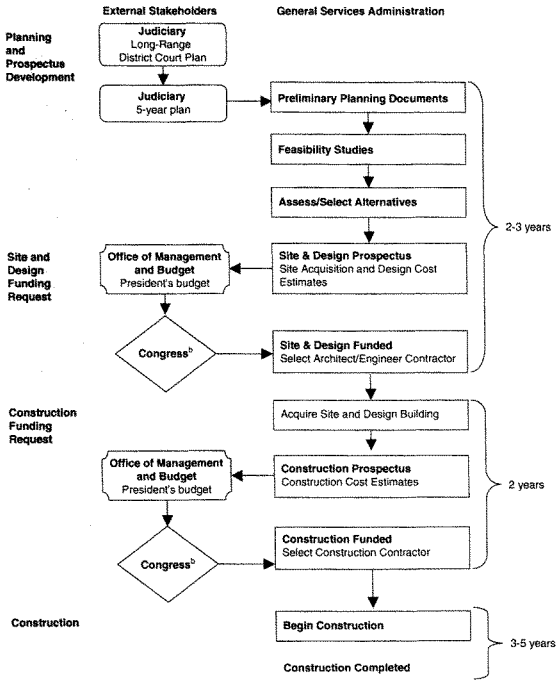
GSA provides a range of real property services including maintenance, repairs, alterations, and leasing to numerous federal agencies and the federal judiciary. The Public Buildings Amendments of 1972 made several important revisions to the Federal Property and Administrative Services Act. First, the 1972 law created a new revolving fund, later named FBF. Next, it required agencies that occupy GSA-controlled buildings to pay rent to GSA, which is to be deposited in the revolving fund to be used for GSA real property services.[1] GSA charges rent based on appraisals for facilities it owns and the actual lease amount for facilities it leases on the tenants' behalf.[2] The legislation also authorized any executive agency other than GSA that provides space and services to charge for the space and services. The rent requirement is intended to reduce costs and encourage more efficient space utilization by making agencies accountable for the space they use. GSA proposes spending from FBF for courthouses as part of the President's annual budget request to Congress.

GSA has been using the judiciary's 5-year plan for new courthouse projects since fiscal year 1996 to develop requests for both new courthouses and expanded court facilities. GSA also prepares feasibility studies to assess various courthouse construction alternatives and serves as the central point of contact with the judiciary and other stakeholders throughout the construction process. For courthouses that are to be selected for construction, GSA prepares detailed project descriptions called prospectuses that include the justification, location, size, and estimated cost of the new or annexed facility. GSA typically submits two prospectuses to Congress. The first prospectus generally requests authorization and funding to purchase the site and design the building, and the second prospectus generally requests authorization and funding for construction, as well as any additional funding needed for site and design work. Once Congress authorizes and appropriates funds for a project, GSA refines the project budget and selects private-sector firms for the design and construction work. Figure 1 illustrates the process for planning, approving, and constructing a courthouse project.

[1]Previously, Congress appropriated money to GSA, and GSA paid for agency space requirements.

[2]Rent is based on approximate commercial charges for comparable space and services. This method was chosen over a cost-recovery basis in order to produce more income so that the revolving fund could finance construction and major repairs.

Figure 1: Development and Approval Process for Funding a Typical Courthouse[a]



Source: GSA.

[a]This figure shows the typical process for a project that is procured through the design bid-build method. Projects may also be procured using the design-build method. Such projects require site, design, and construction funding at the same time and therefore may be submitted to OMB and Congress only once, rather than twice as shown in this figure.

[5]Courthouse projects are financed through the Federal Buildings Fund (FBF), a revolving fund that is used to fund GSA real property activities with rent from tenant agencies. The President's annual budget request to Congress proposes spending from FBF. GSA submits detailed project descriptions called prospectuses to Congress as part of its Capital Investment Program. Prospectuses request authorization for new construction and for repair and alteration projects, including courthouses.

Courthouse projects continue to be costly, and increasing rents and budgetary constraints have given the judiciary further incentive to control its costs. The judiciary pays rent to GSA for the use of the courthouses, which GSA owns, and the proportion of the judiciary's budget that goes to rent has increased as the judiciary's space requirements have grown. According to the judiciary, rent currently accounts for just over 20 percent of its operating budget and is expected to increase to over 25 percent of its operating budget in fiscal year 2009, when the rental costs of new court buildings are included. Additionally, in fiscal year 2004, the judiciary faced a budgetary shortfall and, according to the judiciary, reduced its staff by 6 percent.

In September 2004, the judiciary announced a 2-year moratorium on new courthouse construction projects as part of an effort to address its increasing operating costs and budgetary constraints. During this moratorium, AOUSC officials said that they plan to reevaluate the courthouse construction program, including reassessing the size and scope of projects in the current 5-year plan, reviewing the *Design Guide's* standards, and reviewing the criteria and methodology used to prioritize projects. Judiciary officials also said that they plan to reevaluate their space standards in light of technological advancements and opportunities to share space and administrative services.

GAO's Courthouse Construction Work Has Focused on Costs, Planning, and Courtroom Sharing

Our work in the 1990s showed that decision makers within GSA and the judiciary had wide latitude in making choices that significantly affected costs. The judiciary's 5-year plan did not reflect all of the judiciary's most urgently needed projects. However, the judiciary has since made some of our recommended changes. We also found that the judiciary did not compile data that would allow it to determine how many and what types of courtrooms it needs. The judiciary concluded that additional data and analysis were not necessary.

Courthouse Construction Costs

In 1995, we testified that a primary reason for differences in the construction costs of courthouses was that GSA and the judiciary had wide latitude in making choices about the location, design, construction, and finishes of courthouse projects.[3] These choices were made under circumstances in which budgets or designs were often committed to before requirements were established. In addition, design guidance was flexible, and systematic oversight was limited. As a result, some courthouses had more expensive features than others.[4] While recognizing that some flexibility was needed and that some costly features may be justifiable, we found that the flexibility in the process should have been better managed. We recommended that GSA and AOUSC

- clearly define the scope of construction projects and refine construction cost estimates before requesting project approval and final funding levels;
- establish and implement a systematic and ongoing project oversight and evaluation process to compare courthouse projects, identify opportunities for reducing costs, and apply lessons learned to future projects; and
- establish a mechanism to monitor and assess the use of flexibility within design guidance to better balance choices made about courthouse design, features, and finishes.

GSA and the judiciary said that since 1996, they have also taken several actions to improve the courthouse construction program, including developing priority lists of locations needing additional space (the 5-year plan), revising the *Design Guide*, and placing greater emphasis on cost consciousness in its courthouse construction guidance for GSA.

In a 2004 congressional briefing, we reported that GSA had attributed some cost growth in courthouse construction projects to a number of factors, including changes in the scope of the projects. In Buffalo, New York, for example, GSA had to change the scope of the courthouse project and acquire an entirely new site in order to achieve the necessary security-based setbacks from the street. The judiciary said that funding delays have slowed the progress of the program by creating a backlog of projects, and

[3]GAO, *Federal Courthouse Construction: More Disciplined Approach Would Reduce Costs and Provide for Better Decisionmaking*, GAO/T-GGD-96-19 (Washington, D.C.: Nov. 8, 1995).

[4]GAO/T-GGD-96-19.

increased costs by 3 to 4 percent per year because of inflation. The judiciary also indicated that limiting the size of courthouses to stay within budget has resulted in space shortages sooner than expected at some courthouses. In a 2004 report related specifically to a new federal courthouse proposed for Los Angeles, we found that the government will likely incur additional construction and operational costs beyond the $400 million estimated as needed for the new courthouse.[5] Some of these additional costs are attributable to operational inefficiencies. Specifically, the court is split between a new building and an existing courthouse in Los Angeles, both of which will, according to the judiciary, require additional courtrooms to meet the district court's projected space requirements in 2031.

Judiciary Long- and Short-Term Space Planning

In 1993, we reviewed the long-term planning process used by the judiciary to estimate its space requirements.[6] We found that AOUSC's process for projecting long-term space requirements did not produce results that were sufficiently reliable to form the basis for congressional authorization and funding approval of new construction and renovation projects for court space. Specifically, three key problems impaired the accuracy and reliability of the judiciary's projections. First, AOUSC did not treat all districts consistently. For example, the procedure used to convert caseload estimates to staffing requirements did not reflect differences among districts that affect space requirements. Second, according to AOUSC's assumptions about the relationship between caseloads and staff needs, many district baseline estimates did not reflect the districts' current space requirements. For example, when a district occupied more space than the caseload warranted, future estimates of needs were overstated. Third, AOUSC's process did not provide reliable estimates of future space requirements because the methodology used to project caseloads did not use standard acceptable statistical methods.

We recommended that AOUSC revise the long-term planning process to increase consistency across regions, establish accurate caseload baselines for each district, and increase the reliability of the projected caseloads by

[5]GAO, *L.A. Federal Courthouse Project: Current Proposal Addresses Space Needs, but Some Security and Operational Concerns Would Remain*, GAO-05-158 (Washington, D.C.: Dec. 20, 2004).

[6]GAO, *Federal Judiciary Space: Long-Range Planning Process Needs Revision*, GAO/GGD-93-132 (Washington, D.C.: Sept. 28, 1993).

applying an accepted statistical methodology and reducing subjectivity in the process. In May 1994, we testified that the judiciary had implemented some of these recommendations.[7] For example, on the basis of our recommendation, whenever a decision was made to proceed on a particular building project, AOUSC provided GSA with detailed 10-year space requirements for prospectus development and an overall summary of its projected 30-year space requirements for purposes of site planning. In 2001, we reported that since 1994, AOUSC had continued its efforts to improve its long-term planning process in implementing our previous recommendations.[8] Specifically, the judiciary began (1) using an automated computer program that applied *Design Guide* standards to estimate space requirements, (2) employing a standard statistical forecasting technique to improve caseload projections, and (3) providing GSA with data on its 10-year projected space requirements to support the judiciary's request for congressional approval of funds to build new facilities.

In 1996 we reported that the judiciary had developed a methodology for assessing project urgency and a short-term (5-year) construction plan to communicate its urgent courthouse construction needs.[9] Our analysis suggested that its 5-year plan did not reflect all of the judiciary's most urgent construction needs. We found that the judiciary, in preparing the 5-year plan, developed urgency scores for 45 projects, but did not develop urgency scores for other locations that, according to AOUSC, also needed new courthouses. Our analysis of available data on conditions at the 80 other locations showed that 30 of them likely would have had an urgency score higher than some projects in the plan. We recommended that the Director of AOUSC work with the Judicial Conference Committee on Security, Space, and Facilities to make improvements to the 5-year plan, including fully disclosing the relative urgency of all competing projects and articulating the rationale or justification for project priorities, including information on the conditions that are driving urgency—such as specific security concerns or operational inefficiencies. In commenting on the report, AOUSC generally agreed with our recommendations and

[7]GAO, *Federal Judiciary Space: Progress Is Being Made to Improve the Long-Range Planning Process*, GAO/T-GGD-94-146 (Washington, D.C.: May 4, 1994).

[8]GAO, *Federal Judiciary Space: Update on Improvement of the Long-Range Planning Process*, GAO-01-308R (Washington, D.C.: Jan. 25, 2001).

[9]GAO, *Courthouse Construction: Improved 5-Year Plan Could Promote More Informed Decisionmaking*, GAO/GGD-97-27 (Washington, D.C.: Dec. 31, 1996) and GAO/T-GGD-96-19.

indicated that many of the improvements we recommended were already under consideration. It also recognized that some courthouse projects, which were currently underway, may have had lower priority scores because the funding had already been provided by the time the priority scores were developed.

Courtroom Sharing

In 1997, we reported that the judiciary maintains a general practice of, whenever possible, assigning a trial courtroom to each district judge.[10] However, we also noted that the judiciary did not compile data on how often and for what purposes courtrooms are actually used and it did not have analytically based criteria for determining how many and what types of courtrooms are needed. We concluded that the judiciary did not have sufficient data to support its practice of providing a trial courtroom for every district judge. We recommended that the judiciary

- establish criteria for determining effective courtroom utilization and a mechanism for collecting and analyzing data at a representative number of locations so that trends can be identified over time and better insights obtained on court activity and courtroom usage;
- design and implement a methodology for capturing and analyzing data on usage, courtroom scheduling, and other factors that may substantially affect the relationship between the availability of courtrooms and judges' ability to effectively administer justice;
- use the data and criteria to explore whether the one-judge, one-courtroom practice is needed to promote efficient courtroom management or whether other courtroom assignment alternatives exist; and
- establish an action plan with time frames for implementing and overseeing these efforts.

In 1999, AOUSC contracted for a study of the judiciary's facilities program to address, among other things, the courtroom-sharing issue and identify ways to improve its space and facility efforts. As part of this study, the contractor analyzed how courtrooms are used, assigned, and shared by judges. We reviewed the courtroom use and sharing portion of this study and concluded, along with others, that the study was not sufficient to

[10]GAO, *Courthouse Construction: Better Courtroom Use Data Could Enhance Facility Planning and Decisionmaking*, GAO/GGD-97-39 (Washington, D.C.: May 19, 1997).

resolve the courtroom sharing issue.[11] We recommended that the Director, AOUSC, in conjunction with the Judicial Conference's Committee on Court Administration and Case Management and Committee on Security and Facilities, design and implement cost-effective research more in line with the recommendations in our 1997 report. We also recommended that AOUSC establish an advisory group made up of interested stakeholders and experts to assist in identifying study objectives, potential methodologies, and reasonable approaches for doing this work. In responding to the report, AOUSC disagreed with our recommendations because it believed the contractor study was sufficient and additional statistical studies would not be productive.

In a 2002 report, we found that the judiciary's policies recognized that senior district judges with reduced caseloads were the most likely candidates to share courtrooms and some active and senior judges were sharing courtrooms in some locations primarily when there were not enough courtrooms for all judges to have their own courtroom.[12] However, because of the judiciary's belief in the strong relationship between ensured courtroom availability and the administration of justice and the wide discretion given to circuits and districts in determining how and when courtroom sharing may be implemented, we concluded that there would not be a significant amount of courtroom sharing in the foreseeable future, even among senior judges.

Issues Related to FBF

We have reported over the years that GSA has struggled to address its repair and alteration needs identified in its inventory of owned buildings. In 1989, we found that FBF's inability to generate sufficient revenue in the past was due, in large part, to restrictions imposed on the amount of rent GSA could charge federal agencies, and we recommended in 1989 that Congress remove all rent restrictions and not mandate any further restrictions. It is also important to note that not all federal property is subject to FBF rent payments because GSA does not control all federal properties. We are currently conducting a review for this committee regarding the issues associated with the judiciary's request of a $483 million permanent, annual exemption from rent payments to GSA.

[11]GAO, *Courthouse Construction: Sufficient Data and Analysis Would Help Resolve the Courtroom-Sharing Issue*, GAO-01-70 (Washington, D.C.: Dec. 14, 2000).

[12]GAO, *Courthouse Construction: Information on Courtroom Sharing*, GAO-02-341 (Washington, D.C.: Apr. 12, 2002).

Rent Restrictions Have Historically Contributed to Large Repair Backlogs

As part of our series on high-risk issues facing the federal government, we have reported that GSA has struggled over the years to meet the requirements for repairs and alterations identified in its inventory of owned buildings.[13] By 2002, its estimated backlog of repairs had reached $5.7 billion. We have reported that adverse consequences of the backlog included poor health and safety conditions, higher operating costs associated with inefficient building heating and cooling systems, restricted capacity to modernize information technology, and continued structural deterioration resulting from such things as water leaks.[14] We reported that FBF has not historically generated sufficient revenue to address the backlog.

On the basis of the work we did in the late 1980s and early 1990s, we concluded that federal agencies' rent payments provided a relatively stable, predictable source of revenue for FBF, but that this revenue has not been sufficient to finance both growing capital investment needs and the cost of leased space. We found that FBF's inability to generate sufficient revenue during that time was compounded by restrictions imposed on the amount of rent GSA could charge federal agencies. Congress and OMB had instituted across-the-board rent restrictions that reduced FBF by billions of dollars over several years, and later continued to restrict what GSA could charge some agencies, such as the Departments of Agriculture and Transportation. Because these rent restrictions were a principal reason why FBF has accumulated insufficient money for capital investment, we recommended that Congress remove all rent restrictions and not mandate any further restrictions.[15]

According to GSA, most of the restrictions initiated by Congress and OMB have been lifted. However, the GSA Administrator has the authority to grant rent exemptions to agencies. GSA data show that several rent exemptions are currently in place. In general, these exemptions are narrowly focused on a single building or even part of a single building or are granted for a limited duration. Table 2 summarizes the current rent exemptions that exist in GSA buildings, according to data GSA provided.

[13]GAO, *High-Risk Series: Federal Real Property*, GAO-03-122 (Washington, D.C.: Jan. 2003).

[14]GAO-03-122.

[15]GAO, *Federal Office Space: Increased Ownership Would Result in Significant Savings*, GAO/GGD-90-11 (Washington, D.C.: Dec. 22, 1989).

Table 2: Current Rent Exemptions in GSA Buildings

Agency, address	Justification	Estimated forgone annual rent
Smithsonian Institution, National Museum of the American Indian, New York, NY	Legislatively mandated exemption.	$4,566,632
U.S. Postal Service, 271 Cadman Plaza, New York, NY	GSA granted an exemption to the Postal Service as part of a 99-year rent-free agreement with GSA as a condition of the negotiated sale of the building in lieu of a transfer of funds from GSA.	$1,820,000
National Building Museum, 5th & F Sts., Washington, DC	Legislatively mandated exemption.	$1,300,000
Woodrow Wilson Center, 1300 Pennsylvania Ave., Washington, DC	GSA granted an exemption based on funding limitations imposed by Congress and the compelling purpose of memorializing the nation's 28th President.	$5,400,000
Department of Commerce, 14th St. & Constitution Ave., Washington, DC	GSA granted an exemption covering the area of the building that is maintained at the expense of the tenant agency.	$400,000
National Imaging and Mapping Agency, M Street, SE, Washington, DC	GSA granted a rent exemption of 50 percent because the tenant agreed to pay all maintenance, capital improvements, and security expenses due.	$7,038,552
Department of Agriculture, multiple locations, Washington, DC	GSA granted a 100-percent rent exemption for the tenant's three headquarters buildings for fiscal years 1996 through 2006 to allow the tenant to accumulate funds needed for major repairs on these buildings. The tenant will then pay for the repairs.	$52,406,234
Railroad Retirement Board, nationwide locations	GSA granted a partial rent exemption so that the tenant would only pay for the actual costs on these buildings through fiscal year 2013.	$3,655,063
Centers for Medicare & Medicaid Services, nationwide locations	GSA granted a partial rent exemption so that the tenant would only pay for the actual costs on these buildings through fiscal year 2013.	$15,717,264
Social Security Administration, Washington, DC	GSA granted a partial rent exemption so that the tenant would only pay for the actual costs on these buildings through fiscal year 2013.	$72,417,477
Department of State, 1801 Pennsylvania Ave., Washington, DC	GSA granted an exemption for space used by the President's G-8 Economic Summit staff from August 2004 to November 2004 because neither the Department of State nor the G-8 Economic Summit has received appropriated funding for rent payments to GSA.	$1,330,740
International Broadcasting Board of Governors, Washington, DC	GSA granted an exemption in 2004 based on the tenant's certification that it did not have funds available to meet the obligation. A new long-term occupancy agreement is being negotiated.	$1,016,195
Presidential and Armed Forces Inaugural Committees, Mary E. Switzer Building, Washington, DC	GSA granted an exemption in 2004 because it found that it was not practical or feasible for the tenant to pay the rent.	$2,415,440
U.S. Election Assistance Commission, Washington, DC	GSA granted an exemption for fiscal year 2004 because the tenant was appropriated only 12 percent of its authorized budget and did not have sufficient money to pay its rent.	$100,060
Total		**$169,583,657**

Source: GAO analysis of GSA data.

Note: According to GSA, the U.S. Senate does not pay market rates for its GSA facilities (district offices) because of an October 1996 signed memorandum of agreement between the U.S. Senate and GSA regarding tenant-requested improvements, but the U.S. Senate has not been granted a formal exemption

Direct Appropriations to FBF Generally Benefit the Fund

In fiscal year 2006, according to data from GSA, $7.7 billion in expected FBF revenue is projected to come from rent paid by over 60 different federal tenant agencies, such as the Departments of Justice and Homeland Security. Congress sets annual limits on how much FBF revenue can be spent for various activities through the appropriations process. In addition, Congress may appropriate additional amounts for FBF and between fiscal year 1990 and fiscal year 2005, Congress made direct appropriations into FBF for all but 3 fiscal years.[16] This additional funding was not tied directly to any specific projects or types of projects. The statutory language relating to the direct appropriations states that additional amounts are being deposited into FBF for the purposes of the fund.

It is also important to note that not all federal property is subject to FBF rent payments. While GSA owns and leases property and provides real estate services for numerous federal agencies, we reported in 2003 that GSA owns only about 6 percent of federal facility space in terms of building floor area. Other agencies, including the Department of Defense (DOD), the U.S. Postal Service, and the Department of Energy have significant amounts of space that they own and control without GSA involvement. In all, over 30 agencies control real property assets. Property-owning agencies do not pay rent into FBF or receive services from GSA for the space they occupy in the buildings that they own. For example, the Pentagon and military bases are owned by DOD, and national parks facilities are owned by Interior. As a result, these facilities are maintained by DOD and Interior, respectively.

Our Ongoing Work on the Judiciary's Request for an Exemption from Rent Payments to FBF

In December 2004, the judiciary requested that the GSA Administrator grant a $483 million permanent, annual exemption from rent payments—an amount equal to about 3 times the amount of all other rent exclusions combined. This exemption would equal about half of the judiciary's $900 million annual rent payment to GSA for occupying space in federal courthouses. The judiciary has expressed concern that the growing

[16]Congress did not make direct appropriations into FBF in fiscal years 1998, 2000, and 2005.

proportion of its budget allocated to GSA rent payments is having a negative effect on court operations. According to GSA data, the judiciary increased the owned space it occupies by 15 percent from 2000 to 2004. In February 2005, the GSA Administrator declined the request because GSA considered it unlikely that the agency could replace the lost income with direct appropriations to FBF. In April 2005, this subcommittee requested that we look into issues associated with the judiciary's request for a permanent, annual exemption from rent payments to GSA. Our objectives for this work are to determine the following:

1. How are rent payments calculated by GSA and planned and accounted for by the judiciary?
2. What changes, if any, has the judiciary experienced in rent payments in recent years?
3. What impact would a permanent rent exemption have on FBF?

Our work is still underway, but our past work on related issues shows that rent exemptions have been a principal reason why FBF has accumulated insufficient money for capital investment.

Scope and Methodology

We conducted our work for this testimony in June 2005 in accordance with generally accepted government auditing standards. During our work, we reviewed past GAO work on federal real property and courthouse construction issues, analyzed AOUSC and GSA documents, and interviewed AOUSC and GSA officials.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or the other Members of the Subcommittee may have.

GAO Contacts and Staff Acknowledgments

For further information about this testimony, please contact me at (202) 512-2834 or goldsteinm@gao.gov. Keith Cunningham, Randy De Leon, Maria Edelstein, Bess Eisenstadt, Joe Fradella, Susan Michal-Smith, David Sausville, and Gary Stofko also made key contributions to this statement.

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JUDICIAL CONFERENCE OF THE UNITED STATES

STATEMENT OF

LEONIDAS RALPH MECHAM, DIRECTOR
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

BEFORE

THE SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

ON

THE JUDICIARY'S ABILITY TO PAY FOR CURRENT AND FUTURE SPACE NEEDS

June 21, 2005

STATEMENT OF LEONIDAS RALPH MECHAM, DIRECTOR
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
BEFORE THE SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

June 21, 2005

INTRODUCTION

Chairman Shuster, Congresswoman Norton, and members of the Subcommittee, I appear before you this afternoon in my role as Secretary of the Judicial Conference of the United States to discuss the funding crisis confronting the Judicial Branch and to request that the Committee work with us constructively to provide rent relief for the federal courts.

This Committee has been a longtime friend of the judiciary. During the 20 years I have been Director of the Administrative Office, you have worked with us to authorize the replacement of an outdated and inefficient inventory of federal courthouses that, in many instances, lacked adequate security. We have endeavored together to develop design standards for new courthouses that are efficient, appropriate, and cost-effective. These standards have now been adopted by judiciaries throughout the United States and around the world. We have also worked together to develop a long-range facilities planning system that everyone now accepts as credible and reliable. For example, GAO reported to this Committee in a letter dated January 25, 2001, that "since 1994, AOC [Administrative Office of the U.S. Courts] has continued its efforts to improve the long-range planning process and has made progress in implementing our six previous recommendations... In addition to its efforts to implement our recommendations, AOC is currently considering how to best implement other improvements, including some that were suggested by E&Y [Ernst and Young], to the long-range planning process, such as using more advanced techniques to forecast caseloads."[1]

FUNDING CRISIS IN THE FEDERAL COURTS

The judiciary has been in the midst of an acute funding crisis since fiscal year 2004, when its final appropriation was insufficient to support onboard court staff. At a time when they faced a record number of criminal defendants; record appeals, civil, probation and pretrial caseloads; and a near record caseload in the bankruptcy system, as well as additional requirements mandated by Congress, the courts experienced a 6 percent reduction in personnel nationwide, losing 1,350 employees in appellate, bankruptcy and district courts and probation and pretrial services offices between October 2003 and October 2004. Because of the delay in passing the FY 2005 omnibus appropriations bill, the judiciary lost an additional 450 staff down to a low point of 1,800, or 8 percent below FY 2003 levels.

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[1]Letter on study to follow-up on GAO's 1993 report entitled *Federal Judiciary Space: Long-Range Planning Process Needs Revision* (GGD-93-132, Sept. 28, 1993).

Even with the heroic efforts of the remaining court staff, some degradation in service is already occurring. Lawyers and the public are experiencing long lines as some clerks' offices are closing early. Payments of fees to jurors and for victim restitution are being delayed because of staffing reductions. And, some probation offices that have downsized are reporting an increase in new crimes attributed to offenders under their supervision.

How did this predicament occur? As recently as fiscal year 2003, congressional appropriations were sufficient to allow the courts to maintain staffing levels (no growth for additional workload) and pay GSA rent bills. This changed abruptly in fiscal year 2004. Heading into conference on the fiscal year 2004 appropriations bill, it appeared that the judiciary would be spared draconian cuts. With the 5.7 percent increase originally agreed to by the conferees, the judiciary was poised to maintain fiscal year 2003 staffing levels, although not to acquire staff adequate for our ever-burgeoning caseloads. This outlook changed with the across-the-board 1 percent reduction that was included as part of the omnibus appropriations package.

A 1 percent reduction may not matter a great deal to most federal agencies and departments. But unlike executive branch departments or agencies, the judiciary does not have projects or programs that can be eliminated or cut to absorb budget shortfalls. Our appropriation funds only case-related functions to handle workload which we have no control over. Although we reduced other costs wherever possible, the ultimate result of the 1 percent across-the-board reduction was the loss of 1,350 valued employees, some through normal attrition who were not backfilled, some through buyouts and early retirements, but 285 had to be fired. Since then, as noted, the total loss had risen to 1,800. In order to explain better how court needs are funded, Attachment 1 is an overview of how the judiciary's budget is formulated.

In 2005, the judiciary worked hard to make Congress aware of the problem created by the 2004 budget cuts in the hope that our fiscal year 2005 appropriation would restore much of what was lost. While the 4.3 percent fiscal year 2005 increase for our main Salaries and Expenses account was not everything we had sought, we recognized the constraints under which Congress was operating. Although the more than 1 percent across-the-board reduction in our 2005 appropriation led to additional belt-tightening for the courts, the final funding level was sufficient to halt any further loss of staff. It also allowed about half of the positions lost by the courts in fiscal year 2004 to be restored, but did not permit hiring of staff to address the workload increases. Due to the uncertainty over the fiscal year 2006 budget, many courts have been reluctant to fill vacant positions to restore lost staff for fear they will have to turn around and terminate them next year. In addition, ongoing, multi-year shortages in non-salary areas have prompted courts to shift salary funding to cover these expenses. This is truly a case of doing more with less, and it has adversely impacted court operations.

Compounding our funding crisis is the judiciary's ever expanding workload. Recent enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act and the Class Action Fairness Act, plus the additional resources provided in the fiscal year 2005 supplemental appropriations for homeland security and border enforcement efforts, as well as the Supreme

Court's twin majority decisions in *United States v. Booker* and *United States v. Fanfan,* all will result in significant workload increases for the judiciary.

I am hopeful you will recognize that our current financial predicament is not one of our own making. It is the result of the changed priorities of the federal budget, including the effects of two wars and other domestic fiscal constraints, that provide less growth in funding for the judiciary, which we, like other affected segments of the government, must now work within. To work within these constraints we must reduce our costs of operations, which we are making every effort to do. As described below, we have initiated a major cost containment effort that includes a moratorium on the construction of new court facilities. However, one area that continues to elude our cost containment efforts is GSA rent, which under current law the judiciary must pay to GSA in full as a first charge against its budget. We are asking the Congress to provide sufficient appropriations to the judiciary to allow us to fund both our staffing needs and GSA rent. If Congress is unable to do so, then a choice must be made as it was in FY 2004 – either reduce staff or reduce rent. On June 15, 2005, the House Appropriations Subcommittee on Transportation, Treasury, HUD, and the Judiciary approved a 5.4 percent increase for the judiciary's FY 2006 Salaries and Expenses appropriations which includes $980 million to pay rent to GSA. However, if by conference time our final enacted appropriation for FY 2006 is reduced to the approximately 4 percent level of increase of the past two years, or lower, this could compel the judiciary to cut hundreds, if not thousands, of employees over the coming year, while still having to make full rental payments to GSA. These reductions in staff would come at a time of continuing workload increases in the courts associated with homeland security (enhanced illegal immigration enforcement), criminal caseload, probation supervision, Booker/Fanfan, etc. The courts will not be able to meet their statutory responsibilities if staffing continues to decline and workload continues to grow. We are hopeful that rent relief can be achieved so that we might retain the staff needed to handle the courts' Constitutional and statutory responsibilities.

THE JUDICIARY'S EFFORTS TO CONTAIN COSTS

Of course, the judiciary does not operate in a vacuum. We are sensitive to the constrained budget environment facing all of government, and we are doing our part to contain costs. In fact, I believe we are leading the way. In that vein, in March 2004, alarmed by the fiscal crisis facing the judiciary, the Chief Justice charged the Executive Committee of the Judicial Conference with conducting a comprehensive review of the policies and practices, operating procedures and customs that have the greatest impact on the judiciary's costs, and with developing an integrated strategy for controlling these costs.

The Executive Committee enlisted the assistance of chief judges, court staff, advisory groups, Conference committees, and the AO staff to scrutinize all spending categories, with the focus on whether expenditures – even though needed or desirable – are affordable in the current budget climate. Outside of mandatory spending requirements for Article III and bankruptcy judges' pay and judge-related retirement trust fund contributions, no program or expenditure was

considered off-the-table during this review. Hundreds of ideas were generated and considered. "Quick hitting" action items were identified for immediate implementation, as well as long-term cost-containment ideas for 2005 and beyond.

The initial phase of this massive effort was completed in just five months. Thousands of staff hours were dedicated to this initiative and involved hundreds of judges and court staff across the country. In September 2004, the Judicial Conference approved a long-term cost-containment strategy that includes six major components: (1) space and facilities cost control, to which Judge Roth and I referred earlier; (2) work process efficiency; (3) compensation review; (4) effective use of technology; (5) defender services, court security, law enforcement, and other program cost-management initiatives; and (6) fee adjustments. Implementing this cost-control strategy is a top priority for the Judicial Conference.

GSA RENT COSTS

Central to the discussion of the judiciary's funding crisis is the amount of rent the judiciary pays to GSA each year. Eighty-four percent of the judiciary's total Salaries and Expenses budget goes to support court personnel and the facilities in which they work. As indicated in Attachment 2, total rental payments account for 22 percent of the main courts' Salaries and Expenses account which includes rent for GSA. Rent payments to GSA from the courts' Salaries and Expenses account have grown from $133 million in 1986 to $921.5 million (est.) in fiscal year 2005, almost a 600 percent increase. During that same period, the amount of space provided to the judiciary has grown only 150 percent, from 11.0 million usable square feet to an estimated 27.4 million usable square feet. Including current facilities and new court buildings already under construction, under current pricing policies the judiciary will have to pay about $1.2 billion in rent to GSA by fiscal year 2009, consuming nearly one-quarter of the projected budget for the courts' Salaries and Expenses account.

The judiciary pays more rent in dollars to GSA than any other federal agency except the Department of Justice which pays only slightly more. As a percentage of budget, the Justice Department pays only 3 percent while the courts must pay 22 percent. Our work is space intensive by its very nature – we have 459 statutory places of holding court. But as a percentage of the Salaries and Expenses appropriation, the courts pay seven times more for rent than does Justice. Yet, GSA rent only accounts for less than 1 percent of major Executive Branch agency budgets. No other entity in the federal government pays such a high percentage of its budget to GSA as shown in Attachment 3. In percentage terms, the courts pay 115 times more in rent to GSA than the average Executive Branch department, and 39 times more than the Legislative Branch.

Legislative Branch rent payments to GSA are so low because, for the most part, Congress manages its own space through the Architect of the Capitol, except for some district offices rented from GSA in federal buildings. Of course, the Architect charges no rent to Congress. We know Congressmen and Senators who have moved out of GSA-controlled space over the years

because it is too expensive and they can find cheaper offices in the private sector. The Department of Defense does not pay rent to GSA for the Pentagon or its military bases. The Treasury Department does not pay rent on the main Treasury building or on its mints. Likewise, the Federal Reserve Board and many quasi-federal agencies do not pay rent to GSA. There is no rent paid to GSA on federal prisons, embassies, NIH facilities, VA hospitals, EPA labs, or national parks and national forest facilities. These federal organizations have complete control over the amount of money they dedicate to real estate activities. Attachment 4 identifies those agencies that control their own space. The courts, however, must pay rent forever on all federal court buildings – even those fully amortized and paid for, not just once, but often many times over.

While the judiciary has taken steps of its own to control its rent bill by undertaking a comprehensive review of its courthouse construction program, including a two-year moratorium on new construction projects, it is the rent we are paying for existing facilities and will pay for those already under construction, that is exacerbating our budget woes. As non-defense and non-homeland security discretionary funding is sharply constrained and reduced, we are deeply concerned that the Congress will not be able to support fully the resource needs of the judiciary – at which point the judiciary will be required once again to pay its GSA rent bill in full at the expense of staffing in the federal courts. This is what has happened in recent years culminating in the significant downsizing of court staff beginning in fiscal year 2004 that I described earlier. Our final appropriation was insufficient to support current services in that year. The rent bill was paid in full to GSA while the judiciary had to cut funds for operating expenses and 6 percent of its onboard staff. Moreover, rental payments to GSA by the judiciary were exempted from the across-the-boards imposed on the judiciary which thus took a double hit. We have been advised by the Office of Management and Budget that no Executive Branch department or agency, including GSA, has been forced to make such drastic staff cuts. Rental payments for new buildings, coupled with the inevitable inflationary increases on existing buildings, are expected to raise the judiciary's rental bill by about $74 million a year, an average of 6 to 8 percent over the next four years. If our overall, annual appropriation increases are held to the recent 4 percent level or lower, this could compel the judiciary to cut hundreds, if not thousands, of employees over the coming years, while still having to make full rental payments to GSA. Reductions of such a magnitude to court support staff would imperil the survival of the federal court system.

The effect of these payments to GSA, along with the tightening of the federal budget, is that we must either continue to reduce court staff and further jeopardize our ability to deliver justice, or we must ask the Congress and the Executive Branch to reexamine how rent – the single largest component of our operating expenses other than personnel costs--is computed.

It is clear that the Federal Buildings Fund process implemented in 1975 with its ever-increasing annual rental payments is fatally flawed as it is applied to the judicial branch. At least 27 other federal departments and agencies have been exempted from GSA contracts and rent. Major portions of other agencies likewise are exempt. They control their own building programs which are funded from annual appropriations.

STEPS TAKEN THUS FAR

Having identified the significant impact GSA rent has on our constrained budget, we attempted to work with GSA and OMB to address our concerns. We have exhausted every administrative remedy available to us, and our only recourse is to request help from the Congress.

Our most recent rent cost containment efforts began about 14 months ago. At that time we immediately froze below prospectus-level space requests and by September 2004, as I mentioned previously in this statement, we virtually abolished plans for any major projects that had not received an appropriation. We tried to work out a solution with GSA that would have given us significant long-term rent relief, but what GSA offered was only a $20 million reduction that we believe would have ended up costing the taxpayers an additional $12 million in the long run because of the way certain components of the rental charges would have been recomputed. None of the solutions offered by GSA would have significant long-term savings. Therefore, in early December 2004, Judge Jane Roth (the Chair of the Judicial Conference's Security and Facilities Committee), Judge Carolyn Dineen King (the Chair of the Judicial Conference's Executive Committee), and I met with GSA Administrator Stephen A. Perry to seek a waiver of certain rental charges, pursuant to his statutory authority.[2] Our request of GSA was to exempt the judiciary from those rental payments that exceed GSA's actual cost to operate, maintain and lease federal court facilities, a total reduction of $483 million from our estimated rent payments. Almost three months later, we were told that our request had been rejected. We also approached OMB Director Joshua Bolten, but to date have been provided no new information.

As you can see, at this point, we have been offered no hope for significant administrative relief. Therefore, we welcome the Congress' assistance in reexamining the way rent is calculated for the judiciary. In addition to this hearing, you are probably aware that the Senate Judiciary Committee, which has a special understanding of the needs of the federal courts, has expressed its concerns to the Administration about the judiciary's space rental bill. I will provide a copy of their letter to GSA Administrator Perry to the Committee.

CURRENT PRICING PRACTICES

Mr. Chairman, if I may, I would like to share with you some problems and concerns that we have uncovered recently concerning GSA's current pricing policies and procedures for court facilities:

- GSA has adopted a pricing policy that allows it to add on local real estate taxes in calculating rental charges for tenants within federally-owned facilities despite the fact that the federal government is exempted from incurring such charges. Of course, GSA pays no such taxes, but the judiciary, in effect, is forced to pay them. We have asked GSA how much of our rental payment is comprised of these costs which must amount to tens of millions of dollars annually.

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[2] 41 C.F.R. 102-85.155

- In at least one city, the rental rates per usable square foot for a federally-owned court facility were almost double the rates charged federal tenants for comparable commercially-leased space, an overcharge of $900,000 annually. This could be happening elsewhere as well.

- Just to find out the basis for the charges has proven to be a real challenge for the judiciary. One court had to file a Freedom of Information Act request to obtain the back-up documents to its rental charges. The court was told by GSA that the Freedom of Information Act does not apply to this information. In fact, I understand that GSA has a national policy in place that prohibits the sharing of actual back-up documents with federal agencies.

- In Providence, Rhode Island, the court – not GSA – worked out an agreement wherein the city donated the parking lot behind the courthouse to GSA. The lot cost GSA one dollar. GSA is charging the judiciary $11,000 in rent per year on the parking lot, even though there was no capital outlay from GSA's Federal Buildings Fund. Considering the fact that the judiciary will occupy the courthouse for at least another 50 years, well over $500,000 of taxpayer money will be sent to GSA for a parking lot that only cost the taxpayers one dollar. The GSA regional office refused to waive the rent, stating in a January 21, 2002, letter to the Administrative Office that "GSA is required by law to charge commercially-equivalent rates for all space categories, including parking."

- Another example occurred in Phoenix, where GSA insisted upon an extensive atrium that the judiciary felt was not a suitable, or cost-effective element to include in the new facility. After discussions with GSA, the judiciary agreed to the atrium as long as the judiciary was not charged rent for that space. Despite this agreement, GSA has always included rent charges for the atrium space in the judiciary's monthly rent bill.

- In yet another example, 14,000 square feet of attic space in Utica – accessible only through the ceiling by ladder – was included in the common area rent charges, when the space should have been classified as "unoccupiable." And within the Syracuse facility, GSA included a 5,000 square foot driveway ramp leading into the underground parking area in the rent charges – a miscalculation identified by the Clerk of Court.

Mr. Chairman, we believe this situation has gotten out of hand, and we seek your assistance in obtaining rent relief for the federal courts. The current arrangement gives GSA every incentive to maximize revenues—rent—not to operate and maintain public buildings efficiently. And, the current arrangement gives GSA the monopolistic advantage to pursue higher and higher rents without the restraint of competition. Our principal concern with the present rent arrangement can be simply stated: GSA charges the judiciary a rent to recapture original costs of courthouses that the Congress has already paid for from FY 1990 through FY 2004 through direct appropriations into the Federal Buildings Fund.

The judiciary is also forced to pay for buildings that have been fully amortized – not only once, but as many as four or five or more times. The judiciary is paying a component of its rent in perpetuity for a capital investment on courthouses that were built before 1980 (many of which the Federal Buildings Fund "inherited" when it was implemented in 1975, and for which the Fund made no investment) and buildings built since 1990 for which the Congress appropriated money into the Fund for their construction. The taxpayers paid cash for these courthouses and current GSA pricing policies provide a perpetual "return on investment" that was never made.

As you know, when the Federal Buildings Fund (FBF) was established in 1972, it was supposed to accumulate tax monies for the acquisition, maintenance, and operation of federal buildings under GSA responsibility; to segregate the buildings funds from other GSA funds; and to encourage the prudent use of space by GSA tenants, since the rental payments into the Fund were to come from tenants' yearly appropriations. As originally conceived by GSA, the FBF was to be a revolving fund, with any excess rental income over and above yearly expenses accumulating over time to be used for major renovations and modernizations, new construction, and building purchases. Beginning in 1975, GSA started charging rent and the rent receipts were deposited into the FBF. As actually enacted, however, the FBF is subject to yearly Congressional action (in the form of appropriations bills) that placed annual limits on expenditures. Further, the FBF never lived up to expectations for providing adequate funding for major capital investments.

As early as 1980, GAO wrote:

> The Federal Buildings Fund was established in 1972 to finance the General Services Administration's acquisition and operations of Government owned and leased buildings. To date, the Fund has not accomplished the two primary objectives used as a basis for its establishment. It has not generated sufficient revenues for construction because it has experienced a cash flow problem since its inception. Concerning the second objective, there is no evidence of appreciable improvement in space usage because tenant agencies have to budget and pay for the space they occupy.[3]

GAO continued to document the issues related to the FBF for the next 24 years. In 1990, GAO noted, for example:

> More and more tenant agencies and their congressional supporters are perceiving their space as well as GSA's facilities management program to be detrimental to their mission accomplishment and are attempting to go it alone. Out of frustration, they are chipping away at GSA's public buildings authority... Although the Federal Buildings Fund was set up to provide revenues for capital investment, it has largely failed to do so. Between 1975 and 1988, for example, the Fund generated an average of only $97 million per year (in constant 1988 dollars) for construction and acquisition.

[3] *GSA's Federal Buildings Fund 'Fails To Meet Primary Objectives*, December 11, 1981, B-204688.

> The inadequacy of this funding level is apparent when it is compared to the estimated $3 billion in funding required to construct the 20 buildings GSA wants to initiate between fiscal years 1991 and 1993.[4]

And again, in a report in 1992, GAO told Congress:

> The growing realization that the Federal Buildings Fund has failed to meet its original expectations has resulted in a gradual withdrawal of support for the concept. Not only has the Pentagon been removed from GSA's custody, in addition Congress has authorized other agencies such as the Securities and Exchange Commission to renovate or lease their own buildings...In addition, Senator Moynihan has recently introduced S.2067, a bill which would abolish the Federal Buildings Fund and return the financing of all of GSA's building operating and capital costs to the regular appropriations process.[5]

In a 1993 report, GAO found a number of obstacles that ". . . inhibit the government's ability to acquire and manage real property mission assets in a more cost-effective, businesslike manner. . ." Among the obstacles listed are ". . . GSA's monopoly in providing office space and its preoccupation with day-to-day real property operations . . . [and] Federal Buildings Fund shortfalls. . . ."[6]

Also, in 1993, GAO told Congress:

> While federal agencies' rent payments have provided a relatively stable, predictable source of revenue for the FBF, that revenue has not been sufficient to finance both growing capital investment needs and the costs of leased space . . . The cumulative shortfall in the funds available for needed capital investment also may be attributable at least in part to the FBF's design . . . Thus, there is little assurance that the FBF revenues resulting from commercially-based rents will be adequate for federal capital investment purposes. This could occur, but it would be by happenstance, not by design. . . .[7]

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[4] *The Disinvestment in Federal Office Space*, March 20, 1990 Statement of L. Nye Stevens, Director Government Business Operations Issues, General Government Division, Before the Subcommittee on Water Resources, Transportation and Infrastructure Committee on Environment and Public Works, United States Senate, GAO/T-GGD-90-24.

[5] *DOD Rental Payments to GSA*, Statement of L. Nye Stevens, Director Government Business Operations Issues, General Government Division, Before the Subcommittee on Readiness, Committee on Armed Services, House of Representatives, April 8,1992.

[6] Testimony Before the Subcommittee on Oversight of Government Management Committee on Governmental Affairs, U. S. Senate, July 27, 1993.

[7] *GAO letter to The Honorable Carl Levin Chairman*, Subcommittee on Oversight of Government Management Committee on Governmental Affairs, United States Senate, The Honorable William S. Cohen Ranking Minority Member, Subcommittee on Oversight of Government Management, B-252914, April 5, 1993.

It appears from these GAO reports that there are major systemic problems with the Federal Buildings Fund that need to be addressed. The judiciary has a responsibility to use its scarce resources to directly administer justice rather than to support a system GAO has found is not working as planned. In deciding how best to meet its responsibility, both the judiciary and the Congress should examine the least costly way (both in terms of the judiciary's operating budget and costs to the American taxpayer) in which the critical space needs of the judiciary can be met, both now and in the future.

What we are proposing at this time is similar to what GSA agreed to do over 15 years ago. At that time, the then-Administrator of GSA Terry Golden and I signed a Memorandum of Understanding, to become effective in fiscal year 1990, which foreshadowed what we recently asked Administrator Perry to do. Administrator Golden devised an arrangement whereby the judiciary's rent would be divided into two accounts. One would reimburse GSA for the actual direct costs of operating courthouses – not the "appraisal" or estimated costs – and the other would be used to build new courthouses or to renovate existing ones. When the second account was insufficient to pay for everything that was needed in a given year, we agreed to ask Congress for direct appropriations specifically to construct new, and modernize existing, courthouses. Mr. Golden left GSA shortly after signing the agreement and we understand that the Office of Management and Budget directed GSA not to implement the agreement. The difference between our current request and the agreement with Administrator Golden is that we are currently proposing to pay GSA only the direct operating costs for existing buildings and to ask Congress in the future for direct appropriations for all new construction and major renovation projects needed.

We do not wish to get into the real property or building business. Our preference is to continue to use GSA to manage our real property inventory – despite our concerns about management of specific projects – **if** we can resolve this rent predicament satisfactorily. Alternatively, we could contract with another qualified federal agency, or even with another outside suitable source. But I must also say that if we cannot reach a resolution with the Executive Branch, which has refused to grant us rental relief, we **must** ask the Congress for that relief.

In summary, we believe, as reflected in GAO reports, that the Federal Buildings Fund does not accomplish the purposes for which it was created. That is why we welcome GAO's current examination of the effectiveness of the fund requested by this Committee. Perhaps the FBF works well for some Executive Branch agencies. But, especially in these times of ever-tightening budgets, the judiciary cannot afford the current system.

Members of the Subcommittee, thank you for providing me with the opportunity to discuss our budgetary situation with you today. I would be pleased to answer any questions you might have.

Attachment 1

HOW THE JUDICIARY BUDGETS FOR ITS NEEDS

There are three general categories of requirements that the judiciary takes into account when formulating its budget request: (1) requirements that are legislatively mandated and controlled; (2) requirements that are driven primarily by outside forces over which the judiciary has no control, and these requirements are determined by workload-driven formulas; and (3) requirements that the judiciary has more discretion in determining.

The first component includes requirements for new judgeships, the delivery of new courthouse space, and other legislatively-mandated requirements. Although the judiciary plays a role in recommending the creation of new judgeships and the building of new courthouses, the actual accomplishment of these activities is achieved through the legislative process. Consequently, funding requirements for new judges and new courthouse space is driven by the judicial confirmation and authorization processes, respectively. Judges' salaries and benefits costs and space rental costs comprise 24 percent of the judiciary's fiscal year 2006 budget request for the *Courts of Appeals, District Courts, and Other Judicial Services*.

The second component encompasses operating expenses associated with judges and chambers staff; defender services; petit and grand jurors; the costs of court support staff, probation and pretrial services officers; and associated operating costs needed to process the cases presented to the courts. Within this component, the courts are responding to workload driven primarily by the activities of other federal law enforcement agencies. In formulating many of these requirements, the judiciary uses objective, scientifically-derived formulas to directly link resource requirements to workload requirements. For example, if workload for probation and pretrial services is projected to increase, the formulas for staffing and operating costs would result in a request for additional resources. Similarly, if workload is expected to decrease, the formulas for staffing and operating costs would result in fewer resource requirements. The judiciary updates these formulas on a regular basis to recognize efficiencies achieved through improved automated processes and other workplace efficiencies. These activities combined comprise nearly 62 percent of the fiscal year 2006 budget request for the *Courts of Appeals, District Courts, and Other Judicial Services*.

The third component includes all other requirements that provide direct support for the operations of the courts. This includes information technology, court security, and library services. These activities account for approximately 14 percent of the fiscal year 2006 budget request for the *Courts of Appeals, District Courts, and Other Judicial Services*. While this component accounts for a small percentage of the judiciary's budget, it receives a significant amount of scrutiny within the judiciary. For example, the judiciary hires outside consultants on a periodic basis to independently evaluate the courts' financial and operational requirements and identify areas for improvements and efficiencies. While Congress has directed that some of these studies be undertaken, more often it is the judiciary that initiates the reviews. The judiciary continues to look for efficiencies and savings in order to constrain resource requirements.

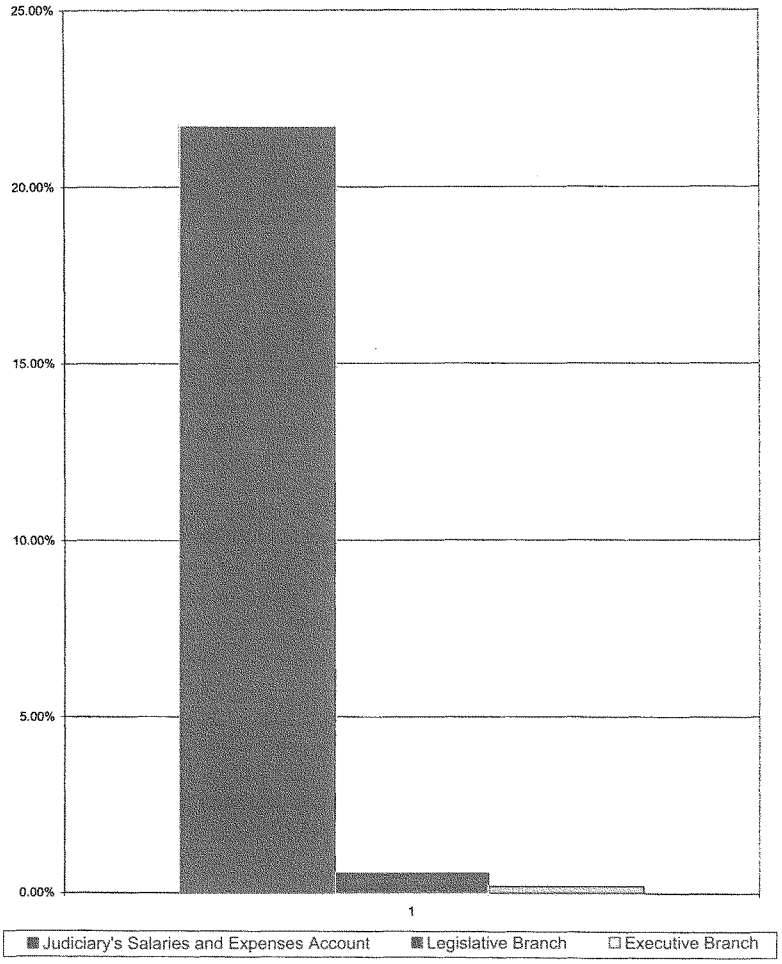
One additional component that impacts the judiciary's appropriation requirements is the

ability to use non-appropriated sources of funding to augment its appropriations from Congress. This includes filing fees paid to the courts for processing cases as well as unobligated funds, or "savings," that can be carried forward from one fiscal year to the next. Every dollar in non-appropriated funding that is available reduces our appropriation request by a dollar. The judiciary encourages court staff and program managers to defer discretionary spending as much as possible in order to maximize the availability of these funds to mitigate appropriation requirements in the following year. The judiciary includes an estimate of non-appropriated funding in its budget request to Congress each February.

After the budget is submitted to Congress in February, the judiciary provides the Appropriations Committees with periodic budget re-estimates that incorporate the most current workload factors and fee and carryforward projections.

Attachment 2

GSA Rent as a Percentage of the FY 2004 Budget



Attachment 3
4/28/2005

FY 2004 Rent Cost Comparison (in millions)

	FY 2004 Actual GSA Rent Obligations[2]	FY 2004 Agency Non-GSA Rent Cost[3]	FY 2004 Agency Gross Obligations[3]	GSA Rent as Percentage of Budget
Judiciary's Salaries and Expenses Account[1]	$ 912	$ 24	$ 4,191	21.76%
Legislative Branch	$ 27	$ 9	$ 4,850	0.56%
Executive Branch	$ 6,231	$ 1,995	$ 3,282,091	0.19%
Total	**$ 7,170**	**$ 2,028**	**$ 3,291,132**	**0.22%**

GSA Rent as a Percentage of the Judiciary's Salaries and Expenses Account	
FY 2009	FY 2015
24%	27%

FY 2004 Rent Cost Comparison for Selected Executive Branch Agencies (in millions)

Agency	FY 2004 Actual GSA Rent Obligations[2]	FY 2004 Agency Non-GSA Rent Cost[3]	FY 2004 Agency Gross Obligations[3]	GSA Rent as Percentage of Budget
Department of Justice	$ 1,049	$ 47	$ 34,208	3.07%
Department of Homeland Security	$ 758	$ 85	$ 44,214	1.71%
Department of Treasury	$ 754	$ 1	$ 398,694	0.19%
Social Security Administration	$ 494	$ 2	$ 560,717	0.09%
Department of Health and Human Services	$ 324	$ 25	$ 701,752	0.05%
Department of Defense	$ 285	$ 1,004	$ 611,799	0.05%
Department of Interior	$ 271	$ 44	$ 19,943	1.36%
Environmental Protection Agency	$ 212	$ 6	$ 10,157	2.09%
Department of Commerce	$ 211	$ 44	$ 8,787	2.40%
Department of Agriculture	$ 191	$ 98	$ 100,655	0.19%
Department of Transportation	$ 170	$ 91	$ 71,304	0.24%
Department of State	$ 166	$ 214	$ 15,566	1.07%
Department of Labor	$ 146	$ 8	$ 67,956	0.21%
Department of Veterans Affairs	$ 137	$ 103	$ 69,974	0.20%
Department of Housing and Urban Development	$ 108	$ 4	$ 49,117	0.22%
Department of Energy	$ 92	$ 4	$ 32,488	0.28%
General Services Administration	$ 83	$ -	$ 22,494	0.37%
Department of Education	$ 57	$ -	$ 77,548	0.07%
Small Business Administration	$ 43	$ -	$ 4,628	0.93%
Total	**$ 5,551**	**$ 1,780**	**$ 2,902,001**	**0.19%**

[1]GSA rent represents 22 percent of the judiciary's Salaries and Expenses account. This account funds all expenses of the appellate courts, district courts, bankruptcy courts, and probation and pretrial offices and represents over 75 percent of all spending in the judicial branch. GSA rent is 15.69 percent for the entire judicial branch, which includes the Salaries and Expenses account and other judiciary accounts such as Defender Services, the Supreme Court, the Sentencing Commission,

[2]Source: From InfoWizard, a GSA rent database. FY 2004 amounts include Federal Protective Service Charges.

[3] Source: United States Budget.

Attachment 4

Owned and Leased Office Area by Agency Within the United States September 2003[1]

Agency	Owned Office Area		Leased Office Area		Total Office Area	
	Square feet	Percent	Square feet	Percent	Square feet	Percent of total office area
General Services Administration	206,021,206	56.77%	156,892,440	43.23%	362,913,646	45.5%
United States Postal Service	152,082,529	97.73%	3,538,756	2.27%	155,621,285	19.5%
Army	83,850,193	100.00%	0	0.00%	83,850,193	10.5%
Air Force	51,231,150	99.96%	21,735	0.04%	51,252,885	6.4%
Navy	48,090,519	98.99%	490,117	1.01%	48,580,636	6.1%
Agriculture	5,397,209	28.68%	13,422,682	71.32%	18,819,891	2.4%
Energy	17,593,666	96.44%	648,857	3.56%	18,242,523	2.3%
Interior	8,100,075	79.14%	2,135,365	20.86%	10,235,440	1.3%
Veterans Affairs	9,112,433	92.95%	690,979	7.05%	9,803,412	1.2%
Nat. Aeronautics & Space Administration	7,881,073	99.67%	26,212	0.33%	7,907,285	1.0%
Defense (Pentagon Headquarters)	7,543,360	100.00%	0	0.00%	7,543,360	0.9%
Health and Human Services	3,875,656	70.27%	1,639,797	29.73%	5,515,453	0.7%
Homeland Security	3,764,979	72.96%	1,395,234	27.04%	5,160,213	0.6%
Corps of Engineers	2,554,066	87.47%	365,703	12.53%	2,919,769	0.4%
Treasury	1,094,872	44.29%	1,377,237	55.71%	2,472,109	0.3%
Transportation	659,588	41.57%	927,195	58.43%	1,586,783	0.2%
Tennessee Valley Authority	1,409,232	100.00%	0	0.00%	1,409,232	0.2%
Commerce	994,213	75.83%	316,825	24.17%	1,311,038	0.2%
Justice	133,282	13.90%	825,787	86.10%	959,069	0.1%
Government Printing Office	304,700	90.15%	33,305	9.85%	338,005	0.0%
Independent Government Offices[2]	0	0.00%	246,097	100.00%	246,097	0.0%
Smithsonian[3]	0	0.00%	233,683	100.00%	233,683	0.0%
National Science Foundation	121,106	63.47%	69,694	36.53%	190,800	0.0%
Federal Communications Commission	5,420	12.96%	36,397	87.04%	41,817	0.0%
Labor	23,812	100.00%	0	0.00%	23,812	0.0%
State	22,998	100.00%	0	0.00%	22,998	0.0%
Environmental Protection Agency	16,875	96.02%	700	3.98%	17,575	0.0%
American Battle Monuments Commission	0	0.00%	14,000	100.00%	14,000	0.0%
Total	611,884,212	76.75%	185,348,797	23.25%	797,233,009	100.0%
Percent of Total Office Area	76.8%		23.2%		100.0%	100.0%

Source: *Federal Real Property Profile as of September 30, 2003* (website visited April 16, 2004), http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annua_%20Report_%20FY2003-R2-ogp_R2M-n11_0Z5RDZ-i34K-pR.doc, p. 9. Please note: Department of Defense data for land, buildings and structures outside the United States is excluded from the table.

1. Additional agencies, including the Architect of the Capitol, have been identified as owning or leasing their own space since this report was produced.

2. Commodity Futures Trading Commission and Broadcasting Board of Governors.

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

September 30, 2005

Honorable Bill Shuster
Chairman
Subcommittee on Economic Development,
Public Buildings and Emergency Management
Committee on Transportation and Infrastructure
United States House of Representatives
591 Ford House Office Building
Washington, DC 20515

Dear Chairman Shuster:

When I responded on August 1, 2005 to some additional questions you sent to me following the Subcommittee's June 21, 2005 hearing on "the Judiciary's Ability to Pay for Current and Future Space Needs," I was unable to answer question number 7, because we were in the process of surveying courts to determine that answer. We have since completed the survey, which examined the question of how many clerks' offices had closed early due to staff shortages and how often. The answer, based on the survey, is now enclosed for the record.

Again, I appreciate the time you have taken to understand our rent concerns and am hopeful that a solution to provide some relief will be forthcoming.

Sincerely,

Leonidas Ralph Mecham
Director

Enclosure

7. **Your testimony (pg. 2) mentions clerks' offices that are closing early. Please identify where, when and how often these offices are closing early.**

Answer

- In August 2005 the Administrative Office of the U.S. Courts conducted a nationwide survey of all clerks' offices in the 94 judicial districts to compile specific data on clerks' offices that are reducing public hours due to budget and staffing constraints.

- It is important to note that the data presented in this response was compiled in August 2005, prior to Hurricane Katrina and its devastating aftermath along the Gulf Coast.

- A total of 56 district and bankruptcy clerks' offices reported some level of reduced hours to the public that fall into three general categories: 1) a reduced public office hours schedule is currently in effect, 2) periodic unscheduled office closings are necessary due to staffing shortages with little or no advance notice to the public, and 3) other conditions that have resulted in reduced public hours. These 56 clerks' offices represent 30 percent of the 187 total district and bankruptcy clerks' offices nationwide.

  - 36 district and bankruptcy clerks' offices reported a schedule change of reduced hours as currently being in place, and planned to be in place indefinitely unless additional funding and staffing resources are provided. This represents 19 percent of all district and bankruptcy clerks' offices. Reduced public hours range from 1.5 hours a week in the Oklahoma-Northern bankruptcy clerk's office, to 55 hours a week for the Florida-Southern district clerk's office (including the headquarters office in Miami and a branch office in Key West). Total reduced public hours are 597 hours per week nationwide, amounting to 31,000 fewer public hours on an annual basis. (See attachment 1 for detail by district.)

  - 26 district and bankruptcy clerks' offices reported periodic unscheduled temporary office closings due to staffing shortages (ex. staff out sick), and reported other conditions that have resulted in reduced public hours (ex. a staff furlough that closes the clerk's office for the day). These 26 clerks' offices represent 14 percent of all district and bankruptcy clerks' offices. Unscheduled temporary closings range from 1 to 5 times per year for the Pennsylvania-Western district clerk's office, to more than 10 times per year for the Montana district clerk's office. (See attachment 2 for detail by district.)

  - The two bullets above include six district and bankruptcy clerks' offices that reported both a reduced public hours schedule in effect and periodic unscheduled temporary closings due to staffing shortages.

- Recurring themes that emerged from the survey responses include:
  - Providing high quality service to the public is taken very seriously by clerks' offices and reducing public office hours is done only as a last resort.
  - Some clerk's offices indicate they are severely understaffed and that employee morale is at an all-time low.
  - Higher graded employees – including the clerk and chief deputy – are increasingly needed to cover the public intake counters and phones due to staffing shortages, which takes them away from their primary duties.

- A complete listing of reduced hours is attached:
  - Attachment 1 is a listing of clerks' offices with a schedule of reduced public hours currently in effect.
  - Attachment 2 is a listing of clerks' offices reporting temporary unscheduled office closings due to staffing shortages, and other factors that have resulted in fewer public hours.

CLERKS' OFFICES REPORTING A SCHEDULE OF REDUCED HOURS IN EFFECT

15-Sep-05

1	2	3	4	5	6 = (4 x 5)	7
Circuit	**Judicial District**	**Court Type**	**Number of Locations in District Affected[1]**	**Avg. Reduced Public Office Hours Per Week (Per Location)**	**Total Reduced Hours Per Week**	**Comments**
DC	District of Columbia	District	1	2.5	2.5	
1	Maine	Bankruptcy	1	5.0	5.0	
	Massachusetts	Bankruptcy	1	4.0	4.0	
	Rhode Island	Bankruptcy	1	5.0	5.0	
2	Connecticut	District	3	10.0	30.0	
	New York-Northern	District	4	7.5	30.0	
4	Maryland	District	2	10.0	20.0	
	North Carolina-Western	District	3	10.0	30.0	
	South Carolina	District	4	2.5	10.0	
	Virginia-Eastern	Bankruptcy	4	7.5	30.0	
	Virginia-Eastern	District	4	12.5	50.0	
5	Louisiana-Middle	Bankruptcy	1	5.0	5.0	
	Louisiana-Western	District	3	6.0	18.0	
	Mississippi-Northern	District	1	40.0	40.0	Due to funding/staffing constraints, beginning October 2005 the Greenville Division Office will no longer offer public hours.
	Mississippi-Southern	Bankruptcy	2	5.0	10.0	
	Texas-Northern	District	2	5.0	10.0	
6	Kentucky-Eastern	Bankruptcy	1	2.5	2.5	
	Ohio-Northern	District	1	3.8	3.8	
	Tennessee-Western	Bankruptcy	2	2.5	5.0	
7	Indiana-Northern	District	4	10.0	40.0	

[1]Includes branch and divisional offices.

CLERKS' OFFICES REPORTING A SCHEDULE OF REDUCED HOURS IN EFFECT

15-Sep-05

1	2	3	4	5	6 = (4 x 5)	7
Circuit	**Judicial District**	**Court Type**	**Number of Locations in District Affected[1]**	**Avg. Reduced Public Office Hours Per Week (Per Location)**	**Total Reduced Hours Per Week**	**Comments**
8	Missouri-Eastern	District	2	5.0	10.0	
	North Dakota	District	2	6.0	12.0	
9	Alaska	District	1	5.0	5.0	
	Alaska	Bankruptcy	1	5.0	5.0	
	California-Central	District	5	7.5	37.5	
	California-Northern	District	3	7.5	22.5	
	Guam	District	1	10.0	10.0	
	Hawaii	District	1	7.5	7.5	
	Nevada	Bankruptcy	2	10.0	20.0	
	Nevada	District	2	10.0	20.0	
10	Colorado	Bankruptcy	1	5.0	5.0	
	Oklahoma-Northern	Bankruptcy	1	1.5	1.5	
11	Alabama-Middle	Bankruptcy	1	7.5	7.5	
	Florida-Southern	Bankruptcy	3	5.0	15.0	
	Florida-Southern	District	2	27.5	55.0	Public hours were reduced in Miami (reduced 17.5 hours per week) and, effective May 2004 Key West became a permanently unstaffed location used only for trials, as necessary (reduced 37.5 hours per week).
	Georgia-Northern	Bankruptcy	4	3.8	15.0	
	TOTAL REDUCED PUBLIC HOURS PER WEEK				**596.8**	

TOTAL REDUCED PUBLIC HOURS PER YEAR	**31,031.0**

[1]Includes branch and divisional offices.

UNSCHEDULED TEMPORARY OFFICE CLOSINGS AND OTHER REDUCED HOURS REPORTED BY CLERKS

15-Sep-05

			Frequency of Unscheduled Temporary Office Closings Due to Staffing Shortages			Other Reduced Hours Reported by Clerks' Offices
Circuit	Judicial District	Court Type	1-5 Times Per Year	6-10 Times Per Year	10+ Times Per Year	
DC	District of Columbia	Bankruptcy	X			
1	Puerto Rico	District				Clerk's office was closed to public on Jan. 7, 2005 because the entire staff was furloughed for the day due to budget constraints.
2	New York-Northern	District	X			
3	New Jersey	Bankruptcy				Clerk's office was closed to public on Nov. 3, 2004 because entire staff was furloughed for the day due to budget constraints.
	Pennsylvania-Western	District	X			
4	North Carolina-Eastern	District			X	
	Virginia-Western	District	X			
	West Virginia-Southern	District	X			
5	Louisiana-Western	District	X			
	Mississippi-Northern	District		X		
	Mississippi-Southern	District	X			
	Texas-Northern	District	X			
6	Ohio-Northern	District	X			
8	Arkansas-Eastern	District	X			
	Arkansas-Western	District	X			
	Iowa-Southern	District		X		
	South Dakota	District	X			

UNSCHEDULED TEMPORARY OFFICE CLOSINGS AND OTHER REDUCED HOURS REPORTED BY CLERKS

15-Sep-05

			Frequency of Unscheduled Temporary Office Closings Due to Staffing Shortages			Other Reduced Hours Reported by Clerks' Offices
Circuit	Judicial District	Court Type	1-5 Times Per Year	6-10 Times Per Year	10+ Times Per Year	
9	Alaska	Bankruptcy	X			
	California-Northern	District	X			
	Montana	Bankruptcy	X			
	Montana	District			X	
	Oregon	District	X			
	Washington-Eastern	District		X		
10	Wyoming	Bankruptcy	X			
11	Florida-Middle	Bankruptcy				Clerk's office is not able to establish a staffed divisional office in Ft. Myers because of funding/staffing constraints.
	Florida-Northern	District	X			

STATEMENT OF

F. JOSEPH MORAVEC
COMMISSIONER

PUBLIC BUILDINGS SERVICE

U.S. GENERAL SERVICES ADMINISTRATION

BEFORE THE

SUBCOMMITTEE ON ECONOMIC DEVELOPMENT,
PUBLIC BUILDINGS, AND EMERGENCY MANAGEMENT

COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE

U.S. HOUSE OF REPRESENTATIVES

JUNE 21, 2005

Good morning, Mr. Chairman and Members of the Subcommittee. My name is F. Joseph Moravec and I am the Commissioner of the Public Buildings Service (PBS), U.S. General Services Administration (GSA). Thank you for inviting me here today to share GSA's perspective on the Federal Judiciary's request for a permanent annual rental exemption, an exemption that would excuse $483 million in the first year alone.

As this Committee knows, GSA manages a diverse portfolio of real estate for the Federal government – over 340 million square feet of space in office buildings, courthouses, border stations, warehouses, etc. We serve nearly 60 agencies (over 400 bureaus), the U.S. Courts, and Congress. We house over one million Federal employees. We see ourselves as mission enablers, providing the functional space needed by Federal agencies to accomplish their missions.

While we are committed to assisting the Judiciary in addressing their fiscal concerns, we do not support granting the rent exemption they have requested. We strongly oppose any action that would undermine the Federal Buildings Fund (FBF) and the rent / user charge system that replenishes it for the benefit of all of

our customer agencies. This remarkably effective piece of public policy has stood the test of time and served the Federal Government well for over 30 years. It has provided a reliable and consistent cost of occupancy to federal tenants and a sustained source of funding for the operations and maintenance of the GSA portfolio of owned and leased properties. It provides an honest accounting of the cost of occupancy in Federal budgets, an effective incentive for Federal agencies to hold down the costs of the space they request, and good value for Federal agencies and the taxpayers. It is modeled on the best practices of the real estate industry.

In the Public Buildings Amendments of 1972, Congress established the Federal Buildings Fund to:

1. Create a consistent source of funding for the construction, operations, maintenance, repair, alteration, and modernization of Federal buildings; and,
2. Require agencies to budget and pay for their space requirements just as they do for personnel, travel, and administrative costs. In report language accompanying the

legislation, Congress noted that making agencies accountable for the space they use should result in more efficient space utilization by agencies.

The rent / user charge is good public policy that promotes accountability for the amount and quality of space they use. Other agencies with whom we've worked to address budget constraints are making decisions to reduce their space costs.

Consistent with the original intent of Congress that the Federal Buildings Fund serve long-term capital needs as well as annual operating expenses, GSA has spent an average of 20 percent of its obligations on capital projects (construction and major repairs and alterations) over the last ten fiscal years. Moreover, Congress has had to provide in appropriations an average of only 4.7 percent of GSA's total obligations during this period.

The Federal Judiciary is a major user of GSA-managed workspace. Measured in terms of square feet of space provided, the Judiciary is our largest customer (2159 courtrooms in 39 million square feet in 333 owned and 128 leased

buildings). It has experienced the most growth of any customer we serve. The Judiciary has increased the amount of space they occupy by 310 percent (an average of 1 million square feet per year) over the last 30 years.

In 1994, the Judiciary and GSA undertook a significantly expanded courthouse construction program to build 160 courthouses. The Judiciary took responsibility for the construction design guide standards, and GSA created a Courthouse Management Group to manage this ambitious construction program. Over the last 10 years, GSA delivered 46 new courthouses or annexes (17 million square feet) at a cost of $3.4 billion from the Federal Buildings Fund. Going forward, the Judiciary has asked for an additional 34 projects (10 million square feet), at a cost of $1.8 billion. Eleven of them are under construction, 3 are funded for construction, and 11 are in the design stage.

Measured in terms of user charges for space occupancy (rent revenue), the Judiciary is our second largest customer (15 percent of projected FY 2005 revenue collected). Not only is the Judiciary occupying more space, but it is high quality, functional space with befitting public areas, modern technological functionality, and enhanced security features. We are proud of the courthouses we have built and are building for the Judiciary. They are built with enduring

materials, to properly represent the role of the Federal government in our nation's communities, and have won many awards for their remarkable designs. More and better quality space has translated into more rent.

To pay for these buildings and to modernize existing courthouses, GSA is required by law to charge a user charge that approximates commercial fair market rent. Congress intended this user charge to provide the necessary funds to construct, operate, maintain, and reinvest in Federal buildings to ensure their continuing functionality. A rent payment to GSA is not a mortgage payment. In return for the rent we charge, GSA bears full responsibility for the total life-cycle operation as well as the risks and costs associated with property ownership including operation, maintenance, and capital reinvestment. For the Judiciary, the Federal Buildings Fund has supported almost $1.7 billion in prospectus-level modernizations for courthouses in the last 20 years.

GSA calculates a charge for space occupancy that approximates commercially equivalent rent based on locality-based, building-by-building appraisals.

- Rent in leased space is based on recovery of actual lease contract costs, related services (e.g., utilities, if applicable), plus transaction costs.

- Rent in Federally-owned buildings is comprised of three main components: a shell rent (or base rate to reflect base building costs), a component to cover operating expenses, and a component to amortize the cost of tenant improvements. The shell rate and operating expenses rate reflect the prevailing market rates. The decisions of tenant agencies drive their tenant improvement rent costs. Once paid for, the amortized tenant improvement costs drop off the rent bill and the agency pays only shell and operating costs, as is the case for many of the rural courthouses.

- As a result of the transfer of the Federal Protective Service from GSA, in FY 2005 the Department of Homeland Security started providing and billing for basic and building-specific operating security (primarily guard service). GSA continues to bill for building-specific capital investments – building features such as progressive collapse construction and hardened building glazing and skin for blast protection.

So that tenant agencies can incorporate space costs in formulating their budgets, GSA provides a projection of their rent costs two budget cycles in advance. GSA also guarantees not to bill in excess of the rent estimate, except for any new space or tenant improvements requested by the agencies.

A year ago we recommended options the Judiciary could explore to reduce space costs, such options as:

- Reducing the number of underutilized courtrooms and courthouses;
- Releasing space;
- Reducing the scope of construction and lease projects;
- Reducing the level of finishes;
- Refining their construction design guide standards;
- Extending amortization of tenant improvements;
- Reducing tenant improvement costs in expiring space assignments; and,
- Renegotiating leases where market rates have dropped significantly.

The collective value of the last three options alone was nearly $23 million in potential savings. We think these suggestions, which we've used to help other agencies, are significant and could be of great assistance to the Judiciary.

In addition to exploring options to help the Judiciary contain rent costs, we have undertaken an effort to validate all of the Judiciary's rent bills. With over 2,700 of these bills, it's reasonable to expect that there will be some errors and, in fact, we

have already found some. We will quickly correct them, whether they are to our credit or the Judiciary's. We are also reviewing our appraisal practices and our building measurement policies and practices to identify opportunities for improvement.

For GSA to perform its mission of delivering space and services to the Judiciary and all of its other Federal customers, rent must be paid in full into the Federal Buildings Fund. The effectiveness of the Fund as a self-financing mechanism, and as a cost-containment incentive, depends on full participation by all tenant agencies in paying for what they consume. Otherwise, other federal agencies bear the cost (in the form of foregone repairs and modernization projects) for those that do not pay the full charge for the space they use. With inadequate funding for repair and modernization projects, buildings deteriorate, tenant agencies can't do their work as well as they should be able to, and the taxpayers' investment loses value.

Fundamentally, this comes down to sound real property asset management. Capital reinvestment is one of the largest challenges for the Federal government. GSA faces growing reinvestment needs in an aging inventory (average building

age 46 years; average age of buildings occupied by the Judiciary 52.5 years). Granting a rent exemption of the magnitude sought by the Judiciary would essentially bankrupt the Federal Buildings Fund system. A short-term budget condition experienced by one tenant agency should not be a reason to undermine successful operation of a revolving fund that uses space occupancy user charges to fund operations and reinvestment needs of Federal facilities for all of our tenant agencies. This system has served the Federal government well for over 30 years. We urge the Committee to keep the Federal Buildings Fund system intact, keep our reinvestment efforts on track, and fully preserve the accountabilities and safeguards that the Federal Buildings Fund affords.

Mr. Chairman, that concludes my prepared statement, and I will be pleased to answer any questions that you or Members of the Subcommittee may have about the Federal Buildings Fund, our space pricing program, or any other aspects of the public buildings program.

STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT
JUNE 21, 2005

Chairman Shuster, thank you for scheduling this hearing. Property costs are a major component of any agency's budget. Therefore, efficient and effective management of such assets can and often does have a real effect on budgets. This subcommittee has a particular interest and expertise in these matters.

In December 2004 the Administrative Office of the U.S. Courts (AOC) petitioned the General Services Administration (GSA) for a permanent waiver of approximately $483 million in costs associated with courts property. They described their condition as one of fiscal crisis in which the growth of their appropriations was lower than expected and thus they were forced into personnel reductions. The AOC requested that the Administrator of GSA use the authority granted to him by law and exempt the courts from certain charges.

On February 25, 2005 the Administrator of GSA replied to the request by noting that "the total rent obligation is a result of the cumulative impact of

the judiciary's decisions to increase the amount, quality, special features, and security of the space" they occupy and thus concluded he was unable to grant the request. Basically saying these are legitimate costs incurred by the courts, and the courts must pay them. Having been turned down by GSA and receiving no support from OMB regarding this issue, the Courts are now seeking relief from Congress.

In testimony, the courts cite weaknesses in the federal building fund as a potential source of their problems. Further, they question GSA's measurement methods and rent calculation methods. Finally, there is a claim that revenues appropriated into the federal building fund were meant for court projects and thus really didn't come out of federal building fund revenues.

The Courts also outline a series of steps they are taking to contain costs. These steps include a two-year moratorium on construction, a review of the design standards, a re-evaluation of the long range planning process, and a request to chief judges to cancel pending space requests and recommend closing visiting facilities with out a full time judge, wherever possible.

GSA for its part is undergoing a full evaluation for accuracy of all its bills to the AOC. Further, the agency has offered to work with the AOC to reduce

the number of underutilized courtrooms and courthouses, release unneeded space, reduce the scope of construction projects, reduce the level of finishes, refine the construction design guide standards, extend amortization of tenant improvements, reduce tenant improvement costs in expiring space assignments, and renegotiate leases where market rates have dropped significantly.

I will be eager to see the progress GSA has made with the AOC on its suggestions. In particular, I want to hear hard numbers, and dollar impact. I will hold the courts to the same standard. For example, what progress has been made with the design guide revisions and what is the dollar impact?

Mr. Chairman, I'm sure you know these are not the "glamour" issues of the Committee but they do have sizeable dollar impact on the agency's budget and thus we need to be vigilant in our oversight roles and how we treat taxpayer dollars.

JUDICIAL CONFERENCE OF THE UNITED STATES

STATEMENT OF

JUDGE JANE R. ROTH
U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT
CHAIR, JUDICIAL CONFERENCE COMMITTEE
ON SECURITY AND FACILITIES

BEFORE

THE SUBCOMMITTEE ON ECONOMIC DEVELOPMENT,
PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

ON

THE JUDICIARY'S ABILITY TO PAY FOR CURRENT
AND FUTURE SPACE NEEDS

June 21, 2005

Mr. Chairman and Members of the Subcommittee:

My name is Jane Roth. I serve as a judge on the Third Circuit Court of Appeals and as chairman of the Judicial Conference's Committee on Security and Facilities. I appreciate the opportunity to appear before the Subcommittee today to discuss the issue of the judiciary's ability to pay for current and future space needs. Director Mecham will discuss the financial hardships facing the judiciary and the adverse impact of rent on court operations. Today I would like to focus on the multiple cost-containment initiatives being pursued by the Committee on Security and Facilities in order to control the building program and reduce the amount of rent the judiciary pays to GSA both now and in the future.

Background

One of the major components of a cost-containment strategy approved by the Judicial Conference of the United States in September 2004 as an attempt to gain greater control over the judiciary's budget was to control space and facilities costs for the judiciary. The courts recognized the significant impact rent was having on the judiciary's overall budget. Several initiatives, which I will describe in detail, have been pursued by the Committee on Security and Facilities since that time including: (1) a two-year moratorium on the courthouse construction program, including a request that GSA cease the preparation of all new feasibility studies except those involving building systems; (2) a review of the standards in the *U.S. Courts Design Guide (Design Guide)*; (3) a re-evaluation of the long-range planning process; and (4) a request to chief judges and circuit judicial councils to cancel pending space requests and to recommend the closure of visiting facilities without a full-time resident judge wherever possible.

Moratorium on the Courthouse Construction Program

In September 2004, the Judicial Conference approved a two-year moratorium on the planning, authorizing, and budgeting for courthouse construction projects and new prospectus-level repair and alteration projects (except for those projects dedicated solely to building system upgrades) to enable a re-evaluation of the long-range planning process. This re-evaluation includes an assessment of the underlying assumptions used to project space needs and how courts can satisfy those needs with minimal costs in a short- and long-term constrained budgetary environment. The Judicial Conference applied the moratorium to 35 courthouse projects on the judiciary's Five-Year Plan for Courthouse Construction that had not received any funding and to seven projects with congressional appropriations and authorizations that were not yet in design. Eight projects on the Five-Year Plan were not subject to the moratorium because they were in the midst of design. They were permitted to proceed with design, but only after the courts involved entered into discussions with their circuit judicial councils and Administrative Office of the U.S. Courts staff about ways to reduce the scope of the projects. Each project engaged in such discussions and reduced the scope of the projects. These reductions were communicated to GSA and the plans for these buildings have been adjusted accordingly in an attempt to save the judiciary additional rent obligations in the future.

The only projects not subject to the moratorium are the four emergency projects: Los Angeles, CA; El Paso, TX; San Diego, CA; and Las Cruces, NM, three of which were authorized by the committee and funded through the appropriations process last year. The judiciary recognizes its responsibility to act prudently when asking Congress to authorize and appropriate

for new courthouses, and for that reason, the only project for which the judiciary is seeking construction funding in FY 2006 is San Diego, CA.

In March 2005, the Judicial Conference also voted to extend for one year a moratorium it had approved in March 2004 on non-prospectus space requests.[1] Again, this was a difficult step for the Judicial Conference to take. This moratorium was, however, necessary to save the judiciary money in future rent obligations and is yet another example of the Third Branch's attempt to internally manage and budget for its future and current space needs.

Review of the *U.S. Courts Design Guide*

The Committee on Security and Facilities is reviewing the space standards within the *Design Guide* with an emphasis on: (1) controlling costs; (2) examining existing space standards to determine if they are still appropriate; (3) meeting the functional space needs of the courts; and (4) space-sharing arrangements. The Committee met last week and considered several initial amendments to the *Design Guide* that will be forwarded to the Judicial Conference for consideration at its September 2005 session. If approved, these changes would save the judiciary rent on new buildings that would be designed according to these new design standards. These proposals represent the first phase of proposed amendments to the *Design Guide*. In the months to come, the Committee will be examining technical aspects, such as lighting and acoustics, atrium sizes, and other areas that will save the judiciary additional money in rent. These proposed changes reflect the Committee's exercise of its responsibility to manage the courts'

[1] A non-prospectus space request is one that costs less than $2.36 million in FY 2005.

design standards to ensure affordability while still meeting the functional needs of the judiciary within the current severely constrained budgetary environment.

One of the issues on which the Committees of the Conference will also focus is the issue of courtroom sharing. While some judges are supportive of the reconsideration of this issue, others firmly believe that each judge must have his or her own courtroom available at all times for proceedings. In reality terms, the actual cost of a courtroom is a small portion of the total construction budget for a courthouse. It has been the judiciary's position that the courtroom is an essential tool used by the judge to accomplish his or her work, which is the timely disposition of cases pending before the court. The minimal savings that might be realized from deleting one courtroom from a courthouse is not worth the resulting loss of efficiency in the judicial process, particularly when the construction of that courtroom might ultimately extend the useful life of a new facility. I cannot predict what the Committees will recommend and the Judicial Conference will approve on the issue of courtroom sharing. I can tell you, however, that the judiciary is seriously considering the budgetary implications of the policy.

Long-Range Planning Process

In September 2004, the Committee on Security and Facilities began a re-evaluation of the long-range planning process including a re-examination of assumptions regarding staff and judgeship growth as well as the space standards used for estimating square footage needs. All of the policies and processes related to facilities planning and space acquisition for the courts are being reviewed in order to identify possible process improvements that could tighten controls and

save money. Current policies that affect future space needs and costs are also being reassessed to determine whether any policy changes would be beneficial and appropriate.

The Committee plans to review the current criteria for scoring new courthouse projects and develop new criteria, if needed. The current scoring process, which uses four Judicial Conference approved criteria (year out of space, security concerns, judges impacted, and operational concerns) will be reviewed to consider personnel, workload, operational hot spots, and extended occupancy.

Release of Unneeded Space and Cancellation of Pending Space Requests

In October 2004, in order to immediately contain space rental costs, I wrote all chief judges requesting that they cancel pending space requests wherever possible. Recognizing the dire financial straights faced by the courts, chief judges did in fact cancel or defer $6,000,000 in space requests. Taking this action is a short-term fix to the longer-term problem of planning adequately for new judges and staff office space. I do not believe that we will be able to sustain indefinitely what has amounted to a virtual freeze on any space acquisition.

In addition, the Committee initiated its biennial review of nationwide space assignments consistent with the requirements of a 1997 Judicial Conference policy that sets forth specific criteria to examine the need for non-resident visiting judge facilities and release of space in probation and pretrial services offices. In March 2005, the Judicial Conference approved the release of space and closure of the non-resident court facility in Dubuque, Iowa, and the release of space in Houma, Louisiana. At its meeting last week, the Committee discussed updating the factors used to determine whether to close a non-resident (visiting) facility.

Conclusion

As you can see from the litany of cost-containment initiatives currently being studied by the Committee on Security and Facilities, controlling the judiciary's current and future space costs is an issue that my Committee takes very seriously. There is no question that the Judicial Conference recognizes the significant impact the building program is having on the judiciary's budget and the need to control rental costs both now and in the future. While the initiatives I have described are a good start, rental relief from GSA, which will be described more fully by Director Mecham, is critical to the continued functioning of the courts both now and in the future.

Thank you for the opportunity to testify before the Subcommittee today, and I would be happy to answer any questions you may have at this time.

U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

Don Young
Chairman

Lloyd A. Jones, Chief of Staff
Elizabeth Megginson, Chief Counsel

James L. Oberstar
Ranking Democratic Member

David Heymsfeld, Democratic Chief of Staff

March 8, 2005

The Honorable Stephen A. Perry
Administrator
General Services Administration
18th and F Streets, NW
Washington, DC 20405

Dear Administrator Perry:

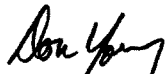
It has come to our attention that in two separate letters to you, the Judicial Conference of the United States and the Administrative Office of the United States Courts (USAOC) have requested a waiver of rent for space provided by the General Services Administration. We are writing to express our serious concerns and objections with your taking such an action.

The Courts have requested from GSA a permanent rent waiver that in FY 06 would amount to $483 million, or 52% of their annual rent costs. This waiver would amount to a permanent reduction in the amount paid into the Federal Buildings Fund (FBF). It is our belief that this rent waiver would severely injure the financial health of the FBF, thus jeopardizing the ability of GSA to meet its statutorily mandated duty of meeting the space needs of the federal government.

Allowing the Courts to permanently avoid payment of rent on space they occupy would not solve the budgetary crisis they are facing. Additionally, granting such a large waiver to the Courts would establish a precedent for more agencies to make similar requests, further threatening the stability of the FBF.

It is our opinion that a solution to the Courts' budgetary problem must not come at the expense of the stability of the FBF, or the ability of GSA to meet the space needs of the Judiciary, as well as all of its federal tenants. Though the USAOC has only just brought this budgetary problem to our attention, we remain committed to assisting you and the Courts in resolving this problem; and urge you to not take any significant action in regards to this matter at this time.

Sincerely,



DON YOUNG
Chairman
Committee on Transportation
and Infrastructure

JAMES OBERSTAR
Ranking Democratic Member
Committee on Transportation
and Infrastructure

BILL SHUSTER
Chairman
Subcommittee on Economic Development
Public Buildings and Emergency
Management

ELEANOR HOLMES NORTON
Ranking Democratic Member
Subcommittee on Economic Development
Public Buildings and Emergency
Management

United States District Court
District of Kansas
517 Robert J. Dole U.S. Courthouse
500 State Avenue
Kansas City, Kansas 66101

John W. Lungstrum
Chief Judge

Telephone: 913-551-6740
Facsimile: 913-551-6513

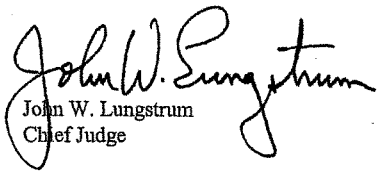
March 3, 2005

Ms. Abbe Godsey
Account Management Specialist
General Services Administration
1500 E. Bannister Road 2176
Kansas City, MO 64131-3009

Dear Ms. Godsey:

The Administrative Office of the U.S. Courts recently asked the District of Kansas to review our GSA rent bills for accuracy as part of a national effort to ensure that the judiciary is being appropriately billed for office and courtroom space. A review conducted by Kirk Alford, the Court's administrative manager, indicates that the square footage reflected on the rent bills for the District of Kansas is extremely accurate for all three of our court locations. I know that GSA Region 6 has expended substantial effort in the last few years to review and validate the amount of space we occupy; and the accuracy of our rent bills is evidence of that effort. On behalf of the Court I would like to express our thanks for the continued excellent service provided by GSA Region 6 to the Kansas federal courts.

Sincerely,



John W. Lungstrum
Chief Judge

cc. Judge Deanell Reece Tacha
Bob Hammervold
Ralph DeLoach
Gary Howard
Kirk Alford

/szs

Federal Protective Service
U.S. Department of Homeland Security
1800 F Street, NW
Suite 2341
Washington, DC 20405

U.S. Immigration and Customs Enforcement

March 21, 2005

Ross Eisenman
Assistant Director
Office of Facilities and Security
Administrative Office of the U.S. Courts
1 Columbus Circle, NE.
Washington, DC 20002

Dear Mr. Eisenman:

As promised, we are continuing to work with your offices and the U.S. Marshals Service (USMS) to cancel guard contracts at the locations you specify. Furthermore, as I mentioned to you and the committee in December 2003, in Seattle and in December 2004, in New York, we do not make money on the guard contracts and would cut the guards at any location you specified as excessive or unwanted.

As you know, there are multiple continuing discussions between the Administrative Office of the U.S. Courts (AOUSC) and the Federal Protective Service (FPS) regarding the FPS security charges for service provided specifically to the judiciary, in addition to how and why those charges should be reduced. Initially, I was disappointed with the very negative and one-sided analysis that was developed and provided to the courts concerning our services and costs. I also found it disconcerting that the message had a great deal of finger pointing which I thought we agreed was not going to happen. Enclosed is a document titled "Federal Protective Service FY2005 Security Charges," which explains how we are funded and why our costs have been increasing since September 11, 2001. The document represents the "story" of the events that have surrounded this issue, which we have been aware of and working diligently on with your staff.

The inference that the FPS has been uncooperative, perpetrated an atmosphere of "confusion and disarray" and has somehow done something wrong, is dubious at best. The notion that the FPS is solely responsible for the need to reduce the number of FPS contract guards assigned to court facilities around the country is inaccurate to say the least. The fact that we have been and continue to charge the judiciary for security services provided at a rate below the estimate that was provided to the AOUSC in 2003, for budgeting purposes is evidence of the fact that the FPS performed due diligence in creating the estimates, and forwarded each in a timely manner for your staff's use in resolving potential issues at that time.

As you know, we have since dedicated hundreds of hours over the past several years to give the AOUSC all of the information that we have about our contract guard costs for the services provided to the judiciary. I am confident in saying that we have provided the AOUSC with more information about our contract guard costs and related information than we have to all other federal agencies combined. Matthew Weese, who formerly worked on your staff at the AOUSC, oversees our Security and Law Enforcement Division, which oversees our contract guard program. He is assisted by Dennis Chapas (the former Chief of the Court Security Office at the AOUSC) and Tom Wood (one of the authors of the first SAIC study). They have closely worked with the AOUSC on these matters for quite some time; therefore, any implication that the FPS has not been cooperative or forthcoming in this matter is an unfortunate misrepresentation.

I acknowledge that the cost of our contract guards has increased since September 11, 2001. The enclosed background document indicates a significant portion of our cost increases is related to the fact that the General Services Administration (GSA) had been subsidizing FPS security services by approximately $100,000,000 per year. This ability to subsidize the difference between the actual cost of the services and what was charged to the client agencies is no longer available to us now that we are under the Department of Homeland Security.

The GSA Public Buildings Service Commissioner, Joseph Moravec, briefed you and the Judicial Conference's Security and Facilities Committee about this at their December 2004, meeting in New York. As the enclosed background document explains, since we are no longer a part of the GSA, our costs must now reflect the actual cost of our services without the ability to make up the difference through a GSA subsidy. In all fairness, any discussions you have about our services and cost increases must address this important issue.

As I told the Security and Facilities Committee at their December meetings in 2003, and 2004, I am resolute in my commitment to assist the AOUSC in reducing our contract guard services, if that is what the judiciary decides it wants to do. I also told the committee that there is no question in my mind that the services being performed at courthouses by our contract guards are justified and needed to supplement the USMS and the Court Security Officer program based on the post September 11th security environment.

As tragic events of the recent past have reminded us, federal courts are high-risk facilities and I believe they should have security officers on site during the evening hours and on weekends when judges and other staff are routinely in the buildings. Federal courts should also have security officers on the perimeter to respond to emergencies and act as a deterrent to anyone wishing to do harm to persons housed in or visiting the building. I stand behind these comments but realize everything has a price and there is never enough money for everything. It is my belief that we should redouble our efforts, work closely with the USMS as a team, to enumerate the comprehensive security requirements for the judiciary from a needs perspective, and launch a unified approach to acquiring the necessary funding focused on that delineated and validated need to protect all participants engaged in the judicial process in facilities nationwide.

It has also been brought to my attention that the AOUSC has not paid any of the judiciary's FPS basic and building specific security charges that are uncontested for this fiscal year. As you know, the FPS is funded by offsetting collections and is required to recover 100 percent of the costs of its security services. If you continue to withhold payment of the security charges, we will be forced to discontinue our contract guard services.

We will have to begin this process on April 22, 2005, to reduce the costs incurring daily. As always, the FPS stands ready to assist the federal courts and the USMS in providing security services at court facilities in a professional, cooperative, and cost effective manner. Please let me know if you wish to discuss these matters further.

Sincerely,

Wendell C. Skingler
Director

Enclosure

Present Value Analysis of West Palm Beach/Ft. Lauderdale Combined Courthouse

Annual Operating and Rent Savings from Combined facility: $8,130,000.00

Projected 30 Year Savings Escalated 4.5% every 5 years:	$286,931,917.00	2 cont
One Time Construction Savings of Combined facility:	88,591,313.00	
Total aggregate savings for 30 year period:	**$375,522,000.00**	

Present Value (as of 2010) of above $286,931,917.00:	$132,909,883.13	1 hour
Total Construction Savings of combined facility:	88,591,313.00	
Total Present Value of all 30 year savings:	**$221,501,196.00**	

Above given to Judge Zloch on Feb. 2, 2005