THE FUTURE OF THE FEDERAL COURTHOUSE CONSTRUCTION PROGRAM: RESULTS OF A GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE JUDICIARY'S RENTAL OBLIGATIONS

(109–83)

HEARING

BEFORE THE

SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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THE FUTURE OF THE FEDERAL COURTHOUSE CONSTRUCTION PROGRAM: RESULTS OF A GAO STUDY ON THE JUDICIARY'S RENTAL OBLIGATIONS

Thursday, June 22, 2006

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

The subcommittee met, pursuant to call, at 11:00 a.m., in room 2167, Rayburn House Office Building, Hon. Bill Shuster [Chairman of the committee] presiding.

Mr. SHUSTER. The Subcommittee will come to order.

I want to welcome everybody here this morning. We are here today because, over a year ago, the Judiciary requested a permanent rent exemption from the Federal Buildings Fund, claiming that rising GSA rent payments were creating a fiscal crisis. OMB and GSA have reviewed the request and have denied it.

Concerned about the effect a waiver would have on the Federal Buildings Fund, this Committee asked the GAO, in April of 2005, to review the reasons why the Judiciary's rent was increasing, the impact of a permanent exemption from the Federal Buildings Fund, and how the Judiciary plans and accounts for rent increases. We wanted to know if the claims that the Judiciary was a "profit center" for GSA were accurate.

Last June, the GAO testified before this Subcommittee on the impact such an exemption would have on the Fund. This report satisfies the remaining issues: to review the reasons why the Judiciary's rent increased and how the Judiciary plans and accounts for rent increases.

The Judiciary courthouses construction program has been of great concern to this Subcommittee recently. As of May 2006, the Courts occupied over 41 million rentable square feet, more than triple the amount of space it occupied over 30 years ago. Over the last ten years, Courts have received 46 new courthouses or annexes at a cost of $3.4 billion from the Federal Buildings Fund. This increase in space can be easily characterized as a construction boom. With any increase in space, one should expect an increase in cost and the Courts' construction boom resulted in just that.

The GAO investigation revealed a direct correlation between the increase in rent and the increase in space. The rent increase for the five year period from 2000 to 2005 was 27 percent. Of that, 19 percent was directly attributed to space increases, and the remain-

der resulted from increased security and rising utility costs, which are uniform throughout the Federal Government. The Judiciary's construction boom has directly contributed to the Judiciary's escalating rent costs.

In fact, this rent increase should come as no surprise to the Courts. Over ten years ago, the Judicial Conference recognized the need to reduce the future growth of overall space rental costs. A March 1996 plan by the Security, Space and Facilities Committee of the Judicial Conference recognized proposed solutions that could address rising rent costs, including the release of excess space, courtroom sharing, updating space standards, and limiting the Design Guide discretion. The Judiciary understood the ramifications of the building boom, yet implemented few of their own recommendations for reform. Failures over the past ten years to address these growing problems have culminated in a request for a permanent rent exemption. The Courts failed to manage their space requirements and has asked for the equivalent of a "get out of jail free" card. The GAO findings only solidify my, and I believe this Committee's, stance against such a rent waiver.

Additionally, the GSA has made numerous proposals to the Courts to help lower rent and cut costs. I am also aware that a majority of the proposals were rejected by the Judiciary. I recommend, in addition to suggestions made today by members of this Subcommittee and those testifying, that the Judiciary reevaluate their stance on the GSA cost saving proposals.

The Federal Buildings Fund was created not only to maximize efficiencies in the construction and maintenance of buildings, but also to ensure that the occupants acquired new space in a responsible manner. Tenants must make choices and balance their demand for space with their other expenses. By law, GSA charges all tenants, including the Judiciary, commercially equivalent charges for the space they occupy.

I like to compare this to a family's decision to purchase a home. The family may love the 10,000 square foot mansion, but may only be able to afford the more conservative 3,000 square foot home. The family is not driven by desire alone. Financial restraints weigh in and the family ends up in a home driven by space needs and economic reality. The Federal Buildings Fund is intended to force the same economic considerations by agencies and prevent poor space utilization and a drain on the taxpayer.

The finding of the GAO report is the fact that the Federal Buildings Fund worked exactly as intended. GAO, GSA, and this Committee are all well aware of this fact.

I am also concerned with the claims of the GSA errors in rent bills and inaccurate appraisals. The Judiciary claims over $38 million in overcharges and faulty appraisals. GSA should not be overcharging tenants and if appraisals are inaccurate, they need to be corrected. The Government's professional landlord should strive for excellence. I am eager to hear how the GSA is addressing these concerns and solving the problem.

I am pleased to see the Federal Building Fund working as originally intended. I am certain its creators would be pleased with GAO's findings and proof that the Fund is providing a check to the Courts' growth through economic restraint. To provide the Judici-

ary with a rent exemption would be disaster for the Federal Buildings Fund and the Government's ability to control its real property needs.

I look forward to hearing from all the witnesses today.

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

Ms. NORTON. Thank you very much, Mr. Chairman. I appreciate this hearing. I think it is an important hearing. I hope it is a hearing that gets us to the problem-solving that this Committee, under your leadership, has sought all along.

Mr. Chairman, a year ago yesterday, June 21st, the Subcommittee met right in this room to hear testimony regarding funding the Judiciary's current and future space needs. Many of the witnesses at that hearing are with us again today, and we welcome them.

At that hearing, the Judiciary, as well as the GSA, committed to a series of actions that each entity would undertake to control the Courts' runaway rental costs. The Committee did its part by asking the GAO to review how the Courts budget for rent, how GSA accounts for rent, and what impact the Courts' rent relief request of nearly $500 million would have on the Federal Building Fund.

However, the Courts chose not to respect the fair and orderly fact-finding process this Committee developed. Instead, they convinced some Senate and House Judiciary Committee members unaware of this dispute, committees that have no jurisdiction over the matters before us, to introduce legislation that would, in effect, cap what the Courts would pay into the Federal Building Fund. They took this action long before the requested GAO report was finished, long before they had finished doing what they had committed to do, long before the GSA had finished its attempts to identify and renegotiate court leases and, of course, without consultation with you, Mr. Chairman, or with any member of this committee of jurisdiction.

However, in accordance with standard practice, the Parliamentarian referred the House bill that the Courts sought to this Committee, the committee of jurisdiction. This puts the Courts back where they started, and worse. Rather than work with the Subcommittee to get at the roots of the problem, their solution of choice was to go around this Subcommittee and limit their own exposure by trying to thrust onto other agencies of the Federal Government—who are feeling the impact of spending and deficit just as much as the Courts are—thrust on other agencies of the Federal Government the burden of subsidizing the Courts' spending habits through the Building Fund.

However, there is no way to circumvent this Committee. Let's try, instead, to try to solve the Courts' problems.

We are here this morning primarily to hear from the GAO regarding our request. However, in preparation for today's hearing, I reviewed the June 2005 hearing record to refresh my memory on exactly what GSA and the Courts committed to doing to address the persistent rent problem of the Courts. In recognition of its rent predicament, in March 2004, the Courts imposed a one year moratorium on court construction. In March 2005, the Judicial Conference voted to extend the moratorium for one year. Also, in 2005,

the Courts Security and Facilities Committee committed to reviewing the space standards in the Design Guide with—and I am quoting them from the record—"an emphasis on controlling courts."

You yourself, Mr. Chairman, noted that space for judges had increased 23 percent, with the average space for judges' chambers at 2800 square feet, as compared with 1200 square feet for members of Congress. Understand, that in the 1200 square feet, we are not talking about—I clerked in the Federal courts—we are not talking about room for a clerk or two, a secretary; we are talking about all of us. And the average member of Congress has 20 staff members, some of them in the District offices. All of us in those 1200 feet.

Now, I am not trying to suggest, by pointing that out, that the Courts should be crammed as we are crammed. I am saying that right now a judge's chambers are twice all of the space members have for themselves and members of their own staff, usually at least a dozen here in the House of Representatives.

Further, the same Committee began a long-range evaluation of its planning process by examining staff and judgeship growth, as well as the space standard used for estimating square footage needs.

Finally, in order to release unneeded and underutilized space, the Space Committee, under Judge Roth's leadership, wrote to all judges requesting that they cancel pending space requests wherever possible. Judges were also requested to recommend closure of visiting facilities without a full-time resident judge. They also were to reexamine criteria for nonresident visiting judges and the release of space in probation and pretrial services. All that from the record of that hearing.

Thus, from these actions undertaken by the Courts, the Committee should be able to expect the following information:

What changes were made to the Design Guide, which governs the size, shape, and attributes of courthouses? What is the anticipated saving associated with each of those changes?

How many facilities without a full-time judge were recommended to be closed? What is the anticipated savings associated with this action item?

What is the status of the moratorium? Has it been extended for another year? What space criteria have been developed for nonresident visiting judges?

What did the review of probation and pretrial services space produce? What are the savings associated with the release of this type of space?

You answer these kind of questions, we can get down to what is left: What can we do?

In addition to these actions taken by the Courts, GSA has also been tasked to address certain issues. During the June 2005 hearing, the then Commissioner committed to the following: hiring a third-party consultant to verify the accuracy of the rent bills;—that analysis was to be completed during the summer of 2005—offered to work with the Courts to dispose of underutilized courthouse space based on the list provided by the Courts; offered to reduce the scope of new projects; offered to reduce the level of finishes; and offered to renegotiate existing leases in private sector buildings. That GSA all committed or offered to do. I hope these actions

produce the results the Committee expected and I, of course, await GSA's testimony.

Before I close, Mr. Chairman, I would like to bring to your attention and the attention of other Subcommittee members a report prepared in 1996 by the Administrative Office of the Courts at the direction of and for the Judicial Conference. This report is entitled "Space Management Initiatives in the Federal Courts." And I would like to submit a copy for the record.

What is remarkable about this report, Mr. Chairman, is not the cost controlling recommendations, it is not that cost controlling recommendations were made a decade ago, but they have such a familiar ring. I won't quote them all, but they talk about personnel levels restricted to 84 percent of staffing formulas. Of course, the Courts have continued in the opposite direction, at 100 percent. And, yes, they talked about shared space.

In fact, I would like to quote what the report said about courtroom sharing. "The Congress has asked the Judiciary to consider sharing courtrooms and to determine the impact of a judge's ability to try cases if courtroom sharing were implemented. The Court Administration and Case Management Committee, working in conjunction with other appropriate committees ... should be tasked by the Conference to determine what policy on courtroom sharing for active and senior judges should be adopted, and whether the impact of any delays that would result for sharing courtrooms will adversely affect case processing."

So here we have, Mr. Chairman, recommendations from a decade ago from the Courts' own staff, and still the Courts have not acted to institutionalize this concept in its planning. In this recommendation, the AOC does say if courtroom sharing should take place—it does not say if courtroom sharing should take place, it assumes it will and recommends that a policy be determined.

Further, Mr. Chairman, the AOC suggests this policy cover active, as well as senior judges. And, finally, they ask for impact analysis linking possible delay with courtroom sharing. All of that is very fair.

Additionally, this report does address usage data, and I quote: "The Administrative Office will be required to provide inventory and usage data on a per capita or other basis to judicial counsels."

As I understand it, Mr. Chairman, this is precisely the type of data you have been trying to get for over a year, and here it is recommended to be collected over a decade ago.

Mr. Chairman, the very first paragraph of the 1996 report acknowledged the report of having centralized rent payment process driven by decentralized approval and use. In 2006, the GAO identified centralized payment system as a source of problems with efficient space management. In 1996, the Administrative Office of the Courts recognized the link between maintaining appropriate staffing levels and sufficient funds to pay its rent bill. Thus, it is dismaying to learn that, a decade later, instead of making space decisions with an eye toward maintaining an 84 percent staffing level, the Courts have moved in the opposite direction and insist on making space decisions based on 100 percent staffing, which, of course, makes it more difficult to pay rent bills.

GSA is not to be held blameless for this rent fiasco. For some time now the agency has been more of a lapdog for its clients, instead of protecting the taxpayers. Time and again over the past decade the Agency has allowed its clients to redesign, reassign, and rethink space decisions, with no thought of the financial consequences borne by the taxpayers. The number of amended resolutions has steadily grown, as has the cost of the court program. GSA has given the impression to clients that they, the agencies, are the real estate experts, not GSA.

Where GSA should be leading, GSA is, at best, walking hand-in-hand with its clients, and now the Congress is simply going to have to lay down the law. For example, staff recently inquired of GSA why there was planned to be not one, not two, but three fitness centers in the San Diego Courthouse for about a dozen and a half judges and U.S. marshals. GSA replied that that was what the client wanted.

I understand, since the staff made something of a fuss over the fitness centers, that the number has been reduced to two. And I am sure the taxpayers will be glad that, instead of three, there are only two fitness centers in courthouses that now want to make 100 percent use their space with no sharing of space. And the reason, apparently, is staff has been told the marshals refuse to share with the judges. Where was the GSA in all of this? Why were three planned in the first place?

Mr. Chairman, I am not naive enough to believe the necessary changes will happen overnight or that they will happen willingly. We certainly know they don't happen willingly, because the Courts have simply defied this Subcommittee. But I am recommending that we continue the practice put in place last year, that is, to withholding authorizing new additions to the Courts' inventory until Congress gets the utilization report being prepared by the Federal Judicial Center and details on real savings and programs put in place by the Courts and the GSA to really control spending.

I don't see how we can ask everybody else, every committee, every appropriation to make those savings and say to the Courts, everybody but you. We are not going to do it. And this Congress—not only this Subcommittee, this Congress is going to have none of it. This Committee has a long history of bipartisan—indeed, nonpartisan—action. We are problem-solvers of management issues that fly under the radar here on Capitol Hill, but have significant financial consequences. The decisions we are talking about today have significant financial consequences at a time when Congress is having to cut public programs that are vitally necessary to the people of this Country.

Under your leadership, we can get our hands wrapped around this problem once and for all, and we can provide an efficient framework for GSA and the Courts to make asset management decisions. As I mentioned last year, however, Mr. Chairman, legislation may be necessary, and I am putting the finishing touches on draft legislation that I am asking my staff to share with your staff to get their comments and your views.

I think some remedial action may well be necessary, unless we are going to continue going around Robin Hood's barn like this. Some such action may be necessary, and I welcome, of course, your

thoughts. I certainly welcome the thoughts of those who will be testifying before us today. But I think everybody should be warned. We have had it. We need to solve the problem.

Thank you, Mr. Chairman. And I welcome today's witnesses.

Mr. SHUSTER. Thank you, Ms. Norton.

I would like to welcome Mr. Goldstein back, as well as Judge Roth and Commissioner Winstead. Thank you for being here today.

Oh, I recognize the gentleman from Arkansas.

Mr. DAVIS. Tennessee.

Mr. SHUSTER. Tennessee. I am sorry.

Mr. DAVIS. I look forward to the testimony and will reserve any comments.

Mr. SHUSTER. Thank you.

With that, I ask unanimous consent that our witnesses' full statements be included in the record. Without objection, so ordered.

Since your written testimony has been made part of the record, we would request that you limit your testimony to a five minute summary of your testimony.

We have two panels of witnesses today. On our first panel we have one witness, Mr. Mark Goldstein, Director of Physical Infrastructure Issues of the Government Accountability Office. Mr. Goldstein is going to provide testimony on the GAO's investigation on the Judiciary's rent and the corresponding report released today. The ability for Congress to perform oversight and investigation is crucial to our mission and GAO, through unbiased audits and timely responses, assists us in this function.

Following Mr. Goldstein's testimony, we will be open for questions.

So, Mr. Goldstein, you may proceed.

TESTIMONY OF MARK GOLDSTEIN, DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. GOLDSTEIN. Thank you. Good morning, Mr. Chairman, Ranking Member Norton, and members of the Subcommittee. Thank you for the opportunity to testify before you today on our work related to Federal courthouse rents.

Since the early 1990's, the General Services Administration and the Federal judiciary have undertaken a multi-billion dollar courthouse construction initiative to address what the judiciary has identified as growing needs. The judiciary pays over $900 million in rent annually to GSA to occupy court-related space, and this amount represents a growing proportion of the judiciary's budget.

The rent payments, which, by law, approximate commercial rates, are deposited into GSA's Federal Buildings Fund. With slightly over 20 percent of its budget allocated for rent payments, in December 2004 the Judiciary requested a $483 million permanent annual exemption from rent payments to GSA.

Denying the judiciary's requested rent exemption, GSA noted that the Fund was designed to encourage efficient space utilization by making agencies accountable for the space they occupy, and that it is unlikely that GSA could obtain direct appropriations to replace lost Fund income. In June 2005 we testified before this Subcommittee that Federal agencies' rent payments provided a relatively sta-

ble, predictable source of revenue for the Fund and that previous rent exemptions such as the one requested by the judiciary hampered GSA's ability to generate sufficient revenue for needed capital investment.

You asked us today to review the judiciary's courthouse rent costs. My testimony will discuss, one, recent trends in the judiciary's rent payments and square footage occupied, and, two, challenges that the judiciary faces in managing its rent costs. My statement is based on a report that is being released today. In summary, we found the following:

One, about two-thirds of the judiciary's $210 million rent increase from fiscal years 2000 through 2005 is attributable to a 19 percent increase in net square footage. The remaining increase is attributable to disproportionately high increases in security and operating costs. We found that neither the judiciary nor GSA had routinely and comprehensively analyzed the factors influencing rent increases. This information could help the judiciary better understand the reasons behind its rent increases, make more informed space allocation decisions in the future, and identify errors in GSA billing.

Furthermore, the lack of a full understanding of the reasons for increases in the judiciary rent, in our view, contributed to growing hostility between the judiciary and GSA. Conversely, GSA's lack of full understanding of the reasons for the rent increases left it unable to justify them to the judiciary and other stakeholders such as Congress. In the report released with the testimony, we recommend that the judiciary begin tracking and analyzing rent trends in order to improve its understanding and ability to manage its rent costs. The judiciary agreed that tracking rent trends is necessary, but said the specific types of data we recommended would not be particularly useful.

Two, the judiciary faces several challenges managing its rent costs, including costly architectural and structural requirements for modern courthouses, a lack of incentives for efficient space use, and a lack of space allocation criteria for appeals and senior district judges. In our report we recommended that the judiciary establish incentives to encourage local decision-makers to use space efficiently and improve space allocation criteria in a number of ways. The judiciary disagreed that additional space allocation criteria are needed for appeals courts and senior judges, and said that it already had started updating its space allocation criteria.

The judiciary has initiated a rent validation effort, but it does not address a lack of incentives for efficient space use at the circuit and district levels. Because rent is paid centrally by AOUSC, circuit and districts have few incentives to efficiently manage their space.

An example of the inefficiencies that may result is in the Eastern District of Virginia, where the judiciary paid $272,000 in 2005 to rent 4,600 square feet of office space for an appeals judge in McLean, Virginia, in addition to paying for 4,300 square feet of chamber space originally designated for that judge in the U.S. Courthouse in Alexandria. According to AOUSC, the judiciary has subsequently pursued alternative uses for that space. Although planning and building for future needs may limit alternative uses

of space until it is occupied, some of this under-utilization is a result of outdated criteria.

Finally, I must inform you, Mr. Chairman, that AOUSC has objected to much of GAO's report and believes that we are biased; that the objectives of our study are not complete; and that our findings, conclusions, and recommendations are unfounded. GAO takes seriously any notion that our reports do not reflect the highest values and standards of the agency. I can assure you that the concerns expressed by AOUSC were carefully examined.

This report has been reviewed and approved at the highest levels of GAO and, like all our reports, it represents an institutional view. GAO strongly rejects any notion that its report was biased, flawed, or unfounded. Our procedures to ensure integrity, independence, and objectivity were followed; our evidence is supported and validated; and our findings, conclusions, and recommendations remain unchanged.

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

Mr. SHUSTER. Thank you, Mr. Goldstein. We appreciate that. Your last statement there, being accused of your report being biased, additionally, the Courts have questioned the legitimacy of some of the interviews you conducted with court staff during the investigation. Can you respond to that accusation?

Mr. GOLDSTEIN. Sure. I will talk briefly about the bias, sir, and then I will talk about the interviews.

Mr. SHUSTER. Sure. Absolutely.

Mr. GOLDSTEIN. Thank you.

Regarding the bias that is alleged, sir, I would say the GAO actually does have a bias: tax dollars should be efficiently spent on behalf of Congress and the American people. But that is the only bias GAO has. Moreover, we take seriously any potential hint of bias in order to ensure our integrity and our independence. Everyone working on our report, including myself, has to sign a form that ensures, at the beginning of every single report we do that we can affirm that we have no impairments regarding our integrity and independence.

With respect to the Courts' contention specifically on this engagement, GAO's long-held position on the impact that rent relief would have on the Federal Buildings Fund for any agency does not constitute a bias that precludes us from examining rent trends and challenges to effective space management.

With regard to our interviewing process, for a number of interviews that the judiciary feels are mischaracterized or perhaps that didn't take place or were anecdotal in nature, for a number of these interviews I was there. I personally heard judiciary officials say the things that we are being accused of mischaracterizing.

The people we talked with knew what they were talking about. They were judges, clerks, circuit executives, GSA officials, all with policy or space management responsibilities. We did more than 60 interviews in the field with relevant officials. They were a combination of walking tours through courthouses and formal conversations with multiple people taking notes and comparing them later for write-ups for our formal work papers. I review every single inter-

view. This isn't a case of GAO making up things or leaning on thin evidence.

Moreover, our interviews revealed multiple court officials in multiple locations corroborating the information, especially regarding challenges that the judiciary faces or our recommendations. It is court officials saying that they need better data; it is court officials saying they need incentives to better manage space; it is court officials saying the criteria for appeals courts would help them manage space better.

I recognize that much of what we were told out in the districts may be inconvenient for the Courts. Frankly, I am surprised that the Courts felt they could reliably determine who we talked to, since, to ensure the integrity and independence of our work, we do not reveal the names of the individuals we talk to, so that people can talk to us truthfully about what they saw and what they think without a fear of reprisal.

As your staff knows, we requested that the Administrative Office of the Courts not come along on the site visits, because officials from that office, in our first visits, attempted to undermine the discussions. They attempted to change the questions being asked, they attempted to change the answers people gave; they repeatedly interrupted others and got into arguments with GSA. It is quite possible that people changed their answers and were less candid when asked to confirm statements by their superiors or colleagues.

Mr. SHUSTER. Thank you. Mr. Goldstein, in testimony submitted by the Judiciary for today's hearing, they state the following: "Since 1985, the rent changes imposed by GSA, adjusted for inflation, has grown at twice the rate as the increase in square footage rented. Rent increased 333 percent, adjusted for inflation, using the same CPI Index used by GAO. During the same period, square footage increased 166 percent."

From an empirical point of view, is it possible to draw this conclusion from the data?

Mr. GOLDSTEIN. We clearly use very different numbers and very different years than the Courts data.

Mr. SHUSTER. I am sorry, can you pull the microphone a little closer?

Mr. GOLDSTEIN. Sure. Certainly.

We clearly use very different data and years than the Courts' data. Just the one initial fact that you mentioned, that you just said that we used a CPI Index is not correct. We use a GDP Index inflation because we feel that it is broader—and includes a lot more in the Index, including construction and steel and things like that. So it is a different inflater.

More generally I can respond and answer by saying a couple of things. First, AOUSC's table only expresses rent in gross terms, making it impossible to analyze how the different rent components changed. Second, based on their notes in the table, their rent and square footage statistics don't appear to include the bankruptcy court, which represents 17 percent of all square footage in the Federal judiciary. Third, the note in the table indicates that the rent statistics represent the Judiciary's judicial services, salaries, and expense accounts, so it is not quite clear to us exactly what is included and what is not included there.

They also use very different years. We chose fiscal year 2000 as the starting point because it coincides with the full use of GSA's new rent pricing policies. We were able to break out the different components of rent: shell, IT, operations, and security and things like that, which the Courts are unable to do or anyone was unable to do before 2000. In fact, when we discussed all these issues with our professional methodologists back at GAO, we were basically told they would not approve us being able to go back before 2000 because the data is relatively meaningless for use in making the kind of decisions and reaching the kinds of conclusions that we are talking about.

Mr. SHUSTER. Well, why did you use the five years and why have they gone back further?

Mr. GOLDSTEIN. We used only the last five years because going back before that period you can't make any causal relationships about the reasons why the rent changed. Only from 2000 forward, with the advent of the new pricing policy that GSA has put in place can GSA track these numbers.

Mr. SHUSTER. And can you explain—you mentioned—what do you use as an index?

Mr. GOLDSTEIN. We use the Gross Domestic Product Index, as opposed to the Consumer Price Index. And it is broader.

Mr. SHUSTER. Broader. And you said——

Mr. GOLDSTEIN. It includes a lot more things in it, such as the price of steel and construction materials and lighting and the like. So it is a broader, more robust index.

Mr. SHUSTER. That is not included in the CPI?

Mr. GOLDSTEIN. That is correct.

Mr. SHUSTER. Steel?

Mr. GOLDSTEIN. Yes, sir.

Mr. SHUSTER. OK.

With that, I would like to recognize Ms. Norton, if you have questions.

Ms. NORTON. Mr. Chairman, I just want to say for the record—and as a member of the bar—how dismayed I am that judges would ask for the names of everyone who spoke to the GAO. It smacks of intimidation. There is a reason why, for as long as there has been a GAO, GAO has never revealed, and will never reveal, the names of people who speak to them. They are often investigating agencies at the top level. The whole point is to speak.

Frankly, the GAO is an investigative agency, it doesn't take anybody's word. It does hear from witnesses the way courts hear from witnesses, except they investigate for Congress. And the confidentiality of witnesses to speak truthfully to the GAO is required by the Congress of the United States. So I am dismayed that judges would ask for the names of people who spoke.

Let me go on to the questions.

Mr. Goldstein, nobody wants a GAO report done about them. Nobody knows this better than I do. I headed a Federal agency, and we all quaked that Congress would come in and ask for a GAO report. GAO reports are objective reviews not aimed at criticizing the agency, but they are aimed at looking for problems. They are never complimentary and, over time, agencies learn to be grown up about what your mission is.

I am shocked at the way in which the courts have responded to the GAO, because courts are in the business of investigating matters. So the whole notion that their rent payments, the way in which they conduct their business, should not be the subject of an investigation the very same way that anybody else can be is very, very troubling to this member of the bar.

The way in which the Courts have, of course, criticized your report is not unusual, except it is rather scathing. It is not unusual. Were the Courts given an opportunity, a fair opportunity to comment and to rebut your findings?

Mr. GOLDSTEIN. Yes, ma'am, they were. They received a number of opportunities. We met with AOUSC throughout the period of our review. We, of course, hold an entrance meeting where we discuss what it is we are going to do based on our work here with the Committee and our discussions with your staff. We met with AOUSC numerous times; we discussed what we would be doing in the field with them; we kept them apprized, obviously, as we went. We worked—and made many of our arrangements to the field through them, so they knew what we were doing, of course.

They had plenty of opportunity, in fact, more than usual opportunity, I would say, to review our work. They reviewed a very early sort of discussion paper version; they reviewed the draft; they met with us several times; they presented voluminous comments to us, which we evaluated; and if you have the fortitude, our evolution is there in the back of our report.

At least half the report is represented by their comments and our rebuttals. Very rarely does GAO need to go to this length, quite frankly, but we had to respond with 70 points to respond to their comments to us in order to, in our opinion, fully set the record straight.

Ms. NORTON. Does this include your conclusions as well, your full report and conclusions?

Mr. GOLDSTEIN. It is in the back of that report.

Ms. NORTON. When they offered detailed rebuttals, did you then review your own findings critically, and did you make any corrections or changes based on their rebuttal?

Mr. GOLDSTEIN. We did both things. Not only did the team that worked on this report review it; any job that—any report that GAO does, an independent team always comes in after the team that writes the report and reviews that report, and literally checks every single word to make sure that it is accurate.

Ms. NORTON. So that is a team that is independent of the team that wrote the report and——

Mr. GOLDSTEIN. Right. A team that had absolutely nothing to do with the initial effort; might not even know where a Federal courthouse is.

On top of it, in this particular instance, because the Judiciary had concerns that were so significant, my management brought in a third team, which is pretty unusual at a high level——

Ms. NORTON. Would you describe that? They brought in, in addition to the team——

Mr. GOLDSTEIN. An additional——

Ms. NORTON.—the independent team that would look at GAO findings of the HHS or the Labor Department, they brought in another team?

Mr. GOLDSTEIN. Yes, ma'am. A team from our quality assurance team.

Ms. NORTON. You brought in another team, I am sorry.

Mr. GOLDSTEIN. A third team examined this report to ensure that we had followed all our procedures, that the report itself was accurate, that we conveyed all the information correctly, that the findings and conclusions and recommendations met our standards. It was obviously also reviewed at the highest levels of the agency. The head of our methodology department reviewed all of the data and all the methodology that we used to make the conclusions that we made. It has been thoroughly vetted.

On top of that, as you suggested, the Courts did have multiple opportunities to look at the material, and we have made numerous changes. We have made three kinds of changes: one, we have made some minor changes for things that—you know, technical corrections, things that we mislabeled. We mislabeled a couple photographs and some buildings, things like that that always crop up, and the assurance process is designed to get at those kinds of mistakes.

We made changes to the report to add some context as a courtesy to the Courts, because they felt that because we weren't handling certain kinds of objectives, that additional context might be necessary. And then we made some changes on behalf of the judiciary to update some information that had changed over time. But none of that changed our findings, our conclusions, and our recommendations.

Ms. NORTON. One of the challenges to your work was how you chose the courts that were highlighted in the report. How did you choose the courts when you conduct your site visits? Were there courthouses that were fully occupied and busy? How did you decide which courts to visit?

Mr. GOLDSTEIN. GAO always tries to do site visits; it is one of the things that we do. We get out in the field. It is one of the things we add value to for Congress, finding out what is going on out in the field, so that we can understand issues, not just here in Washington. And we felt that for this particular report it would be useful, since the question being asked was essentially why did the rent increase and what are the trends in the rent increases, to go out and look at those districts where the rent had actually increased. And that is the principal driver behind the decisions that we made.

We also looked at other districts where new courthouses were being constructed, and a couple where courthouses were not being constructed as well.

Mr. SHUSTER. Ms. Norton, let me move on and let these other folks get a question in here, then we will come back. Since you have a number of questions, I will give you another crack at it.

Mr. Kuhl.

Mr. KUHL. Thank you, Mr. Chairman.

Mr. Goldstein, just a couple questions. Number one, from my our overview and look, you were aware of the request of Judiciary to have a permanent rent exemption?

Mr. GOLDSTEIN. Yes, sir.

Mr. KUHL. What would happen to the Federal Building Fund if in fact that exemption were granted?

Mr. GOLDSTEIN. Well, we testified last June and have long held the position that rent exemptions of any kind to the Federal Building Fund really have a very negative impact on the ability of the Fund to generate capital for investment in other government buildings. As you know, GAO already has real property as a high risk item which we have carried for a number of years, since 2003.

We think that there are a lot of issues and problems with respect to real property in the Federal Government, and any diminution of the funds going into it that a rent exemption like this would cause would further exacerbate the fund and create problems in terms of being able to renovate Federal property, to be able to effectively deal with its problems.

Mr. KUHL. What percentage of the Fund is the Judiciary's contribution?

Mr. GOLDSTEIN. My understanding is——

Mr. KUHL. As far as overall income?

Mr. GOLDSTEIN. My understanding is that it is about 15 percent, but that it gets out about 40 percent.

Mr. KUHL. OK. So there would——

Mr. GOLDSTEIN. In fact, the Chairman made that particular point last year at the hearing.

Mr. KUHL. OK. Question for you. You obviously, in the report, mentioned going and visiting several of these sites. Is there a standard percentage square foot basis per person that is acceptable, say, in any courtroom?

Mr. GOLDSTEIN. There is a Design Guide that sets out how much space various components in the building are allowed, such as judges' chambers and courtrooms, and they vary even between the kinds of courtrooms, whether it is a magistrate or a bankruptcy courtroom or the like. So there are very set numbers for all of those kinds of things, right down to square feet, and also discusses the kinds of finishes that are allowed in all these various facilities.

Mr. KUHL. In any of your visits did you find any facilities that were over-utilized?

Mr. GOLDSTEIN. We did find some courthouses that were at capacity. We also found a number of courthouses that were not at capacity; some significantly under capacity. However, the courts——

Mr. KUHL. Could you share some of those examples with the Committee, what facilities you found, say, underutilized?

Mr. GOLDSTEIN. Sure. Some of the courthouses that had extra courtrooms that we saw—and I can supply this more fully for the record—were—well, let me put it this way. Of the 14 courthouses we visited, we found 10 that had unassigned courtrooms and chambers, and not just the newer courthouses. For example, the courthouse in Baltimore, which was built in the 1970's, had four magistrate courtrooms that were being used for storage, the large special proceedings courtroom was unassigned, and two appeals courtrooms that had not been used for that purpose for years.

At the Union Station Courthouse in Tacoma, Washington, we found a number of unassigned courtrooms and chamber suits. One of the courtrooms there was being used by the U.S. Trustees, which is not a part of the Federal Judiciary, and, until recently, two of those chambers were being used by local members of Congress, but at the time of our visit those chambers were completely empty.

In the Walsh Courthouse in Tucson, Arizona, we found that there were only two bankruptcy judges currently assigned to the entire courthouse, which had previously housed the entire district court.

In Seattle, the judiciary had enough courtrooms and chambers for one bankruptcy judge to have courtrooms and chambers in both the Seattle courthouse and the Tacoma courthouse 30 miles away. He had a combined 8,000 square feet.

Those are some others. We have many such examples, sir.

Mr. KUHL. Thank you.

Mr. Chairman, I yield back.

Mr. SHUSTER. Just a quick follow-up on Mr. Kuhl's question. Do the courts have a standard they use for space for people? I know there is an OSHA standard, and I don't know what that is. In the Congress, we are exempt from that, so we don't give people enough people to work, we use smaller spaces. So I just wondered is there a standard that the Courts use for space in the Design Guide, and how does that compare to commercial businesses, private industry?

Mr. GOLDSTEIN. I will have to get back to you for the record, or you may ask GSA. I don't have the specifics of it.

I do know that GSA and the Courts have worked together to try to ensure that space is reasonable and functional, and to try to contain costs, but there are also a number of other things that the Design Guide does not cover, as we indicate in our testimony, such as space allocation for appeals court judges or senior judges, that we feel would help the districts, particularly. A number of the folks that we talked to out in the districts said that having some kind of space allocation set for these judges and these courtrooms would help them manage space better.

Mr. SHUSTER. OK. Thank you.

Mr. Davis, the gentleman from Tennessee.

Mr. DAVIS. When I first was led to the Congress, I sought perhaps maybe opening an office in one of the counties that had a Federal building, and we checked with the Federal building to check on the cost involved, and it was really too expensive for us to be able to rent office space from GSA in the Federal courthouse.

I know when you look at the budget there are several things that you have to provide. You provide utilities, you provide maintenance, and obviously the construction costs, capital outlay, which we make appropriations for. But what I became concerned about—not concerned, what I wondered about was whether or not—and I know you have overhead, you have to pay for employees. You have got to keep GSA in operations, obviously.

But we appropriate a lot of money here directed to General Services Administration, and I am concerned are you looking at the rental properties, and that is basically what it is, even though it is owned by the Federal Government. Are we looking at rental properties as a way to make a profit from other agencies, since we are all one big—I mean, we are all part of the Government, but are

you using your ability to charge rents that would create a profit, bottom line, for GSA's operating expense?

Mr. GOLDSTEIN. We have never specifically looked at that question, sir, and you might ask that of GSA. But the Federal Buildings Fund was designed in the 1970's to try and get government agencies under GSA to account for their space needs and to pay for them, rather than just not having to sort of feel the pain, if you will, of getting any space that they want in order to assure some accountability.

Mr. DAVIS. I yield back.

Mr. SHUSTER. Thank you.

Ms. Norton, do you want another?

Ms. NORTON. I just have one more question, Mr. Chairman.

Based on your analysis, are the Courts a "profit center" for GSA, as stated in the Courts' year-end report?

Mr. GOLDSTEIN. We did not specifically look at that question, so I cannot answer it directly. But we did not find, in any of the things that we examined, that there is any notion of that.

Ms. NORTON. Mr. Chairman, here is new construction in courthouses. This begins in 1991. And the reason I point this out, Mr. Chairman, is because I have been on this Committee since 1991, and I say, without fear of contradiction, that all we authorized for construction are courthouses. Yes occasionally there is a Federal building of some kind. We authorized the transportation building after 30 years, when it was struggling to get a new building.

But in effect, the one kind of construction that Congress has been willing consistently to do are courthouses, rather than the construction that agencies beg for throughout the Country. You had the figures, I think, about the number of courthouses. Having sat through construction of nothing but courthouses, it is hard for me to believe that anybody is paying for courthouses except other Federal agencies, who pay into the—whose rents go into the Building Fund and are then used to construct what? Courthouses.

Mr. GOLDSTEIN. As you mentioned yourself last year, roughly 15 percent of the funds of the Courts, but they get about 40 percent back. The other point that is well worth mentioning is that between 1990 and 2006 there were only four years in which Congress did not provide additional funds to the Federal Buildings Fund, so that it is not simply a matter of the judiciary's own appropriations.

Mr. SHUSTER. Thank you. Again, can you talk just a little bit, before we close, in the interviews, what went on in the interviews? When you had an interview, who was in there? You were speaking to people individually?

Mr. GOLDSTEIN. We did a number of kind of interviews. We did walk-throughs, we did tours of every courthouse we went to.

Mr. SHUSTER. And you went to 14 courthouses, right?

Mr. GOLDSTEIN. Of the 14—right, in all the districts we went to. I think it was six or seven districts. And we typically would have a tour of the courthouses that we were going to look at with GSA, because they had the keys, and court officials. And those court officials ranged, depending on the courts we were in, from district clerks and circuit executives and judges of all kinds. We talked to magistrate judges, bankruptcy judges, district judges, a whole variety of folks. We talked to folks at the circuit levels as well.

So we did the tours and got a lot of information that way. Then we also had more formal interviews afterwards. We went back to conference rooms and sat down and asked a lot of questions. We typically were there for a couple days.

Mr. SHUSTER. One-on-one or were they groups when you had the formal interviews?

Mr. GOLDSTEIN. It varied. Sometimes it was one person, sometimes it would be two or more. GAO does all of its interviews with at least two GAO staff, and those GAO staff always take notes. Our conversations were not casual, they were formal in nature. After our interviews were done, the GAO staff taking the notes compare them, a third GAO staff person looks at them as well. Once they are written up, based on the notes—we have a number of processes and procedures that we go through to assure the integrity of the interviews we take.

Mr. SHUSTER. And did you say that there were officials from the Judiciary that were in there that were trying to change answers, did I hear you say?

Mr. GOLDSTEIN. When we first began this job for you, we went to a couple courthouses that were in this part of the country, and unbeknownst to us—because we had not invited them, but apparently the courts maybe did—some officials from the Administrative Office attended, and we found their attendance to be very disruptive, so we asked for all future visits that we went on that those officials not join us so we could be able to do our interviews and conduct our inquiry unimpeded and independently.

Mr. SHUSTER. OK, thank you. And how long have you been working for GAO and doing these kinds of studies

Mr. GOLDSTEIN. I have been at GAO for about six years, sir.

Mr. SHUSTER. Six years.

Mr. GOLDSTEIN. But I have been doing public service for more than 20.

Mr. SHUSTER. And, in your opinion, you feel this study was as fair and unbiased and straightforward as could possibly be?

Mr. GOLDSTEIN. Yes, sir. It followed all of our procedures and policies, and was reviewed, as I mentioned earlier, not only through our normal processes but, because of the concerns the judiciary had, it received even greater scrutiny.

Mr. SHUSTER. And not just one group reviewed yours, but you had a second or a third group came in too?

Mr. GOLDSTEIN. That is correct. There were two independent teams, not just one, in this instance.

Mr. SHUSTER. OK. Well, thank you, Mr. Goldstein. I appreciate your being here today, and I am sure we will be speaking to you in the future.

Mr. GOLDSTEIN. Thank you, Mr. Chairman.

Thank you, Ms. Norton.

Mr. SHUSTER. With that, we will invite the second panel to come to the table.

We are going to have votes in about 20 minutes, so I am sure we can get through the second panel's testimony, and we will go from there.

So Mr. Winstead and Judge Roth, please.

We are joined today by the Honorable Jane Roth, who sits on the United States Court of Appeals for the Third Circuit and also serves as the Chair of the Judiciary Conference's Committee on Security and Facilities; and also Mr. David Winstead, who is the Commissioner of General Services Administration Public Building Service.

I am certain that our second panel will provide us with insight, and maybe differing opinions, on the GAO report.

So, with that, Judge Roth, would you go ahead and proceed?

TESTIMONY OF THE HONORABLE JANE R. ROTH, JUDGE, THIRD CIRCUIT COURT OF APPEALS, CHAIR, COMMITTEE ON SPACE AND FACILITIES; THE HONORABLE DAVID L. WINSTEAD, COMMISSIONER, PUBLIC BUILDING SERVICE, GENERAL SERVICES ADMINISTRATION; ACCOMPANIED BY ROBERT ANDRUKONIS, DIRECTOR, CENTER FOR COURTHOUSE PROGRAMS, GENERAL SERVICES ADMINISTRATION

Judge ROTH. Thank you, Mr. Chairman, members of the Subcommittee. I appreciate the opportunity to testify today on the GAO study of the Judiciary's growing rental obligation.

The Judiciary is grateful to the Transportation and Infrastructure Committee for supporting and furthering the administration of justice through the authorization of new courthouse construction and renovation projects necessitated in recent years by workload, growth, and security requirements.

I would like to note at the outset that we did not know until late in the study that GAO had dropped its original number one objective: to review how GSA calculates the rent bills. GAO has not addressed the fundamental question of whether GSA's commercially equivalent pricing practices developed for office buildings are appropriate for special purpose buildings such as courthouses.

There was no assessment of how existing practices impact rent costs over the long term. Addressing both of these questions we believe would have provided necessary information to the Committee with regard to our request for rent relief.

It is important to understand that we need the additional space we have requested. The Judiciary's workload and consequent need for additional judges and staff are growing due to many factors, including the increased Federalization of crimes, a proliferation of multi-defendant trials, and growth in immigration-related and drug trafficking proceedings.

Security requirements also increased substantially following Oklahoma City and 9/11, and due to the violent nature of many of the criminal offenses we try. A modernization and expansion program was therefore critical to provide adequate facilities for the Federal courts to serve their vital public purpose.

The Judiciary understands that courthouse construction and renovation will cause rents to increase, as highlighted in GAO's study. However, since 1985, GSA's rent charges have grown at twice the rate as the increase in square footage. Using the GPI Index to adjust for inflation, rent increased 333 percent, while square footage increased only 166 percent. GAO's draft report highlighted a six year period, with 27 percent rent growth, 19 percent of which was shell rent, and contrasted that to 19 percent growth in new space.

This short time frame was too limited and does not present an accurate picture for the Committee. The 20 year analysis during which rent grew at double the rate of new space is a more meaningful statistic and reflects our concern that rent has taken up an increasingly larger proportion of our budget over the years. The longer look also clarifies the fact that from year to year the greatest part of our rent bill is for courthouses already in our inventory.

The Judiciary's primary rent concern is that GSA does not price courthouses appropriately. GSA prices the Judiciary's rent as if the Judiciary were a small tenant on a five-year lease in a speculatively built office building. This makes no sense given the true circumstances of our occupancy. The Judiciary is the long-term tenant for whom a building is constructed. Typically a build-to-suit commercial tenant enters into a long-term lease and enjoys a low long-term level rent reflective of the cost to finance the building over 25 or more years.

Of equal concern to us is whether GSA is in fact calculating our rent accurately. We had hoped the GAO might corroborate and gage the extent of inaccuracies we have recently discovered in rent billings. Although the Judiciary is only at the beginning of a rent validation effort, in 15 buildings alone we have identified annual overcharges amounting to approximately $38 million. We brought these to the attention of GAO, but they were not addressed in the report.

Another objective of the GAO study was to identify what challenges, if any, the Judiciary faces in managing costs associated with its space needs. In answering this question, GAO did not analyze the factors that dictate judicial space need and did not ask a single Judiciary official with policy-making responsibility what they believe the challenges to be. The GAO conclusions, therefore, fail to address some of the more significant planning challenges we face, such as planning for expected growth, the intractability of a space decision once it is made, and an inventory containing obsolete facilities that do not meet modern technological and security needs.

Notwithstanding the concerns I have mentioned, we find the GAO's recommendations are consistent with efforts we already have underway to control rent costs. The tracking process recommended by GAO is dependent on GSA providing data in a way that will lead to meaningful analysis. We are continuing to work with GSA to complete the measurement and categorization of space assignments by court component so that they can fully analyze and track trends as suggested.

We also have a number of space management efforts underway which may be of interest to the Committee. We are imposing tighter budget control and rent caps on space decisions made by circuit judicial counsels; we are making changes to the U.S. Courts Design Guide that will reduce construction costs by about 8 percent; we are retooling our long-range facilities planning process to introduce life-cycle cost benefit analysis into the evaluation of housing alternatives; we will continue our rent validation initiative with GSA; and the Judiciary is conducting a comprehensive study of courtroom utilization.

We will continue to improve our facilities planning and management processes to control costs, but these efforts cannot reduce in a substantial way the Judiciary's total rent payments for hundreds of existing courthouse facilities across the Country. Only a reduction in rent charges can have any significant impact on the Judiciary's rent bill.

Mr. Chairman, I thank you for this opportunity to testify. We deeply appreciate the Committee's recognition of the Judiciary's need for adequate and secure facilities in which to conduct the work of the courts, and I would be very happy to answer any questions the Committee may have.

Mr. SHUSTER. Thank you very much, Judge.

Commissioner Winstead.

Mr. WINSTEAD. Chairman Shuster, Ranking Minority Member Congressman Norton, and Congressman Kuhl, I am very pleased to be here. I am David Winstead, Commissioner of the Public Building Service at GSA, and I am here to share with you both the response to the GAO report, as well as to share with you a little bit about the partnership that we have with the Courts, which is very, very important to us in terms of some of the objectives you outlined both in your opening comments, in terms of saving costs, containing costs in the design of new courthouses, and also managing and trying to work with the Courts in terms of their rent.

As you know, since 1995, GSA—and my full report is for the record, please, full testimony.

Since 1995, GSA has embarked on the largest courthouse development program in 50 years. In an effort to uphold a lot of the Federal principles of architecture as espoused by Senator Moynihan and others, we have attempted to return the public buildings to the real prominence that they once had and creating a portfolio of integral public structures that both represent the public and the importance of the judicial process.

Many circumstances, however, have altered the way these buildings have been shaped since 1995. The program has attempted to strategically meet both financial accountability to both the present OMB, Congress, and the taxpayer, who is ultimately supporting our housing needs, both the Judiciary and the other Federal agencies.

We have done this with difficulty in terms of the construction escalations we have received and have been living with over the last five years, and these have really impacted all of our construction and development in recent years. The difficulty of estimating and forecasting funding requests to meet that cyclical change has been a challenge, but this Committee has been responsive in terms of its work in March in approving the 2007 Public Buildings Program.

But the evolution of modern courthouse design has also required us to be more efficient than ever before, and the last three concepts that have been approved by GSA and the Courts—both Nashville, Salt Lake City, and Austin—I think show an attention to the issues and concerns you have expressed in terms of more efficient courthouses and greater control of efficiency in terms of utilization and operation. We believe that these strategic decisions which are being implemented close to the objectives that you have outlined before.

In terms of the GAO report, the three findings in the report really address the explanation and address the Judiciary's rent issues, both finding increased space needs as a major cost, stricter security needs, and rising energy costs. We agree that the primary factor underlying the Judiciary's rent increases has and will continue to be the increase in space needs, and that has been both the GAO testimony and reflected in your opening statement, the facts on that.

We have, from 2000 to 2005, on the space seen about 19 percent increase, and I think the Judicial Conference has long recognized that the need to return certain facilities that are not fully used for full-time resident judges, however, will only release about 15 courthouses, and we believe that this is one area in terms of space utilization, in terms of saving additional space.

The GSA also believes another opportunity to reduce cost is to enhance space utilization by taking a serious look at courtroom sharing. As an attorney, obviously, I am very cognizant of the availability of courtroom for the judge in terms of moving parties to settlement, but we also think, over the last decade, recommendations have been made in terms of space sharing, wherever possible, should be made, and, frankly, to this date, very little progress has been made.

Security. The second finding in the GAO report is the rising cost of security, and it has become a disproportionate part of the cost of rent, some 130 percent increase from 2000 to 2005. These security costs are in fact rising for all of our customers, and we are actively involved in reducing these costs wherever possible.

But security enhancements such as progressive collapse have increased building costs by up to 8 percent in terms of the courtroom cases. We are finding a great deal of success when we integrate security requirements early in the design process in the form of serving for security setbacks, and we also are working to blend hurricane and security measures wherever possible.

The third factor that the GAO report addressed is, again, energy costs, which, unfortunately, have been a disproportionate rise of the overall rent and our cost factors, some 45 percent increase from 2000 to 2005. GSA has been aggressively working to explore use of new technology in both our purchase as well as use of fossil fuels. We have achieved about a 30 percent average reduction in energy consumption in recent years, over the past decade, and will continue to focus on efficient HVAC, lighting systems, and instituting more efficient operating procedures to save cost on the utility side.

The GAO recommendations, they made two in this report. The first is that GSA and the AOC should work together to both track rent and square foot data in a way that enables the Courts to attract the effect of their space management decisions. The second recommendation is for the AOC to work with the Judicial Conference to create incentives for district and circuit judges and circuit executives to better manage space and pace consumption more efficiently.

With respect to the first recommendation, we believe that we have programs and systems in place to assist the AOC in tracking rent and square footage trends on an annual basis, as well as assist in revising the Cost Design Guide. In a recent meeting with

Judge Roth and her committee, we worked to refine that, and where we do feel that the cost savings could be 8 percent, in one specific project we have identified 2 percent savings in a planning sense for a new courthouse.

GSA has informed their customer, and we do inform the customer of rent implications as early as possible on two levels: both the project level, with rent implication documented in our occupancy agreement, and at the aggregate level, where GSA provides a detailed projection of rent costs two years in advance, known as the rent estimate, which is also submitted to the OMB.

In the second recommendation the GAO has met, and that is working with the Judicial Conference to create incentives for judicial districts and circuit executives to better manage space more efficiently, we think that this is essential. Today, at the project level, judges and local court personnel may make decisions about project scope without full regard to long-term impact on rent. We will support and continue to focus on this and work with the AOC to connect local space decisions with the accountability for who is paying for these decisions.

I would now like to share with you what other more immediate steps we have taken in the past year to work with the Judiciary. We have made progress in three areas: partnering, billing accuracy, and lease renegotiation. GSA has partnered with the Judiciary on three levels.

At the executive level we have new leadership, both at GSA with Administrator Doan and myself, who came on board at the end of 2005, as well as the Judicial Conference. I think Jim Duff and obviously the new Chief Justice are in place. And I have talked to Judge Roth, and we are really energized to try to continue this partnership to control these costs, and I think you will see that moving out even more. In fact, Monday and Tuesday we are meeting again.

We reestablished partnering sessions. We got together on April the 11th to review all the projects in the planning stage at GSA for the new courts, and next week we get together on Monday and Tuesday with the Courts to work together on both space analysis and planning methodology. At the project level, every new courthouse has a formal partnering meeting that includes the GSA project team, the Court project team, design architectures, and also, eventually, the general contractor.

The other concern raised by GAO and also by Judge Roth is the rent bill accuracy. Another area of progress in this regard is due to the volume. We do admit that some human factors were involved in the complexity of our system. There have been some errors. If you calculate the percent of those errors and the reimbursements we paid to the Judiciary, it is about one and a half percent of their total rent bill.

Last year we reviewed about 2,500 bills and assignments for rent accuracy, and the Judiciary has recently asked us to review 40 appraisals used by the GSA to calculate rent and owned space for accuracy. We are formally involved in that and will continue to focus on these appraisal issues.

Also in the renegotiation level, which is a third area that we have addressed, in renegotiating leases, GSA has worked with the

AOC to develop a methodology for determining which leases should be considered for renegotiation. We have identified 14 thus far, and we are doing that with other clients as well and achieving some success in savings. So we do hope that this will continue to yield areas of cost savings for the Judiciary.

Mr. Chairman, Committee, I would like to conclude by just mentioning, in summary, the actions—because all of you all, in your opening statements, addressed the directions of this Committee last year and focusing in on this partnership with the Courts and trying to save costs and trying to help them control and monitor and manage their rent bill.

Since May of last year and the hearing which was here in June, we actually have proposed four different initiatives: closing unused court facilities, which could save somewhere in the neighborhood of $13 million; extending the amortization period of tenant improvements, we can save about $14 million; reducing the tenant improvement costs, which is substantial, as highlighted by GAO, which would save about $2 million; and also renegotiating leases, as I mentioned before.

To date, unfortunately, we have not been able to succeed pushing forward on the first three. However, the Judiciary is working with us on renegotiating leases, and we have refined just very recently, and are implementing, Design Guide changes, which should save costs as well.

In conclusion, I think there were several issues that Delegate Norton raised. We are also, since last year, we have had a third-party billing contractor that is reviewing our awards. We have been very involved with obviously the Courts and the rent guide, and we continue to push for renegotiation of leases.

The last thing I would like to conclude on, on April the 11th we got together with our chief architect and his design people and the head of the Courts program, and as a result of a partnership that Judge Roth and six Federal judges had, we committed in three areas to work, both asset management planning with a working group to coordinate new planning and mission-related requirements and security establishing a working group to look at the GSA design security tool and to try to reduce those costs, and also in terms of a selection process.

And this is very, very important—we are going to enhance the GSA process of site selection in two ways: prior to designating a panel member, we will agree to have a pre-meeting with the Courts in administrative offices at building sites, and we will also make sure that we are clarifying the role of both the Design Excellence process and our GSA involvement in that. So those are three new initiatives just taken since the April meeting partnering with the Courts.

Mr. Chairman, I want to thank you all for your leadership in this issue, and I would be happy to answer any questions.

Mr. SHUSTER. Thank you very much. We are managing our time clock up here. Hold on one second.

OK, here is what we are going to do. I have to go vote, and I am going to recognize Ms. Norton to ask her questions, and when she is finished, then we are going to go into recess. And I will be back here at about 12:45 I will be back, and I will end up answer-

ing my questions, and whoever else is here. So, with that, I ask unanimous consent that Ms. Norton is able to proceed with her questioning, and we will stand in recess when she concludes. So, with that, I recognize Ms. Norton for her questions.

Ms. NORTON. Thank you very much, Mr. Chairman.

Judge Roth, one of the things we need to do is to find a way to get around the repetitive and circular back and forth. I am very unused to it. You know, when I deal with my friends on the other side of the aisle, if we want something to be done, we ultimately get down to what each of us can do to get it done, and everybody wants a win-win, so somebody gives up a little on each side, and that is the only way we are able to do legislation.

You can see that the Committee feels strongly that the Court has to do its part and that the present circumstance of continuing to study or arguing for the same configuration just doesn't work, and what it is doing to me is inspiring me to just go into legislative mode. I am trying one more time, but I do want everyone to know what the mood is here on the Hill. We are fraught with issues of how to simply get through the appropriation process because the cuts are so huge.

Mr. Winstead, when I went to the so-called THUD, the appropriation for your committee, there wasn't a lot of controversy there. The Democrats and the Republicans didn't have a lot of controversy because the allocation for that subcommittee, which GSA shares with five or six other agencies, had been cut something like $600 million. So everyone could see that there just wasn't the money for one side to say why don't you fund my X, Y, or Z.

Ultimately, there was an amendment on the floor just to get enough for Amtrak to keep going. Amtrak runs through 43 States. That is one of the few amendments everybody knows you could pass on the floor for more money. One does have to understand that that is where the Congress is.

So despite the fact that I am very concerned, because I have been through this so many times, I enjoy being in the Congress because I enjoy solving problems. I don't enjoy gotcha, I enjoy OK, how—you know, it is like a crossword puzzle for me. And nothing can be more interesting than the whole notion of, well, you know, courtroom sharing, well, maybe I don't want to do as much sharing as you want to do, but I can see that maybe there is something I can do.

Without that kind of problem-solving mode, it is not that we are going to continue like this, it is that there is going to be legislation. And I can tell you that there is nobody in the Congress, nobody, who would find this anything but an easy bill to pass, a bill mandating the kind of savings, doing the kinds of things this Committee has asked to be done now for more than 10 years. We would love that, because then we can go home on both sides of the aisle and show to the American people we are saving on building courthouses.

As much as people want there to be courthouses, let me be clear, it is nobody's priority up here except this Subcommittee. Nobody's. Nobody cares but us. And we care because we build courthouses, and want to build courthouses. We build courthouses in one way. Congress does not appropriate money for courthouses. We build—

Congress does authorize courthouses. Courthouses to be paid for out of the Federal Building Fund. Most of the agencies in that Fund are in rented buildings, they never get a new building.

So they pay rent year after year in order to build somebody else a building. Guess who that turns out to be? The Courts. So, if anything, this has been upside down. The Courts have had construction of buildings where it is very hard to find a Federal agency that isn't in a building that it hasn't been in for decades. And the Courts' courthouses have been constructed out of the rent paid by Federal agencies, not because we appropriate money. We do so very, very rarely. And this is the last thing Congress would do today.

Having said that, I want to find a way to get through these issues that keep coming up. Let's take sharing. This notion that has been put forward by the Courts, that this one courtroom is essential for the administration of judges and so forth. I am pleased to see that the Courts have been more analytical than that themselves. We look back at the Design Guide, the first one published in 1979, and, Judge Roth, I want you, I want Mr. Winstead to see what the Design Guide said.

This is Judicial Conference. Knows all about the Constitution and the administration of justice. And here I am quoting: "In accordance with the October 1971 Judicial Conference Resolution, no judge of a multiple judge court will have the exclusive use of any particular courtroom. It is contemplated that a multiple judge courthouse will contain various size courtrooms. Each courtroom will be available on a case assignment basis to any judge."

Has the Judicial Conference amended this principle, Judge Roth?

Judge ROTH. We are undertaking at this time, as you probably know, a courtroom utilization study. We have moved up the completion date of that study, and I think it would be inappropriate for me to indicate at this point what the future position of the Judicial Conference will be, since that will depend upon the results of that study.

Ms. NORTON. Of course, I was asking you about the underlying principle. And the Conference itself, the Judicial Conference apparently has not changed the principle. I appreciate that there is yet another study going on. You see, you keep studying something to death and you get legislation.

There was some testimony, we were pleased to hear, that sharing did occur in certain courts, such as Sioux City, Nashville, some courts in Illinois were named. Did the Judicial Conference receive complaints about trial delays in these courts where some sharing in fact was going on?

Judge ROTH. I do not know.

Ms. NORTON. That is something you might want to look at, because if we had that kind of information, it could help us know. I would be the first with you to say justice delayed is justice denied. Our court system is inherently slowed; that is the way the framers wanted it. But we certainly don't want to slow things up any more than they ordinarily would be.

Judge Roth, the AOC submitted to the Committee a list of changes made to the Design Guide. These changes apparently were intended to save money. We looked at the section describing excep-

tions, and one exception seemed very peculiar for judges to be concerned with. It had to do with the plumbing standard for an office. Why should the plumbing standards be changed?

The first thing that occurred to the Committee was—indeed, staff was told that closets have been designed in such a way as to include plumbing so that they can, and, indeed, some have already been, converted to private showers. Are private showers being built for judges in any courthouses?

Judge ROTH. No, not that I know of.

Ms. NORTON. Why, then, is the Court interested—well, of course, we were told differently, but perhaps you have no information to that regard. But let me ask you, why, then, was anybody at the level of the Design Guide have any interest in plumbing standards or for an office——

Judge ROTH. That is a matter——

Ms. NORTON. Now, for an office. Not for the courthouse, for an office.

Judge ROTH. Right. That is a matter of construction costs. In constructing the building, if you can limit the number of pipes run in the building, it cuts down on the cost of construction. Therefore, we felt it was appropriate to take steps to limit the plumbing pipe runs as a cost containing factor.

Ms. NORTON. So you have been more interested in plumbing than you have in sharing courthouses. I don't know, Mr. Winstead or GSA will tell me that plumbing standards for particular offices, as opposed to a building. You might in fact convince me if you were talking about fewer pipes throughout the building, but this is in an office.

It is very interesting that you all have gotten down to the point of looking at plumbing standards, because you are rather far afield from what we would expect you to have any sense of. That is why the Committee is very sensitive, because we lived through the era of chandeliers and high ceilings and private kitchens and so forth. So that is why I asked the question.

I think people ought to alert people that if you really to send Congress up the wall, you just let Congress find out that judges have private showers in their chambers.

Judge ROTH. Private showers are not permitted in the Design Guide and they are no longer——

Ms. NORTON. This was, of course, for an exception, that is why it caught our attention. So obviously it is not in the Design Guide. But then why in the world would the Design Guide mention it as an exception? Don't you think it should be taken out of the Design Guide until you consult with GSA?

Judge ROTH. Absolutely.

Ms. NORTON. Thank you.

What is the status of the two year moratorium?

Judge ROTH. The two-year moratorium expires in September of this year. Therefore, the Design Guide revisions will, for the most part, have been made by then. So, when we move forward with construction projects of sorely needed courthouses, we will incorporate the new guidelines into new planning.

Ms. NORTON. So are you going to extend the moratorium?

Judge ROTH. No, we are not. The moratorium was in place so that we did not design new courthouses under the old Design Guide. Now that those revisions are about completed, we will be able to move forward with designing projects in areas we have not——

Ms. NORTON. Well, obviously, the Committee isn't going to authorize any courthouses until it sees what the changes are and how much money they are going to save. So that would be my next question. If there is no moratorium, then, of course, I don't know what people are designing.

Judge ROTH. Well, there are 35 projects on the list that were stopped by the moratorium. We will proceed to move forward year by year, submitting new projects for design as we work cooperatively with GSA to determine which projects should have priority on the list.

Ms. NORTON. Let me go back to this 84 percent notion. You heard me quote from the 1996 report. I quoted from the report because it encapsulizes the frustration of the Committee. That is 10 years ago. Virtually all of those recommendations, Judge Roth, are still in play.

Judge ROTH. You know, I am very happy to say that we reformulated and reduced the overall staffing guide, so that what was 84 percent is now 100 percent. And the fact that we, after that, tried to staff at 100 percent reflects the reduction in the staffing formula that was made. So that the later 100 percent is equivalent to the earlier 84 percent.

Ms. NORTON. Well, I guess, then, we are not talking about the same thing. You have moved to a 100 percent——

Judge ROTH. With the new formula, yes.

Ms. NORTON. This is what I mean. A hundred percent standard assumes that all the staff will be on board the day the courthouse opens. That is the long and short of all I am talking about. That is what we mean by 84 percent versus 100 percent. And we see that 100 percent standard as having forced an increase in the amount of space.

Judge ROTH. Well, I hope you realize now that there are two different formulas and they have no relationship to each other.

Ms. NORTON. I hope you realize what the 84 percent means to this Committee, because I have just described what it means to this Committee. Now, if you want to—this is what you did with the GAO report. You can't change the subject. The 1996 report I was talking about comes from the AOC's report. That report recommended 84 percent for planning purposes, and that means, that has to do with the staff that will be in the new courthouse. The staff that will be on board when the facility opens, Judge Roth. You can't say what you mean. This is what the AOC meant. That is what this Committee means.

So you are talking about two different things. That is not what the AOC was talking about. I have just described what the AOC was talking bout. What the AOC was talking about was staff that will be on board when the new facility opens. That is what 84 percent meant. You have proceeded to build on 100 percent basis.

Judge ROTH. But on a different formula, yes.

Ms. NORTON. That has had an effect on——

Judge ROTH. On a reduced staffing formula we have built on 100 percent.

Ms. NORTON. Sorry?

Judge ROTH. On a reduced staffing formula, on a new formula established since 1996, the date you are speaking of. We have created a new formula and new staffing——

Ms. NORTON. So fewer staff will be on board when the courthouse opens. And, therefore, since fewer staff will be on board, the courthouse will have all staff on board when the courthouse opens.

Judge ROTH. Under the reduced formula, yes.

Ms. NORTON. I mean, you must think that we are not in the building business.

Judge ROTH. Under the reduced formula.

Ms. NORTON. Mr. Winstead, what does the 84 percent and 100 percent mean in GAO terms? I am sorry, in GSA terms.

Mr. WINSTEAD. Well, in terms of the 84 percent was the original, obviously, staffing—the 84 percent was the original staffing, and I think the Judge is referring to the decreases in terms of the staffing, some 1800 staff over the last year. But in terms of the Design Guide——

Ms. NORTON. What do you use when you plan a building, any building?

Mr. WINSTEAD. We are using the standards in the Design Guide, from the standpoint, yes.

Ms. NORTON. Meaning, the number that they have reduced staff would be a very interesting thing to argue, but that is not what we are talking about here. I am trying to deal only with what this Committee deals with.

Mr. WINSTEAD. Right.

Ms. NORTON. And what this Committee—what the 84—and I am asking you to describe what the 84 percent means versus 100 percent when we are talking about new construction.

Mr. WINSTEAD. Well, we are adhering to, both in the preplanning phase in terms of the office and the courtroom space, which is about 15 percent of the average courthouse, we are actually projecting based upon their staffing requirements, which are—and the 84 percent.

Madam Chair, the actual formula, the formula that the Judge has mentioned is the reduced staffing level, which is the one that we are utilizing in the pre-design work.

Ms. NORTON. The reduced staff level of what?

Mr. WINSTEAD. In terms of——

Ms. NORTON. I am interested in the following—and would somebody from GSA come to the table to speak? Perhaps it is too technical an issue. Eighty-four percent meaning for planning purposes, assume 84 percent of the staff recommended for the new courthouse will be on board when the facility opens. That is what I understand it to mean.

Mr. WINSTEAD. Rob is in charge—if you would. As you requested, Rob is the head of the courthouse program.

Ms. NORTON. Whatever amount of staff they have. Whatever amount of staff they have, it assumes that 84 percent will be on board.

Mr. ANDRUKONIS. Those projections assumed 84 percent staffing what the projected 100 percent would be.

Ms. NORTON. Sorry, I can't hear you at all.

Mr. ANDRUKONIS. I am sorry. The shift to 100 percent staffing, from what we could see, resulted in larger square footage for the buildings.

Ms. NORTON. That is all I want to make sure we understand, that when you assume 100 percent will be on board, ergo, you need more space. And you are saying that did result in increase in space needs.

Mr. ANDRUKONIS. Yes, we saw the spaces increase when that change occurred.

Ms. NORTON. Thank you.

Judge ROTH. Except we changed the formula, so that——

Ms. NORTON. You changed the formula to 100 percent.

Judge ROTH. But the staffing levels we reduced. We have a new staffing formula, a reduced number.

Ms. NORTON. I don't even know how to make that any clearer, but I understand that. See, that is a different figure. We are trying to compare apples to apples.

Judge ROTH. Yes. One hundred percent——

Ms. NORTON. We are pleased that you reduced the number of people, but I don't care if you had two people or 100 people or 1,000 people. The formula asks us, for building purposes, to assume how many will be on board when the facility opens.

Judge ROTH. Under the new formula, 100 percent is equal to what 84 percent was under the old formula.

[The information received follows:]

Status of the Judiciary's Study on Courtroom Use

The House Committee on Transportation and Infrastructure's Subcommittee on Economic Development, Public Buildings and Emergency Management has asked for a comprehensive study of the issue of courtroom sharing and the usage of courtrooms across the country. Subcommittee Chairman Shuster detailed the minimum requirements of the study. It should:

- provide documentation of how often courtrooms are actually in use with people in the courtrooms for official functions based on a statistically significant sample of courthouses;
- be designed with input from GAO's Physical Infrastructure Division; and,
- incorporate other factors the judiciary thinks are necessary.

In response to the Subcommittee's request, the Judicial Conference's Committee on Court Administration and Case Management (CACM) asked the Federal Judicial Center (FJC) to assist the Committee in designing and carrying out a methodologically sound study. The FJC is the research and education agency of the federal judicial system, statutorily charged with developing recommendations about the operation of the federal courts and conducting research on federal court operations. The FJC has developed a design for the courtroom use study and timetable for publishing results; the CACM Subcommittee overseeing the study has approved them.

The FJC has met with representatives from GAO who indicated that the length of the study might occasion some concern by the House Subcommittee. As a result, the timetable has been shortened by approximately 6 to 8 months. The study's descriptive report on courtroom usage is scheduled to be provided to the CACM by Fall 2007; the final report and any further analysis that the CACM might request is scheduled for completion by April-June 2008. The GAO staff declined to make any substantive comments on the study design citing their charge to retain their objectivity and neutrality. It is anticipated that the House Subcommittee will ask GAO to comment on the study once it is completed.

The study will provide descriptive information about actual courtroom use, latent courtroom use, and the role of courtrooms from judges' and users' perspectives. It will include active and senior district judges and magistrate judges and the courtrooms they use. These three groups can be accommodated in a single study that takes into account their different caseloads, case types, and courtroom requirements. To gather enough data to provide a solid basis for conclusions about courtroom use, the study will collect data in a randomly selected sample of 27 districts. Data collection will occur during the first half of 2007.

Ms. NORTON. Well, let us go on. I think we have an understanding of what happened. And GSA has clarified it, and maybe you and I can get together on it, or somebody.

The staff from the AOC has supplied us with a list of courts that do not have a full-time assigned judge, containing 63 courthouses. GSA has a slightly higher number. Based on your testimony from last year, courts from this list would be identified for closure. Have any such courthouses been identified for closure?

Judge ROTH. The Judicial Conference, in March, passed a recommendation that we flag courthouses by using a formula based on the work performed there and the cost of the courthouse to determine whether they are cost-effective. Now, these are statutorily designated places of holding court. They are courthouses mostly in very rural areas where, for accessibility to justice and for accessibility of jury pools, we have determined it is important to hold court. There is a very strong feeling, I think, among members of Congress that it is important to keep open some of these courthouses.

Since 1996 we have closed 17 courthouses that did not have resident judges. There are courthouses that now have been flagged for further consideration. I discussed one of them with Mr. Oberstar the other day, the courthouse in Fergus Falls, which, although it is very small, conducts very important business in Northern Minnesota. I have here a list of the 17 courthouses we have closed since 1996, which I will be happy to present to the Committee, and I can assure you that we are, every year, reviewing the courthouses to determine where nonresident facilities can be closed.

Ms. NORTON. Staff tells me that they have those 17, and that the 63 are in addition to those 17. That is what my question went to.

Judge ROTH. That is correct.

Ms. NORTON. I am very pleased that 17 have been closed, but that is not the—the 63 I am talking about are a new list.

Judge ROTH. Yes. And it is very important that some of these courthouses be kept open——

Ms. NORTON. Judge Roth, you will have no problem with me or any member here if in fact we have a situation where a community doesn't have the kind of access to a courthouse; you will find everybody on both sides of the aisle particularly sensitive to rural areas where in fact, if you have to travel too long and the rest of it. All we need is the analysis.

You know, we are not going to give anybody carte blanche on these 63 courthouses. If in fact there is a list of 63 courthouses that do not have a full-time assigned judge, we need to know which ones you think should be opened and which ones you think might in fact be closed. Now, if you have a rationale for keeping all 63 of them open, fine. We would like to have that too. But we don't have that. That is why I asked for that information. And we are going to get that information.

And we are going to get that information or there are not going to be any more new courthouses. I don't care what committees you go to in the House or Senate. Because all we have to do is go on the floor and indicate that new courthouses are being built while we are not doing what we want to do for the elderly and for children, and that just shuts that down right away.

We are the only ones that want to build courthouses, and we do want to build them, but we don't have any ammunition here. As long as we can't go back. You better believe we are not going to go back to our colleagues in a rural area and say we are closing down your courthouse. You better believe it. But we have a whole bunch of members here who are part of a caucus who would be interested in notions of that kind, and they go on the floor and they are trying to get us to in fact spend less money on every appropriation.

So I have got to be able to justify, Mr. Shuster has got to be able to justify by saying, look, we are keeping this one open in No Name Someplace in a State because people would have to travel. Yes, it doesn't have a full-time assigned judge. You ever heard of what the framers did? They rode circuit. Yes, they don't have a full-time assigned judge, but this needs to be open because, I don't know, people have to travel 200—I don't even know what the mileage is.

But we would be all open to receiving that, because we are not going to try to shut down a courthouse. That is very hard to do. So that is why the Court is in much better shape if they make the recommendation and we look at it. But when we don't have anything, then, of course, we are put in the position of being asked for essentially the status quo. Well, we are at the end of the status quo.

I am almost through here.

Mr. Winstead, you know what I feel about the GAO. See, the Courts have been the hardest agency to deal with here, because the Courts have assumed a position, an impossible position: that they simply didn't have to abide by the same rules everybody else has to abide by. They literally have articulated a position, a nonsensical position based on separation of powers that applies, of course, to matters of the controversy or, for that matter, to all kinds of other matters having to do with the law. But I tell you one thing, you will never find it written that it has anything to do with what gets built.

So I do want you to know as critical as we have been of the Courts, we really do believe that GSA has been enablers, that they have allowed the Courts—even though the Committee has been very critical, certainly ever since I have been on the Committee, of lavish spending by the Courts. You have not warned the Courts that, 10 years after the report I quoted from, these people are going to be running out of patience.

You have to carry these matters to the OMB, not the Courts essentially. You can imagine where the OMB would be on some of the notions we have heard here about no sharing. You know, I really don't want the OMB to hear that there is any agency of the Federal Government saying the kinds of things we have heard from the Courts.

I want to ask you, though, the same question that I asked the GAO regarding the Courts' claim, and here I am going to quote them. Quoting the GAO, that "Since 1985, rent increased 333 percent, adjusted for inflation, using the same CPI Index used by the GAO. During this same period, square footage increased 166 percent. Non-inflation adjusted actual rent costs increased four times as much as square footage."

So would you comment on that?

Mr. WINSTEAD. Madam Chairman, I would be happy to. First of all, you know, your concern—obviously, the Judiciary is our biggest client in the capital programs side, getting about 50 percent of recent capital programs in terms of revenue——

Ms. NORTON. It is your biggest client because that is all we build, is courthouses.

Mr. WINSTEAD. I understand that. I understand your concern. And as Commissioner over the last nine months, I have taken a very close look at this, and I will address the rent question. But I did want to mention that, you know, you are well aware of the issues of parody with the Federal Building Funds with regards with a rent exemption request. I mean, since 1990, the Courts have received about 36 percent of the money from the Federal Building Fund, while paying in about 11 percent. So they are getting a lot more in return, obviously, than they are paying in rent. So I think the rent exemption question, the GAO report, this Committee has addressed, and I think we are committed to.

The real question I think you are raising is on the rent charge. Over the last 20 years, the rent charged imposed by us in the calculation has achieved, with CPI adjustment, those increases, but I think what you need to keep in mind is that the product, the courthouse product 20 years ago was very, very different than that then we have seen in the last five years or ten years under Design Excellence. So I think in the last five years the GAO——

Ms. NORTON. The product is different in what way?

Mr. WINSTEAD. Both in terms of the Design Guide applications, in terms of the tenant improvements and fixtures, in terms of what the Design Excellence Program has delivered for the courts, and in terms of major landmark public buildings. But if you actually look at the GAO report from 2000 to 2005, the costs have not gone up any greater than the square footage.

So I think, although from the 20 year period you see this great increase, in terms of the last five years it is in parody with the square footage increase. The courthouses are in fact bigger, the security costs have gone up. I mentioned in my testimony security costs have gone up 140 percent. You know, energy costs have gone up enormously in the last five years because of the cost of energy. So all have in fact driven that rent figure to the level that is quoted in the GAO report vis-a-vis the square footage.

Ms. NORTON. And this is, of course, why——

Mr. WINSTEAD. But I do want to mention that it is disturbing to me as a new Commissioner to be before the Committee on an issue dealing—such a major issue with our major client. We are working in partnership with the Courts, and we will continue, Madam Chairman, to focus in on design excellence both in terms of new construction scoping, using this new Design Guide, which in the case of several courts I know is going to save 2 to 8 percent when implemented, in terms of construction costs. We are very focused on that.

Ms. NORTON. I am sorry, what is save 2 to 8 percent?

Mr. WINSTEAD. If you apply—a new courthouse in Pennsylvania that we are going to design—the new Design Guide, we are calculating there will be a saving in roughly 2 percent in cost. So we

are going to continue to focus in on both the scoping and contained costs in these new courthouses going through the Design Excellence Program.

Ms. NORTON. Yes. When we sit with agencies—indeed, this needs to be understood—their rent payments, they who get no new construction—which is virtually every Federal agency—their rent payments go up, don't they, in keeping with commercial market rates?

Mr. WINSTEAD. Yes. That is correct.

Ms. NORTON. So as security increases for a building which the Government doesn't own and is renting, the agency has to pay out of its budget, allocated by the Congress, these increases in rent payments assessed by the GSA.

Mr. WINSTEAD. That is correct.

Ms. NORTON. And those rent payments then go to the Federal Building Fund.

Mr. WINSTEAD. That is correct.

Ms. NORTON. Now, the Federal Building Fund is used to construct new courthouses and other new buildings. It is also used, is it not, for repairs? What else is it used for?

Mr. WINSTEAD. It is used for major and minor repairs. About a third of the money goes to new construction, about a third to minor repairs for existing owned buildings, and about a third to major repairs, such as the Department of Interior in recent years.

Ms. NORTON. So the Courts get, of course, new courthouses, but they also get whatever repairs they get——

Mr. WINSTEAD. Yes, they do.

Ms. NORTON.—they get from this Building Fund.

Mr. WINSTEAD. That is correct.

Ms. NORTON. Is there any agency, any single agency that gets—what is the next—from the Building Fund you have just told us what percentage the Courts get versus what percentage they give. What is the next percentage? I know the DOD builds its own.

Mr. WINSTEAD. The IRS and FBI are two of the other major ones.

Ms. NORTON. Are they anywhere close to the Courts?

Mr. WINSTEAD. No. No.

Ms. NORTON. And we know DOD builds its own. They are separate and apart.

Mr. WINSTEAD. That is correct.

Ms. NORTON. So the lion's share of the Building Fund, compared to other agencies who also have to have their repairs out of this Fund; if they ever get a new building, it has to come out of this same Fund. And they don't get—the Courts are mostly in—are almost always in owned space, as opposed to rental space.

Mr. WINSTEAD. Largely. There are some rental use courthouses, but the majority——

Ms. NORTON. And the reason is it is a courthouse. So we don't rent courthouses.

Mr. WINSTEAD. Right.

Ms. NORTON. So the courthouses, unlike other agencies, all of whom want a new building—the other people are in leased buildings, and they are paying into the Federal Building Fund in order to get whatever they can get in repairs and whatever construction we do—because we do not appropriate money for buildings for courthouses, we, in fact, build out of this Fund that every agency

pays into through the rent they pay to the Federal Building Fund. Is that right?

Mr. WINSTEAD. That is correct. The demand on the Federal Building Fund is ever increasing, and the courthouse program is assumed a big portion of that, but, as I mentioned earlier, I think the focus of this Committee and the directives a year ago, I mentioned the improvements and the actions in containing costs through both the Design Excellence Program and in terms of operating costs, and I think we will continue—you will soon see some savings and results as a part of that. But you are absolutely correct, the demand and consumption of the capital money in the Federal Building Fund is dominated by the Courts currently.

Ms. NORTON. So it is really ass backwards, if you will forgive me, about who gets what out of the Federal Building Fund. And if agencies were to have a true understanding—they who are struggling just to keep alive in this budget period, who always complain about rents and how come they are paying these increases—where the lion's share of the money would go, I think the complaints would be heard all the way down Pennsylvania Avenue.

One more question. GSA has offered to renegotiate certain leases for the Courts in order to save them money. That is something everybody always wants. Is this the first time GSA has offered to renegotiate leases for the Courts?

Mr. WINSTEAD. No. We are in the process, as I mentioned in my testimony, of some 14 lease negotiations, and we actually have recommended a number of those, and we are proceeding to try to achieve savings. We did, for the IRS, recently negotiate several leases and got in the neighborhood of $700,000 annual savings.

Ms. NORTON. So in—of course, Courts have some personnel in leased space.

Mr. WINSTEAD. Correct.

Ms. NORTON. And it is those leased space that you are trying to renegotiate leases. Have there been any results from that? That is one kind of quick and easy way to try to save some money.

Mr. WINSTEAD. Yes. We have actually—as I mentioned, we have tried to look at—there are several conditions that you have to have. The tenants have obviously got to be willing to continue to provide the space——

Ms. NORTON. Sorry?

Mr. WINSTEAD. The tenant—we have actually, as I mentioned, for the IRS we have offered about 14——

Ms. NORTON. No, I am talking about for the Courts.

Mr. WINSTEAD. No. We have offered 14 leases for renegotiation with the Courts, and we keep moving to try to achieve reduction through those negotiations.

Ms. NORTON. Have in fact any of the Court leases been renegotiated?

Mr. WINSTEAD. To date, no, but we are still very focused on that with the Courts, and, obviously, their consent is needed in order to renegotiate those leases as a party.

Ms. NORTON. I am really, really all mixed up here. If you are renegotiating the lease, then the Courts—you would already have talked to the Courts.

Judge ROTH. We are working with GSA to accomplish this.

Ms. NORTON. But, I mean, renegotiating a lease doesn't have anything to do with the Courts. They don't know what in the world to do if you are renegotiating leases. I mean, I am really trying to figure this out. If in fact a court can pay less money because GSA, who alone knows how to renegotiate a lease—Norton doesn't know how to do that.

Mr. WINSTEAD. Right.

Ms. NORTON. Roth doesn't know how to do that. Are you renegotiating leases? And what are you talking about the Courts? What could they possibly tell you about renegotiating the rent down?

Mr. WINSTEAD. Madam Chair, we are—obviously, that was one of the things a year ago we said we would aggressively pursue. We have. In the last two years we have looked at some 60 leases. We have recommended 14 for renegotiation and we are proceeding to accomplish that.

The reality is we have to have—you have to have consent, you have got to obviously have a fixed term that needs to be approved by the Courts. So we have to be party with them in terms of the rent commitments and the extent of the leases. But we are pushing hard on that, as directed by the Committee.

Ms. NORTON. So nothing has been renegotiated yet.

Mr. WINSTEAD. No. But we have 14 we are working on.

Ms. NORTON. That is outrageous, Mr. Winstead. I mean, you know, that one really escapes me altogether.

Mr. WINSTEAD. I will get back to this Committee the details on all the leases that are currently——

Ms. NORTON. What in the world is there—you know, once—you know, if my real estate agent tells me this is a way to save some money, let me renegotiate a lease, I am really not going to micromanage him, because I don't know what in the world I am doing. So I really can't understand what the Courts have to do with saving the taxpayers' money by renegotiating leases pursuant to the policy of this Committee.

Mr. WINSTEAD. You are correct, we are the real estate agent for the Courts in this regard. We do need their consent to the long-term in terms of the fixed term commitments and the renegotiated lease, and we are going to push to close as many of these as we can. We have looked at 60; we have recommended 14, and it is an aggressive focus——

Ms. NORTON. When were the 14 recommended?

Mr. WINSTEAD. Sorry?

Ms. NORTON. When did you recommend the 14?

Mr. WINSTEAD. My understanding is that we actually—14 were recommended last year, in about September of last year, just about the end of last year. And we will report to——

Ms. NORTON. I want you to submit those 14 to the Committee.

Mr. WINSTEAD. OK. I would be happy to.

Ms. NORTON. I want to know what you have recommended.

Mr. WINSTEAD. I will do that.

Ms. NORTON. I want to know what they are paying now, and I want to know what is holding them up. I mean, I just think, Mr. Winstead, this is quite outrageous. I am not sure that the Courts could tell you anything except a guesstimate on how long that they

would want to remain in the building. I also don't know how they could do that without consulting with you.

Mr. WINSTEAD. And they are. It can't be a unilateral action.

Ms. NORTON. And I don't know why you would do anything but recommended to them something that I don't think they would be in a position to rebut, how long you think they ought to be in there. And, meanwhile, who is carrying this are the taxpayers of the United States of America. And you haven't renegotiated a single lease.

Mr. WINSTEAD. We are——

Ms. NORTON. Now perhaps you understand our impatience.

Mr. WINSTEAD. I totally understand, and we will get you all 14 leases.

Ms. NORTON. I would like to see the re-leases. I would like you to submit the re-leases within 10 days. I want to know where they are located, I want to know the state of the negotiation—when I say submit to me, I am talking about submitting them to the Chairman, obviously—and I want to know when—we want to know when you believe you can begin to negotiate.

The reason I am so up in arms about this is let's assume you get "permission," whatever in the world that—here is permission to save me some money, OK. You get the permission. The hard part is renegotiating the lease, Mr. Winstead. I don't want you to renegotiate my lease if I am a party. So you are going to have to renegotiate the lease, and, therefore, you know, the part on the other end just likes it just the way it is. And the only reason you are in a position to renegotiate at all is not because of the judges or the court, it is because a big player in every market is the GSA.

So I am at a loss to understand why we are still carrying those leases when—not only those 14, but I want to know why there isn't wholesale renegotiation of leases going on, at a minimum, to staunch the bleeding.

Mr. WINSTEAD. OK, Madam Chair, I will get you those leases. I mentioned that we presented 60 two years ago to the Courts. Following their review, they have analyzed these 14 that they want to proceed on that meet their long-term needs, and I will get you the status of the 14.

Ms. NORTON. Thank you, Mr. Winstead. You know, and I want to go to heaven, but that is what has brought us to this level of frustration.

Mr. WINSTEAD. I understand.

Ms. NORTON. Because we always hear, of course we intend to do the right thing. But because we never get there, the cash register is running. I ain't paying, but the taxpayers are paying, and we cannot, with a straight face, justify what is happening to our colleagues in the Congress.

I want to call a recess until Mr. Shuster returns, and that will be whenever he returns.

The Committee stands in recess.

Mr. WINSTEAD. Thank you.

[Recess.]

Mr. SHUSTER. [Presiding] Sorry for that. Now I have a time constraint on me that we have to be out of here at 1:15, so I am going to submit some questions to both of you that you might be able to

answer in writing, but I do have—I guess I only have time for one question.

Judge Roth, I know you started to proceed with a space utilization study. My question is, and my concern is, how independent is it going to be? I guess the Federal Judiciary Center is going to do it. But I also understand—and tell me if I am correct—that the Judicial Conference has to approve any report that they put out.

That, to me, says that you might not approve it if it doesn't come out the way you want to. I think it is important for any study to be done to let the study happen, and wherever the chips fall, they fall. So could you talk to me about that? Is that true, that the Judicial Conference is going to approve or potentially disapprove a report?

Judge ROTH. I don't know, because it is not through my committee that the study is being done. But we can get back to you on that.

Mr. SHUSTER. OK. I think that is—especially in light of also what we heard the GAO say that happened in some of those courthouses, some of the officials were disruptive. And it is a great concern that a study that comes out is not going to—that it doesn't turn out the way you folks want it to, that you are going to have some influence on it.

Judge ROTH. Representative, let me clarify the question of the GAO study. We received the draft statement of facts from GAO and we sent them out to the interested courts where GAO had visited for the court's comments. We got comments back, ″that this is not what I said.″ We did not go around and ask who talked to GAO and who said what. We sent them the draft report and their response to us was ″this isn't what I said″ or ″this is only half of what I said.″ And that is what raised our concern about the GAO report.

Mr. SHUSTER. OK, I was just informed that the Judiciary sent a letter to the GAO asking them who they spoke to. And in a situation like this,——

Judge ROTH. Well, that was because we were getting comments from the courts they visited saying, ″we didn't say this″ and ″no one here said this.″ So we were concerned.

Mr. SHUSTER. All right. Well, again, to have an unbiased report means on both sides you have got to look at it, you have got to keep your hands off it to——

Judge ROTH. I agree absolutely.

Mr. SHUSTER.—as I said, where the chips fall, that is where they fall, and that is what is going to be so important.

Now, the other thing I have a concern about the study is you are talking about it being completed in 2008. You know, we really need to see that thing sooner, because as we have made quite clear, there is a great concern about the amount of money that is being spent on courthouses that we have approved.

There are courthouses, you know, one by one you can look at them and say—like San Diego, for instance, has got a tremendous increase in the number of cases and activity there. But you really need to look at the whole system that you have and do long-term strategic planning with the GSA to decide do you need to downsize in places, because in the 14 courthouses that they traveled to do

the study on the rent, I mean, there were many cases, as you heard Mr. Goldstein talk about, where you have courtrooms not being utilized.

Judge ROTH. Could I——

Mr. SHUSTER. Sure.

Judge ROTH.—say that in building a courthouse, it is necessary to build for the future, and our workload has grown, and the number of judges has grown. There is, for instance, a judgeship bill that has not been passed, but that we hope will be passed. And if we build a courthouse which is absolutely full the day it is opened, with the growth of the courts, with new judges, with an increasing caseload, we will not have room to expand over the ten-year period.

GSA and we agreed at a partnering session a couple of years ago that a courthouse should be built for the ten-year period from the date of completion, and that means that there will be more judges coming on board during that period in certain areas, and that we need to incorporate space in those courthouses for that.

Now, for instance, there is a photograph in the GAO study of a future courtroom that is being used for storage space. What GAO doesn't mention in the study is that the court closed down rented storage space elsewhere and brought those items into the courthouse to store in what will become, five years down the pike, a courtroom. In the meantime, we stopped paying rent for storage space elsewhere, and are using that empty space now for the storage that we rented space for before.

Mr. SHUSTER. And then we also talked about a courthouse that was 30 years old that is not being utilized. Again, that is why there is such a great need in a shorter period of time to get this space utilization study, because once—as I said to you before in conversations, we know that there are courthouses that need to be built and we know there are courthouses that need to be expanded, but not all of them do.

And we have got to look and learn like any organization, any business has to do, look at what they are doing, study it. We have to utilize it to the best of our abilities because it is the taxpayers' dollars. You are not exempt from—the Judiciary, the Executive Branch, the Legislative Branch, none of us are exempt from doing our best with the Federal dollar, the taxpayers' dollar. And, again, I don't believe that has occurred, but it needs to occur. And that is the sticking point in all this.

Judge ROTH. The 30 year old courthouse in Baltimore was designed prior to the sdoption of the Design Guide. The four courtrooms that are not being used were designed by a judge who thought we could have little hearing rooms. They haven't worked out, so we use them for storage space. The plan is now to take those four unusable small courtrooms and combine them into two usable courtrooms.

Mr. SHUSTER. Well, again, my time has expired. As you can see from my time constraints here, we are utilizing this committee room. More things go on here than just—I don't get to just have this committee room to myself, unfortunately, today. We will be talking to you. Again, I stress the need for that study to be done in a shorter amount of time and to look at sharing courtrooms for judges. So, with that, I——

Judge ROTH. Judge Tunheim would like to come and talk to you. He would be very happy to come and talk to you about that.

[The information received follows:]

Judiciary Staffing Formulas

The judiciary calculates staffing requirements for the courts using scientifically-derived staffing formulas based on functions and work requirements of the different court programs (appeals, district, bankruptcy, and probation/pretrial services). These staffing formulas are approved by the Judicial Conference of the United States and provide the judiciary with an objective means of determining the number of supporting personnel that are necessary to allow the judiciary to provide a consistent level of service to the bench, the bar, and the public, taking into consideration upward and downward changes in workload. These formulas assign a value in terms of work years necessary to perform various functions. Each formula generally has multiple factors in order to capture adequately the staffing required for any individual program.

Around 1993, it became clear that court operations were becoming more efficient and the staffing formulas had not been updated to reflect the increased efficiency. Thus, beginning in FY 1994 the judiciary began using 84% of the full staffing formula requirements as a target staffing level for the courts, until new staffing formulas could be developed. The judiciary continued to seek funding to achieve the 84% staffing target until FY 2001 when the judiciary implemented new staffing formulas for all court programs. These new staffing formulas took into account new work requirements, the impact of automated systems on court operations, and other efficiencies introduced in the courts. In comparing the old and new staffing formulas, 100% of the new formula equated to about the same number of staff overall as 84% of the old formula, essentially validating the judiciary's position on the number of staff needed to ensure the effective operation of the federal courts. These new staffing formulas then became the new basis for formulating the judiciary's budget request to Congress and for space planning and other purposes. Since FY 2001, we have continued to update our staffing formulas periodically to take into account the increased use of automated systems and other process improvements and efficiencies.

Mr. SHUSTER. I would love to engage in that conversation at length.

Judge ROTH. Great. Great.

Mr. SHUSTER. Well, thank you all for being here. Commissioner, again, sorry we didn't get a chance, but I will get written questions out to both of you, as well as other members of the Committee. But thank you for your testimony today.

I would like 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 unanimous consent that during such time as the record remains open, additional comments offered by individuals or groups may be included in today's record. Without objection, so ordered.

I would like to thank you again for being here today. And the Committee stands in adjournment.

Judge ROTH. Thank you.

[Whereupon, at 1:22 p.m., the subcommittee 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 11:00 a.m. EDT
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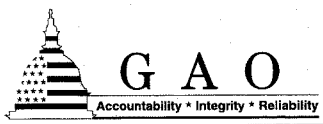
FEDERAL COURTHOUSES

Rent Increases Due to New Space and Growing Energy and Security Costs Require Better Tracking and Management

Statement of Mark L. Goldstein, Director
Physical Infrastructure Issues



GAO-06-892T

GAO
Accountability Integrity Reliability

Highlights

Highlights of GAO-06-892T, a testimony before the Subcommittee on Economic Development, Public Buildings and Emergency Management, Committee on Transportation and Infrastructure, House of Representatives

Why GAO Did This Study

The judiciary pays over $900 million in rent annually to GSA for court-related space, representing a growing proportion of the judiciary's budget. The judiciary's rent payments are deposited into GSA's Federal Buildings Fund (FBF), a revolving fund used to finance GSA's real property services, including the construction and repair of federal facilities under GSA control. In December 2004, the judiciary requested a $483 million dollar permanent, annual rent exemption which GSA denied, saying that it undermined the intent of FBF and that GSA was unlikely to obtain appropriations to replace lost FBF income. GAO reviewed (1) recent trends in the judiciary's rent and space occupied and (2) challenges that the judiciary faces in managing its rent costs.

What GAO Recommends

In an associated report, GAO recommended that the judiciary (1) track rent trends and (2) improve its management of space and associated costs by providing incentives for efficient use and updating its space allocation criteria. AOUSC strongly disagreed with our report and said that it does not believe tracking data recommended by GAO would be useful. We believe otherwise. AOUSC also said it is already implementing incentives and updating its criteria, however, the actions it identified do not fully address our recommendations. GSA generally agreed with the report.

www.gao.gov/cgi-bin/getrpt?GAO-06-892T.

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

June 2006

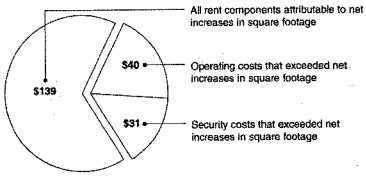
FEDERAL COURTHOUSES

Rent Increases Due to New Space and Growing Energy and Security Costs Require Better Tracking and Management

What GAO Found

The federal judiciary's rental obligations to GSA for courthouses have increased from $780 million to $990 million or 27 percent from fiscal years 2000 through 2005, after controlling for inflation—primarily due to a simultaneous net increase in space from 33.6 million to 39.8 million rentable square feet, a 19 percent increase nationwide. Much of the net increase in space was the result of new courthouses that the judiciary has taken occupancy of since 2000. According to the Administrative Office of the U.S. Courts (AOUSC), the judiciary's workload has grown substantially and the number of court staff has doubled since 1985. Shell rent (the building with basic infrastructure) increased proportionately with square footage growth, but operational (utilities and general maintenance) and security costs grew disproportionately higher than square footage due to external factors, such as increasing energy costs and security requirements. Neither GSA nor the judiciary had routinely and comprehensively analyzed the factors causing rent increases, making it more difficult for the judiciary to manage increases.

The Approximate Share of Judiciary Rent Increases Attributable to Growth in the Net Square Footage and Other Factors (Fiscal Years 2000 through 2005)
Dollars in millions



Total: $210 million increase, adjusted for inflation
Source: GAO analysis of GSA data.

The federal judiciary faces several challenges to managing its rental obligations, including costly new construction requirements, a lack of incentives for efficient space use, and a lack of space allocation criteria for appeals and senior judges. First, building enhancements, such as three separate circulation patterns for judges, prisoners, and the public, and structural and architectural elements make courthouses among the most expensive federal facilities to construct in GSA's inventory, often leading to higher rent payments. Second, the judiciary has begun a rent validation effort intended to monitor GSA rent charges, but it does not address the lack of incentives for efficient space management at the circuit and district levels. An example of the inefficiencies that may result is in the Eastern District of Virginia, where the judiciary paid about $272,000 in 2005 to rent space for an appeals judge in McLean, Virginia, in addition to paying for space designated for that judge in a nearby federal courthouse that the judiciary later used for alternative purposes. Finally, the lack of criteria for assigning courtrooms for appeals and senior judges can contribute to inefficiencies in the amount of space provided, which can result in higher rent payments.

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

Thank you for the opportunity to testify before you today on our work related to federal courthouse rents. Since the early 1990s, the General Services Administration (GSA) and the federal judiciary[1] have undertaken a multibillion dollar courthouse construction initiative to address what the judiciary has identified as growing needs. According to the Administrative Office of the U.S. Courts (AOUSC), the judiciary's workload has grown substantially and the number of court staff has doubled since 1985. The judiciary pays over $900 million in rent annually to GSA to occupy court-related space, and this amount represents a growing proportion of the judiciary's budget. The rent payments, which by law approximate commercial rates, are deposited into GSA's Federal Buildings Fund (FBF). With slightly over 20 percent of its budget allocated for rent payments, in December 2004, the judiciary requested a $483 million permanent, annual exemption from rent payments to GSA so that according to judiciary officials, the judiciary would not have to cut personnel to pay the rent. In denying the judiciary's requested rent exemption, GSA noted that FBF was designed to encourage efficient space utilization by making agencies accountable for the space they occupy, and that it is unlikely GSA could obtain direct appropriations to replace lost FBF income. In June 2005, we testified[2] 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. In fact there have been several direct appropriations to FBF to cover this funding gap. We also found that previous rent exemptions, such as the one requested by the judiciary, hampered GSA's ability to generate sufficient revenue for needed capital investment. You asked us to review the judiciary's courthouse rent costs.

Today my testimony will discuss (1) recent trends in the judiciary's rent payments and square footage occupied; and (2) challenges that the

[1] The federal judiciary is comprised of 94 judicial districts organized around state boundaries and grouped into 12 regional circuits, each of which has a United States Court of Appeals. There is also a 13th Circuit, the Court of Appeals for the Federal Circuit, which has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws and cases decided by the Court of International Trade and the Court of Federal Claims.

[2] GAO, *Courthouse Construction: Overview of Previous and Ongoing Work*, GAO-05-838T (Washington, D.C.: June 21, 2005).

judiciary faces in managing its rent costs. My statement is based on our report that will also be released today.[3] In summary, we found the following:

- About two-thirds of the judiciary's $210 million rent increase from fiscal years 2000 through 2005 is attributable to a 19 percent increase in net square footage. The remaining increase is attributable to disproportionately high increases in security and operating costs. We also found that neither the judiciary nor GSA had routinely and comprehensively analyzed the factors influencing the rent increases. In the report released with this testimony, we recommended that the judiciary begin tracking and analyzing rent trends in order to improve its understanding and ability to manage its rent costs. The judiciary agreed that tracking trends is necessary, but said that the specific types of data we recommended would not be particularly useful for program planning, management, or budgeting purposes.

- The judiciary faces several challenges to managing its rent costs including costly architectural and structural requirements for modern courthouses, a lack of incentives for efficient space use, and a lack of space allocation criteria for appeals and senior district judges. AOUSC also identified several challenges in addition to the ones we identified, including statutorily designated places of holding court, the benefits to GSA and the Federal Buildings Fund of backfilling courthouses with other courts, and inconsistencies in the funding stream for courthouse construction projects. In our report released with this testimony, we recommended that the judiciary establish incentives to encourage local decision makers to use space efficiently and improve its space allocation criteria in a number of ways. The judiciary disagreed that additional space allocation criteria are needed for appeals courts and senior judges, and said that it has already started updating its space allocation criteria related to technological advancements and plans to consider other changes in the future.

Background

Federal agencies, including the judiciary, that operate in facilities under the control and custody of GSA are required to pay rent for the space they occupy. Rent payments, which by law must approximate commercial rates, are deposited into the FBF, which is a revolving fund that GSA uses

[3]GAO, *Federal Courthouses: Rent Increases Due to New Space and Growing Energy and Security Costs Require Better Tracking and Management*, GAO-06-613 (Washington, D.C.: June 22, 2006).

to provide a range of real property services, including maintenance, repairs, and alterations, to space occupied by federal agencies. GSA, through FBF, encourages federal agencies to be accountable for the space they use by requiring them to budget and pay for their own space requirements. A committee report accompanying the enactment of FBF noted that because each agency would have to budget for its space needs, doing so would promote more efficient and economical use of space by government agencies.[4] The judiciary's rent payments represent roughly 15 percent of all rent payments made into FBF, making it one of the two largest contributors.[5]

On the basis of a rent pricing policy introduced in the late 1990s, the rent GSA charges is composed principally of shell rent, operating expenses, tenant improvements, and security costs. These components account for over 96 percent of the judiciary's rent bill payments in fiscal year 2005.

- The shell rent represents the cost of using the structure, base building systems, concrete floor, and basic wall and ceiling finishes and is the largest rent component, representing 60 percent of the judiciary's annual rent bill payments in fiscal year 2005.[6] For most government-owned properties, shell rent does not represent the actual costs, but is based instead on comparable private sector commercial rents in the local commercial market.

- Tenant improvements reflect customizing space for that tenant and can include private offices, special type spaces, floor covering, doors, and wood finishes. The tenant is responsible for deciding how to finish the space beyond some basic minimum standards and thus has control over much of the cost. GSA officials have said that the judiciary has the highest costs for tenant improvements in its inventory because of the level of finishes needed in federal courthouses. Unlike the other rent components, tenant improvement costs are removed from the rent bill once the tenant has completely paid for them.

- Operating costs—which cover cleaning; general maintenance; and heating, air conditioning, and other utilities—are set as part of the market appraisal

[4]H.R. Rep. No. 92-989, at 3 & 4 (1972).

[5]The other is the Department of Justice.

[6]According to GSA, it uses shell rent proceeds to finance the cost of acquiring, repairing, altering, and operating buildings under the custody and control of GSA.

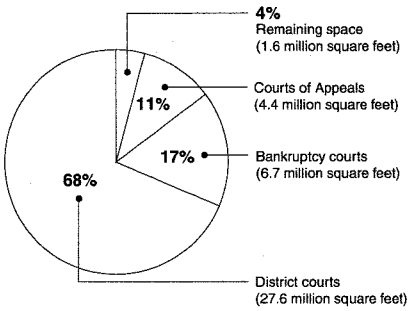
for the shell rent in owned space. But unlike the shell rent, operating costs are adjusted annually for inflation in between appraisals.

- Until fiscal year 2005, the judiciary paid Federal Protective Service (FPS) security costs to GSA as part of its rent payment. Starting in fiscal year 2005, however, the judiciary began paying these security costs directly to the Department of Homeland Security (DHS) after FPS was transferred to that department. However, since FPS security costs still exist, and they were an important part of rent for all of the other years we analyzed, we included these costs as if they were still part of annual rent bill payments for fiscal year 2005.

- Rent is also composed of several other components, including fees for parking, building joint use, antennas, and GSA's Public Buildings Service. These other components comprised about 4 percent of the judiciary's entire rent bill in fiscal year 2005.

The Judicial Conference of the United States (Judicial Conference) is the judiciary's principal policy making body. The Judicial Conference works in coordination with AOUSC, which is responsible for administering the federal judiciary's budget as well as performing other programmatic and administrative functions, such as paying the judiciary's rent bill from its annual appropriations from Congress. Each circuit has a judicial council, which is composed of federal judges in that circuit, and the council has the authority to determine the need for all space accommodation within its circuit. As such, the district, bankruptcy, and appeals courts occupy space in courthouses or lease space in other federal or private office buildings. The district courts are the trial courts of the federal court system, housing both district and magistrate judges. They occupy the most space within the federal judiciary. The district courts have jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters. The federal judiciary has exclusive jurisdiction over bankruptcy cases, which are overseen by bankruptcy judges. The court of appeals from each circuit hears appeals from the district courts located within its boundaries, as well as appeals from decisions of federal administrative agencies. Figure 1 illustrates the rentable square feet distribution within the federal judiciary.

Figure 1: Space Distribution within the Federal Judiciary in Fiscal Year 2005



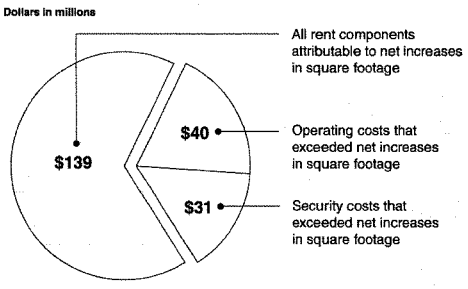
Source: GAO analysis of GSA data.

Note: The remaining space is composed of AOUSC, the Federal Public Defender's Office, and other specialized federal courts.

Increases in Square Footage and Operating and Security Costs have Driven Increases in the Judiciary's Rent Bill from Fiscal Years 2000 through 2005

The federal judiciary's rental obligations for federally owned and leased space have steadily risen from $780 million to $990 million, or 27 percent from fiscal years 2000 through 2005, after controlling for inflation using the Gross Domestic Product price index. During this period, the judiciary had a net increase in the amount of space it occupies, from 33.6 million to 39.8 million rentable square feet, which is a 19 percent increase nationwide. About two-thirds of the rent increase is attributable to this increase in square footage. Among the components of rent, shell (the building with basic infrastructure) grew proportionately with the amount of net space added—about 19 percent. However, increases in operating costs (driven by increases in energy costs) and security costs grew disproportionately higher than the percentage of net space added, thus contributing to the overall increase in rent (see figure 2). The costs of tenant improvements (finishes such as carpeting) increased at a slower rate than the amount of net space added. AOUSC disagreed with our methods for attributing costs to the judiciary's net growth in square footage. We continue to believe that our methods are sound.

Figure 2: The Approximate Share of Judiciary Rent Increases Attributable to the Net Growth in Square Footage and Other Factors (Fiscal Years 2000 through 2005)



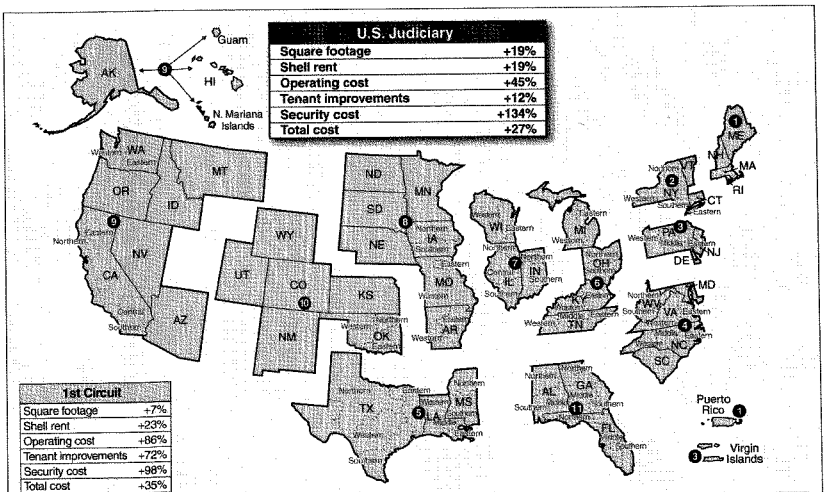
Total: $210 million increase, adjusted for inflation

Source: GAO analysis of GSA data.

Square footage and total rent growth occurred in all years, circuits, and courts (see figure 3). The judiciary's rent increases have outpaced those of other agencies located in GSA space, largely because the federal judiciary's square footage is growing faster than that of other agencies. However, the rate of operating cost growth was similar to that experienced by other agencies.[7]

[7] Interagency comparisons regarding security costs are not possible since the methods used to secure federal courthouses differ from other agencies.

Figure 3: Percentage Net Change in Square Footage and Major Rent Bill Components, by Judicial Circuit, Fiscal Years 2000 through 2005



U.S. Judiciary	
Square footage	+19%
Shell rent	+19%
Operating cost	+45%
Tenant improvements	+12%
Security cost	+134%
Total cost	+27%

1st Circuit	
Square footage	+7%
Shell rent	+23%
Operating cost	+86%
Tenant improvements	+72%
Security cost	+98%
Total cost	+35%

2nd Circuit	
Square footage	+22%
Shell rent	+20%
Operating cost	+47%
Tenant improvements	-51%
Security cost	+97%
Total cost	+15%

3rd Circuit	
Square footage	+16%
Shell rent	+23%
Operating cost	+25%
Tenant improvements	-23%
Security cost	+107%
Total cost	+19%

4th Circuit	
Square footage	+14%
Shell rent	+7%
Operating cost	+40%
Tenant improvements	-3%
Security cost	+178%
Total cost	+17%

5th Circuit	
Square footage	+20%
Shell rent	+28%
Operating cost	+63%
Tenant improvements	+54%
Security cost	+171%
Total cost	+47%

6th Circuit	
Square footage	+17%
Shell rent	+11%
Operating cost	+35%
Tenant improvements	+215%
Security cost	+137%
Total cost	+34%

7th Circuit	
Square footage	+7%
Shell rent	+15%
Operating cost	+51%
Tenant improvements	-55%
Security cost	+215%
Total cost	+22%

8th Circuit	
Square footage	+36%
Shell rent	+17%
Operating cost	+53%
Tenant improvements	+65%
Security cost	+162%
Total cost	+27%

9th Circuit	
Square footage	+27%
Shell rent	+35%
Operating cost	+43%
Tenant improvements	+20%
Security cost	+143%
Total cost	+39%

10th Circuit	
Square footage	+11%
Shell rent	+50%
Operating cost	+41%
Tenant improvements	+96%
Security cost	+81%
Total cost	+48%

11th Circuit	
Square footage	+14%
Shell rent	+7%
Operating cost	+21%
Tenant improvements	+22%
Security cost	+106%
Total cost	+21%

Sources: GAO analysis of GSA data and MapArt.

Note: The Federal and District of Columbia circuits were included in the aggregate statistics but are not listed in the map.

Much of the judiciary's recent growth in net square footage was caused by the construction of new courthouses. New courthouses represent about 8.8 million rentable square feet of new space that the judiciary has taken occupancy of since fiscal year 1998 (a larger timeframe than our rent trend data). According to judiciary officials, much of the judiciary's growth and accompanying space-related needs have been the result of elevating workloads, such as increases experienced in civil case filings. The judiciary's courthouse construction effort may continue. Before it imposed a moratorium in 2005, postponing new courthouse construction projects for two years, the judiciary indicated that it had 35 additional courthouse construction projects planned for fiscal years 2005 through 2009, estimated to cost billions of dollars. According to AOUSC, these projects will be subject to the judiciary's new asset management planning process that will consider renovation and other ways to limit new construction. As of May 2006, no final decisions had been made.

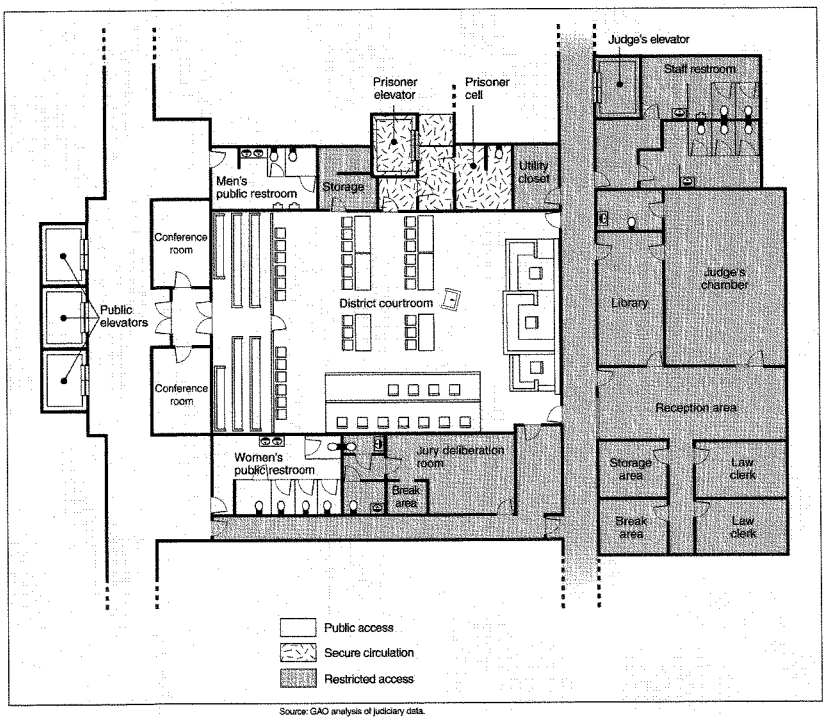
We found that neither the judiciary nor GSA had routinely and comprehensively analyzed the factors influencing the rent increases. This information could help the judiciary better understand the reasons behind its rent increases, make more informed space allocation decisions in the future, and identify errors in GSA's billing. Furthermore, the lack of a full understanding of the reasons for increases in the judiciary rent, in our view, contributed to growing hostility between the judiciary and GSA. Conversely, GSA's lack of full understanding of the reasons for the rent increases left it unable to justify them to the judiciary and other stakeholders, such as Congress.

Judiciary Faces a Number of Challenges but Could Take Actions to Better Manage Its Future Rent Payments

The federal judiciary faces several challenges to managing its rent costs including costly new construction requirements, a lack of incentives for efficient space use, and a lack of space allocation criteria for appeals and senior district judges. First, modern courthouses require structural and architectural elements that make them among the most costly types of federal space to construct. Chief among these elements are the three separate circulation patterns for judges, prisoners, and the public that the U.S. Marshals Service requires for security (see figure 4). These construction costs necessitate rental rates under GSA's pricing policy that are more expensive than the highest-quality office space in some markets, including Denver, Colorado; Phoenix, Arizona; and Seattle, Washington. This necessitates GSA using an approach for calculating rent charges that is based on the costs to construct the building—known as return on investment pricing—instead of an appraisal. The judiciary's policy of providing one courtroom per district judge sets the number of courtrooms

needed in new federal courthouses and adds space requirements, consequently increasing rent payments.

Figure 4: Sample Courtroom and Associated Support Spaces That Were Based on *Design Guide* Criteria



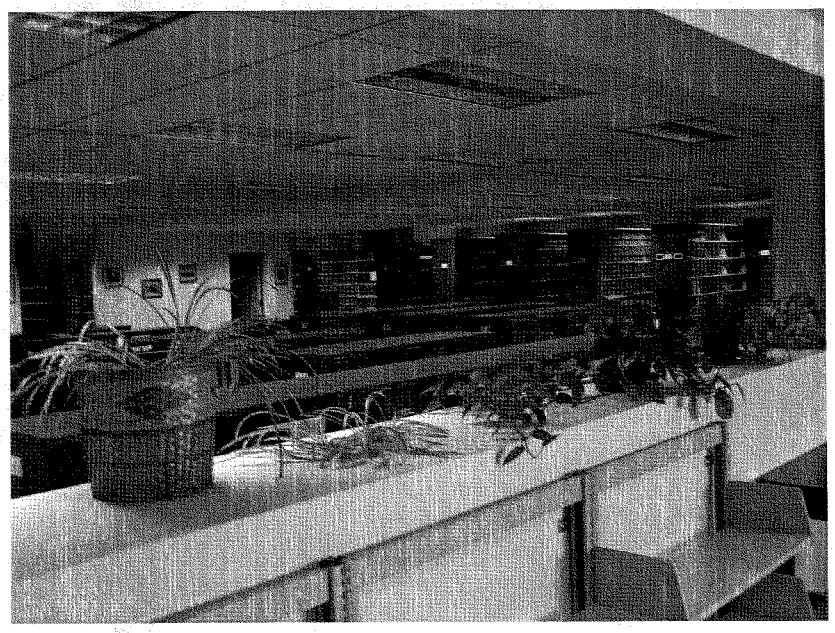
Source: GAO analysis of judiciary data.

The judiciary has initiated a rent validation effort, but it does not address the lack of incentives for efficient space use at the circuit and district levels. Because rent is paid centrally by AOUSC, circuits and districts have

few incentives to efficiently manage their space. An example of the inefficiencies that may result is in the Eastern District of Virginia, where the judiciary paid about $272,000 in 2005 to rent 4,600 square feet of office space for an appeals judge in McLean, Virginia, in addition to paying for 4,300 square feet of chamber space originally designated for that judge in the Albert V. Bryan U.S. Courthouse in nearby Alexandria, Virginia. According to AOUSC, the judiciary has subsequently pursued alternative uses for this chamber space.

During site visits, we observed multiple instances of unused or unassigned courtrooms, chambers, and support spaces. Although planning and building for future needs may limit alternative uses of space until it is occupied, some of this underutilization is the result of outdated criteria, which stipulated the existence of support areas, such as libraries, that in some cases are now rarely used. In most cases, this was because judicial officers are increasingly turning to electronic sources and research and keeping the limited number of books they need in their chambers. However, since the *Design Guide* provides space for law libraries, the districts we visited all had them (see figure 5).

Figure 5: Law Library in the Evo A. Deconcini Courthouse in Tucson, Arizona



Source: GAO.

Assigning space to appeals courts and senior district judges poses challenges due to a lack of criteria, which can lead to variation and inefficiencies and, thus, higher rent. Although the appeals court is required by law to hold court in specific locations, the statute does not indicate how much space it should occupy. For example, the judiciary plans to increase the space the appeals courts occupy by taking over former district courthouses in Richmond, Virginia, and Seattle, Washington, for appeals court use, even though the appeals courts conduct court there

once a month or less. Circuit and district officials said that national criteria for managing the space allocated to the appeals courts and senior district judges could help limit the space assigned to them. In commenting on the report associated with this testimony, AOUSC also identified several challenges in addition to the ones we identified that we subsequently incorporated into the report but did not evaluate. These included statutorily designated places of holding court, the benefits to GSA and the Federal Buildings Fund in backfilling courthouses with other courts, and inconsistencies in the funding stream for courthouse construction projects.

Recommendations

We made the following five recommendations to the judiciary in our report associated with this testimony[5] in order to help the federal judiciary better understand and manage rent costs:

1. Work with GSA to track rent and square footage trend data on an annual basis for the following factors:
   - rent component (shell rent, operations, tenant improvements, and other costs) and security (paid to the Department of Homeland Security);
   - judicial function (district, appeals, and bankruptcy);
   - rentable square footage; and
   - geographic location (circuit and district levels).

This data will allow the judiciary to create a better national understanding of the effect that local space management decisions have on rent and to identify any mistakes in GSA data.

2. Work with the Judicial Conference of the United States to improve the way it manages its space and associated rent costs.

   A. Create incentives for districts/circuits to manage space more efficiently. These incentives could take several forms, such as a pilot project that that charges rent to circuits and/or districts to encourage more efficient space usage.

[5]GAO-06-613.

B. Revise the Design Guide to establish criteria for the number of appeals courtrooms and chambers and the space allocated for senior district judges and make additional improvements to space allocation standards related to technological advancements (e.g., libraries, court reporter space, and staff efficiency due to technology) and decrease requirements where appropriate.

Agency Comments

We provided a draft of the report that is being released today[9] to GSA and AOUSC for official review and comment and received written comments from both. GSA agreed with the thrust of the report and concurred with our recommendations, but expressed one concern. GSA felt it was more aware of the reasons for rent increases than our draft portrayed. In commenting on the report associated with this testimony, AOUSC said that it does not believe tracking the data recommended by GAO would be useful—we disagree with this assessment. AOUSC also said it is already implementing incentives and updating its criteria, however the actions it identified do not fully address our recommendations. For a more thorough discussion of the agency comments, see the report associated with this testimony.[10]

Scope and Methodology

We conducted our work from May 2005 to May 2006 in accordance with generally accepted government auditing standards. During our work, we analyzed nationwide judiciary rent data generated from GSA's billing data, reviewed laws and the regulation related to FBF and GSA's rent pricing process and policies, and reviewed the U.S. Courts *Design Guide* and other judiciary rent planning documents. Additionally, we conducted site visits at federal courthouses in the following districts: Arizona, Eastern Virginia, Maryland, Nebraska, Rhode Island, and Western Washington. We selected Arizona, Nebraska, Rhode Island, and Western Washington because they were in districts that experienced large overall rent increases from fiscal years 2000 through 2005 and were geographically dispersed. We also visited Maryland and Eastern Virginia court facilities while we were designing this audit and included them in the review because they contained a new courthouse, a renovated courthouse, and a courthouse that was targeted for replacement. The findings from these courthouse visits can not be generalized to the population of federal courthouses

[9]GAO-06-613.

[10]GAO-06-613.

nationwide. We interviewed district, magistrate, and bankruptcy judges; officials from the AOUSC, which is the judiciary's administrative agency; clerks, circuit executives, and other representatives from U.S. circuit and district courts with authority over space and facilities; GSA officials in headquarters and the regions; and other real property management experts. We determined that the rent data were sufficiently reliable for the purposes of our review.

Mr. Chairman and members of the Subcommittee, 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 Acknowledgements

For further information about this testimony, please contact me at (202) 512-2834 or goldsteinm@gao.gov. Keith Cunningham, Randy DeLeon, Bess Eisenstadt, Brandon Haller, Grant Mallie, Susan Michal-Smith, Joshua Ormond, Elizabeth Repko, David Sausville, and Gary Stofko made key contributions to this statement.

United States Government Accountability Office

GAO

Report to Congressional Requesters

June 2006

FEDERAL COURTHOUSES

Rent Increases Due to New Space and Growing Energy and Security Costs Require Better Tracking and Management

GAO

Accountability * Integrity * Reliability

GAO-06-613

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Abbreviations

AOUSC	Administrative Office of the United States Courts
DHS	Department of Homeland Security
FBF	Federal Buildings Fund
FPS	Federal Protective Service
GSA	General Services Administration
ROI	return on investment

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United States Government Accountability Office
Washington, DC 20548

June 20, 2006

The Honorable Don Young
Chairman
The Honorable James Oberstar
Ranking Democratic Member
Committee on Transportation and Infrastructure
House of Representatives

The Honorable Bill Shuster
Chairman
The Honorable Eleanor Holmes Norton
Ranking Democratic Member
Subcommittee on Economic Development, Public
Buildings, and Emergency Management
Committee on Transportation and Infrastructure
House of Representatives

Since the early 1990s, the General Services Administration (GSA) and the federal judiciary[1] have undertaken a multibillion dollar courthouse construction initiative to address what the judiciary has identified as growing needs. According to the Administrative Office of the U.S. Courts (AOUSC), the judiciary's workload has grown substantially and the number of court staff has doubled since 1985. The judiciary pays over $900 million in rent annually to GSA to occupy space for court-related purposes, and this amount represents a growing proportion of the judiciary's budget. The rent payments, which by law approximate commercial rates, are deposited into GSA's Federal Buildings Fund (FBF). With slightly over 20 percent of its budget allocated for rent payments, in December 2004, the judiciary requested a $483 million permanent, annual exemption from rent payments to GSA so that, according to judiciary officials, they would not have to reduce personnel to pay the rent. In denying the judiciary's requested rent exemption, GSA noted that FBF was

[1]The federal judiciary is comprised of 94 judicial districts organized around state boundaries and grouped into 12 regional circuits, each of which has a United States Court of Appeals. There is also a 13th Circuit, the Court of Appeals for the Federal Circuit, which has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws and cases decided by the Court of International Trade and the Court of Federal Claims.

designed to encourage efficient space utilization by making agencies accountable for the space they occupy, and that it is unlikely GSA could obtain direct appropriations to replace lost FBF income.

In June 2005, we testified[2] 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 also found that previous rent exemptions, such as the one requested by the judiciary, hampered GSA's ability to generate sufficient revenue for needed capital investment. To address its budget- and space-related concerns, in 2004, the judiciary placed a 2-year moratorium on new capital courthouse projects, which is planned to be lifted at the end of fiscal year 2006. The judiciary said that it is pursuing and implementing cost-containment initiatives through a number of strategies associated with the moratorium. For example, the judiciary is reviewing its design standards for new courthouses that could lead to rent reductions, and it has initiated a new asset management planning process that it expects to use to select less costly renovations over building new courthouses on future projects. We have not evaluated these measures. In addition, no new projects were included in the President's fiscal year 2007 budget submission to Congress. On the basis of a request by the House Committee on Transportation and Infrastructure's Subcommittee on Economic Development, Public Buildings, and Emergency Management, the judiciary has recently initiated a detailed study of courtroom use. The Federal Judicial Center, the research arm of the federal judiciary, plans to conduct this study. Federal Judicial Center officials met with GAO staff on April 18, 2006, to discuss the study.

You asked us to review the judiciary's courthouse rent costs. Accordingly, we identified (1) recent trends in the judiciary's rent payments and square footage occupied and (2) challenges that the judiciary faces in managing its rent costs. To address these objectives, we analyzed nationwide judiciary rent data generated from GSA's billing system, reviewed laws and the regulation related to FBF and GSA's rent pricing process and policies, and reviewed the *U.S. Courts Design Guide* and other judiciary rent planning documents. Additionally, we toured federal courthouses in the following districts: Arizona, Eastern Virginia, Maryland, Nebraska, Rhode Island, and Western Washington. We selected Arizona, Nebraska, Rhode

[2]GAO, *Courthouse Construction: Overview of Previous and Ongoing Work*, GAO-05-838T (Washington, D.C.: June 21, 2005).

Island, and Western Washington because they were districts that experienced large overall rent increases from fiscal years 2000 through 2005 and were geographically dispersed. We also visited Maryland and Eastern Virginia court facilities while we were designing this audit and included them in the review because they contained a new courthouse, a renovated courthouse, and a courthouse that was targeted for replacement. The findings from these courthouse visits cannot be generalized to the population of federal courthouses nationwide. We interviewed district, magistrate, and bankruptcy judges; officials from AOUSC, which is the judiciary's administrative agency; clerks, circuit executives, and other representatives from U.S. circuit and district courts with authority over space and facilities; GSA officials in headquarters and the regions; and other real property management experts. We determined that the rent data were sufficiently reliable for the purposes of our review. We conducted our work from May 2005 to May 2006 in accordance with generally accepted government auditing standards. Appendix I contains additional information on our scope and methodology.

Results in Brief

The federal judiciary's rental obligations for federally owned and leased space have steadily risen from $780 million to $990 million, or 27 percent from fiscal years 2000 through 2005, after controlling for inflation. During this period, the judiciary had an increase in the amount of space it occupies, from 33.6 million to 39.8 million rentable square feet, which is a 19 percent increase nationwide. About two-thirds of the rent increase is attributable to this net increase in square footage, much of which was caused by the construction of new courthouses. Among the components of rent, shell (the building with basic infrastructure) grew proportionately with the amount of net space added—about 19 percent. However, increases in operating costs (driven by increases in energy costs) and security costs grew disproportionately higher than the percentage of net space added, thus contributing to the overall 27 percent increase in rent. The costs of tenant improvements (finishes such as carpeting) increased at a slower rate than the amount of net space added. Square footage and total rent growth occurred in all years, circuits, and courts. The judiciary's rent increases have outpaced those of other agencies located in GSA space, largely because the federal judiciary's square footage is growing faster than that of other agencies. However, the rate of operating cost growth was similar to those experienced by other agencies.[3] We found that neither

[3]Interagency comparisons regarding security costs are not possible since the methods used to secure federal courthouses differ from other agencies.

the judiciary nor GSA had routinely and comprehensively analyzed the factors influencing the rent increases. To improve the judiciary's understanding of its rent costs, we are recommending that the judiciary coordinate with GSA to analyze its rent trends and factors causing any changes on an annual basis.

The federal judiciary faces several challenges to managing its rent costs including costly new construction requirements, a lack of incentives for efficient space use, and a lack of space allocation criteria for appeals and senior district judges. First, modern courthouses require structural and architectural elements that make them among the most costly types of federal space to construct. Chief among these elements are the three separate circulation patterns for judges, prisoners, and the public that the U.S. Marshals Service (Marshals Service) requires for security. These construction costs necessitate rental rates under GSA's pricing policy that are more expensive than the highest-quality office space in some markets, including Denver, Colorado; Phoenix, Arizona; and Seattle, Washington. The judiciary's policy of providing one courtroom per district judge sets the number of courtrooms needed in new federal courthouses and adds space requirements, consequently increasing rent payments. Second, a rent validation effort the judiciary began recently does not address the lack of incentives for efficient space use at the circuit and district levels. Because rent is paid centrally by AOUSC, circuits and districts have few incentives to efficiently manage their space. An example of the inefficiencies that may result is in the Eastern District of Virginia, where the judiciary paid about $272,000 in 2005 to rent 4,600 square feet of office space for an appeals judge in McLean, Virginia, in addition to paying for 4,300 square feet of chamber space originally designated for that judge in the nearby Albert V. Bryan U.S. Courthouse in Alexandria, Virginia. According to AOUSC, the judiciary has pursued alternative uses for this chamber space.

During site visits, we observed multiple instances of unused or unassigned courtrooms, chambers, and support spaces. Some of this underutilization is the result of outdated criteria, which stipulated the existence of support areas, such as libraries, that in some cases are now rarely used. Lastly, assigning space to appeals courts and senior district judges poses challenges due to a lack of criteria, which can lead to variation and inefficiencies and, thus, higher rent. Although the appeals court is required by law to hold court in specific locations, the statute does not indicate how much space it should occupy. For example, the judiciary plans to increase the space the appeals courts occupy by taking over former district courthouses in Richmond, Virginia, and Seattle, Washington, for

appeals court use, even though the appeals courts conduct court there once a month or less. We are recommending that the judiciary establish incentives for more efficient space use at the circuit and district levels, establish criteria for the number of appeals court and senior district judge courtrooms and chambers, and revisit its space allocation criteria related to technological advancements.

We provided a draft of this report to GSA and AOUSC for review and comment. GSA agreed generally with the thrust of the report and concurred with our recommendations, but said that it was more aware of the reasons for rent increases than our draft portrayed (see appendix II). AOUSC strongly disagreed with the findings and recommendations in the draft report. For example, AOUSC said that our objectives did not focus on important issues, such as increases in the judiciary's workload and the appropriateness of GSA rent pricing policy. These issues fell outside the scope of our review. In addition, AOUSC questioned our methodology for attributing two-thirds of the judiciary's rent increase to net increases in square footage, however, we continue to believe that our methodology is sound and a discussion of the reasons is contained at the end of this letter and in comment 4 of appendix III. In commenting on our draft report, AOUSC also identified several challenges in addition to the ones we identified that we subsequently incorporated into the report but did not evaluate. These included statutorily designated places of holding court, the benefits to GSA and the Federal Building Fund of retaining old courthouses with other courts, and inconsistencies in the funding stream for courthouse construction projects. In addition, we added context from the judiciary's perspective in other areas and made technical changes in response to AOUSC's comments. While important, these changes did not impact our overall findings, conclusions, or recommendations. See appendix III for AOUSC's letter and our comments.

With regard to our recommendations, AOUSC said that tracking trends is necessary, but that the specific types of data recommended would not be particularly useful. AOUSC also said that it is in the process of creating incentives by establishing an annual budget cap for space rent costs, but no final decisions on the structure or level of the caps have been made. AOUSC disagreed that additional space allocation criteria are needed for appeals courts and senior district judges, but said that it has already started updating its space allocation criteria related to technology and plans to consider other changes in the future. We believe additional criteria for the appeals court and senior district judges are needed because the appeals courts' portion of the judiciary's square footage and rent bill is growing, and exclusive courtroom space is provided for senior district

judges with limited caseloads. AOUSC also noted concerns about obtaining needed data from GSA to manage its rental obligations; we agree that cooperation from GSA is important.

Background

Federal agencies, including the judiciary, that operate in facilities under the control and custody of GSA are required to pay rent for the space they occupy. Rent payments, which by law must approximate commercial rates, are deposited into FBF, which is a revolving fund that GSA uses to provide a range of real property services, including maintenance, repairs, and alterations, to space occupied by federal agencies. GSA, through FBF, encourages federal agencies to be accountable for the space they use by requiring them to budget and pay for their own space requirements. A committee report accompanying the enactment of FBF noted that because each agency would have to budget for its space needs, doing so would promote more efficient and economical use of space by government agencies.[4] The judiciary's rent payments represent roughly 15 percent of all rent payments made into FBF, making it one of the two largest contributors.[5] Over the last 20 years, we have compiled a large body of work on courthouse construction and federal real property that focused primarily on the need to better manage courthouse costs, planning, and courtroom use. A list of GAO reports related to federal real property and federal courthouses appears at the end of this report.

On the basis of a rent pricing policy that was fully implemented in fiscal year 2000, the rent GSA charges is composed principally of shell rent, operating expenses, tenant improvements, and security costs. These components account for over 96 percent of the judiciary's rent bill payments in fiscal year 2005. The shell rent represents the cost of using the structure, base building systems, concrete floor, and basic wall and ceiling finishes and is the largest rent component, representing 60 percent of the judiciary's annual rent bill payments in fiscal year 2005.[6] For most government-owned properties, shell rent does not represent the actual costs, but is based instead on comparable private sector commercial rents in the local commercial market. GSA updates the shell rent rates every 5

[4]H.R. Rep. No. 92-989, at 3 & 4 (1972).

[5]The Department of Justice is the other largest contributor.

[6]According to GSA, it uses shell rent proceeds to finance the cost of acquiring, repairing, altering, and operating buildings under the custody and control of GSA.

years on the basis of a commercial market real estate appraisal. GSA officials said that because the specialized courthouse finishes are paid for separately as tenant improvements, the remaining shell is comparable with other high-quality office space. In areas where there is no commercial real estate market to use in developing an appraisal or where the appraisal does not provide a fair return on GSA's capital investment, GSA applies a return on investment (ROI) pricing model. ROI pricing uses a cost recovery approach based on the cost to design and construct the building, plus a GSA fee spread over a 25-year period. GSA officials indicated that the ROI approach is primarily used for border-related facilities and that less than 1 percent of GSA's non judiciary facilities are priced using ROI. In government-leased space, GSA passes the actual lease costs directly to the tenant, plus a GSA management fee. Regardless of how GSA prices it, the tenant agency is responsible for paying shell rent for as long as it occupies the facility.

In both owned and leased space, tenant improvements reflect customizing space for that tenant and can include private offices, special type spaces, floor covering, doors, and wood finishes. The tenant is responsible for deciding how to finish the space beyond some basic minimum standards and thus has control over much of the cost. GSA officials have said that the judiciary has the highest costs for tenant improvements in its inventory because of the level of finishes needed in federal courthouses. Unlike the other rent components, tenant improvement costs are removed from the rent bill once the tenant has completely paid for them.

Rental rates for operating costs—which cover cleaning, general maintenance, heating, air conditioning, and other utilities—are set as part of the market appraisal for the shell rent in owned space. But unlike the shell rent, operating costs are adjusted annually for inflation in between appraisals. In leased spaces and some owned locations, GSA passes the actual operating costs directly to the tenant, plus a GSA fee to recoup the expenses incurred.

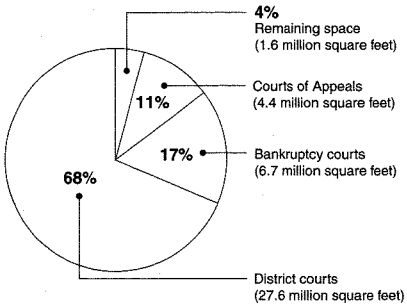
The Marshals Service provides security services to judges, courts staff, and the public inside courthouses, and the Federal Protective Service (FPS) generally protects the exterior of courthouses. Until fiscal year 2005, the judiciary paid security costs to GSA as part of its rent payment. Starting in fiscal year 2005, however, the judiciary began paying FPS security costs directly to the Department of Homeland Security (DHS) after FPS's transfer to that department. However, since FPS security costs still exist, and they were an important part of rent for all of the other years we analyzed, we included these costs as if they were still part of annual rent

bill payments for fiscal year 2005. Rent is also composed of several other components, including fees for parking, building joint use (e.g., cafeterias and daycare centers), antennas, and GSA's Public Buildings Service. These other components comprised about 4 percent of the judiciary's entire rent bill in fiscal year 2005.

It is GSA's policy that all space assignments in its inventory have an occupancy agreement between GSA and the tenant agency that explains the financial terms and conditions of the occupancy, as well as the years of occupancy. According to GSA, the occupancy agreement provides the tenant with a preview of total rent charges prior to construction of a facility and can act as a rent planning mechanism. GSA tenants, including the judiciary, can appeal a rent charge for a bill if they think that GSA may have made a mistake or misapplied its rent policy. GSA said that formal rent appeals are rare. GSA officials said that they do not track informal appeals because they are resolved locally. For example, the District of Rhode Island is currently informally challenging its appraised rate for the Federal Building U.S. Courthouse and the adjacent J.O. Pastore Federal Building but this has not yet risen to the level of a formal challenge.

The Judicial Conference of the United States (Judicial Conference) is the judiciary's principal policy making body. The Judicial Conference works in coordination with AOUSC, which is responsible for administering the federal judiciary's budget as well as performing other programmatic and administrative functions, such as paying the judiciary's rent bill from its annual appropriations from Congress. Each circuit has a judicial council, which is composed of federal judges in that circuit, and the council has the authority to determine the need for all space accommodation within its circuit. As such, the district, bankruptcy, and appeals courts occupy space in courthouses or lease space in other federal or private office buildings. The district courts are the trial courts of the federal court system, housing both district and magistrate judges. They occupy the most space within the federal judiciary. The district courts have jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters. The federal judiciary has exclusive jurisdiction over bankruptcy cases, which are overseen by bankruptcy judges. The court of appeals from each circuit hears appeals from the district courts located within its boundaries, as well as appeals from decisions of federal administrative agencies. Figure 1 illustrates the rentable square feet distribution within the federal judiciary.

Figure 1: Space Distribution within the Federal Judiciary in Fiscal Year 2005



Source: GAO analysis of GSA data.

Note: The remaining space is composed of AOUSC, the Federal Public Defender's Office, and other specialized federal courts.

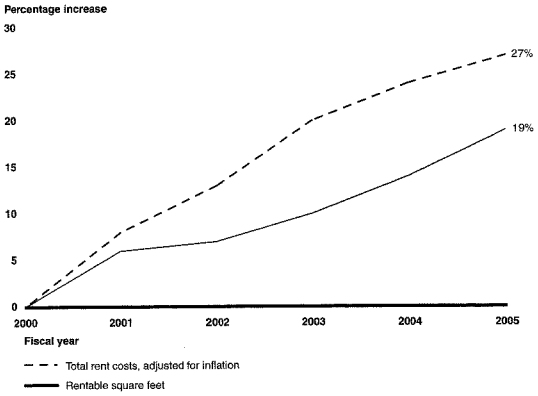
The judiciary and GSA are responsible for managing the multibillion-dollar federal courthouse construction program, which is designed to address the judiciary's long-term facility needs. AOUSC works with the nation's 94 judicial districts to identify and prioritize needs for new and expanded courthouses. Since fiscal year 1996, AOUSC 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 operational inefficiencies that may exist. The *Design Guide* specifies the judiciary's criteria for designing court facilities and sets the space and design standards that GSA uses for courthouse construction and renovation. First published in 1991, the *Design Guide* has been revised several times to address economic constraints, functional requirements, and other issues, and the guide is currently undergoing another revision. Any significant deviation from the *Design Guide*'s standards must be approved by the appropriate circuit council—a group of judges within a circuit—and reported to Congress.

Increases in Square Footage and Operating and Security Costs Have Driven Increases in the Judiciary's Rent Bill from Fiscal Years 2000 through 2005

The federal judiciary's rental obligations for federally owned and leased space have steadily risen from $780 million to $990 million, or 27 percent from fiscal years 2000 through 2005, after controlling for inflation. During this time, the judiciary had a net increase in the amount of space it occupies nationwide of 6.2 million rentable square feet, from 33.6 million to 39.8 million rentable square feet—a 19 percent increase. The judiciary's rent increases have outpaced those of other agencies located in GSA space, largely because the judiciary's square footage is growing faster than that of other agencies. According to AOUSC, the judiciary's workload has grown substantially and the number of court staff has doubled since 1985.

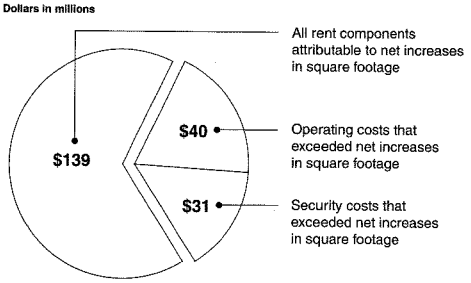
In analyzing the increases in rent, it is useful, for purposes of comparison, to consider that percentage increases in rent would occur proportionally with percentage increases in net space added. In other words, holding all factors constant, a net increase in space of 19 percent would logically be accompanied by a 19 percent increase in rent. Although several factors make it difficult to predict rent increases, comparisons with percentage increases in net space provide a frame of reference to better understand changes in rent from a prior period. As such, in analyzing the individual components of the actual rent increases the judiciary experienced, we found that shell rent, which includes the building with basic infrastructure, grew proportionately with the percentage of net space added—19 percent. However, operating and security costs grew disproportionately more than net space added. Operating costs grew 45 percent during this period and security costs grew 134 percent. On the basis of discussions with GSA, the private sector, and our review of industry data, we concluded that the primary reasons for this growth are, in the case of operating costs, significant spikes in recent years in energy costs, and, in the case of security, the increased emphasis on security needs in the aftermath of the September 11, 2001, terrorist attacks. Figure 2 shows the percentage increase in net rentable square feet between fiscal years 2000 and 2005 compared with the percentage increase in rent. Figure 3 shows that about two-thirds of the rent increase is attributable to the 19 percent increase in net square footage, and that the other one-third was caused by operating and security costs that grew disproportionately more than square footage.

Figure 2: Change in Judiciary Rent and Rentable Square Footage (Fiscal Years 2000 through 2005)



Source: GAO analysis of GSA data.

Figure 3: The Approximate Share of Judiciary Rent Increases Attributable to Net Growth in Square Footage and Other Factors (Fiscal Years 2000 through 2005)



Total: $210 million increase, adjusted for inflation

Source: GAO analysis of GSA data.

In commenting on our draft report, AOUSC disagreed with our methods for attributing costs to the judiciary's net growth in square footage. We believe that our methods are sound. Our analysis is based on a calculation of rent data trends rooted in the basic mathematical logic that a net increase in square footage will lead to additional rent charges associated with that space (see comment 4 in app. III).

New Courthouses Have Added Considerable Amounts of Space in Recent Years

The construction of new courthouses accounts for much of the new space added by the judiciary in recent years. New courthouses represent about 8.8 million rentable square feet of new space that the judiciary has taken occupancy of since fiscal year 1998, which represents a larger timeframe than our rent trends data.[7] According to judiciary officials, much of the judiciary's growth and accompanying space-related needs have been the result of elevating workloads, such as increases experienced in civil case filings. For example, AOUSC said that appeals filings have increased 66 percent, civil filings (district) have increased 29 percent, criminal filings

[7]We use different time periods to show that the courthouse construction period extended beyond our trend analysis and to avoid methodological problems involving partial year occupancy.

(district) have increased 44 percent, bankruptcy filings have increased 118 percent, persons under supervision have increased 40 percent, total judges have increased 25 percent, and total court support staff has increased 45 percent from 1990 to 2005. Accordingly, judiciary officials stated that the additional space the courts have added, often through construction of new courthouses, was essential in accommodating the creation of new judgeships. Furthermore, judiciary officials have said this growth has also resulted in the need for ancillary space for court support staff.

Table 1 lists the names and associated rentable square feet of the courthouses that the judiciary has taken occupancy of since 1998. New courthouses do not account for all of the judiciary's new space. The judiciary has added other space and, in some cases, does not return old courthouses to GSA for disposal. In our site visits to districts with newly constructed courthouses, we found that the judiciary tended to retain the old district courthouse, although usually for other purposes. For example, in Phoenix and Tucson, Arizona, the bankruptcy court took over the old district courthouses after the district court moved into the new courthouse. In Seattle, Washington, and Richmond, Virginia, the appeals courts plan to take over the old district court after the district court moves to the new courthouse. Among the courthouses we visited, only in Omaha, Nebraska, did the federal judiciary permanently vacate the old location of the federal court when it moved to the newly constructed Hruska Courthouse. In that instance, the judiciary more than doubled its overall square footage when it moved out of a multiple-agency federal building into the new courthouse.

Table 1: Newly Constructed Federal Courthouses Occupied since Fiscal Year 1998

Federal courthouse	City and state	Construction completed (fiscal year)	Rentable square feet
Quentin N. Burdick United States Courthouse	Fargo, North Dakota	1998	84,313
U.S. Courthouse and Federal Building	Ft. Myers, Florida	1998	102,201
Howard H. Baker Jr. U.S. Courthouse	Knoxville, Tennessee	1998	200,563
Robert C. Byrd and U.S. Courthouse	Charleston, West Virginia	1998	209,808
Sam M. Gibbons U.S. Courthouse	Tampa, Florida	1998	307,671
Charles Evans Whittaker Courthouse	Kansas City, Missouri	1998	470,718
John Joseph Moakley U.S. Courthouse	Boston, Massachusetts	1998	506,602
Robert C. Byrd Federal Building and Courthouse	Beckley, West Virginia	1999	61,145
William J. Nealon U.S. Courthouse Annex	Scranton, Pennsylvania	1999	65,917
Covington U.S. Courthouse	Covington, Kentucky	1999	83,435
U.S. Courthouse Annex	Tallahassee, Florida	1999	86,463
Jim Shaw Courthouse	Lafayette, Louisiana	1999	110,199
Brownsville Federal Building U.S. Courthouse	Brownsville, Texas	1999	111,222
Pete Domenici Courthouse	Albuquerque, New Mexico	1999	227,801
Robert T. Matsui U.S. Courthouse	Sacramento, California	1999	348,134
Ronald Reagan Federal Building and Courthouse	Santa Ana, California	1999	403,049
Roman L. Hruska U.S. Courthouse	Omaha, Nebraska	2000	197,724
Lloyd D. George Federal Building and U.S. Courthouse	Las Vegas, Nevada	2000	213,708
Evo A. DeConcini Courthouse	Tucson, Arizona	2000	232,245
Alfonse M. D'amato U.S. Courthouse	Central Islip, New York	2000	409,652
Thomas F. Eagleton U.S. Courthouse	St. Louis, Missouri	2000	611,487
James H. Quillen U.S. Federal Courthouse	Greenville, Tennessee	2001	108,164
Corpus Christi Courthouse	Corpus Christi, Texas	2001	129,952
Frank M. Johnson Junior Courthouse	Montgomery, Alabama	2001	231,460
Sandra Day O'Connor U.S. Courthouse	Phoenix, Arizona	2001	396,472
Nathaniel R. Jones Federal Building and U.S. Courthouse	Youngstown, Ohio	2002	21,234
C.B. King U.S. Courthouse	Albany, Georgia	2002	42,072
London Courthouse Annex	London, Kentucky	2002	63,990
Hammond Courthouse	Hammond, Indiana	2002	152,873
Carl B. Stokes U.S. Courthouse	Cleveland, Ohio	2002	357,278
Matthew J. Perry Jr. U.S. Courthouse	Columbia, South Carolina	2003	148,189
Alfred A. Arraj U.S. Courthouse	Denver, Colorado	2003	215,037
United States Courthouse	Jacksonville, Florida	2003	308,247

Federal courthouse	City and state	Construction completed (fiscal year)	Rentable square feet
Federal Building and U.S. Courthouse Annex	Wheeling, West Virginia	2004	28,936
Erie New Construction Annex	Erie, Pennsylvania	2004	30,914
Laredo Federal Building U.S. Courthouse	Laredo, Texas	2004	91,351
Dan M. Russell Federal Building and U.S. Courthouse	Gulfport, Mississippi	2004	134,974
New Federal Courthouse	Seattle, Washington	2004	386,281
William B. Bryant Annex to the E. Barrett Prettyman U.S. Courthouse	Washington, DC	2005	267,738
U.S. Courthouse	Fresno, CA	2006	274,278
Emanuel Cellar U.S. Courthouse Annex	Brooklyn, NY	2006	396,410

Source: GAO analysis of GSA data.

The judiciary is evaluating its future courthouse construction effort. Before it imposed its 2005 moratorium postponing new courthouse construction projects for 2 years, the judiciary indicated that it had 35 additional courthouse construction projects planned for fiscal years 2005 through 2009, estimated to cost billions of dollars. According to AOUSC, these projects will be subject to the judiciary's new asset management planning process that will consider renovation and other ways to limit new construction. As of May 2006, no final decisions had been made.

Square Footage Increases Occurred in All Years, Circuits, and Courts

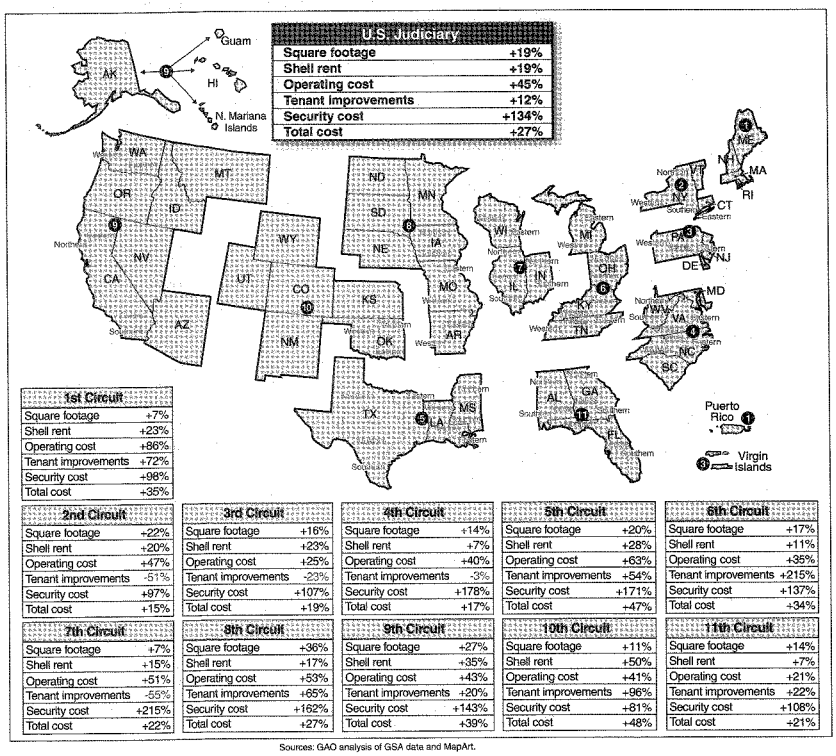
Each circuit increased its square footage from fiscal years 2000 through 2005. However, the 8th and 9th Circuits added proportionally more square footage than the others, growing by 36 percent and 27 percent, respectively. Within the 8th Circuit, Missouri and Nebraska have nearly doubled their square footage from fiscal years 2000 through 2005. Fiscal year 2001 was the first full year of occupancy for the Eastern District of Missouri in the newly constructed Thomas F. Eagleton U.S. Courthouse in St. Louis, which is the single largest federal courthouse in the nation based on square footage. Fiscal year 2001 was also the first year of occupancy for the District of Nebraska in the Roman L. Hruska U.S. Courthouse in Omaha, which the chief district judge said was necessary because a number of space and security deficiencies existed in its previous facility. In the 9th Circuit, the District of Arizona has experienced a 128 percent increase in its space during this time period, thus leading to rent bill increases in excess of $15 million from fiscal years 2000 through 2005. During this time, the district opened two new district courthouses—the Sandra Day O'Connor U.S. Courthouse in Phoenix and the Evo A. DeConcini Courthouse in Tucson—and converted its old district

courthouses in Phoenix and Tucson into bankruptcy courthouses.[8] The chief district judge indicated that these new courthouses were necessary due to the new judgeships and increasing caseloads in Arizona.

Figure 4 shows that square footage and total rent increased in all circuits. However, the amount of increase in shell rent compared to square footage varied by circuit. GSA officials said much of this variation is the result of differing real estate trends nationwide, but we did not evaluate the variations.

[8]In addition to taking occupancy of new and existing courthouses, the judiciary vacated some leased space.

Figure 4: Percentage Change in Square Footage and Major Rent Bill Components, by Judicial Circuit, Fiscal Years 2000 through 2005



U.S. Judiciary	
Square footage	+19%
Shell rent	+19%
Operating cost	+45%
Tenant improvements	+12%
Security cost	+134%
Total cost	+27%

1st Circuit	
Square footage	+7%
Shell rent	+23%
Operating cost	+86%
Tenant improvements	+72%
Security cost	+98%
Total cost	+35%

2nd Circuit	
Square footage	+22%
Shell rent	+20%
Operating cost	+47%
Tenant improvements	-51%
Security cost	+97%
Total cost	+15%

3rd Circuit	
Square footage	+16%
Shell rent	+23%
Operating cost	+25%
Tenant improvements	-23%
Security cost	+107%
Total cost	+19%

4th Circuit	
Square footage	+14%
Shell rent	+7%
Operating cost	+40%
Tenant improvements	-3%
Security cost	+178%
Total cost	+17%

5th Circuit	
Square footage	+20%
Shell rent	+28%
Operating cost	+63%
Tenant improvements	+54%
Security cost	+171%
Total cost	+47%

6th Circuit	
Square footage	+17%
Shell rent	+11%
Operating cost	+35%
Tenant improvements	+215%
Security cost	+137%
Total cost	+34%

7th Circuit	
Square footage	+7%
Shell rent	+15%
Operating cost	+51%
Tenant improvements	-55%
Security cost	+215%
Total cost	+22%

8th Circuit	
Square footage	+36%
Shell rent	+17%
Operating cost	+53%
Tenant improvements	+65%
Security cost	+162%
Total cost	+27%

9th Circuit	
Square footage	+27%
Shell rent	+35%
Operating cost	+43%
Tenant improvements	+20%
Security cost	+143%
Total cost	+39%

10th Circuit	
Square footage	+11%
Shell rent	+50%
Operating cost	+41%
Tenant improvements	+96%
Security cost	+81%
Total cost	+48%

11th Circuit	
Square footage	+14%
Shell rent	+7%
Operating cost	+21%
Tenant improvements	+22%
Security cost	+108%
Total cost	+21%

Sources: GAO analysis of GSA data and MapArt.

Note: The Federal and District of Columbia circuits were included in the aggregate statistics but are not listed in the map.

The district, bankruptcy, and appeals courts have increased their square footage and rent obligations to GSA from fiscal years 2000 through 2005. The appeals court's space and rent have grown at a faster rate than the district and bankruptcy courts. We found indications from our site visits that this trend may continue. In Richmond, Virginia, and Seattle, Washington, the appeals courts are planning to greatly expand their space by taking over older courthouses for their exclusive use (this example is discussed in more detail later in this report).

Judiciary's Energy and Security Costs Increased at a Disproportionately Higher Rate Than Net Square Feet Added

From fiscal years 2000 through 2005, the portion of the judiciary's rent attributable to operating costs have increased 45 percent, primarily due to rising energy costs, thereby outpacing growth in square footage. This rate was consistent with space that other federal agencies occupy in GSA's inventory. In 2005, operating costs comprised about 22 percent of the judiciary's rent bill and represented a growing proportion of the rent bill in recent years. Industry officials acknowledged that the office building sector has experienced similar increases in operating costs, and we found that the wholesale costs of natural gas and heating oil have risen during this period. Operating cost growth occurred in all U.S. Circuits and, according to GSA officials, can be attributed to significant cost increases for utilities, such as heating fuels. For example, the 1st Circuit Court's operating costs have increased 86 percent since fiscal year 2000. GSA officials said that this increase in operating costs in the 1st Circuit can be attributed primarily to the Moakley Courthouse in Boston, Massachusetts, where the appraised operating costs increased at that courthouse by more than $2 million in fiscal year 2004 because of energy cost increases throughout the region.

Since the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City and the September 11, 2001, attacks, federal agencies have understandably devoted significant resources and attention to the physical security of their real property assets. In part to account for this change, the security cost component of the judiciary's rent bill payments increased 134 percent from fiscal years 2000 through 2005. This increase greatly outpaced the 19 percent growth in square footage. The security component represents about 6 percent of the entire rent bill in fiscal year 2005 and increased considerably in all U.S. Circuits from fiscal years 2000 through 2005. A basic security charge is assessed for all GSA properties

where FPS[9] provides security services. Many new courthouse construction projects have additional security enhancements that have led to increased rent bills nationwide.[10] According to AOUSC, FPS has placed additional contract guards in all federal buildings since the terrorist attacks of September 11, 2001. Security costs for private sector buildings have also increased during this period. The judiciary no longer pays its FPS security costs to GSA as part of its charges. Beginning in fiscal year 2005, the judiciary started paying FPS security costs directly to DHS instead of including them in its rent payments to GSA. However, since the security costs still exist, and they were an important part of rent for all of the other years we analyzed, we included these costs as if they were still part of annual rent bill payments for fiscal year 2005.

Tenant Improvement Costs Have Increased at a Disproportionately Lower Rate Than Square Footage

The tenant improvement component of the rent bill has increased 12 percent nationwide since fiscal year 2000, growing at a disproportionately lower rate than the net amount of square footage added. Tenant improvements grew at a slower rate than other rent components because the majority of federal courthouses are not newly constructed or renovated, and, unlike other components, every year some tenant improvements are removed from the rent bill when fully amortized. In the 2nd, 3rd, and 7th Circuits, while other rent cost components grew, the tenant improvement component decreased since 2000 because some buildings reached the end of their tenant improvement cycle. For example, the judiciary's tenant improvement payments for the Connecticut Financial Center, which houses part of the 2nd Circuit's Federal Bankruptcy Court, expired in fiscal year 2005, and the tenant improvement rental cost went from $44,500 in fiscal year 2003 to zero in fiscal year 2005. In addition, the Martin Luther King Jr. Federal Building and U.S. Courthouse in Newark, New Jersey, which houses the 3rd Circuit's district court in that city, paid off much of its tenant improvement costs from fiscal years 2002 through 2005, thereby reducing its tenant improvement charges for that facility by more than $1.5 million since fiscal year 2001.

[9]In March 2003, FPS, which provides security for federal facilities, was transferred from GSA to Immigration and Customs Enforcement within the Department of Homeland Security.

[10]GSA charges for building specific capital security items through the rent bill, which are for security items that are typically part of the building core and shell that can include vehicular barriers, guard booths, blast-resistant windows, and progressive collapse countermeasures.

The judiciary said that it believes fully amortized tenant improvement charges are not removed from its rent bill but, instead, are shifted to shell rent under the heading of "residual value of tenant improvements." GSA's pricing policy allows appraisers to consider the remaining value of amortized tenant improvements when appraising a property, but GSA officials said that this does not affect the appraised shell rental rate in most instances. Although we did not evaluate specific appraisals, our analysis of the rent data did not show a disproportionate increase in shell rent that would have been expected if GSA was generally shifting fully amortized tenant improvement costs to shell rent on the judiciary's rent bill. Shell rent per square foot stayed constant over the five-year period we analyzed, after adjusting for inflation.

Although tenant improvements increased 12 percent overall, some circuits experienced steep increases in tenant improvement costs because of the new courthouses that were constructed in recent years and the types of finishes the judiciary had chosen. For example, the District of Rhode Island experienced a 927 percent increase in its tenant improvement costs, which GSA attributed to the cost of finishes for major renovations of the district's two primary courthouses—the Federal Building U.S. Courthouse and the adjacent J.O. Pastore Federal Building. District Court officials told us that practically every part of the building had tenant improvement needs. GSA officials said that both of these major renovation projects, chosen in lieu of new construction, led to increases in the overall quality of the space the district occupies and, consequently, very large increases in tenant improvement charges. The judiciary noted that this facility was renovated within *Design Guide* standards and within the tenant improvement allowance limits established by GSA.

GSA and the Judiciary Do Not Routinely and Comprehensively Analyze Trends of Major Rent Bill Components Related to Rent Bill Growth

GSA and judiciary officials do not routinely and comprehensively analyze the trends in rent in a way that provides understanding and discussion of the factors influencing rent changes. GSA has provided the judiciary with what it views as options for reducing its rent obligations, including renegotiating leases in locations where commercial market rents have declined and closing underused courthouses, but the judiciary stated that this assistance has not been very useful in reducing long-term rent costs. In addition, GSA has not fully analyzed the underlying factors contributing to increases in the judiciary's rent. Similarly, judiciary officials said resource and data limitations have inhibited the judiciary's ability to create these trend data. For example, judiciary officials said they receive rent information at the building level, making it difficult to compile the information into nationwide trends. However, without this type of

analysis, it is difficult for the judiciary to know how to best address larger-than-expected increases in rent or to gain a national understanding of the effect that local space management decisions have on rent. Our analysis of GSA data shows that space increases, operating cost charges, and security increases have driven the rent bill increases since 2000, while tenant improvement fees rose more slowly. This information could help the judiciary better understand the reasons behind its rent increases, make more informed space allocation decisions in the future, and identify errors in GSA's billing. Furthermore, the lack of full understanding of the reasons for increases in the judiciary rent, in our view, contributed to growing hostility between the judiciary and GSA. For example, the judiciary has criticized courthouse rent as being a "profit center" for GSA without fully understanding the reasons for rent increases. Conversely, GSA's lack of a full understanding of the reasons for the rent increases left it unable to justify them to the judiciary and other stakeholders, such as Congress.

Judiciary Faces a Number of Challenges but Could Take Actions to Better Manage Its Future Rent Payments

Structural and architectural elements, such as the need to build three separate circulation patterns for judges, prisoners, and the public, make courthouses among the most expensive federal facilities to construct in GSA's inventory. The judiciary's centralized rent payment system does not provide incentives for efficient space use at the circuit and district levels. The lack of criteria in the *Design Guide* for assigning courtroom and chamber space for appeals and senior district judges creates variation in the amount of space provided that also affects the amount of rent the judiciary pays. The judiciary noted a number of other challenges including, among other, the changing nature of its work and inadequate communication with GSA.

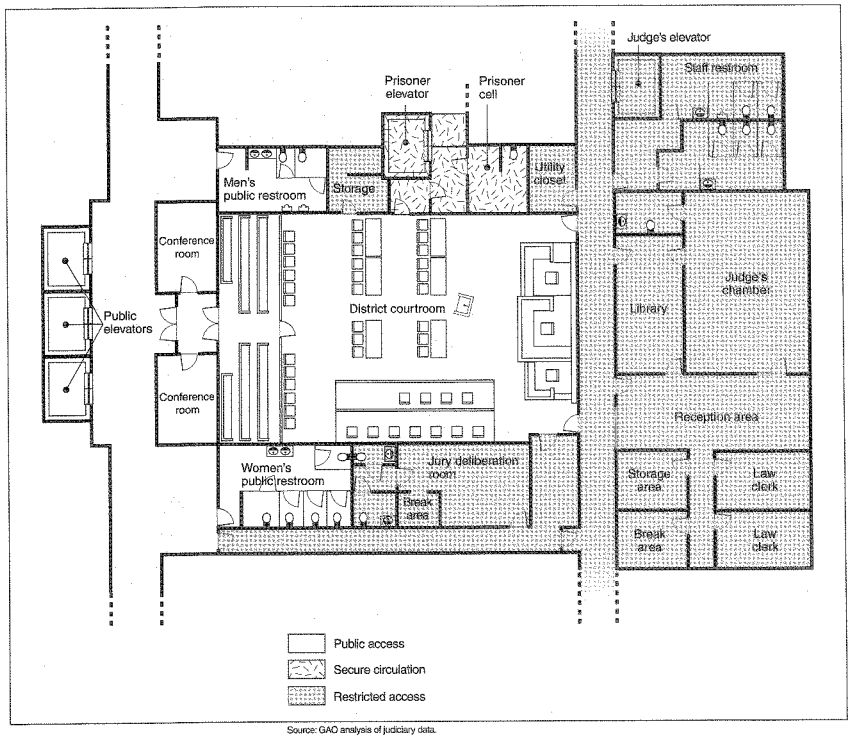
Structural and Architectural Elements of Modern Courthouses Have Increased Construction Costs beyond the Commercial Market

To help ensure consistency, the *Design Guide* was first published in 1991, and it established the design criteria for modern courthouses by providing space guidelines for a federal courthouse. The guide lays out a framework for a complex construction project due to three different circulation patterns for judicial officers, federal prisoners, and the public. The Marshals Service requires separate circulation patterns in order to provide adequate security for federal courthouses. To maintain separate circulation patterns, courthouses need elevators leading from each independent circulation parking garage or building entrance to each independent circulation area within each floor. For example, the *Design Guide* provides for separate elevator systems (1) linking judicial officers to their restricted parking areas, (2) linking prisoners with the secured cell block and parking location, and (3) linking the public with the public

entrance. As a result, each courthouse has four elevator systems, when including the need for a freight elevator system.

In our site visits, we found that these circulation patterns do not always exist in the older courthouses, such as the Federal Building U.S. Courthouse in Providence, Rhode Island. In these older courthouses, the three groups access courtrooms through the same hallways, which, as previously noted, is considered a security deficiency by the judiciary and the Marshals Service. Moving into a courthouse that meets *Design Guide* criteria improves security and increases the amount of space each courtroom requires without increasing the actual size of the courtroom. Figure 5 illustrates the *Design Guide* criteria provided for a courtroom and the support space associated with it, including the three circulation patterns, judges' chambers, prisoner holding cells, and public hallways. Since the *Design Guide* also outlines the judiciary's policy for providing one courtroom for each district judge, support spaces including chambers, jury rooms, holding cells, and independent hallways for judges, the public and prisoners, are replicated for each district judge in new courthouses. This policy increases the judiciary's space requirements and, hence, its rent payments.

Figure 5: Sample Courtroom and Associated Support Spaces That Were Based on *Design Guide* Criteria

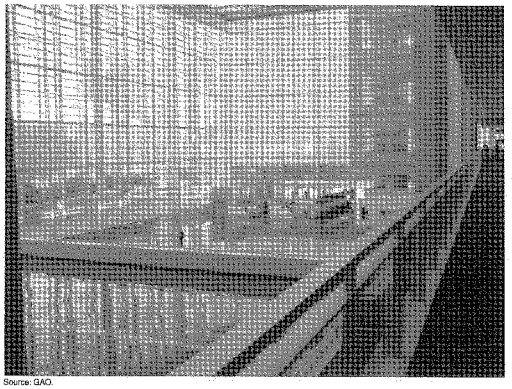


Source: GAO analysis of judiciary data.

GSA has also added architectural elements to courthouses that can increase square footage and, in turn, rent. GSA's Design Excellence Program establishes nationwide policies and procedures for selecting the finest and most appropriate architects and artists for GSA buildings. The

program has produced architecturally important courthouses that were supported by the judiciary. AOUSC said access to the federal courts is a core value in the American system of government and that courthouses are historic and important symbols of the federal government in communities across the country that often play a significant role in urban redevelopment efforts. According to judiciary and GSA officials, some of these architectural elements, however, can increase the size of a building and consequently, the rent the judiciary pays. Figure 6 illustrates how the public spaces within a courthouse can help maintain architectural vision and increase space requirements above functional needs, in turn leading to increased rent.

Figure 6: The Atrium in the Sandra Day O'Conner U.S. Courthouse, Phoenix, Arizona



Source: GAO.

Structural elements, including heightened security standards outlined in the *Design Guide*, also contribute to the higher costs of modern courthouses. Examples of these heightened security standards include exit controls at the building perimeter; security door hardware; bullet- and break-resistant glazing and physical barriers; and standard, emergency, and backup power sources. The judiciary noted that some of these

elements reflect governmentwide building standards, not the judiciary's own standards.

These structural and architectural elements have made federal courthouses some of the most expensive federal facilities that GSA constructs, at times increasing their price beyond what commercial market rates will support. While the rent GSA charges for most properties is based on commercial market appraisals, some properties' construction costs do not garner an adequate ROI on the basis of the prevailing rates for high-quality office space. For these facilities, GSA applies ROI pricing that is based on the cost of design and construction of the building shell. Increasingly, GSA is using ROI pricing for its federal courthouse properties as compared with other federal facilities under the control of GSA. Currently, 28, or 72 percent, of 39 ROI properties in GSA's inventory are federal courthouses (excluding border-related facilities). This includes several newly built courthouses in urban markets, such as Seattle, Washington; Denver, Colorado; and Phoenix, Arizona. GSA officials said that the complexity and physical requirements, mostly related to security, drove the costs of these facilities above the price that the commercial market would bear.

Judiciary's Rent Validation Effort Intends to Monitor GSA Rent Charges but Does Not Include Incentives for Efficient Space Management

In January 2005, the judiciary initiated a nationwide rent validation effort to ensure that GSA is accurately applying its rent pricing policy. Phase I of the effort involves reviewing space assignments drawings compared with the space occupied by the judiciary. Phase II involves the examination of rental rates for buildings that the judiciary occupies. The judiciary said that this effort has been hindered by an inability to get underlying documentation, such as floor plans and appraisals, from GSA in a timely manner. AOUSC indicated that this information is necessary to truly validate GSA rent bills. As part of the validation effort, the judiciary uncovered mistakes in GSA pricing that led to a significant decrease in rent for the Northern and Southern Districts of New York. According to the judiciary, the 9th Circuit also validates some rent information, and GSA has corrected mistakes in that circuit that were identified. In addition, the judiciary recently informally challenged $27 million in rent payments for several courthouses. Future discussions with GSA will be needed to determine whether these rent challenges represent actual rent errors.

The judiciary's rent validation effort will help the judiciary monitor GSA billing. However, it does not address the lack of incentives for efficient space management that we found in the judiciary's process for space-use

planning and rent payment. AOUSC pays the monthly rent bill on a national level without providing access to billing information to circuit and district officials. One AOUSC official processes the thousands of rent bills monthly. While the rent bills are paid at a national level, space-use decisions are made locally by circuit and district officials since each circuit judicial council has the authority to determine space needs. Some circuit and district officials that we visited said that this process creates no incentives to save or reduce space and, consequently, to lower rent payments. This is because the benefits of lower rent do not directly benefit circuits or districts that reduce their space requirements, and, conversely, neither the circuits nor the districts are responsible for paying the higher costs associated with their space-use and planning decisions. We also did not find a centralized oversight function for judicial space-use at the district or courthouse level. Consequently, the different court functions—such as the district, bankruptcy, and appeals courts—are responsible for managing their own space, thus limiting opportunities for efficient space management overall.

We identified a number of different examples during our site visits that may illustrate how the lack of incentives may be undermining efficient space-use and, consequently, causing increased rent payments by the judiciary. We found the following:

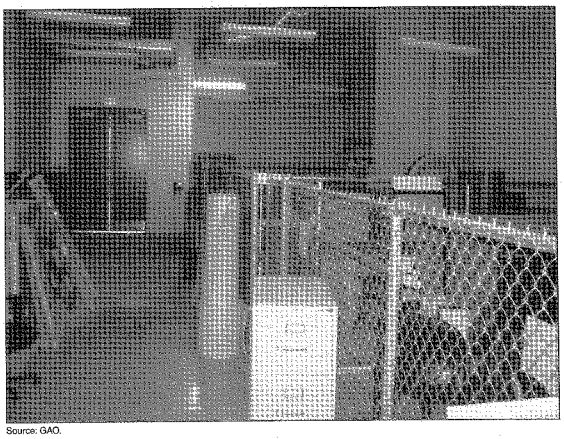
- The judiciary builds to the 10-year need. That is, to avoid having to obtain new space again soon after a new project is completed, judiciary officials said that the judiciary plans for 10 years of excess space in new buildings and major renovations.[11] However, building to the 10-year need assumes that the judiciary pays for excess space for the first 10 years of any new construction project. Because so many courthouses have been constructed recently, the judiciary had excess space in many courthouses. AOUSC officials said that having this excess space is preferable to buildings being full upon occupancy because the benefits of having the extra space available, especially if workload increases faster than expected, outweigh the increased short-term rental costs. There is a risk in the 10-year plan that excess space could last beyond the 10-year time frame if the judiciary overestimates growth. For example, the Union Station Courthouse in Tacoma,

[11]According to GSA, the judiciary's policy of planning for 10 years of excess space upon occupancy of new buildings and major renovations is a pilot test that GSA tentatively agreed to for four projects in fiscal year 2004. All prior projects were based on the 10-year requirement from the design year.

Washington, and the Albert V. Bryan U.S. Courthouse in Alexandria, Virginia, are reaching the 10-year point where they were expected to be completely full, but both still had unassigned chambers and courtrooms.[12] AOUSC informed us that when this occurs, the judiciary seeks alternative uses for the space, such as using it for conferences or storage. In addition, AOUSC said that the Albert V. Bryan Courthouse should be full in the next few years. Figure 7 illustrates space within the Seattle Courthouse that is used for storage but was planned for conversion into a district courtroom when needed.

[12]According to AOUSC, these unassigned chambers and courtrooms are used when needed by nonresident judges and for other purposes, and the Albert V. Bryant Courthouse has reached space capacity for its district courts clerks and probation offices.

Figure 7: Storage Space in the Seattle Courthouse That Was Planned for Conversion into a District Courtroom



Source: GAO.

- Some courtrooms were built in excess of size standards. Two districts we visited (Nebraska and Western Washington) chose to add features to the bankruptcy and magistrate courtrooms, such as making them larger or adding holding cells, in exchange for building fewer courtrooms than allotted. Judiciary officials said that these districts reduced the number of courtrooms they were allotted to offset the larger size. While official deviations from the *Design Guide* require approval by the appropriate circuit council and can yield a more flexible courthouse, they also may result in additional enhanced space and costs.

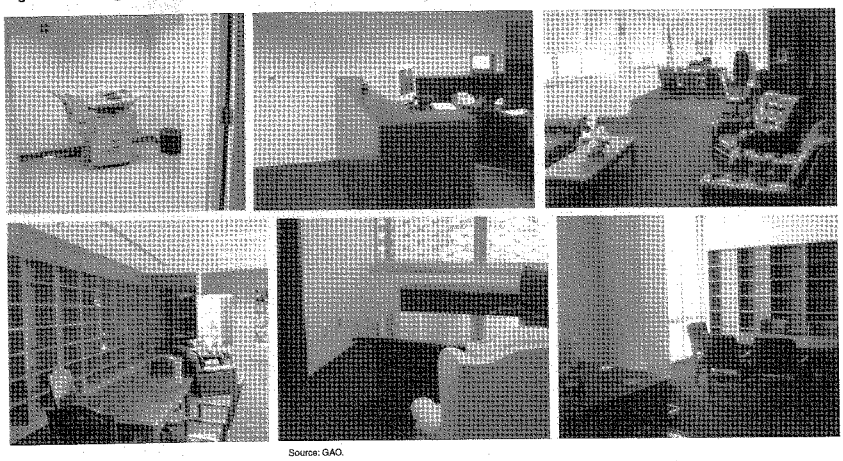
- Numerous courtrooms and chambers were reserved for visiting judges.[18] Districts often assign courtrooms and chambers for visiting

[18]The judiciary defines visiting judges as those judges who travel to a different courthouse location to provide temporary assistance to help meet its caseload needs.

judges. It is common judicial practice for judges to travel outside their resident courthouse for limited periods. During those times, they need chambers and courtrooms to perform their work responsibilities. However, according to district court officials, reserving courtrooms and chambers for visiting judges means that they are not used by the judiciary when visiting judges do not need them. Since the judiciary does not currently track courtroom usage statistics,[14] it is not possible to determine how often visiting judges make use of the courtrooms and chambers, but on each of our visits, the visiting chambers were not being used. The judiciary said it intends, over time, to assign these courtrooms to resident judges when a judicial vacancy is filled or a new judgeship is created. AOUSC officials said that the absence of new judgeships and rise in caseload in some areas of the country have made visiting judges one of the most successful and immediate ways to handle the workload. Furthermore, AOUSC said that visiting judge assignments have been helpful to courts where criminal caseloads are increasing, where a court might be inundated with a temporary spike in caseload, in courts where there has been a lag in filling a judicial vancancy, or where a judge has been on extended leave due to illness. Figure 8 shows unassigned judges' chambers in the Arizona district that are used when needed by visiting judges.

[14]We have done previous work on this issue. See GAO, *Courthouse Construction: Better Courtroom Use Data Could Enhance Facility Planning and Decisionmaking*, GAO/GGD-97-39 (Washington, D.C.: May 19, 1997).

Figure 8: Unassigned Chamber Suites Used by Visiting Judges in the Arizona District



Source: GAO.

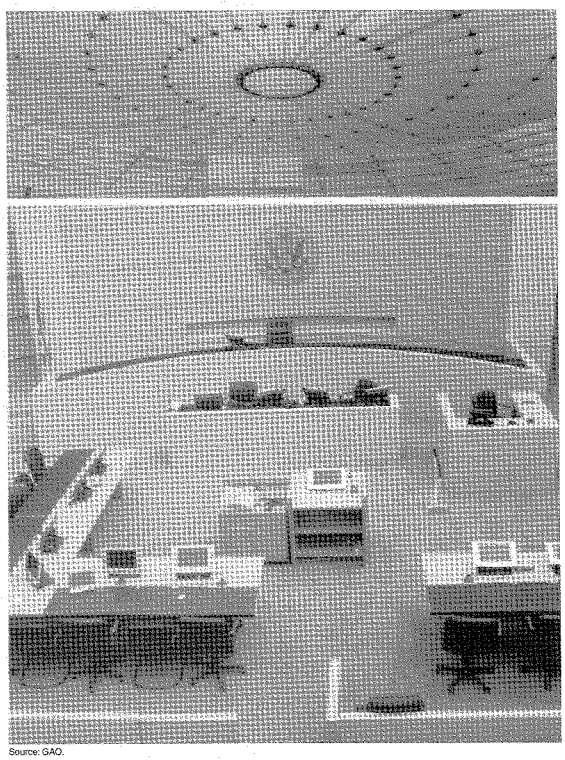
- A number of space saving opportunities were not fully realized. During our visits, centralized libraries were either closed or unused. In most cases, this was because judicial officers are increasingly turning to electronic sources and research and keeping the limited number of books they need in their chambers. However, since the *Design Guide* provides space for law libraries, the districts we visited all had them. For example, when planning the new courthouse in Seattle, Washington, the judiciary decided to reduce the size of the law library by half, but instead of reducing the district's space requirements by that amount, the district used the extra space to create a large conference center for the use of the courthouse's tenants. Also, after the court switched from court reporters to electronic recording, the extra space that had been allocated for court reporters was reallocated to the bankruptcy judge chamber suites, increasing their size above *Design Guide* standards. District officials in Seattle said that this was not

considered a departure from the *Design Guide* because it did not increase the overall square footage of the building.[15] The AOUSC said that the provision for library space in the *Design Guide* will be considered at the Judicial Conference's September 2006 meeting.

- Special proceedings courtrooms were not routinely assigned to a specific judge. The *Design Guide* provides for a special proceedings courtroom in district courthouses that is larger than the other district courtrooms. These special proceedings courtrooms tended to also have architectural elements or finishes that made them more aesthetically pleasing than the other courtrooms in a courthouse. Instead of assigning these courtrooms to an individual judge, several of the districts we visited said that they preferred to only use special proceedings courtrooms for special events, such as multidefendant trials, highly visible trials, or naturalization ceremonies. The *Design Guide* indicates that a special proceedings courtroom must be assigned for daily use and large, multiparty trials, and the guide encourages flexible use of the courtroom. Although AOUSC said that the judiciary intends to assign the courtrooms to judges, in practice, only two courthouses of the seven we visited that had special proceedings courtrooms, had assigned them to a judge. Figure 9 illustrates the special proceedings courtroom in the Sandra Day O'Conner U.S. Courthouse in Phoenix, Arizona, which is not assigned to an individual judge.

[15]GSA said that it would consider the provision of space not in the approved request as a departure from the *Design Guide*, even though it did not increase the overall square footage of the building.

Figure 9: Special Proceedings Courtroom in the Sandra Day O'Conner U.S. Courthouse in Phoenix, Arizona



Source: GAO.

- Not all courtrooms were being used. At the Edward A. Garmatz Federal Building and U.S. Courthouse in Baltimore, Maryland, four magistrate courtrooms were being used to store excess furniture. The district chose not to use these courtrooms because they did not meet *Design Guide* standards for square footage.[16] Judiciary officials said that the magistrate judge hearing-room size poses security concerns due to the lack of separation between individuals in custody, the victims, law enforcement officers, judges, and the lawyers. However, the size of courtrooms is not listed as a security risk factor for increasing the priority for having a new courthouse built. The judiciary used the lack of magistrate courtrooms in the courthouse to increase its priority for having a new courthouse built in Baltimore. This goes against *Design Guide* instructions, which indicate the following: "Differences between space in the existing facility and the criteria in the *Design Guide* are not justification for facility alteration and expansion."

- Judges had exclusive access to facilities in multiple buildings. For example, a bankruptcy judge with a full courtroom and chamber suite in the Union Station Courthouse in Tacoma, Washington, also maintained an exclusive courtroom and chamber suite about 30 miles away in Seattle, Washington. As a result, the judge occupied about 8,000 square feet of space, not including the jury rooms, holding cells (Tacoma), and separate circulation patterns. In commenting on this report, AOUSC said that the next bankruptcy judge assigned in Western Washington will reside in Tacoma, although AOUSC did not say whether the current judge would no longer travel. As another example, an appeals judge who had been assigned space in the new Albert V. Bryan U.S. Courthouse in Alexandria, Virginia, chose to stay in leased space 18 miles away in McLean, Virginia. In addition to the about $272,000 it paid in 2005 for the 4,600 square feet in the Westpark Corporate Center in McLean, the judiciary pays for a 4,300 square foot chamber in the federal courthouse in Alexandria. While the chamber was vacant during our visit, the judiciary said that the chamber suite is now used as a conference room, a meeting place for the bar association, and file storage.

Some circuit and district officials said that they would consider different choices if they had incentives to better utilize space, but determining what those differences would be or how they would ultimately affect the

[16]The Edward A. Garmatz Federal Building and U.S. Courthouse in Baltimore, Maryland, was built before the first *Design Guide* was published.

judiciary's rent bill is difficult to determine. Our financial management work has shown that implementing effective acquisition decisions relies on empowering stakeholders and holding them accountable for coordinating, integrating, and implementing acquisition decisions.[17] It does not appear that accountability for the cost of acquiring courthouses and other facilities from GSA rests with circuit- and district-based officials, such as judges and key staff. In our visits to court locations, we discussed with judiciary officials a number of possible changes to incentives. Judiciary officials said, for example, that the judiciary could charge rent to the circuits that make space decisions. This approach would provide greater accountability for, and understanding of, the consequences of local space-use decisions. According to AOUSC, in March 2006 the Judicial Conference approved a plan to establish budget caps for the judiciary's space and facilities program as part of its budget check process. This action may help the judiciary manage its space but could face implementation challenges. In addition, AOUSC said that not all of its space use decisions are within its control. For example, AOUSC said that it faces challenges in what space within specially built courthouses it can return to GSA for security reasons. Consequently, the judiciary may be forced to retain space they do not need within the context of a larger courthouse.

Judiciary Lacks Space Allocation Criteria for Appeals Courts and Senior District Judges

The *Design Guide* establishes the standards for most aspects of federal courthouses; however, it lacks firm criteria for assigning courtroom and chamber space for appeals and senior district judges. The *Design Guide* suggests one courtroom be provided per district judge because district hearings have one presiding judge. Since appeals judges sit in panels of three or more, the one judge per courtroom criteria does not apply. However, the *Design Guide* does not set different criteria for the number of chambers/courtrooms per appeals judge. The absence of criteria could lead to variation in the number of courtrooms that appeals courts are provided and this hinders more efficient space management. Data provided by the judiciary show that the number of courtrooms per appellate court judge varies by circuit. Since 2000, the appeals court has increased its rent costs and the square footage it occupies faster than the district and bankruptcy courts. Additionally, this lack of criteria appears to

[17]GAO, *Framework for Assessing the Acquisition Function at Federal Agencies*, GAO-05-218G (Washington, D.C.: September 2005).

increase the number of courtrooms for appeals court judges, thereby potentially increasing the rent costs.

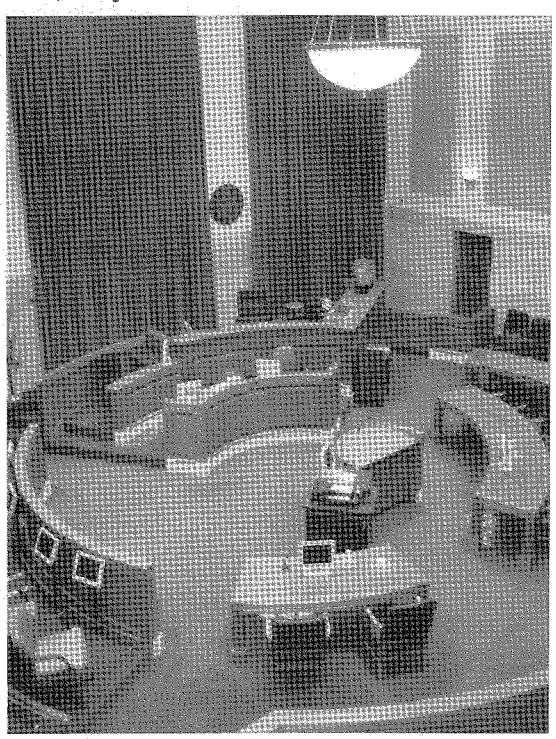
In two districts we visited, the appeals courts were taking over the old district courthouses after the district court moved into a new building. Appeals courts are suitable for older courthouses because of their differing security requirements, but there are no criteria for the number of courtrooms for the appeals court or courtroom usage data. Furthermore, while certain appeals courts are required by law to have regular sessions at more than one location,[18] it is unclear whether their caseload is sufficient to justify their own courthouses. Appeals judges sit in panels and do the bulk of their work outside of the courtroom. When the new district courthouse in Richmond, Virginia, which is currently under construction, opens, the 4th Circuit Court of Appeals will take over exclusive use of the courthouse that currently houses all district, bankruptcy, and appeals courtrooms in that city. However, according to judiciary officials, the 4th Circuit holds court in Richmond only 9 weeks a year. Similarly, when the new courthouse in Seattle, Washington, opened in 2004, the district court and appeals courts moved out of the old building, the Nakamura Courthouse. After a $53 million renovation of the Nakamura Courthouse, the 9th Circuit Court of Appeals plans to reoccupy most of the building, although it already has 9th Circuit Appeals Courthouses in Portland, Oregon; San Francisco, California; and Pasadena, California. In addition, court records showed that the 9th Circuit had used only one courtroom for 1 week each month in Seattle over the last 3 years, with one exception. Moving into the Nakamura Courthouse will quadruple the number of courtrooms and chambers that the appeals court will occupy in Seattle. Circuit and district officials with space management responsibilities said that national criteria for managing appeals space would help encourage efficient space use, improve on current space use, and limit the overall space appeals courts occupy.

The *Design Guide* suggests that circuits and districts consider courtroom sharing for senior district judges, but it has not established national criteria for when or how that sharing should occur. When a judge turns 65

[18]For example, the 4th Circuit Court of Appeals is required to hold regular court sessions at Richmond, Virginia, and Asheville, North Carolina. The 9th Circuit Court of Appeals is required to hold regular sessions in San Francisco and Los Angeles, California; Seattle, Washington; and Portland, Oregon. However, the statue does not specify how much space the courts should occupy at any of these locations. For example, according to judiciary data, the 4th Circuit Court does not have a courtroom in Asheville.

and has at least 15 years of service, the judge is eligible to retire. Instead of immediately retiring, judges may continue to hear cases as senior district judges, although at a reduced caseload, and some senior district judges hear few, if any, cases. About 15 percent of the federal court's caseload has been handled by senior district judges. The lack of firm *Design Guide* criteria for assigning senior district judges space gives circuit and district officials discretion in implementing a specific courtroom-sharing policy among senior district judges and discourages uniform practice. In the districts we visited, senior district judges usually retained exclusive use of a courtroom and chamber suites. Figure 10 illustrates a courtroom in the Union Station Courthouse in Tacoma, Washington, that is assigned exclusively to an active senior district judge. Senior district judges with little or no caseload share courtrooms in some districts. A circuit official and a chief district judge said that national criteria, such as caseload requirements for maintaining an exclusive courtroom or any courtroom, could provide leverage with district judges and court staff in reducing the space requirements for senior district judges.

Figure 10: Senior District Judge Courtroom in the Union Station Courthouse in Tacoma, Washington



Source: GAO.

Additional Challenges Identified by the Judiciary

In commenting on our draft report, AOUSC provided a list of additional challenges that it believes the judiciary faces. Some of the challenges related to ongoing disagreements with GSA, which we did not evaluate for this report. These included rent estimates from GSA that the judiciary believes are not timely; weak communication, according to AOUSC, from GSA regional offices to determine the cost implications of potential projects; problems the judiciary believes GSA has with keeping projects on schedule; GSA rent pricing practices for court space; and, according to AOUSC, GSA's inconsistent execution of current policies. AOUSC cited other challenges which are addressed in our report, including increases in workload and staff, the requirements of modern courthouses, statutorily designated places of holding court, and security requirements. AOUSC identified challenges of aging facilities, which is a challenge agencies face governmentwide, and the benefits from GSA backfilling old courthouses with court functions. We agree that helping GSA address the challenges of vacant GSA buildings is beneficial to FBF, but that this can have negative consequences for tenants. Lastly, AOUSC stated that inconsistent streams of funding for courthouse projects are a challenge. In June 2005, we testified[19] 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.

Conclusions

Neither the judiciary nor GSA had routinely and comprehensively analyzed rent trends to fully understand that the judiciary's growing rent costs were primarily due to increases in the amount of space the judiciary occupies, together with rising operating and security costs. Without accurate data on the costs of rent components (e.g., shell rent, operations, and tenant improvements) maintained over time, the judiciary cannot identify, monitor, and respond to trends in rent costs. Similarly, without tracking its use of space over time—both overall (rentable square footage) and by function (district, appeals, and bankruptcy) and level (circuit and district)—the judiciary cannot identify and address trends affecting its rent costs. Obtaining and analyzing information on rent costs and space use would give the judiciary a better understanding of the reasons for rent increases and help guide its decisions about space use, especially as the judiciary plans to continue to expand into more new courthouses after the

[19] GAO-05-838T.

judiciary's moratorium on new construction expires at the end of fiscal year 2006.

To some extent, the judiciary's space uses are mandated, and some associated rent costs are beyond the judiciary's control (e.g., complying with security requirements and paying for energy costs). However, the judiciary has discretion and could reduce its space use and rent costs through better tracking and management of rent costs. The judiciary's rent validation effort is intended to monitor GSA rent charges, but it does not address the growth in square footage that is a key driver in the rent increases. Without incentives for efficient space management, firm criteria for assigning space for appeals and senior district judges, and space allocation standards that are based on use, the judiciary often appeared to rent as much space as it is allocated in its *Design Guide*, without fully considering the impact of its space management decisions on rent costs. As a result, the appeals courts' portion of the judiciary's square footage and rent bill is growing, and exclusive courtroom space is provided for senior district judges with limited caseloads. Additionally, our observations of space use in selected courthouses, while not generalizable to all courthouses, suggest that some of the judiciary's space allocation standards, such as those for law libraries and court reporting, may not be consistent with current use due, for example, to advancements in technology.

Recommendations

To help the federal judiciary better understand and manage rent costs, we make the following five recommendations for steps that the judiciary should take:

1. Work with GSA to track rent and square footage trend data on an annual basis for the following factors:

- rent component (shell rent, operations, tenant improvements, and other costs) and security (paid to the Department of Homeland Security);
- judicial function (district, appeals, and bankruptcy);
- rentable square footage; and
- geographic location (circuit and district levels).

This data will allow the judiciary to create a better national understanding of the effect that local space management decisions have on rent and to identify any mistakes in GSA data.

2. Work with the Judicial Conference of the United States to improve the way it manages its space and associated rent costs.

   a. Create incentives for districts/circuits to manage space more efficiently. These incentives could take several forms, such as a pilot project that that charges rent to circuits and/or districts to encourage more efficient space use.

   b. Revise the *Design Guide* to (1) establish criteria for the number of appeals courtrooms and chambers, (2) establish criteria for the space allocated for senior district judges, and (3) make additional improvements to space allocation standards related to technological advancements (e.g., libraries, court reporter space, and staff efficiency due to technology) and decrease requirements where appropriate.

Agency Comments and Our Evaluation

We provided a draft of this report to GSA and AOUSC for review and comment and received written comments from both. GSA agreed with the thrust of the report and concurred with our recommendations, but expressed one concern. GSA felt it was more aware of the reasons for rent increases than our draft portrayed. GSA's complete comments are contained in appendix II. AOUSC strongly disagreed with several of the findings and conclusions in the draft report, but indicated that it was already implementing actions related to our recommendations. AOUSC's extensive comments are contained in appendix III, along with specific GAO comments on issues AOUSC raised and facts it questioned about, among other things, our methodology and approaches. In response to AOUSC's comments, we made numerous additions to the report to provide context from the judiciary's perspective, and made some minor corrections that did not impact our findings, conclusions, or recommendations.

GSA Comments

GSA agreed with the thrust of the report and concurred with our recommendations. GSA stated it has the programs and systems in place to assist AOUSC in tracking rent and square footage data and revising the *Design Guide*. To support the judiciary in managing its space requirements, it will be important for GSA to cooperate and assist the judiciary, including being responsive to reasonable requests for rent-related information. Regarding our conclusion that neither the judiciary nor GSA conducted an analysis to fully understand the factors contributing to judiciary's growing rent costs, GSA stated that both GSA

and the judiciary were aware that increases in the amount of space occupied and increases in security countermeasures comprised the primary reasons for judiciary's rent increases, and requested that we revise the report accordingly. While we acknowledge that GSA performed limited analyses of the judiciary's rent data, we continue to believe, as stated in our report, that GSA and the judiciary did not conduct routine and comprehensive examinations of trend data for the various components of the rent charges. The effect of this was that GSA and the judiciary were not fully aware of the impact that certain rent components had on rent bill increases the judiciary was experiencing. As an example, until we did our analysis of trends by rental component, GSA and AOUSC were not fully aware of the extent to which operating costs, driven in part by spikes in energy costs, were partially driving rent increases.

AOUSC Comments

AOUSC strongly disagreed with the draft report's findings and overall conclusions. However, AOUSC said that it has actions underway that relate to our recommendations but provided no details or timelines regarding implementation of these actions. AOUSC expressed concerns regarding the scope and methodology of our analysis, as well as our presentation of appropriate context. AOUSC said that GAO did not address important aspects of GSA rent-charging practices, such as identifying GSA rent billing errors. AOUSC also disagreed with the draft report's methodology and subsequent findings related to rent payment trends, citing our analysis of a positive correlation between the increase in space and increase in rent. Moreover, AOUSC stated that the draft report did not provide proper context to understand the judiciary's increasing space needs and rent costs, including an expansion in workload, security requirements, and challenges obtaining data from GSA. AOUSC also challenged several of the statements and facts in the report pertaining to individual court locations and discussions we held with judiciary officials in the cities we visited.

We disagree with AOUSC's assessment of our report and believe our findings, conclusions, and recommendations are well supported. Moreover, we believe that AOUSC's concerns about the scope of our research stem from a misunderstanding of the purpose of our review. While we had several discussions during the course of the review to clarify the scope of our work, AOUSC continued to assert that addressing the judiciary's request for rent relief should be the central purpose of the review. Our review was never intended to examine the judiciary's request for rent relief, but rather to identify recent trends in the judiciary's rent payments and square footage occupied and challenges that the judiciary

faces in managing its rent costs. AOUSC contends that we began our analysis with a preconceived conclusion about rent relief and that this affected the methodological approach we took. In previous reports we have expressed the view that exemptions on rental payments undermine the FBF, an intragovernmental revolving fund that was established, in part, to make federal tenants, including the federal judiciary, directly accountable for the space they occupy.[20] This position had no bearing on our ability to independently evaluate trends in rental payments and related challenges. Our methodological approach allowed us to identify the primary factors influencing the judiciary's rent bill increases, which include square footage, operating costs, and security charges. This data can help all stakeholders better understand the reasons behind the judiciary's rent bill increases, make more informed space allocation decisions in the future, and—as our report states—help address AOUSC's concerns with identifying errors in GSA's rent billing. We also believe this review can act as a starting point for future research, which could include some of the analyses suggested by AOUSC, such as evaluating rent increases by building age. However, we continue to believe that it was necessary to conduct an initial factual analysis to determine the factors driving rent increases that focused on the basic components of rent—shell rent, operational costs, security, and tenant improvements.

We also disagree with AOUSC's assertion that our report does not provide proper context within the scope of our objectives. As discussed earlier, while we added context from the judiciary's perspective on the basis of AOUSC's comments, the draft report AOUSC reviewed already contained information that AOUSC asserted it was lacking. For example, it contained references to the judiciary's workload including increases in civil case filings and security requirements for such items as building circulation. We added additional context as a result of AOUSC's comments and believe our report provides a fair and balanced portrayal of the challenges facing the judiciary within the bounds of our study objectives.

In commenting on our recommendations, AOUSC said the recommendations reflect areas they are already addressing, but have little bearing on the issue of rental charges. We disagree that our recommendations related to trend analysis, space allocation criteria, and incentives for managing costs have little bearing on increasing rental

[20]We addressed this issue in our June 2005 testimony at a congressional hearing that examined the judiciary's request for rent relief. See GAO-05-838T.

changes. We continue to believe the findings and recommendations in our report can help the judiciary better understand and manage rent costs. AOUSC also noted that effective implementation of some of our recommendations will require more timely and accurate data gathering from GSA. We concur and as stated in our first recommendation, we believe that AOUSC should work with GSA to track rent and square footage data on an annual basis to allow the judiciary to create a better national understanding of the effect of local space management decisions and identify any mistakes in GSA data, and that, in doing so, GSA's cooperation with the judiciary's reasonable requests for rent data would be helpful. In addition, although AOUSC indicated that it is in the process of updating its *Design Guide* to address libraries and other issues, it does not believe that additional criteria are necessary for the appeals court or senior district judges. We believe these recommendations have merit because the appeals courts' portion of the judiciary's square footage and rent bill is growing, and exclusive courtroom space is provided for senior district judges with limited caseloads.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Administrator of GSA and the Director of AOUSC. Copies will also be made available to other interested parties on request. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or GoldsteinM@gao.gov. GAO staff who made major contributions to this report are listed in appendix IV.

Mark L. Goldstein
Director, Physical Infrastructure Issues

Appendix I: Scope and Methodology

Our objectives were to identify (1) recent trends in the judiciary's rent payments and square footage occupied and (2) challenges that the judiciary faces in managing its rent costs. To address these objectives, we reviewed General Services Administration (GSA) rent data, laws relevant to GSA, the regulation related to the Federal Buildings Fund (FBF), and judiciary planning and budget documents; interviewed GSA and judiciary officials; and conducted audit site visits at six United States District Courts located across the country. We assessed the reliability of rent data provided by GSA's Public Building Service by (1) reviewing GSA annual financial audits, (2) interviewing knowledgeable officials about these data, and (3) reviewing an independent third-party rent bill validation effort. We determined that these data were sufficiently reliable and valid for the purposes of this report.

To identify trends in judiciary's rent payments, we examined GSA's billing information and its primary rent database, the System for Tracking and Administering Real Property, to analyze nationwide judiciary rent expenditure data from fiscal years 2000 through 2005. We chose fiscal year 2000 as a starting point for our analysis to coincide with GSA's introduction of a new rent pricing policy, which provided numeric breakouts for each of the various rent bill components (e.g., shell, operating costs, and tenant improvements). Additionally, we chose fiscal year 2005 as an ending point since this was the last full year of GSA-generated rent data. We reviewed GSA's information on the judiciary's Agency/Bureau Code designations to provide information related to the various court functions (e.g., U.S. Circuit, District, and Bankruptcy) and their space allocations. We removed the effect of inflation on the rent data by using the Gross Domestic Product price index (2005 dollars). Generally, this index is preferred as a general price index because its coverage is broader than the Consumer Price Index.

For our purposes, we used rentable square footage because that is the metric GSA uses to bill tenant agencies, including the judiciary. GSA calculates rentable square feet by measuring building space, including courthouses, in terms of usable and common spaces, based on the Building Owners and Managers Association's market-based definitions of those terms. For example, lobbies and public restrooms are considered common space. GSA converts usable space into rentable square feet by multiplying the usable space by the building's rentable/usable factor, which distributes common space proportionally among tenants in a given building. We adjusted the rentable square footage for the number of months a facility was occupied during a given fiscal year to avoid distortions in rentable square footage statistics due to partial year

occupancy in certain courthouses. We also reviewed relevant GSA documents, such as the GSA's *Desk Pricing Guide*, for additional information on GSA's rent pricing policy and the cost components that comprise rent payments.

To identify challenges that the judiciary faces in managing its rent costs, we visited federal courthouses in the following districts: Arizona, Eastern Virginia, Maryland, Nebraska, Rhode Island, and Western Washington. We selected Arizona, Nebraska, Rhode Island, and Western Washington because they were in districts that experienced large overall rent increases from fiscal years 2000 through 2005, were geographically dispersed, and may have been more likely to have challenges in managing rent costs. We also visited Maryland and Eastern Virginia court facilities because they contained a new courthouse, a renovated courthouse, and a courthouse that was targeted for replacement. During our site visits, we interviewed GSA officials in the regions, as well as other facilities experts, to discuss rent cost increases. The findings from these courthouse visits cannot be generalized to the population of federal courthouses nationwide. We also interviewed district, magistrate, and bankruptcy judges; clerks; circuit executives; and other representatives from U.S. circuit and district courts with authority over space and facilities. We interviewed judiciary officials associated with the rent bill payment process, including Administrative Office of the United States Courts officials. We also reviewed the judiciary's *U.S. Courts Design Guide* to determine space allocations for the different court components, including chambers, courtrooms, and ancillary space for U.S. appeals, district, and bankruptcy courts.

Appendix II: Comments from the General Services Administration

GSA Public Buildings Service

JUN 7 _ 2006

Mr. Mark L. Goldstein
Director, Physical Infrastructure Issues
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Goldstein:

The U.S. General Services Administration (GSA) appreciates the opportunity to review and comment on the Draft GAO Report to the House Committee on Transportation and Infrastructure titled "Federal Courthouses Rent Increases Due to new Space and Growing Energy and Security Costs Require Better Tracking and Management" (GAO-06-613). We concur with the essence of the Government Accountability Office's (GAO's) conclusions and recommendations. We feel that we have the programs and systems in place to assist the Administrative Office of the United States Courts to track rent and square footage trend data on an annual basis as well as assist with revising the Court Design Guide.

Our technical comments to the draft report are enclosed. We have identified an area of the report that we feel does not properly characterize GSA's and the judiciary's knowledge of the judiciary's growing rent costs and request that GAO revise the report accordingly.

The conclusions section of the report states "Neither the judiciary nor GSA had conducted an analysis to learn that the judiciary's growing rent costs were primarily due to increases in the amount of space the judiciary occupies, together with rising operating and security costs." Both GSA and the judiciary were aware that the judiciary's growing rent costs were primarily due to the increases in the amount of space occupied and increases in security countermeasures, particularly after the events of September 11, 2001. GSA provided basic analyses and explanation for the increases to the judiciary, which are generally consistent with GAO's findings.

GSA provides an annual rent estimate to all our customer agencies that contains aggregate rental amounts by agency bureau code and location, including rent details such as square feet, shell rent, operating cost, joint use rent, tenant improvement amortization (both general and custom), and parking rent, which can be sorted for trend analysis. In addition, the Security, Space and Facilities Committee prepared a space and rental growth report for the Judicial Conference in March 1996. The report outlined judiciary rent for 10 years (FY's 1985-1994) and estimated rent for the following 6 years (FY's 1995-2000), which was consistent with actual experience. This demonstrates that

U.S. General Services Administration
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the judiciary has had sufficient data to conduct basic trend analysis in the past and was reasonably aware of the primary reasons for their rent increases.

If you have any questions or concerns about these comments, please contact me or Mr. Anthony E. Costa, Deputy Commissioner, at (202) 501-1100.

Sincerely,

David L. Winstead
Commissioner

Enclosure

Appendix III: Comments from the Administrative Office of the U.S. Courts

GAO comments supplementing those in the report text appear at the end of this appendix.

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

June 6, 2006

Mr. Mark Goldstein
Director, Physical Infrastructure
Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Goldstein:

See comment 1.

I am writing to provide the federal judiciary's comments on the draft report by the Government Accountability Office (GAO) regarding the judiciary's request for rent relief from the General Services Administration (GSA). In short, the study design and methodology were seriously flawed, rendering its primary conclusions unfounded. The report is not accurately or objectively presented, and it is fraught with misrepresentation and innuendo. Unfortunately, the report contains little useful analysis to assist Congress in evaluating the merits of the judiciary's request for rent relief.

See comment 2.

There are several factors, all of which GAO has been told, that are directly relevant to understanding and considering the judiciary's request for an adjustment to its rental charges:

- The judiciary has expressed concerns for many years about GSA's excessive rent charges, but these concerns about GSA's rent-charging practices became acute when budget constraints limited Congress' ability to provide sufficient annual funding increases to the judiciary. The portion of the courts' funds that must be used to pay rent to GSA now exceeds 20 percent.

- **The basic problem is quite simple: mandatory rent payments by the judiciary to GSA have been increasing at a faster rate than the judiciary's appropriations increases.** Since 2002, average annual appropriations for the

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

Mr. Mark Goldstein
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federal courts[1] have increased 4.7 percent while GSA's average annual rent charges have increased 6.2 percent. This development created a funding crisis that necessitated a large reduction in court staff and that endangers the effective operation of the United States federal court system.

- The judiciary's workload has grown substantially and the number of court staff has doubled since 1985. The judiciary's facilities needs were long-neglected. A modernization and expansion program has been critical to provide adequate facilities for the federal courts to serve their important public purpose, but the judiciary's rental payments have increased at a rate that is far in excess of its increase in space. **Since 1985, rent (adjusted for inflation) rose at twice the rate of the increase in square footage.**[2]

- The judiciary's long-range facilities planning process has been widely praised, and GAO's past recommendations on modifying the process were adopted. The judiciary has and will continue to enhance its facilities program planning and management practices to control costs. **It must be understood that cost-containment initiatives cannot reduce in any substantial way the judiciary's total rental payments for hundreds of existing courthouse facilities across the United States. Only a reduction in GSA's rent charges can have any significant impact on the base of the judiciary's rent bill.**

- By statute, GSA is authorized to charge government tenants rent that is "commercially equivalent." GSA is also allowed to grant exemptions, which it has done for many agencies. The judiciary is not a typical GSA tenant because courthouses are special-purpose facilities that are very different than office buildings. Other government organizations with special-purpose facilities, such as federal prisons and Federal Reserve banks, are not under GSA's control. **Because of the unique functions and needs of special-purpose facilities such as courthouses, identifying a "commercially equivalent" rent charge is impractical.**

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[1]Salaries and Expenses for Courts of Appeals, District Courts and Other Judicial Services.

[2]Rent adjusted for inflation increased 333 percent, while the judiciary's usable square footage increased 166 percent.

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- **There is no incentive for GSA to control rental charges, and GSA's pricing practices often result in excessive rental charges.** As a monopoly, GSA can set rent rates at whatever levels it determines are "commercially equivalent," and it does not have to compete for tenants because its tenants are forced to have GSA as their landlord. For example, capital security costs are foisted on the judiciary by GSA regardless of whether the judiciary agrees.

- **GSA's lack of adherence to its own policies in calculating rent charges is a serious problem.** GSA appears to be operating with near impunity in the calculation of rental charges, closely guarding its documentary basis for these charges from its tenants. The results of a comprehensive audit of its rent calculations, which was spurred by the judiciary's discovery of significant billing errors, have not been shared by GSA with tenants. Over the past few months, in 15 locations, the judiciary has identified approximately $38 million of annual billing errors and unexplained alterations to underlying independent appraisals.

What do these points above have to do with GAO's draft report?—remarkably little; and that is a major deficiency of this report.

The report's recommendations mostly reflect areas we are already addressing, and they have little bearing on the main issue, which is the increasing rental charges the judiciary must pay to the General Services Administration. Most of the information presented appears to be tangential at best, if not irrelevant, to an assessment of these matters. Moreover, although GAO was asked to report on challenges the judiciary faces in managing its rent costs, the report presents only GAO's notions of our challenges and **none** of the primary issues and challenges identified by the judiciary.

The issues at stake here go far beyond facilities matters; they are vital to maintaining a strong and independent judicial branch of government. Chief Justice John G. Roberts, Jr. stated in his first year-end report issued January 1, 2005: "The judiciary cannot continue to serve as a profit center for GSA." He wrote: "The judiciary must still find a long-term solution to the problem of ever-increasing rent payments that drain resources needed for the courts to fulfill their vital mission." Certainly, $38 million in overcharges represent a significant "profit," as do the rent payments GSA gets for buildings that the Office of Management and Budget and GSA officials have told us are funded from direct appropriations into the Federal Buildings Fund and not from the Fund's own revenue.

See comment 3.

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Congressional interest in this issue cuts across committee lines. In May 2005, the chairman, ranking member and nine additional members of the Senate Judiciary Committee sent a letter that strongly urged GSA's Administrator to grant the judiciary's request for "an exemption from all rental payments except for those required to operate and maintain federal court buildings and related costs." The Senate Judiciary Committee, which is intimately aware of the judiciary's mission-related space needs, declared that this situation and future prospects constitute a "near crisis."

Major Conclusions Are Not Meaningful

See comment 4.

As noted earlier, since 1985, the judiciary's rent payments (adjusted for inflation) have increased at twice the rate of the judiciary's square footage increase. **GAO has produced a flawed analysis and has leaped to conclusions about a causal connection between growth in space and increases in rent**. The study concludes that, because the judiciary's assigned space expanded by 19% from 2000 through 2005, and because shell rent, after adjusting for inflation, also increased by 19% over the same period, that the growth in space "accounted for" the growth in shell rent. Moreover, on the report's "Highlights" page is a pie chart depicting $139 million out of a total rent increase of $210 million "attributable to growth in square footage." While the data, and common sense, suggest a positive correlation between the increase in space and the increase in rent, it is an inferential leap to conclude that space growth *caused* $139 million of the rent increase.

See comment 5.

A quick comparison of other time periods shows that the growth rates between space and rent are not identical. The following table, calculated in constant dollars, demonstrates this.

Judiciary Space Growth vs. Rent Growth*		
Period	Change in Sq Feet	Change in Rent $
2000-2006	19.61%	23.72%
2002-2006	13.47%	8.47%
1995-2006	115.11%	186.02%
1985-2006	166.53%	332.97%

* The square footage and rent figures represent the Courts of Appeals, District Courts and Other Judicial Services Salaries and Expenses account. The rent figures are total, or gross, rent numbers rather than merely "shell" rent, since shell rent did not exist as a discrete rent component until 2000. The dollars are adjusted for inflation.

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See comment 6.

It is inappropriate to attribute absolute causality to increases in inventory size for proportionate rent increases, primarily because real estate markets move both up and down, and since GSA sets rent on the basis of market appraisals, overall rents could increase –above CPI inflation–even if the inventory size were static. Similarly, overall rents could decrease even while the inventory were growing, if markets were declining.

The point, again, is that GAO has shown only a correspondence between space growth and rent increases, not a causal relationship. Unless other critical independent variables, such as real estate market movement and GSA repair and renovation activity, are accounted for, conclusions that rent increases are "attributable" to space growth are unwarranted. Indeed, as the table above demonstrates, over the past 20 years, square footage increases can "account for" no more than half of the total rent increase for the corresponding period, even after adjusting for inflation.

See comment 7.

See comment 8.

It is important to recognize that the report's primary focus on rent cost increases in recent years is only a fraction of the whole rent picture because rent for existing courthouses constitutes the majority of the judiciary's rental costs. Paying escalating rent on the existing inventory of space is a budget problem for the judiciary. The fact that adding new space in a district increases rent costs is not surprising, but there is no context provided to explain why the judiciary has needed more space and why it will continue to need new courthouses in the future. That is a primary challenge facing the judiciary in managing its rent costs, but it is not identified as such.

See comment 9.

See comment 10.

Another of the report's conclusions is that having better data to analyze would enable the judiciary to manage its rent increases. This is mystifying. While the judiciary is keenly interested in obtaining better data from GSA, the judiciary's rental problem will not be solved through tracking the kinds of rent component costs that GAO recommends. The implication that we have "larger than expected increases in rent" (as stated on page 19) is inaccurate and insulting. The judiciary does an excellent job of projecting, budgeting and accounting for its rent costs. **Our problem is not that we are unaware of rent costs, it is that appropriations levels are insufficient to pay the rent and meet other critical needs.**

See comment 11.

GAO has identified as a major challenge a "lack of incentives" for efficient space management at the circuit and district levels because the rent bill is paid centrally. Notwithstanding GSA's current inability to break the rent bill into the appropriate court unit components that would allow for useful trend analysis and possible circuit-focused

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rent budgeting, the assumption that public officials need a financial incentive to exercise responsible stewardship is debatable.

See comment 12.

See comment 13.

Stepping outside its primary focus on rent, the report pays inordinate attention to the current assignment of chambers and courtrooms in several locations, and **the report draws unfounded conclusions about courtroom and chambers use and needs.** The team's lack of knowledge and understanding about the operations of federal courts has severely affected the validity and utility of the resulting analysis and conclusions. To draw conclusions from a superficial assessment in a report on real estate costs about matters of such fundamental importance to the judicial process is almost reckless. It is surprising that GAO's internal review processes would allow recommendations to be made about appellate courtroom needs, for example, when the team neither spoke with a single appellate judge nor asked the judiciary about the appellate courts' courtroom usage practices or needs. More concerns about these problems are addressed later in these comments.

The Report Lacks Balance

See comment 14.

In June 2005, you testified before the House Committee on Transportation and Infrastructure's Subcommittee on Economic Development, Public Buildings and Emergency Management Subcommittee that approval of the judiciary's request for rent relief would have grave consequences for the Federal Buildings Fund. From the start, GAO's *a priori* premise that rent relief was a bad idea appears to have influenced the design and conduct of the study.

See comment 15.

GAO chose not to address fundamental issues regarding the appropriateness of GSA's rent policies for courthouses, whether these policies were implemented properly, the impact of rising rental costs on the judiciary's ability to fund other essential needs, or mission-based reasons why the judiciary has and will need additional facilities. GAO's unbiased analysis of these complex issues would have been welcome.

See comment 16.

Throughout, the report presents the judiciary as wrong and GSA as right. For example, **while the report questions whether the judiciary has sufficient incentives in place to control space growth decisions made by the courts and circuit judicial councils, it does not explore at all whether GSA has incentives to control costs and rental charges.** The report does not assess GSA's policies or practices at all, and the report mentions none of GAO's prior studies critical of GSA's management of the Federal Buildings Fund. The deferential treatment of GSA's practices was illustrated

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See comment 17.

when a GAO official defended GSA's decision to charge $11,000 in annual rent to the judiciary for a parking lot that was transferred to the government for $1, arguing that it was within GSA's authority to do so. Typically, GAO evaluates the public value regarding how government entities exercise their authorities. Indeed, in this report GAO does not show the same hands-off respect for decisions made under the purview of the judiciary's authorities that it has afforded GSA.

See comment 18.

The judiciary was fully prepared to assist GAO in carrying out a thorough and objective evaluation of the key issues related to rental costs, including the judiciary's facilities needs and funding challenges. These involve complex issues that have broad implications. GAO sought very little formal information from the judiciary and ignored pertinent facts provided by the judiciary's officials. Instead, GAO determined to use anecdotal material in such a way as to cast blame on the one who complained about GSA's aggressive pricing practices. The resulting product has been crafted to suggest that the judiciary's rent problems may be due to unnecessary growth in space and to inefficiency. GAO has ignored vital facts and failed to present the true picture.

Questionable Methodology

See comment 19.

Questionable Use of Site Visit Anecdotes. The flawed analysis of national data was discussed earlier. Another major component of GAO's study involved site visits. GAO opted to focus its limited resources on a short time period (2000-2005) and on only a few judicial districts which saw a large increase in their rent charges during that period. Acknowledging that an analysis of only a few districts could not be generalized to reflect the entire system, GAO chose this methodology ostensibly to delve into the details regarding the five districts. Instead, these visits have been used to cobble together a series of misleading anecdotes with scant facts presented out of context, many of which are unrelated–and these are used to draw conclusions that are unfounded.

See comment 20.

A clear example of methodological errors leading to inaccuracies can be seen in a section on visiting judges (pages 25-26 of the draft). Visiting judges are those judges who travel from their official duty station to handle caseloads in locations where, for example, either a new judgeship has yet to be created, a resident judge has become ill, or where there is a spike in case filings. The draft report characterizes the space associated with these judges as unused. This is clearly not the case. In Phoenix, for example, chambers and courtrooms are used by visiting judges, the 9th Circuit Bankruptcy Appellate Panel when its caseload brings the Panel to the district, and by executive branch administrative law judges through a Memorandum of Understanding.

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See comment 21.

While the language in the report was carefully parsed to avoid making false statements, this technique has not succeeded in producing an accurate result. First, it is important to point out that GAO never asked about the judiciary's use of visiting judges or its policies and practices with regard to planning courtrooms or chambers for them. In a survey, GAO asked courts to identify spaces currently used by visiting judges, but did not ask about usage. Therefore, to say "it is not possible" to determine how often visiting judges make use of courtrooms and chambers because the judiciary does not collect national statistics is unfounded, particularly with regard to the districts portrayed.

See comment 22.

The GAO team visited six districts and focused on use of these spaces based on momentary observations. It is highly questionable to imply that these observations have any validity for drawing general conclusions. In an effort to highlight the idea that courtrooms and chambers are sitting idle, GAO published an array of six photographs purported to be of an "unused" visiting judge chamber in Phoenix. There are two major problems with this presentation: first, most of the photographs are wrong; and second, the chamber is used frequently. Of the six photographs, only two are from a sixth-floor chambers suite used by visiting judges in the Phoenix bankruptcy court. One photo is from another floor of that courthouse, and three others are from a different city altogether. This mistake can be attributed to simple error in record keeping, which demonstrates that GAO's fact-checking process is fallible. Even more disturbing than this error, however, is the characterization of the chambers suite as "unused," which is belied by facts. The bankruptcy clerk for the District of Arizona explained that judges in Tucson carry assigned caseloads in Phoenix and travel regularly to hear those cases. Had GAO asked about usage data, the court has a calendar system which shows that the 6th floor courtroom under question in Phoenix was used 103 days in the last twelve months--which is nearly half of all business days. The clerk of court also wrote that:

> Our GAO guests did not ask for such information or ask specifically whether we tracked utilization locally. My recollection is that I described our current usage in some detail, noting how our Tucson judges use the 6th floor chambers and courtroom on a regular basis on assigned caseload....

See comment 23.

No Analysis of Reasons for Growth. It can be no surprise to anyone that total rent costs increased for districts which moved into newly constructed courthouses during the time period GAO selected. This information was known and could be reviewed without visiting the courts. The resources expended by GAO to visit courthouses across the country has produced very little relevant information about the selected districts. A reader will not have a clear picture at all about the situations in those districts because the

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information presented for each district is sketchy and inconsistent. In particular, there is no information about why a district needed new facilities. **The report contains virtually no discussion of the mission-related purposes for facilities decisions that were made that would give meaning to the numerical data presented**. Instead, the assortment of facts selected for publication appear to be chosen for their potential value in supporting certain conclusions. Every court visited was asked to confirm the facts reported by GAO. All of them identified errors and nearly all courts reported that GAO had misconstrued the facts or told only part of the full story. The Honorable Benson Everett Legg, Chief Judge, U.S. District Court, District of Maryland, requested that the enclosed letter be included as part of the judiciary's official comments.

See comment 24.

No Analysis of Space Measurement Accuracy. One useful outcome anticipated from the site visits was not achieved. The GAO team said it needed to go on site to inspect the space and compare it to GSA's plans and other documents, and to validate the rental charges for those buildings, but the draft reports nothing about this. Whether the square footage was correctly charged or not was deemed to be a salient part of the assessment by GAO itself. The district court in Rhode Island shared with GAO an assessment of incorrectly charged space, along with photos of space GSA incorrectly considered usable for offices. Originally, GAO wanted to ignore this data, and only recently has agreed to note this one example in the report, but plans to characterize it as an "informal" appeal of GSA's rental rates.

See comment 25.

Inaccurate Assessments of Chambers and Courtrooms. The report has focused on judicial chambers and courtroom spaces, and how they are currently assigned in the courts. This topic has little real significance to the larger rent issue; moreover, courtroom use is a topic being studied separately. GAO's reported facts regarding the courthouses visited concentrate on instances of currently unassigned courtrooms and chambers. The shortsightedness of these findings is remarkable. Courthouses are built to be used for decades. The judiciary's space planning process has been endorsed as sound by independent entities. But, planning is not an exact science, particularly when critical factors are largely outside the control of the judiciary or unpredictable. To draw conclusions about whether chambers or courtroom facilities are used "efficiently" based on a snapshot in time is wrong without considering the complexity of driving factors. Importantly, new judgeships are created by Congress and the filling of judgeship vacancies is controlled by the President and Congress. Judges may become ill, pass away, or leave the bench. Judges may take senior status when eligible or they may not, and they may or may not carry a heavy workload in senior status for varying periods of time. Caseload volumes may shift between locations within a particular district requiring judges

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to travel to non-resident locations. New judges may serve in a different duty station within a district or a circuit than the judges they replace. There are public benefits to establishing places of holding court where judges may only spend limited amounts of time, and it is Congress which establishes these locations.

See comment 26.

In addressing the current assignment of chambers and courtrooms, these practical complexities are not described. There is nothing presented about pending new judgeships, replacements for judges taking senior status, or future judgeship needs in the districts visited. For example, there has been an explosion of workload in the District of Arizona. Five new district judgeships (and 4.5 magistrate judgeships) were added since 1999 and there are five new district judgeships in the judiciary's judgeship bill pending in Congress. But the report covers only a large increase in square footage and rental costs for this district. For GAO to limit its analysis to square footage figures is not only meaningless, but it suggests that the construction of courthouses is unrelated to definable needs.

See comment 27.

Paraphrasing Anonymous Sources. GAO decided how to present the judiciary's views, and it has opted to make use of anonymous paraphrases attributed to judges and court officials which cannot be confirmed by the judiciary. **GAO refused a request to confirm these statements with their sources, stating that GAO has sufficient internal control measures to attest to the accuracy of these statements. GAO also refused a specific request from a chief district judge who wanted to know only if he was the purported source for a particular statement.** In light of the license GAO has taken with regard to presenting only selected bits of information gleaned in the site visits which some court officials believe have been misrepresented, judges and court officials are understandably concerned about these anonymous statements. Court officials have expressed concern that some casual statement or a reply to a question might have been misunderstood and taken out of context by GAO. If the goal is accuracy, confirming with sources any statements of theirs that will be paraphrased in a report would enhance GAO's products.

See comment 28.

Why Did GAO Drop the Number-One Objective to Assess How GSA Calculates Rent?

The study does not address a primary issue—namely, whether the methods used for determining commercially equivalent rental charges are appropriate for special-purpose facilities such as courthouses. It does not analyze cost impacts related to five-year shell rent adjustments. And, it does not report on the accuracy of GSA's bills.

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GAO's underlying concern about reducing revenue for the Federal Buildings Fund presumptively affected the methods by which the study was conducted, and it ultimately led to eliminating or covering only superficially key study objectives. Importantly, the study did not assess how rent charges are calculated by GSA. Indeed, GAO inexplicably dropped this original number-one objective entirely from its final study objectives and chose only to describe the policies for charging rent, which were already understood by the involved parties. This objective would have focused attention on whether these policies are appropriate for courthouses and on whether the policies are followed in actual calculation of the rent.

See comment 29.

Judiciary officials informed the GAO team early in the study of significant errors discovered in GSA's rent bills amounting to tens of millions of dollars in annual overcharges. Judiciary officials raised questions about undocumented alterations made by GSA employees to independent appraisals which elevated rental charges, and judiciary officials also expressed concerns about the potential for certain conflicts of interest related to a special bonus program at GSA's Public Buildings Service which includes revenue enhancement as a factor that can result in large monetary bonuses to regions and individuals. GAO opted to ignore these serious matters, which you said would be "outside the scope" of this study. In light of your government accountability mission, it is incomprehensible how GAO could determine that assessing whether GSA has been misapplying its pricing policies and overcharging for rent is outside the scope of a study about the judiciary's rent costs. Indeed, inappropriate pricing practices and misapplication of current policies could be a key component of the rent increases.

See comment 30.

Not only did the GAO team ignore and dismiss these serious issues, but in the first written product GAO produced, the only mention of rent bill errors was an incredible statement that we rarely find rent bill errors. This misrepresentation of the judiciary's concerns was later edited in the draft following our protest. Moreover, although GAO's team orally reported that key documents to substantiate rental charges were missing from GSA's records, these internal control deficiencies were not cited in the report. GAO has now committed to reflecting in the report the judiciary's concerns about the accuracy of rental charges, but this is a poor substitute for an independent assessment by GAO on this extremely critical matter.

AO officials informed the team about the difficulties the judiciary has faced in analyzing the accuracy of GSA's rental charges. In particular, we cited the unwillingness of GSA to produce backup documentation regarding the basis for individual buildings' rent charges, such as current space plans or appraisals. We told the GAO team that a

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district court resorted to filing a Freedom of Information request to obtain such information from GSA. We discussed GSA's decision to hire an outside auditor to review the documentation for rental charges (and the team said the Booz-Allen findings were reviewed by GAO). We told the team that we had an extensive and labor-intensive rent-validation effort underway across the judiciary.

See comment 31.

Importantly, none of these matters is addressed or identified in the draft nor are there any facts presented about how specific rental charges were actually calculated by GSA and whether they were accurate. GAO's objective and independent findings regarding the accuracy of the rent bills is needed.

Key Issues in Assessing the Appropriateness of GSA's Rental Charges

See comment 32.

As noted above, instead of evaluating how GSA calculates rent charges, the draft describes only very basic and well-known components of the rental charges. The more difficult questions are missing. For example, the report does not examine the rental charges for government-owned facilities. How many judiciary facilities are government owned? What contributory effect have real estate market cycles had on GSA rental rates, and what effect are they likely to have? What cost trends can be expected for those facilities over the life of the buildings? To what extent do charges exceed the actual cost of operating those facilities?

See comment 33.

The study does not examine whether GSA's appraisal-based pricing approach is inappropriate for build-to-suit, special purpose structures such as courthouses. This appraisal-based approach results in:

- higher rental rates reflective of speculative space rents, yet the judiciary is the guaranteed tenant and there is no speculative risk for GSA;
- higher rental rates reflective of a small (i.e., 10,000 square foot) occupancy, whereas the judiciary is the majority tenant and entitled to a volume discount for occupying full floors;
- rental rates that usually escalate every five years as GSA re-appraises the space, whereas typically private sector tenants in build-to-suit buildings enjoy long term (i.e., 20 to 25 year) fixed rent agreements; and

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- premium (extra) rent charges for courtrooms as well as for secure judges' elevators and prisoner elevators, even though these features are part of the original building design and in typical build-to-suits, upcharges would never be assessed on such features. Rather, rents would be set to recover cost of capital. These premium rents recover far more than the amortization of initial capital costs.

See comment 34.

Also, while it is described in the draft, the study does not assess the relative merits of GSA's secondary means of pricing space—return on investment (ROI) pricing. Should this be the primary pricing approach for courthouses and special purpose facilities? If so, should the rate of return be adjusted to reflect how risk is actually apportioned? To explore these questions, the following points should be addressed:

- GSA's pricing policy provides that, when an appraisal-based rental rate will not yield GSA an initial minimum return of 6% on the capital to be invested, it resorts to ROI pricing.

- The ROI approach is more in keeping with how the space would be priced commercially, but in GSA's application of ROI, 200 basis points (2%) are added to the commensurate term Treasury Bill rate to arrive at the amortization rate used in calculating the rent.

- GSA argues that it is entitled to a 200 basis point spread above commensurate term Treasury Bills as a "premium" for the risks it takes, but in the way GSA has formulated ROI pricing, the tenant--not GSA-- bears all risk: if the project is delayed, the judiciary and not GSA pays for any "holdover" rent in its current space as well as storage costs for furniture and equipment for supporting the new building. Also, if the project runs over budget, the judiciary pays the final cost, regardless of escalations and budget busts. In the private sector, when a building is not delivered on time, the tenant can withdraw from the project, but, because GSA is a monopoly service provider, the tenant agency has no choice but to incur the added costs.

- The appropriate amortization rate for GSA to use in ROI pricing is the interagency borrowing rate charged by the Federal Financing Bank: the Treasury Bill rate plus 12.5 basis points.

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The Draft Report Lacks Essential Context

See comment 35.

The product contains numerous items that reflect the team's lack of knowledge about the federal courts and that lack relevant programmatic detail and context. Many of the topics addressed in this report involve matters that are not simply facilities-related but are mission-related, and that require a basic understanding of the federal judicial system. Also, the lack of historical perspective and the emphasis on describing current facilities details is both shortsighted and of questionable significance for describing the longer-term funding issues and facilities needs of the judiciary.

A presentation of basic information about the judiciary's growth would provide essential background and contribute to a more complete analysis regarding the judiciary's facilities needs. Overall workload growth trends created a need for more judges and staff in the courts. Over the last fifteen years (1990-2005), the following changes occurred:

See comment 36.

- Appeals filings increased 66%
- Civil filings (district) increased 29%
- Criminal filings (district) increased 44%
- Bankruptcy filings increased 118%
- Persons Under Supervision increased 40%
- Total judges increased 25%
- Total court support staff increased 45%

Moreover, the judiciary's workload is not under the control of the courts and workload cannot be reduced to meet budgetary and space constraints. Matters within the jurisdiction of the courts must be handled expeditiously by the courts; there is no alternative.

See comment 37.

Another contextual issue missing from the report is that the judiciary is not the only involved party in determining courthouse facilities needs. Access to the federal courts is a core value in the American system of government. Congress has established a court system to achieve this end, which includes designating places of holding court across the United States and authorizing courthouse projects. Courthouses are historic and important symbols of the federal government in communities across the country that often play a significant role in urban redevelopment efforts. The interest in constructing new courthouses is often shared by the judiciary, Congress, the executive branch, and others.

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The Report Ignores Challenges Facing the Federal Judiciary in Managing Rent Costs

Another major objective of the study was to identify the challenges the judiciary faces in managing its rent costs. Indeed, the report completely ignores information from the judiciary's designated officials about the judiciary's challenges. Instead, the report notes only GAO's limited views on challenges the judiciary faces. **There are many challenges facing the judiciary in managing rent costs which the GAO report neglects to discuss.**

See comment 38.

Inelasticity of Buildings and the Need for Expansion Space. First in importance is the challenge of planning for new courthouse buildings that can accommodate future expansion of court functions, but which, at the point of project delivery, are more than the courts' current needs. This problem is common to law firms and many other organizations, including federal agencies, with projected expansion needs. A common private-sector practice to remedy this problem is to lease more space than is presently needed, and then sub-lease the expansion space until the organization expects it will need that space in the future. Another technique is to acquire lease options, such as a first right of refusal, on additional space in a leased building. The problem is compounded for the judiciary because courthouses are essentially built-to-suit buildings; they are not conventional office buildings with space that is readily interchangeable with other tenants.

Given the inelasticity of real estate, and the long lead times in courthouse project delivery, it would be highly imprudent to size these buildings merely to the judiciary's space requirements for the time of initial occupancy. This would mean the building might soon be filled to capacity, and expansion requirements would be pushed into another building. Accordingly, when GSA builds new courthouses, it constructs them to meet the judiciary's projected ten-year space requirements. While the judiciary has no control over outside forces which contribute to its space needs, such as the number of case filings, crime rates, and enhanced border enforcement activities, it projects its future needs using a methodology that has been refined over the years to incorporate recommendations made by GAO. The additional capacity is sometimes used by other tenants, such as the U.S. Attorney's office, or components of the courts that might later be pushed out, and sometimes used as storage.

It makes no sense to have a new courthouse full upon occupancy, but GAO leads the readers of its draft to believe that having expansion space in a courthouse is excessive. Instead of addressing this issue as a legitimate challenge for the judiciary in managing its

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See comment 39.

rent costs, GAO has turned this into a criticism by characterizing it as the judiciary's "inefficient space use."

According to GSA, it can take, at a minimum, 11 years to plan, design and construct a courthouse. Recently, it is taking even longer to gain the necessary approvals and to ultimately occupy the buildings. In the short-term, however, a new building should have space that might not be used for the purposes for which it is ultimately planned. For instance, instead of building completely finished courtrooms that will not be utilized in the immediate future, GSA builds capacity into the building that can be converted to courtroom or office space use in the future. Figure 7 in the draft report illustrates how a storage space in Seattle, Washington can be converted to make a district courtroom in the future at minimal expense. This use of space reduces the judiciary's costs for off-site leased storage units, while also allowing for the court to have space available for its expansion needs in the long term. Even though the judiciary must pay rent on the space in the meantime, the benefits of having the space available, especially if the workload increases quicker than expected, outweigh the increased short-term rental costs.

See comment 40.

The draft also references the Alexandria, Virginia, courthouse, and claims that the building should be full. There are currently nine judges in Alexandria, plus one vacancy, two judgeships for the district in legislation pending before Congress, and one judge eligible to take senior status now and another judge eligible within three years, for a total of 14 potential judges. There are currently 14 courtrooms in Alexandria, so the courthouse will be full within the next few years. GAO has characterized the judiciary's space planning efforts in a way that would suggest that the building has too much space. Having the capacity to accommodate these additional judicial officers shows how good planning avoids the need to split the court into multiple locations and avoids the need to incur extra costs associated with, among other things, telecommunications, security, and moving files, staff, and jurors among multiple locations.

See comment 41.

The draft report unfairly criticizes courts for increasing courtroom flexibility in exchange for building fewer courtrooms than were allotted. In the districts of Nebraska and Washington Western, courts chose to build courtrooms to district judge courtroom standards to avoid having to build more courtrooms in the future. The judiciary reduced the number of magistrate and/or bankruptcy judge courtrooms planned in the buildings. Yet the draft criticizes those courts because bankruptcy and magistrate judges would be using courtrooms that deviate from the space standards in the *Design Guide*. The report fails to recognize that flexibility in courtroom and courthouse planning can reduce the cost but might result in deviation from the space standards in the *Design Guide*.

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See comment 42.

Intractability of Space Costs. Another challenge facing the judiciary in terms of rent is the inherent intractability of space costs (i.e., rent) once the initial decision has been made to build. GSA, not the judiciary, is responsible for managing construction and controlling the overall building cost—the courts have only an allowance for tenant build-out to manage—and if the entire building cost becomes too great, GSA will resort to Return on Investment pricing, and is guaranteed to recover the entire capital investment, at a 6% or better rate of return, no matter what the cost. For buildings with appraisal-based pricing, once the occupancy is established, future costs are more a function of real estate market dynamics than they are of tenant agency program decisions. The judiciary, in particular, is limited in what space it can relinquish due to security or specialized build-out. The judiciary also has little control as to when space rents increase as a consequence of GSA-initiated capital improvements to buildings, through repair and renovation projects or capital improvements to enhance security.

See comment 43.

Rental Charge Accuracy. As noted elsewhere, the judiciary also faces a challenge in trying to corroborate the reasonableness and accuracy of GSA's charges for space. This is due both to the special purpose nature of courthouses and the lack of direct market comparables for courthouse space, as well as to GSA's reluctance to share appraisals and other background information (such as full cost data for ROI-priced properties) that would enable the judiciary to validate the charges.

See comment 44.

Technology. Challenges involving the space implications of technology are also important to understand. Many courthouses were built prior to the widespread use of electronic research for legal sources and, therefore, the sizes of libraries in courthouses were designed to accommodate significant numbers of hard copy materials. When planning the new courthouse in Seattle, Washington, the court reduced its library by half the size. Significant changes to the library space standards will be considered in September 2006 by the Judicial Conference.

See comment 45.

Some courts have switched from court reporters to electronic recording after the building was occupied and there is now space for court reporters in judges' chambers. The draft report completely mischaracterizes what transpired in Seattle with regard to court reporter space. It is not possible to give this existing space back to GSA unless it can be rented out to other agencies.

See comment 46.

The *Design Guide* will also be updated to reflect the impact of electronic case filing on filing storage requirements in clerks' office. As technological advances are

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incorporated into the everyday functioning of the court, the judiciary is committed to changing its space standards accordingly.

See comment 47.

Obsolete Facilities. Another challenge is that obsolete space poses functional and security risks. Some courtrooms simply cannot accommodate the changing nature of the federal courts' caseload. The GAO evaluation team found totally inadequate hearing-room space that could no longer be used for modern-day court proceedings before magistrate judges in Baltimore. The building in Baltimore was built prior to the first publication of the *Design Guide*, and the magistrate judge hearing-room size poses security concerns due to the lack of separation between individuals in custody, the victims, law enforcement officers, judges, and the lawyers. The court states that it has undertaken plans to combine the four rooms into two functional courtrooms; they are currently being used to store furniture due to a lack of storage space in the building. With the roles of magistrate judges growing to the point where magistrates handle almost all types of proceedings except for felony trials and sentencing, the court space assigned for magistrate judges to carry out these duties must adequately accommodate them. Additional information from the court about the total inadequacy of this space is provided in the enclosed letter from the court.

See comment 48.

Other judiciary challenges are not addressed in the report. The judiciary has the following challenges in managing rent costs:

- The uncontrollable growth in workload, requiring additional judges and staff
- Addressing security needs and functional obsolescence in an aging inventory
- The inappropriateness of GSA's rent pricing practices for court space and inconsistent execution of current policies
- Obtaining timely rent estimates from GSA
- Inadequate communication from GSA regional offices to determine the cost implications of potential projects
- GSA keeping projects on schedule
- An inconsistent funding stream for courthouse construction projects

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- The changing nature of the judiciary's work and the consequent changes wrought to the design and amount of space required
- Statutorily designated places of holding court
- Benefits to GSA and the Federal Buildings Fund in backfilling courthouses with other courts

Additional Accuracy Problems

See comment 49.

We have many concerns about the accuracy of commentary and analysis in the report, many of which have been previously described. Although numerous corrections have been made in the past few weeks due to efforts on the part of judiciary staff who produced extensive materials, a large number of the stated facts are incorrect or only partially correct, and critical facts are simply missing. As noted earlier, various fact snippets are so devoid of context that they will be readily misinterpreted, and their use to support conjectures about "inefficient" space utilization on a particular day or point in time, or to raise questions about a judicial practice that the team does not fully understand is highly questionable. Unless the facts are clarified, any resulting inferences have highly questionable probative validity.

Some of the report's additional major inaccuracies are noted below:

See comment 50.

- The draft report mischaracterizes space made available for use by a judge in Tacoma, Washington. The draft states that a bankruptcy judge with a full courtroom and chambers suite in Tacoma, also maintains an exclusive courtroom and chambers suite about 30 miles away in Seattle. This is not correct. The judge is stationed in Seattle and travels to Tacoma in order to assist the divisional office with its work. The next bankruptcy judge authorized by Congress for the district will be stationed in Tacoma. Having adequate space available is a key factor in handling the caseload expeditiously. Also, the courtrooms do not have holding cells, as currently stated in the draft.

See comment 51.

- Unique functional requirements can also dictate space use that may involve increased costs. One example was noted in Alexandria, Virginia. There, in accordance with 28 U.S.C. § 462(c), a circuit judge was assigned to leased space in McLean, Virginia. While such leases add to the judiciary's total rent costs, the special nature of the work the courts conduct can sometimes dictate how the

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See comment 52.

judiciary uses its space. The report's highlights page incorrectly states that the judge had "designated" chambers space in Alexandria as well as in McLean. In this case, the appellate judge chambers planned in the Alexandria courthouse was subsequently converted to be used for other purposes by the district court because of a shuffling of space related to the court's need to create a Sensitive Compartmented Information Facility to accommodate the classified materials associated with several high-profile terrorist cases, including the Moussaoui case.

See comment 53.

- The report contains several inappropriate statements about "finishes." When discussing tenant improvements, the report links "steep increases" in cost to the "types of finishes" and fails to discuss the components of the tenant improvement allowance. On page 3, in discussing the judiciary's tenant improvement costs, the draft report parenthetically notes as an example of tenant improvements, "finishes such as wood finishes," which could mislead a reader to think that the bulk of the judiciary's tenant improvement costs are due to the use of wood finishes. Indeed, tenant improvements include doors, floor covering and drywall as well—not just "finishes."

See comment 54.

- The report notes that District of Rhode Island experienced a 927 percent increase in tenant improvement costs which was, according to GAO, attributed to "the cost of finishes." This comment needs additional context. In the 1990's, the court in Rhode Island had to choose either to renovate a badly deteriorating courthouse building (the Federal Building & U.S. Courthouse) with infrastructure that GSA had not overhauled in a century and which could not accommodate all of the court functions, or to build a new courthouse building. With GSA's support, the court chose to fully renovate the Courthouse Building and partially renovate the adjacent J.O. Pastore Federal Building. Consequently, both buildings underwent prospectus-level renovations between 1995 and 2002. Thus, the judiciary was responsible for restoring and preserving these historic buildings while incorporating significant security and functionality elements into the historic fabric of these buildings, and their useful lives were extended far into the future. The buildings were basically completely gutted and then restored.

See comment 55.

- There are also inappropriate references to the term "architectural." This term implies that the elements are non-functional design elements; however, examples of "architectural elements" cited in the report, such as secure corridors and elevators, are truly "structural" or "functional" in nature. The draft report states that, "First, modern courthouses require **architectural** (emphasis added) elements

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that make them among the most costly types of federal space to construct." The draft report should be revised to read, "First, modern courthouses require *structural* elements that, *according to GAO,* make them among the most costly types of federal space to construct."

See comment 56.

- The draft contains misleading statements about security needs and secure circulation. The draft report notes that separate elevator systems are recommended for, among other things, "linking judicial officers to their restricted parking areas." This statement reflects the team's lack of expertise in this area. The separate, secure elevator system is for judicial officers to move between floors and to parking areas, so as to uphold the integrity of the judicial process. For security reasons, judicial officers as finders of fact and law in cases and controversies before the court, must have the ability to move within the courthouse without encountering prisoners and the public – which may include some defendants, family members of victims and defendants, or litigants, witnesses, and attorneys in a case.

See comment 57.

The report states that spaces, such as secure circulation, are "replicated for each district judge," and in support of that statement, provides a diagram of a courtroom and chambers with three different sets of elevators. The statement coupled with the diagram are extremely misleading because they imply that every courtroom has a set of elevators for the public, the prisoners, and judges and their staffs. Although the *Design Guide* contains a variety of diagrams depicting courtroom and chambers adjacencies, the GAO developed its own.

Contrary to what is depicted, courthouses have only one elevator drop-off point for prisoners and one elevator drop off point for judges per floor (not per courtroom). Incidents in courts in Georgia, Kansas, and Chicago are indicative of the importance of secured circulation and secured elevators in courthouses.

The integrity of the justice system is at stake if judicial officers or jurors encounter an interested party to a case outside of the courtroom. Indeed, there are serious constitutional ramifications to a juror observing a defendant in shackles, escorted by a United States Marshal.

- The diagram is also inaccurate in a number of other ways which increases significantly the total amount of space depicted for a courtroom, chambers, and

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associated spaces. Comments were provided to GAO under separate cover about the diagram itself, which should be corrected.

See comment 58.

See comment 59.

- Some concerns about the discussion of appeals judges and courtrooms were covered previously. In addition, the report seems to imply that although the one judge/one courtroom standard for district judges does not apply to appellate judges, the judiciary builds a courtroom for each appellate judge. The report states, "the *Design Guide* does not set **different** criteria for the number of chambers/courtrooms per appeals judge." As stated, the implication is that since the *Design Guide* does not set different criteria, the judiciary follows the same criteria as they do for district judges. This is not true. There are only 54 appellate courtrooms throughout all circuits for nearly 300 judges. The report then states that the lack of criteria for assigning courts of appeal courtrooms "appears" to increase the number of appellate courtrooms and "thereby potentially" increase the rent. This statement is nothing more than conjecture. Congress makes all determinations as to where court will be held by each circuit court of appeals. The judiciary must, therefore, provide space to hold court in the locale determined by Congress.

Specific Comments on Recommendations in the Draft Report

GAO Recommendation

1. *AOUSC should work with GSA to track rent and square footage trend data on an annual basis for the following factors:*
   a. *Rent component (shell rent, operations, tenant improvements, and other costs) and security paid to the Department of Homeland Security);*
   b. *Judicial function (district, appeals and bankruptcy);*
   c. *Rentable square footage; and*
   d. *Geographic location (circuit an district levels).*

This data will allow the judiciary to create a better national understanding of the effect local space management decisions have on rent and identify any mistake in GSA data.

See comment 60.

Judiciary Comment. GAO recommends that the AOUSC work with GSA to track rent and square footage trend data, which we agree is necessary. The specific types of data recommended would not be particularly useful for program planning, management or

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budgeting purposes; but, the judiciary is keenly interested in obtaining useful data from GSA. Indeed, the judiciary has exerted a significant amount of effort to obtain the necessary documentation and information from GSA to track space and rent trends and, as GAO states, "identify any mistakes in GSA data." This effort to obtain such information has been to almost no avail.

The GSA, in the past, has not been forthcoming with data that will help the judiciary to identify mistakes in rent bills. In fact, GSA policy precludes making back-up data to rent bills readily available to occupants of GSA-controlled space. As the judiciary has explained to the GAO evaluation team, courts in New York, in attempting to identify mistakes in GSA's rent, were forced to file Freedom of Information Act requests to obtain back-up data related to the rent bills in their courts. GSA has now reluctantly begun to supply the AOUSC with some information, much of which is a complete embarrassment to GSA. The independent market appraisals, which form the basis of GSA's square footage rent calculations, have numerous GSA staff-authored adjustments that raised judiciary rents by tens of millions of dollars. If everything the judiciary has identified thus far from these and other documents is true, approximately $38 million in overcharges resulting from unilateral modifications to documents or misapplication of GSA's own pricing policies will have been incurred by the judiciary in a single year.

In the judiciary's view, to achieve the stated goal of "creat[ing] a better national understanding of the effect local space management decisions have on rent and identify[ing] any mistakes in GSA data," the report must recommend that GSA provide all back-up information requested by the judiciary. Unfortunately, it is only since the judiciary embarked upon its rent relief efforts that GSA began to provide some data on the rent components described in draft Recommendation 1a. The GAO evaluation team has indicated that addressing this important issue is outside the scope of this study. However, the recommendation that the judiciary should track rent trends to better understand how space decisions affect rent is meaningless if the underlying rent pricing policies and calculations are fundamentally flawed.

See comment 61.

As to the GAO's recommendation that the judiciary should track square footage trends, the GAO draft report needs to recognize that the judiciary, for well over five years, has been attempting to get information from GSA that will help us track the space inventory better and identify trends in space growth. Even though GSA has been working on supplying the judiciary with this information for over four-and-a-half years, the GSA effort is now only 60 percent complete. Important to note, however, is that the judiciary anticipated the need to get better data from GSA at least seven years ago and that the

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See comment 62.

effort is underway, albeit at a pace that is slower than the judiciary would prefer. Getting the data requires GSA to remeasure space and code the space in its database in a way that will enable assigning costs to the various components of the judicial branch, e.g., district court courtrooms and chambers, probation offices, clerk's office, libraries, etc.

One example of this effort could explain some of the GAO's confusion regarding the growth of court of appeals space. The growth in the court of appeals space described in the draft report could be attributed to the fact that library space might have previously been assigned to the district courts, when in fact all library space comes under the purview of the courts of appeals. This recoding of the assignment of space from the district courts to the courts of appeals might help to explain why GAO has concluded that there has been significant growth in the courts of appeals space. The percent increases by "function" cited in the draft could be attributable, therefore, to the transition from the old way GSA provided the judiciary with data to the new way initiated by the judiciary. If this is the case, GAO might have reached different conclusions about growth rates for the appeals courts.

See comment 63.

It is also integral to an understanding of square footage growth that the GAO explain there are many factors outside the judiciary's control that drive the courts' space needs. Indeed, population trends, caseload growth, the changing nature of cases handled by the federal courts, and the age and condition of existing facilities all play a role in determining where new facilities and additional space are needed. Certainly the judiciary's long-range facilities planning process has been a useful tool in identifying space trends. It uses a methodology that has been refined over the years based on recommendations made by GAO. Actual needs, of course, might change depending upon the dynamics of the outside factors that could drive the courts' space needs, such as the timing of legislation that would create additional judgeships or stepped-up border enforcement activities.

Having inventory information based on court components at a micro-level will be of great assistance to the AOUSC and the Judicial Conference in the future. The judiciary has already undertaken steps to obtain such information. The AOUSC believes that the data should be parsed in way that enables analysis by various categories within the appeals, district, and bankruptcy courts. The judiciary is, in fact, moving well beyond what GAO has recommended in its draft report by seeking information from GSA that will help us focus on space utilization and cost by specific court unit components.

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Unfortunately, getting the necessary data is not as easy as one might be led to believe. The GAO's recommendations in this section correctly put the onus on the judiciary and GSA to get better data. From the judiciary's perspective, it has provided GSA with what it believes will be helpful in identifying trends and tallying costs at the local level. The burden is now on GSA to complete the data gathering effort expeditiously and to ensure the accuracy of the data. On this latter point, categorizing the data requires an understanding of how the judiciary is organized. We are certainly committed to working with GSA to ensure the data is accurate, but it is ultimately up to GSA personnel at the local level to ensure data is input correctly. Without a quality assurance program, this entire effort will be rendered meaningless. Therefore, we strongly urge that GAO recommend that GSA develop a quality assurance program for the data it provides to the judicial branch related to rent, and that GSA expedite the space remeasurement/reclassification effort. Without such additional recommendations, the GAO draft report is incomplete in its identification of the steps necessary to achieve its general recommendation that rent and square footage data be tracked.

See comment 64.

GAO Recommendation

2. *AOUSC should work with the Judicial Conference of the United States to improve the way it manages space and associated rent costs.*
   a. *Create incentives for districts/circuits to manage space more efficiently. These incentives could take several forms, such as a pilot project that charges rent to the circuits and/or districts to encourage more efficient space usage.*

Judiciary Comment. Underlying this particular recommendation is a false premise that space decisions are within the control of the local districts and circuits. While Congress has recognized the importance of local decision-making on space matters by providing circuit judicial councils – the entity that has first-hand knowledge of local caseload and other trends important to the courts space needs – with the statutory authority to determine the need for space accommodations, Congress also determines where court shall be held throughout the country. From a real-estate perspective, it might not be efficient to have statutorily designated places of holding court in cities that are in close proximity to each other, but that decision is not always made by the local circuit judicial council and should not be implicitly attributed to them if such a decision seems inefficient.

See comment 65.

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For instance, one could argue that there is no need for a courthouse in Tacoma, Washington, because there is a large facility in Seattle, Washington. Whether there needs to be a facility in Tacoma is not a decision ultimately made by the judiciary, but a congressional one. The judiciary must, however, work within this system in conducting its business and must provide space where Congress determines court shall be held. From an access-to-justice perspective (as opposed to a "bricks-and-mortar" perspective), the system is quite efficient, and the judiciary is a strong proponent of providing ready and easy access to the federal courts. Having courtrooms and chambers in different cities provides the judiciary with the ability to assign judges to caseloads at locations where the jury pool most accurately represents one's peers, and saves litigants and their counsel, as well as witnesses, jurors, and other involved parties, from traveling long distances. The judiciary should not, however, be blamed by GAO for having multiple facilities for the courts of appeals, district courts, and bankruptcy courts in a particular circuit or judicial district. The report must state clearly that it is up to Congress to determine where court is held. If GAO believes that Congress has created real estate inefficiencies by designating locations of holding court, it should discuss those concerns with the congressional committees with jurisdiction over such matters. To reflect the complete picture of space management and the associated rent costs accurately, the GAO report must state that in terms of rent costs, the number of places of holding court, as determined by Congress, poses a rent challenge to the judiciary because the judiciary has very little control over where court is held.

See comment 66.

Similarly, the report should also recognize there are interests outside the judiciary that can influence space decisions. For example, when there is even a brief discussion about closing a court facility by a circuit judicial council, Congress, local governments, and members of the local bar raise serious concerns. In the opposite situation the same is true. Members of Congress also have the ability to ask GSA to study the feasibility of constructing a facility at a specific location. That facility might not comport with the priorities established by the judiciary. Regardless of why the facility was constructed, the judiciary must still pay the rent costs associated with that new building. These factors pose challenges for the judiciary in terms of additional rent and space decisions. While the creation of local incentives to use space efficiently may help the judiciary, the circuit judicial councils are not the only entities who make space decisions.

See comment 67.

As to the idea that incentives should be created, the judiciary is working toward the same objective but is taking a slightly different tack aimed at attaining tighter budgetary controls on the circuits' facilities decisions. On March 14, 2006, the Judicial Conference approved in concept the establishment of an annual budget cap for space rental costs.

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The Executive Committee of the Judicial Conference urged the Administrative Office in March 2006 to move expeditiously with development of rent budget caps and to consider issuing rent allocations within those caps to circuit judicial councils as soon as possible. This Judicial Conference action comports with the GAO recommendation 2a.

Implementation of the budget-cap initiative will ensure that local decision-makers balance competing space requests at the circuit level and help circuit judicial councils in space planning. The AOUSC recently convened meetings with the circuit executives and their assistants for space to develop a methodology to implement a rent allocation equitably among the circuit judicial councils by the beginning of FY 2007 on a pilot basis. Work on this initiative will continue throughout the summer of 2006 and all of 2007.

It is important to note, however, that there are serious challenges facing the judiciary in implementing this initiative. Much of its success will depend on GSA's ability to provide reliable rent information and to keep projects on schedule. A spreadsheet that displays GSA rent estimates for a randomly selected group of projects has been provided to the GAO evaluation team under separate cover. The spreadsheet shows that GSA's local staff do not always provide accurate rent estimates in a timely manner. In addition, local GSA officials meet with local courts, but do not fully disclose the financial implications of proposals made by GSA or suggested by courts. Expectations are subsequently raised in the courts that, in turn, can lead to disagreements about whether the improvements are needed and were requested, and how the rent for them will be paid. It should be described as a challenge facing the judiciary's efficient management of its space in the final GAO report.

Another administrative hurdle involves GSA's rent billing protocols and other policies. The GAO evaluation team has been advised that Treasury regulations require prompt payment of the monthly rent bill. GSA will only send the bill to an agency's headquarters. Because the judiciary is billed centrally by GSA, creating space incentives at the local level has proven to be a challenge. In the past, the judiciary established incentives for courts to reduce their space by crediting their local operating budgets with a portion of any rent savings. An incentive program such as this one will be discussed with the Judicial Conference's Space and Facilities and Budget Committees.

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GAO Recommendation

2. *AOUSC should work with the Judicial Conference of the United States to improve the way it manages space and associated rent costs.*
   b. *Revise the Design Guide to:*
      - Establish criteria for the number of appeals courtrooms and chambers and the space allocated for senior judges.

See comment 68.

Judiciary Comment. We note first that GAO has already committed to deleting the recommendation that the judiciary should establish a policy for senior judges' courtrooms because the judiciary has a planning policy for senior-judge courtrooms.

See comment 69.

Courts of appeals' courtrooms are not a significant part of the judiciary's space inventory. According to our current records, there are 54 appellate courtrooms across the nation. Some circuits may have all or most of their courtrooms located in one building and others, especially larger circuits, may have appellate courtrooms in several locations. The mission and functions of the United States Courts of Appeals simply do not require daily courtroom usage. GAO did not collect any information on this subject and, in fact, the GAO evaluation team never interviewed a court of appeals judge to get an explanation of how the appellate courts hear and process cases. Without this information, it is difficult to understand how GAO can recommend the need for a formula; therefore, this recommendation should be eliminated.

As noted in the draft report, the courts of appeals will backfill space previously occupied by district courts in Seattle and Richmond. As such, some courtrooms previously dedicated to district court use are converted for use by the court of appeals. While this is portrayed as inefficient space management, it is extremely important to realize that when GSA studies the feasibility of constructing a new courthouse, it considers the revenue the Federal Buildings Fund (FBF) will lose if the existing courthouse is no longer occupied. GSA puts a lot of pressure on the courts to backfill existing district court buildings with either the court of appeals or the bankruptcy court so that the FBF does not lose revenue. Because of the special-purpose nature of courthouses, the only logical backfill occupant is another federal court because the courtrooms and, to some extent chambers, are not readily converted to standard-type office space. The courtrooms are already constructed in these buildings so at times, one or two extra courtrooms might be assigned to the judiciary. In other instances, there are no other federal tenants available to backfill the space.

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See comment 70.

Similarly, if the court of appeals is in leased space, as is the case in Seattle and as are some offices in Richmond, not as much revenue is accruing to the FBF. Many courts are quite happy in their leased space, but GSA has the authority to reassign space as it sees fit. Sometimes the rental rates in the leased space are lower than what GSA will charge when the court backfills an existing district court building. In many cases, the old courthouse buildings have been neglected for years or have historic qualities that render their use by any entity other than a federal court untenable. The judiciary then ends up paying higher rent as a result of a major renovation in an existing building.

The phenomenon of lost revenue to the FBF and its effect on backfill tenants poses a significant challenge to the judiciary and should be described as such by the GAO evaluation team in the final GAO report. This challenge can lead to what the GAO report has portrayed as inefficient space decisions made by the judiciary, especially with regard to the court of appeals recommendation, yet is not necessarily a factor over which the judiciary has complete control. In light of this GAO recommendation, however, the judiciary will not be as accommodating to GSA as it has been in the past.

GAO Recommendation

2. *AOUSC should work with the Judicial Conference of the United States to improve the way it manages space and associated rent costs.*
   b. *Revise the Design Guide to:*
      - Make additional improvements to space allocation standards related to technological advancements (e.g., libraries, court reporter spaces, staff efficiency due to technology, etc.) and decreases requirements where appropriate.

See comment 71.

Judiciary Comment. The judiciary has already begun to implement this recommendation. At its March 2006 session, the Judicial Conference approved significant changes to the *Design Guide*. Also, changes to square footage and planning assumptions for libraries will be considered by the Judicial Conference in September 2006. The effect of electronic case filing (as opposed to paper filing) on file storage needs, as well as the impact of recent changes approved by the National Archives and Records Administration that will result in reduced paper files space, will also be considered in September 2006. Space standards for microfilm and microfiche reading and storage are also scheduled to be changed. The judiciary is committed to updating its space standards on a regular basis.

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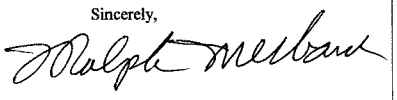
Conclusion

A fundamental problem with the draft report is that it does not contain key information necessary for an objective, fair or thoughtful assessment of issues relevant to the judiciary's request for rent relief. It is in the interest of good government and it is in the public's interest that the report GAO ultimately provides to the Committee reflects the accurate and unbiased research expected from GAO. It would be helpful to all involved parties if GAO could present information and an objective analysis to address these key questions:

- What are the primary reasons why the judiciary has needed more space and what are the prospects for future space needs?
- How have rental costs changed over time and what cost increases are expected in the future?
- Are the judiciary's budget concerns substantiated by recent history and reasonable expectations about future funding requirements and appropriations levels?
- Are rent policies and practices employed by GSA reasonable for special-purpose facilities such as courthouses?

Over the past few weeks, by necessity, we have rushed to provide vital information that GAO should have been collecting and analyzing during the year-long study effort. We urge you to produce a balanced report that will assist the Committee in considering a matter of vital importance.

Sincerely,



Leonidas Ralph Mecham
Director

Enclosure

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

BENSON EVERETT LEGG
Chief Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-0723

June 2, 2006

Ms. Cathy McCarthy
Deputy Associate Director
Administrative Office of the U.S. Courts
Office of Management, Planning and Assessment
Washington, D.C. 20544

Via Facsimile: (202) 502-1155

Re: Comments Regarding GAO Courthouse Rent Study Draft Report

Dear Ms. McCarthy:

You asked me to review for accuracy an excerpt regarding the Baltimore courthouse that appears in the GAO's draft report on courthouse rent. Unfortunately, the excerpt is wrong both in terms of its factual basis and its slant. The GAO states:

> At the Edward A. Garmatz Federal Building and U.S. Courthouse, we found that four magistrate courtrooms are being used to store excess furniture. The district chose not to use them because they do not meet *Design Guide* standards for square footage. The judiciary then used the lack of magistrate courtrooms in the courthouse to increase its priority for having a new courthouse built in Baltimore. This appears to go against *Design Guide* instructions which indicate, "Differences between space in the existing facility and the criteria in the Design Guide are not justification for facility alteration and expansion."

The Baltimore courthouse was designed in the late 1960s and built in the mid-1970s. Although our institutional memory of this long-ago time is limited, we are confident that the bench did not choose to make the courtrooms small. We understand that the late Edward Northrop, who was then chief judge, unsuccessfully argued that the courtrooms, which are all undersized by today's standards, would prove inefficient. Because of the hyper-inflation of the 1970s, the project was strapped for cash and the building envelope was substantially reduced to cut costs. We believe that the small courtrooms were dictated by the strapped budget rather than a desire to have small, inefficient courtrooms.

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See comment 73.

Under today's *Design Guide*, magistrate judge courtrooms should be 1800 square feet. As built, the four magistrate judge courtrooms cited in the GAO report are 963, 995, 1154, and 1169 square feet with 9 foot ceilings. The cramped size of these courtrooms proved ill-suited to handle the drug and gun cases that characterize a big-city federal docket. In the small courtrooms, there was almost no separation between persons in custody, the victims who might be testifying or observing, law enforcement officers, lawyers and the like. Everyone was right on top of everyone else, creating security and logistical problems.

Before 1994, Baltimore was the sole federal courthouse in Maryland. In 1994, the Southern Division courthouse in Greenbelt opened, and eleven judicial officers, who would otherwise be housed in Baltimore, are quartered there. Because Greenbelt has absorbed the bulk of the Court's recent growth, there are three more district court courtrooms than there are district judges. The four Baltimore magistrate judges now share these three courtrooms. It would be silly to require the four judges to use the old, small courtrooms when better space is available.

One of the deficiencies in the Baltimore courthouse is the lack of storage space. We put file cabinets and not-currently-needed furniture wherever we can find an unused room. Because they were unoccupied, we stored furniture in the old magistrate judge courtrooms.

Time marches on and Greenbelt is now completely full. Although Baltimore is not yet full, space is fast running out, especially given the growth of the bankruptcy court. We will hit a crunch soon when a group of active judges will transition to senior status and their replacements arrive. To solve this looming problem, the district court turned over two of the old magistrate judge courtrooms (2B and 2C) to the bankruptcy court. They will be renovated and combined into one bankruptcy courtroom. We just received approval to renovate the other two courtrooms (2D and 2E) into one usable magistrate judge courtroom. So, these old spaces will be put to good use. It is worth mentioning that in demolishing the spaces we will not be sacrificing expensive finishes. The four courtrooms have drywall walls and metal slat ceilings, so we are not giving up anything worth saving.

See comment 74.

I am not sure where the GAO got the idea that the judiciary is using the lack of courtrooms in the Baltimore courthouse "to increase its priority for having a new courthouse built in Baltimore." The Baltimore project was placed on the so-called 5-year list for a new courthouse in 1998. Our placement on the list was driven by security issues, structural problems, and the space needs of a growing, big-city court.

We here in Baltimore believe that the four tiny magistrate courtrooms should not be counted as "courtrooms" because they simply do not work as such in a court with a high volume of drug and gun cases. This issue is now moot as the four courtrooms will be reconfigured into two far more usable spaces.

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See comment 75.

As a final matter, we take exception to the slant of the GAO draft report that portrays the Court's space decisions as irrational and arbitrary. The GAO apparently made no effort to study the type of proceedings that magistrate judges handle. Had the GAO done so, it would have readily seen that the four tiny courtrooms simply do not work. There are good reasons why the Design Guide calls for magistrate judge courtrooms of 1800 square feet.

We have always been guided by common sense rather than whim. We invite anyone to come to Baltimore to take a look at the courthouse and how we use it. What they will find is a modest, 1970s-style cement office building with few frills and adornments that we use efficiently to serve the public.

Very truly yours,

Benson Everett Legg

cc: Felicia C. Cannon

The following are GAO's comments on the Administrative Office of the U.S. Courts letter dated June 6, 2006.

GAO Comments

1. The Administrative Office of the U.S. Courts (AOUSC) said that the draft report is about the federal judiciary's request for rent relief from the GSA. This is not the case. Addressing the judiciary's request for rent relief was not one of the objectives of this review. Our objectives were to determine the recent trends in the judiciary's rent payments and square footage occupied and challenges that the judiciary faces in managing its rent costs. AOUSC's misinterpretation of the scope of our work is, in our view, at the root of its criticisms of the study's design and methods. Regarding the judiciary's request for rent relief, exemptions on rental payments undermine the FBF, an intragovernmental revolving fund that was established, in part, to make federal tenants, including the federal judiciary, directly accountable for the space they occupy. In fact, we addressed this issue in our June 2005 testimony at a congressional hearing that examined the judiciary's request for rent relief.[1]

2. AOUSC listed seven factors summarizing its need for an adjustment to its rent. The judiciary's request for a rent adjustment is outside the scope of this review (see comment 1). However, the report does indicate that the judiciary has experienced problems with obtaining underlying documentation for rent charges from GSA and is informally challenging a number of its rent bills. AOUSC states that rent increases outpacing its appropriations has created a funding crisis. AOUSC does not effectively explain why the judiciary should obtain space and services from GSA at a reduced rate. The judiciary's rental agreements with GSA are interagency agreements the judiciary is expected to fulfill like other GSA tenants. If the judiciary believes specific charges are inappropriate, informal and formal appeals can be made to GSA.

3. AOUSC's analysis of direct appropriations for FBF projects is incorrect. AOUSC suggested that courthouses are funded through direct appropriations. AOUSC further asserted that Office of Management and Budget and GSA officials have said that courthouse projects are funded through direct appropriations and not from FBF revenue. In all but 4 years between 1990 and 2006, Congress appropriated additional funds for FBF. This additional funding was not tied directly to any particular project or

[1]GAO-05-838T.

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. Courthouse projects have been funded through FBF, whether or not there were additional appropriations made to the FBF. We have called this misinterpretation to the judiciary's attention on several occasions, including at the June 2005 hearing on rent relief and in related questions for the record that we provided to the subcommittee.[2]

4. AOUSC said that we made an inferential leap to conclude that space growth caused $139 million of the rent increase. We disagree with AOUSC's comment and strongly believe that AOUSC mischaracterized our analysis as being inferential. In fact, this analysis is based on calculations of rent data trends rooted in basic mathematical logic. More specifically, our analysis is based on the logical conclusion that a net increase in square footage will lead to additional rent charges associated with that space, and the judiciary acknowledges a positive correlation between square footage and rent as "common sense." In estimating the amount of rent to attribute to the judiciary's increase in square footage, we separated the rent into its base components (shell rent, tenant improvements, security, operating, and remaining costs).

- Shell rent increased proportionally with the increase in net square footage from fiscal year 2000 through 2005. In other words, the dollars per square foot that the judiciary pays in shell rent did not change after accounting for inflation. Shell rent is based on the appraised dollars per square foot multiplied by the number of square feet in a building. On the aggregate level, the dollars per square foot remained constant at about $15 in real terms, meaning that the growth in square footage alone caused shell rent to increase. Based on this formula, we can estimate in the aggregate that the judiciary's 19 percent net increase in square footage can be attributed to the $94 million increase in shell rent from fiscal year 2000 through 2005. Any influence of other outside factors, such as real estate rates, would be expressed in the dollars per square foot variable that remained constant.

- Tenant improvements and the remaining costs also increased by 12 and 10 percent, respectively from fiscal year 2000 through 2005—rates slower than the growth in square footage. Although the tenant improvement costs increased, the dollar per square foot rate that the

[2]GAO, *Questions for the Record: Hearing on the Judiciary's Ability to Pay for Current and Future Space Needs*, GAO-05-941R (Washington, D.C.: July 27, 2005).

judiciary pays nationwide for tenant improvements actually decreased in real terms since fiscal year 2000. Tenant improvement costs increased at a slower rate because they amortize after 25 years and are removed from the rent bill once fully amortized, and a number of judiciary facilities are amortizing their tenant improvements. There were a number of courthouse renovations, which included increases in tenant improvement costs, but did not increase the judiciary's overall square footage. However, the slower growth in tenant improvements shows that these were more than compensated for by the amortization of tenant improvements in older facilities. In other words, if the judiciary would not have expanded its space, tenant improvement costs would have fallen rather than risen. Consequently, we attributed the $11 million increase in tenant improvements and the remaining costs to the net increase in square footage occupied by the judiciary.

- Security and operating costs increased at 134 percent and 45 percent, respectively—faster rates than the increase in square footage. Given the 19 percent increase in square footage, we attributed a 19 percent increase in security and operating costs to the net increase in the square footage occupied by the judiciary because the net new space must be protected, heated, and cleaned. As a result, $29 million of the increase in operating costs and $5 million of the increase in security costs are associated with the judiciary's growth in square footage. However, since the actual increases in security and operating costs exceeded the growth in square footage, it is clear that the growth in square footage does not explain all of the increases in security and operating costs. We attributed the remaining $40 million increase in operating costs and $31 million increase in security costs to the disproportionately high increases in those components from fiscal year 2000 through 2005. Security increased because of the increased focus on security since the September 11, 2001 terrorist attacks, and operating costs increased due to recent increases in energy costs.

5. AOUSC conducted a space versus growth analysis of its own. However, AOUSC's analysis uses different rent data and time periods, which greatly limits its analytical value as a comparison to our methodology's results.

- *Different data.* Our data are exactly what GSA billed the judiciary by rent component for every building the judiciary occupied for fiscal years 2000 through 2005. AOUSC's data are different in a number of important ways. First, the AOUSC's table only expresses rent in gross terms, making it impossible to analyze how the different rent components changed. Second, based on the note in the table, AOUSC's rent and square footage statistics do not appear to include the

bankruptcy court, which represents 17 percent of all square footage in the federal judiciary as of fiscal year 2005. Third, the note in the table also indicates that the rent statistics represent the judiciary's Judicial Services Salaries and Expense account. It is unclear if it is a rent line item within the account or other expenses.

- *Different years.* We chose fiscal year 2000 as a starting point to coincide with GSA's introduction of a new rent pricing policy, which provided numeric breakouts for each of the various rent bill components (e.g., shell, operating costs, tenant improvements, etc.). Prior to that year, it is impossible to break out these components, which allow an understanding of the reasons behind rent increases. However, AOUSC chose some dates in their analysis that preceded this change in GSA's rent pricing policy, which limits the information's usefulness. We chose fiscal year 2005 as an ending point because it was the last full year of GSA rent billing data, but AOUSC chose fiscal year 2006 as the end date for each set of figures. Since fiscal year 2006 does not end until September, we chose not to estimate square footage and rent statistics for fiscal year 2006. Consequently, we chose the longest time frame for which to measure trends in the different rent components. Our conclusions apply only to our time frame and should not be considered predictive in nature.

6. AOUSC also said that we should have analyzed other independent variables, such as movement in the real estate market. The aggregate impact of those other variable are captured in the dollars per square foot variable for shell rent that remained constant in real terms from fiscal year 2000 through 2005. For example, if rising real estate rates would have been a large nationwide factor it would have been reflected in rising dollars per square foot rate for shell rent. Other variables are important for understanding the change in rent at the building level, but at the aggregate level, the effect of these variables offset each other. This point is illustrated by the circuit based analysis in figure 4; even though rent and square footage increased proportionally at the aggregate nationwide level, the rates of growth observed at the disaggregate circuit levels varied.

7. AOUSC said that the report's primary focus on rent cost increases in recent years is only a fraction of the whole rent picture because rent for existing courthouses constitutes the majority of the judiciary's rental costs. Although our report discusses the addition of new space as one factor driving rent increases, our aggregate trend data and data at the individual circuit level include rental payments on existing space.

8. AOUSC said that our report provides no context for why the judiciary has needed more space. Our report provides context for why the judiciary has added square footage in a number of places. For example, the draft report we sent to AOUSC for comment contained the following context:

> According to judiciary officials, much of the judiciary's growth and accompanying space-related needs have been the result of elevating workloads, such as increases experienced in civil case filings. Accordingly, judiciary officials stated that the additional space the courts have added, often through construction of new courthouses, was essential in accommodating the creation of new judgeships. Further, more judiciary officials have said this growth has also resulted in the need for ancillary space for court support staff.

In addition, we have added information to the report about the judiciary's increasing workload, such as the workload statistics that AOUSC included on page 14 of its comment letter.

9. AOUSC said that it is mystifying how better data analysis could enable the judiciary to better manage its rent increases. Obtaining and analyzing information on rent costs and space use would give the judiciary a better understanding of the reasons for rent increases and help guide its decisions about space use, especially as the judiciary plans to continue to expand into more new courthouses after its moratorium expires. As discussed in our report, until our review, both GSA and the judiciary were not fully aware of the extent to which energy and security costs had affected rent increases. We believe analyzing cost data to better manage those costs is a basic managerial principle in government and business.

10. AOUSC said that the implication that it had larger than expected increases in rent is inaccurate and insulting. As discussed in the report, it is useful, for purposes of comparison, to consider that percentage increases in rent would occur proportionally with percentage increases in net space added. In other words, holding all factors constant, a net increase in space of 19 percent would logically be accompanied by a 19 percent increase in rent. As our data showed, rent costs increased 27 percent. We did not intend to insult AOUSC; we meant that some rent components increased more than expected given a 19 percent increase in square footage. AOUSC made reference again to its lack of appropriations to pay its rent bill. As mentioned earlier, AOUSC does not effectively explain in its comments why the judiciary's should obtain space and services from GSA at a reduced rate. In the appropriations process, congressional subcommittees conduct hearings at which federal officials provide detailed justifications for their funding requests.

11. AOUSC said that our report assumed that public officials need financial incentives to exercise responsible stewardship. We recommended creating incentives for districts/circuits to manage space more efficiently. One such incentive is linking dollars to space usage. During our review, circuit and district officials with space management responsibility essentially agreed and said that they would consider different choices if they had incentives to better utilize space. In addition, the FBF itself is based on holding federal agencies accountable for the space they occupy.

12. AOUSC said that our report pays inordinate attention to the current assignment of chambers and courtrooms and draws unfounded conclusions about them. Our report does not generalize our site visit findings to all courthouses nationwide, as noted in the report. However, we use the findings from those case studies to illustrate how a lack of incentives may lead to less than efficient space use in these locations.

13. AOUSC said that the team neither spoke with an appellate judge nor asked the judiciary about the appellate courtroom usage practice or needs. In several locations, we met with circuit level officials with responsibility over space use decisions for the appeals courts in their circuits and requested information about the appellate courts' need for space. In addition, we reviewed the long-range facility plans, which include information on the appellate courts' need for space. We also interviewed numerous district, senior district, bankruptcy, and magistrate judges.

14. AOUSC stated that we began our analysis with a preconceived conclusion about rent relief and that this affected the methodological approach we took. In previous reports we have expressed the view that exemptions on rental payments undermine the FBF, an intragovernmental revolving fund that was established, in part, to make federal tenants, including the federal judiciary, directly accountable for the space they occupy.[3] This position had no bearing on our ability to independently evaluate trends in rental payments and related challenges. Our methodological approach allowed us to identify the primary factors influencing the judiciary's rent bill increases, which include square footage, operating costs, and security charges. These data can help all stakeholders better understand the reasons behind the judiciary's rent bill increases, make more informed space allocation decisions in the future,

[3] GAO-05-838T.

and—as our report states—help address AOUSC's concerns with identifying errors in GSA's rent billing.

15. AOUSC said that we chose not to address fundamental issues regarding the appropriateness of GSA's rent pricing policy for courthouses, whether these policies were implemented properly, the impact of rising rental costs on the judiciary's ability to fund other essential needs, or mission-based reasons why the judiciary has and will need additional facilities. These were not the objectives of this review (see comment 1). However, the report does include context on why the judiciary believes it needed additional courthouses (see comment 8).

16. AOUSC said that our report portrays the judiciary as being wrong and being GSA as right. As an example, AOUSC asserts that we only focused on incentives for the judiciary to control costs and not GSA. We disagree that our report portrays any entity as right or wrong. We were not asked to review the appropriateness of GSA's rent pricing policies, incentive structure, or other challenges facing GSA.

17. AOUSC said that our support for GSA's ability to charge rent for donated property, which is not in the report but was discussed at meetings with AOUSC officials, illustrated deferential treatment to GSA. We disagree. GSA is authorized to charge rent on a donated parking lot. Pursuant to 40 U.S.C. 3175, the Administrator of General Services is authorized to accept, on behalf of the federal government, gifts of real property. The Administrator is further authorized pursuant to 40 U.S.C. 586 to set rates for the space and services that GSA provides to federal agencies, and in doing so, shall approximate commercial charges for comparable space and services. We have stated that agency appropriations are available for charges attributable to employee parking spaces that are included as part of GSA's charges for space and services that it provides to agencies. (See in the Matter of Parking Fees and Charges for General Services Administration, B-177610, 55 Comp. Gen. 897 (1976).) While we did not review whether the $11,000 that GSA charged the judiciary for parking in Providence, Rhode Island, was reasonable, GSA was acting within its authority when it accepted the property and charged approximate commercial rates for the parking spaces.

18. AOUSC said our report suggests that the judiciary's rent problems may be due to unnecessary growth in space. We disagree. We make no value judgment on whether the growth was necessary or not. However, given its rent problems, the judiciary's efforts to justify its additional space and validate GSA rent charges are prudent. In addition, AOUSC also said that

GAO sought very little information about the judiciary and ignored pertinent facts provided by judiciary officials. We disagree. We conducted numerous interviews with judiciary officials to obtain information about the judiciary and many of the facts that the judiciary provided were outside the scope of our review.

19. AOUSC questioned our use of site visits as a methodological tool. We often use site visits to illustrate findings and in the case of this report, did not generalize those findings to the larger population (see comment 12). We selected Arizona, Nebraska, Rhode Island, and Western Washington because they were in districts that experienced large overall rent increases from fiscal year 2000 through 2005, were geographically dispersed, and may have been more likely to have challenges in managing rent costs. We chose fiscal year 2000 as a starting point for our analysis to coincide with GSA's introduction of a new rent pricing policy, which provided numeric breakouts for each of the various rent bill components (e.g., shell, operating costs, tenant improvements, etc.) and fiscal year 2005 as an ending point because it was the last full year of rent billing data.

20. AOUSC said that our report characterized the space associated with visiting judges as unused. This comment was not a complete characterization of these issues in our draft report. Our draft report stated that these courtrooms and chambers are not used when a visiting judge is not present. We have clarified the report to allow for the possibility of nonjudicial uses of visiting courtrooms and chambers.

21. AOUSC questioned our understanding of visiting judge policies and practices and said that we never asked about visiting judge courtroom and chamber usage. However, on October 25, 2005, we asked for all courtroom usage data compiled by the judiciary, but AOUSC officials said that the judiciary does not track courtroom usage at any level. We also reviewed *The Use of Visiting Judges in Federal District Courts: A Guide for Judges and Court Personnel*, published by the Federal Judicial Center, the research arm of the federal judiciary.

22. AOUSC said that we mislabeled six photographs of empty courtrooms and chambers as being in Phoenix, Arizona. We clarified the caption to state that the photographs were taken in courthouse locations within the District of Arizona. Regarding the courtroom in Phoenix that AOUSC said was used on 103 days or nearly half of all business days. We have

concluded in a past report that usage rates this low indicate that greater use of courtroom sharing could be considered.[4] We discussed the use of courtrooms and chambers with court officials during our site visits, and we requested courtroom usage data nationwide. AOUSC officials said they do not track courtroom usage at any level and added that any tracking mechanism would under value courtrooms, which are absolutely essential to the judicial process.

23. AOUSC questioned our decision to visit districts where rent costs have increased and said that the report contained no information on why the district needed new facilities. First, our report methodology clearly indicates that we chose the U.S. Districts of Arizona, Nebraska, Rhode Island, and Western Washington because their rent costs were rising and they were geographically diverse, but we also visited Eastern Virginia and Maryland because they contained a new courthouse, a renovated courthouse, and a courthouse that was targeted for replacement. Second, our report addresses why the judiciary believes it needed new facilities (see comment 8).

24. AOUSC said that GAO did not validate the rental charges for courthouses, as it said we would. Although validating GSA rent charges was not part of our objectives (see comment 1), we did interview GSA officials at each of our site visits. In those interviews, we discussed how GSA calculates rental charges, including reviewing floor plans, occupancy agreements, and rent bills. In addition, our report correctly describes Rhode Island's disputed rent bill as informal in that the judiciary has not pursued an official challenge under policies prescribed by GSA.

25. AOUSC's subtitle said we inaccurately assessed judicial chambers and courtroom space, but AOUSC does not raise any factual inaccuracies in the body of its comments. Instead, AOUSC said that the issue of how chambers and courtrooms are assigned has little significance to rent. Our draft report addressed how courtrooms and chambers are assigned to illustrate the challenges that the judiciary faces in managing its rent costs. For example, we noted that special proceedings courtrooms are not routinely assigned to a district judge, as an illustration of how a lack of incentives may be undermining efficient space use and consequently causing increased rent payments by the judiciary. In addition, we noted

[4]GAO-97-39 and GAO, *Courthouse Construction: Sufficient Data and Analysis Would Help Resolve the Courtroom-Sharing Issue*, GAO-01-70 (Washington, D.C.: Dec. 14, 2000).

that the judiciary said that it intends, over time, to assign courtrooms reserved for visiting judges to resident judges when a judicial vacancy is filled or a new judgeship is created. Regarding AOUSC's criticism of some of our observations of how space is used as "snapshots" that are not useful; we agree that courthouses are built for the long-term and that complex factors are involved. However, the judiciary is experiencing significant growth in rent costs in locations where it is paying for space that is not used regularly or sometimes not at all. This demonstrates one of the challenges facing the judiciary that we describe in our report. While the judiciary has identified a long-term need for space that is currently underutilized, it is unclear whether the judiciary has determined if there are opportunities for better utilization in the short-term.

26. AOUSC said that our report included no information on new judgeships in the Districts we visited and lists the District of Arizona as an example. The draft report AOUSC reviewed included information on the creation of new judgeships, and the report now includes the District of Arizona as an example. The Chief Judge within the District of Arizona said that these new courthouses were necessary due to new judgeships and increasing caseloads. AOUSC asserted that limiting our analysis to square footage figures suggests that the construction of courthouses is unrelated to definable needs. As discussed in comment 8, our report discusses the judiciary's increased caseload in the context of space needs.

27. AOUSC questioned our use of testimonial evidence obtained during site visits and our refusal to release names of officials associated with specific testimonial evidence. We generally do not identify individuals by name in our audit reports for several reasons, one of which is to avoid adversely affecting those individuals. For similar reasons, during the auditing process, we have found that we are better able to obtain information from officials in circumstances in which they do not feel intimidated or pressured. Thus, we avoid identifying officials by name so they can speak freely without concern that their statements will be held against them. In addition, our processes and procedures for collecting testimonial evidence provide assurance that such statements, when used in a report, are heard by more than one analyst, accurately described, and corroborated by multiple sources. AOUSC and a district judge made a formal request for revealing the identities of the individuals whom we interviewed, which we declined for these reasons.

28. The questions AOUSC raises, including whether methods used for determining commercially equivalent rental charges are appropriate for courthouses and whether GSA's bills are accurate, were never objectives

of this review. AOUSC also suggests that we did not address how GSA calculates rent in the draft report. We addressed this issue in the background section of our report. At the beginning of our review, we identified a descriptive objective related to how GSA calculates rent. This was never intended to be an evaluative objective, and as such, we included the information in the background section of this report. It is common in our audits that background or descriptive information collected be conveyed in this manner.

29. AOUSC said that we chose to ignore judiciary officials' concerns about a GSA rent billing and bonus program. Neither of these issues were within the objectives of this study (see comment 1). Our report says that the judiciary has identified errors. In addition, we discussed the issue of GSA billing errors with an official in GSA's Office of the Inspector General (OIG). This official said that OIG has begun work looking into GSA rent billing errors in response to AOUSC's concerns. We agreed to discuss our findings with OIG staff after the completion of our review.

30. AOUSC said that we amended our report to reflect new information regarding AOUSC's identification of billing errors. We have added information to our report regarding AOUSC's challenges to GSA rent bills.

31. AOUSC said that the draft report did not address or identify that the judiciary has found it challenging to obtain GSA's back-up documentation regarding rent charges. We have added the following information on judiciary's rent validation effort to our report:

The judiciary said that this [rent validation] effort has been hindered by an inability to get underlying documentation, such as floor plans and appraisals, from GSA in a timely manner. AOUSC indicated that this information is necessary to truly validate GSA rent bills.

32. AOUSC noted that we described the basic components of rental charges but suggests that we examine the rental charges in a number of other ways, including the rent trends over the life of buildings and the effect of real estate trends on rent. The trend data we developed represent a first step in understanding judiciary's rental payments to GSA and can serve as a basis for questions and inquiries by GSA and the judiciary.

33. AOUSC said that the study does not say whether GSA's appraisal-based pricing approach is appropriate for courthouses. Examining the appropriateness of GSA's rent pricing policy was not part of this study (see comment 1).

34. AOUSC said that the study does not assess GSA's return on investment pricing policy and raises a number of concerns with the GSA policy. Evaluating the relative merits of GSA's different methods for rent pricing was not one of the objectives of this study (see comment 1).

35. AOUSC questioned our knowledge of the federal courts. Over the past 20 years, we have compiled a large body of work on federal courthouse construction and federal real property. Our work on courthouse construction has focused primarily on construction costs, planning, and courtroom sharing (see Related GAO Products at the end of this report). In addition, we have a large body of work on the federal courts' mission-related activities, such as caseload management and sentencing.

36. AOUSC said that it is essential to provide information about the judiciary's growth and cited a number of statistics related to filings, judges, and staff. Our report provides context for why the judiciary has added square footage in a number of places, including the growth statistics listed here (see comment 8).

37. AOUSC cited additional contextual issues missing from the report including the fact that access to the federal courts is a core value in the American system of government, and that courthouses are historic and important symbols of the federal government in communities across the country and often play a significant role in redevelopment efforts. We added context to the report to reflect this comment.

38. AOUSC says that the GAO did not include information in the report about the need to build courthouses that can accommodate future expansion and that it makes no sense to have a courthouse full upon occupancy. However, our draft report discussed as a challenge that the judiciary builds to the 10-year need to accommodate future expansion, and this can lead to larger rent payments in the short term. We added context to the report to reflect AOUSC's view on this issue.

39. AOUSC attributes a quote "inefficient space use" that is not in the draft report.

40. AOUSC said that our draft report indicated that the Alexandria, Virginia, Courthouse "should" be full. We have clarified the report to state that the Albert V. Bryan Courthouse in Alexandria, Virginia is reaching the 10-year point where it is expected to be completely full but that we found that there were unassigned chambers and courtrooms. In addition, we

noted in the report that AOUSC said that the courthouse in Alexandria should be full in the next few years.

41. AOUSC said that the report unfairly criticizes the judiciary for increasing courtroom flexibility in exchange for building fewer courtrooms than were allotted. Our report says that this approach can create a more flexible courthouse and that the judiciary expanded the courtrooms in exchange for building fewer courtrooms than allotted. However, it is important to note that any benefits of this policy would only be realized in the future if the Districts can effectively implement a policy of courtroom sharing that does not presently exist.

42. AOUSC said that we did not include information on the challenges associated with changes in real estate market dynamics. The challenge to which the judiciary refers is an inherent part of the FBF. Rent payments by law must approximate commercial rates; and GSA, through FBF, encourages federal agencies to be accountable for the space they use by requiring them to budget and pay for their own space requirements. A committee report accompanying the enactment of FBF noted that because each agency would have to budget for its space needs, doing so would promote more efficient and economical use of space by government agencies. However, this approach may not work as intended with the judiciary unless the incentives are in place at the point where space use decisions are made. We found that the judiciary lacks incentives at the circuit and district levels for efficient space use and management. In addition, AOUSC said that it faces challenges in what space within specially built courthouses it can return to GSA for security reasons. We added context to the report to reflect this point.

43. AOUSC said that the draft report did not include information on the challenges associated with obtaining underlying documentation in support of GSA's rent bills. We added context to our report indicating that the judiciary has experienced problems with obtaining underlying documentation for rent charges from GSA.

44. AOUSC said that the draft report did not include information on the challenges involving space implications of technology. However, our draft report included a section indicating that the *Design Guide* criteria does not keep up with technological changes, and we recommended that AOUSC update its criteria, accordingly. In addition, AOUSC cites the fact that the Seattle court reduced its library by half the size, as an example of implications of technology. However, it is important to note that instead of reducing the size of the courthouse by this amount, the district chose to

create a large conference center with the extra space. AOUSC also indicated that the Judicial Conference will review library space standards in September of 2006, which is a positive step.

45. AOUSC said that our draft report mischaracterizes what transpired in Seattle, with regard to court reporter space. We disagree. Although we were unable to verify when these decisions were made, our report reflects the statements made by circuit and district officials on our visit, and we found that the bankruptcy chambers in the Seattle courthouse exceed *Design Guide* standards. AOUSC also said that it is not always practical to return space in an existing courthouse to GSA. We added context to the report to reflect this point, and we believe that this makes the decisions made during courthouse design even more critical.

46. AOUSC said that it will update the *Design Guide* to reflect the impact of electronic filing on storage requirements in the clerks' office, which we view as a positive step that is in line with our recommendations.

47. AOUSC indicates that the four magistrate courtrooms in the Baltimore courthouse are an inadequate size that creates security concerns. We have added additional context in the draft on this matter. However, the size of courtrooms is not listed as a security risk factor for increasing the priority for having a new courthouse built. In addition, it is important to note that the judiciary used the lack of magistrate courtrooms in the courthouse to increase its priority for having a new courthouse built in Baltimore. This goes against *Design Guide* instructions, which indicate the following: "Differences between space in the existing facility and the criteria in the *Design Guide* are not justification for facility alteration and expansion."

48. AOUSC said that a number of challenges were not addressed in the report, including workload, security, and statutorily designated places of holding court. AOUSC also listed a number of challenges, including problems with the funding stream for courthouse construction projects, communication from GSA regional offices to determine the cost implications of potential projects, and GSA keeping projects on schedule. Our draft report addressed a number of these challenges, and we have listed AOUSC's views of these challenges in the body of this report.

49. AOUSC incorrectly interprets our draft report as stating that we use the word "inefficient." The word "inefficient" did not appear in the draft report.

50. AOUSC indicates that we make an incorrect statement about a bankruptcy judge that travels between Tacoma and Seattle, Washington. We continue to believe our statement that a bankruptcy judge in the Western District of Washington maintains an exclusive courtroom and chambers in two separate locations, within a 30-mile radius, is factual and accurate. First, this is the way judiciary officials conveyed his status in interviews. Second, the Web site for the Bankruptcy Court for the Western District of Washington lists different chambers, courtrooms, and staff contacts for the bankruptcy judge in Seattle and Tacoma.

51. AOUSC notes that both courtrooms used by the bankruptcy judge, who travels between Seattle and Tacoma, Washington, do not have holding cells. We clarified the report to note that the Tacoma courthouse has holding cells, which exceed *Design Guide* standards for bankruptcy courtrooms, but the bankruptcy courtrooms in Seattle do not.

52. AOUSC said that our highlights page incorrectly states that an appeals court judge had designated chamber space in Alexandria as well as McLean, Virginia. We believe that the word "designated" is appropriate because the appeals court judge occupied that space at one point, according to a judiciary official, before choosing to move to leased space in McLean, Virginia. Thus, it is correct to state that this judge had designated space in the building. The space was vacant during the time of our visit. We note in our report that the judiciary now uses this space for a variety of other purposes. However, it is not clear that it needed to use the space designated for the appeals judge for these purposes since the courthouse is not currently fully occupied. Specifically, the judiciary said that the Alexandria courthouse currently has 9 judges for 14 courtrooms in addition to excess space in its secure parking lot.

53. AOUSC said that we make several inappropriate statements about tenant improvements in the draft report. AOUSC said that it is inappropriate to refer to tenant improvements as "finishes." We feel that referring to tenant improvements as finishes is appropriate because GSA defines tenant improvements as the improvements that take the space from shell to finished condition. AOUSC said that the report links "steep increases in cost to the types of finishes." We believe that this is a mischaracterization of the text in the draft report. We link the increases in tenant improvement costs to the new courthouses constructed in recent years and the types of finishes the judiciary has chosen. We clarified the report to indicate that there are tenant improvement finishes in addition to wood finishes.

54. AOUSC said that we need to add context to the finding that tenant improvement costs in the District of Rhode Island increased 927 percent, but we believe our draft report addressed these issues. Our report states:

> The District of Rhode Island experienced a 927 percent increase in its tenant improvement costs, which GSA attributed to the cost of finishes for major renovations of the district's two primary courthouses—the Federal Building U.S. Courthouse and the adjacent J.O. Pastore Federal Building. District court officials told us that practically every part of the building had tenant improvement needs. GSA officials said that both of these major renovation projects, chosen in lieu of new construction, led to increases in the overall quality of the space the district occupies and, consequently, very large increases in tenant improvement charges. The judiciary noted that this facility was renovated within *Design Guide* standards and within the tenant improvement allowance limits established by GSA.

55. AOUSC suggested that we change the word "architectural" to "structural" in our references to the security based elements of courthouses. We accepted this suggestion, and changed our report, accordingly.

56. AOUSC said that the draft includes misleading information about security needs and secure circulation patterns. We disagree with this statement. Our draft report included context that the judiciary suggests. For example, the draft report stated:

> The Marshals Service requires separate circulation patterns in order to provide adequate security for federal courthouses. To maintain separate circulation patterns courthouses need elevators leading from each independent circulation parking garage or building entrance to each independent circulation area within each floor. For example, the *Design Guide* provides for separate elevator systems (1) linking judicial officers to their restricted parking areas, (2) linking prisoners with the secured cell block and parking location, and (3) linking the public with the public entrance.

AOUSC also again questioned our expertise, which we addressed in comment 35.

57. AOUSC said that figure 5 in the draft report labeled "Sample Courtroom and Associated Support Spaces That Were Based on *Design Guide* Criteria" is inaccurate. We developed this figure because the *Design Guide* depiction of a district sized courtroom is not drawn to scale. In addition, our sample courtroom graphic is based on the floor plan of an actual courtroom that was built to *Design Guide* standards. The AOUSC also states that we imply that every courtroom has a separate set of elevators. We have clarified the report to reflect that independent

hallways, rather than a separate set of elevators, are replicated for each district judge. The point remains that modern courtrooms include more than just the actual courtroom and that a policy which provides one courtroom per district judge in new courthouses also must provide all the support spaces as well.

58. AOUSC said that our draft report implies that the judiciary uses a one courtroom per judge criteria for the appeals court and says that this is not true. We disagree that our draft report makes this implication. Our report states that the absence of criteria could lead to variation in the number of courtrooms that appeals courts are provided. Data from the judiciary shows that the number of courtrooms per appeals court judge varies by circuit. For example, the 3rd Circuit has two appeals courtrooms for 22 circuit judges while the 8th Circuit has nine appeals courtrooms for 21 judges.

59. AOUSC said that our linkage between the lack of criteria for the number of appeals courtrooms and a possible increase in rent is conjecture. We believe there is evidence to support a logical link between criteria for the number of appeals courtrooms and chambers and the judiciary's ability to limit growth and consequently rent. Specifically, since fiscal year 2000, the appeals court has increased its share of rent costs and the square footage it occupies faster than the district and bankruptcy courts. Criteria on the number of courtrooms and chambers assigned to the appeals court may help stem this growth.

60. In responding to our first recommendation, AOUSC said that the specific types of data we recommend tracking would not be useful for program planning, management or budgeting. We disagree. Without accurate data on the costs of rent components (e.g., shell rent, operations, and tenant improvements) maintained over time, the judiciary cannot identify, monitor, and respond to trends in rent costs. Similarly, without tracking its use of space over time—both overall (rentable square footage) and by function (district, appeals, and bankruptcy) and level (circuit and district)—the judiciary cannot identify and address trends affecting its rent costs. Obtaining and analyzing information on rent costs and space use would give the judiciary a better understanding of the reasons for rent increases and help guide its decisions about space use, especially as the judiciary plans to continue to expand into more new courthouses after its moratorium expires at the end of fiscal year 2006. As previously mentioned (see comment 9), until our review, both GSA and the judiciary were not fully aware of the extent to which energy and security costs had driven rent increases. We believe that the benefits of analyzing cost data to better

manage those costs is a basic managerial principle in government and business.

61. AOUSC said that we should recommend that GSA provide all data that will help the judiciary to identify mistakes in rent bills. We agree that data accuracy and accountability are important and recommended that the judiciary work with GSA on tracking changes in rent. We discussed the issue of GSA billing errors with an official in GSA's Office of the Inspector General (OIG). This official said that OIG has begun work looking into GSA rent billing errors in response to AOUSC's concerns. We agreed to discuss our findings with OIG staff after the completion of our review.

62. AOUSC said that it is possible that some of the growth in the appeals courts square footage may be attributed to library space, previously assigned to the district courts. AOUSC raised this issue for the first time in these official comments. Consequently, we did not formally evaluate the coding of judiciary space at that level, and it is not clear from the AOUSC's statement when the recoding occurred or how much space was affected. However, we still believe that establishing criteria for the number of appeals courtrooms and chambers is needed in order to better control the amount of space allocated to them.

63. AOUSC said that it is integral to an understanding of square footage growth that we explain there are many factors outside the judiciary's control that drive the courts' space needs. Our draft report addressed workload issues, as does our final report. See comment 8.

64. AOUSC indicates that accurate data is important, and we agree. We noted in the draft report that one of the ways trend data can be useful is in identifying rent billing errors.

65. In responding to our second recommendation regarding incentives for efficient space management, AOUSC says that the recommendation is based on the false premise that space decisions are within the control of the local districts and circuits. We disagree. While the law specifies some of the locations where the judiciary holds regular sessions of court, the amount of space occupied at each location is within the judiciary's discretion. According to AOUSC, Congress has recognized the importance of local decision making on space matters by providing circuit judicial councils—the entity that has first-hand knowledge of local caseload and other trends important to the judiciary's space needs—with the statutory authority to determine the need for space accommodations. AOUSC also states that one could argue that there is no need for the Tacoma facility

because there is a large facility in Seattle and notes that Congress chooses some of the locations at which the judiciary operates, however, our draft report does not address the relative merits of locating the court in Tacoma but only the challenges associated with using it efficiently.

66. AOUSC said that the report should recognize that there are interests outside the judiciary that can influence space decisions. We believe that the draft report did this. For example, the conclusion section of the draft report stated that "to some extent, the judiciary's space uses are mandated, and some associated rent costs are beyond the judiciary's control." In addition, we have added information on other challenges identified by the judiciary that either related to ongoing disagreements with GSA that we did not evaluate or are addressed in our report in other places.

67. AOUSC said that it is working to create incentives by establishing budget caps for space rental costs. This concept was approved on March 14, 2006, and many of the details have yet to be determined. This action has the potential to be an effective tool in space management. As AOUSC points out, it faces serious implementation challenges. We agree.

68. AOUSC said that GAO had committed to deleting the recommendation that the judiciary should establish a policy for senior district judges' courtrooms. We disagree. AOUSC officials pointed out in a meeting that we have acknowledged in the past that the judiciary has a policy encouraging courtroom sharing among senior district judges. Our recommendation would enhance this policy by providing specific criteria on when such sharing could take place. We agreed in a discussion of this issue with AOUSC to consider whether the judiciary's existing policy, which only encourages sharing, addressed this issue. We concluded that the policy of granting flexibility to the circuits and districts regarding senior district judges does not represent nationwide criteria for when and how courtroom sharing for senior district judges should occur.

69. AOUSC said that the appeals courtrooms are not a significant part of the judiciary's space inventory and that we do not have sufficient knowledge to make such a recommendation. We believe that the appeals court is a significant part of judiciary's space inventory. Specifically, our report found that in fiscal year 2005, the court of appeals represented 11 percent of the judiciary's overall square footage, or 4.4 million square feet, which includes courtrooms, chambers, and support space. We also found that the appellate courts' share of square footage occupied by the judiciary had grown between fiscal years 2000 and 2005. And, as discussed in

comment 13, AOUSC said that the team neither spoke with an appellate judge nor asked the judiciary about the appellate courtrooms usage practice or needs. In several locations, we met with Circuit level officials with responsibility over space-use decisions for the appeals courts in their circuits and obtained information about the appellate courts' need for space. In addition, we reviewed the long-range facility plans, which include information on the appellate courts' need for space. We also interviewed numerous district, senior district, bankruptcy, and magistrate judges.

70. AOUSC said that the judiciary is committed to updating its space standards on a regular basis. We support this effort.

71. AOUSC said that backfilling old courthouses can have benefits to FBF. We agree that vacant buildings of which GSA cannot dispose creates a drain on FBF, and we have added context to the report to reflect that.

72. AOUSC said that a problem with the draft report is that it does not contain a fair, objective, and thoughtful assessment of the judiciary's request for rent relief. An assessment of the judiciary's request for rent relief was not one of the objectives of this study (see comment 1). We have provided additional contextual information on the growth in the judiciary's workload to our report.

73. In a letter enclosed in AOUSC's comments, the Chief Judge of the U.S. District Court of Maryland said that the four magistrate courtrooms in the Edward A. Garmatz Federal Building and U.S. Courthouse were ill-suited to handle the drug and gun cases that characterize a big-city federal docket. We added context to the report indicating that judiciary officials said that the magistrate judge hearing-room size poses security concerns because of the lack of separation between individuals in custody, the victims, law enforcement officers, judges, and the lawyers (see comment 47).

74. The Chief Judge said that he did not know how we concluded that the lack of courtrooms in the Baltimore Courthouse were used to increase its priority for having a new courthouse built in Baltimore. We obtained the project scoring worksheet for Baltimore that indicated that four magistrate judges are "impacted," meaning that they do not have courtrooms. Each impacted judge increases a district's urgency score for justifying a new courthouse. Four magistrate judges are impacted because the district has chosen to use four magistrate courtrooms for storage. This appears inconsistent with the *Design Guide*, which states, "Differences

between space in the existing facility and the criteria in the *Design Guide* are not justification for facility alteration and expansion."

75. The Chief Judge said that our draft report portrays the court's space decisions as irrational and arbitrary and that we did not study the type of proceedings that magistrate judges handle. We disagree that our report portrays the judiciary in this way. Our report states that the district chose not to use the courtrooms because they do not meet *Design Guide* standards, and we have added that the judiciary believes they pose security concerns (see comment 43). However, the size of courtrooms is not listed as a security risk factor for increasing the priority for having a new courthouse built. In addition, as part of our review, we reviewed the role of magistrate judges and interviewed numerous judges, district clerks of court, and circuit officials that were knowledgeable of the role of magistrate judges.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the individual named above, Keith Cunningham, Randy DeLeon, Bess Eisenstadt, Brandon Haller, Grant Mallie, Susan Michal-Smith, Joshua Ormond, Elizabeth Repko, David Sausville, and Gary Stofko made key contributions to this report.

Related GAO Products

Questions for the Record: Hearing on the Judiciary's Ability to Pay for Current and Future Space Needs, GAO-05-941R. Washington, D.C.: July 27, 2005.

Courthouse Construction: Overview of Previous and Ongoing Work, GAO-05-838T. Washington, D.C.: June 21, 2005.

Courthouse Construction: Information on Project Cost and Size Changes Would Help to Enhance Oversight, GAO-05-673. Washington, D.C.: June 30, 2005.

L.A. Federal Courthouse Project: Current Proposal Addresses Space Needs, but Some Security and Operational Concerns Would Remain, GAO-05-158. Washington, D.C.: December 20, 2004.

Courthouse Construction: Information on Courtroom Sharing, GAO-02-341. Washington, D.C.: April 12, 2002.

Federal Judiciary Space: Update on Improvement of the Long-Range Planning Process, GAO-01-308R. Washington, D.C.: January 25, 2001.

Courthouse Construction: Sufficient Data and Analysis Would Help Resolve the Courtroom-Sharing Issue, GAO-01-70. Washington, D.C.: December 14, 2000.

General Services Administration: Comparison of Space Acquisition Alternatives—Leasing to Lease-Purchase and Leasing to Construction, GAO/GGD-99-49R. Washington, D.C.: Mar. 12, 1999.

Courthouse Construction: Better Courtroom Use Could Enhance Facility Planning and Decisionmaking, GAO/GGD-97-39. Washington, D.C.: May 19, 1997.

Courthouse Construction: Information on the Use of District Courtrooms at Selected Locations, GAO/GGD-97-59R. Washington, D.C.: May 19, 1997.

Courthouse Construction: Improved 5-Year Plan Could Promote More Informed Decisionmaking, GAO/GGD-97-27. Washington, D.C.: December 31, 1996.

Federal Courthouse Construction: More Disciplined Approach Would Reduce Costs and Provide for Better Decisionmaking, GAO/T-GGD-96-19. Washington, D.C.: November 8, 1995.

General Services Administration: Opportunities for Cost Savings in the Public Buildings Area, GAO/T-GGD-95-149. Washington, D.C.: July 13, 1995.

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.

Federal Buildings Fund Limitations, GAO/GGD-93-34R. Washington, D.C.: Apr. 5, 1993.

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

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Statement of the
Honorable Eleanor Holmes Norton
June 22, 2006
Subcommittee Hearing on GAO Report regarding Court Rent Increases.

Thank you, Chairman Shuster.

Chairman Shuster, a year ago yesterday, June 21, 2005 the subcommittee met in room 2167 to hear testimony regarding the judiciary's ability to pay for its current and future space needs. Many of the witnesses at that hearing are with us again today and we welcome them. At that hearing the judiciary as well as the General Services Administration (GSA) committed to a series of actions that each entity would undertake to control the courts' run-away rental costs. The Committee did its part by asking the Government Accountability Office (GAO) to review how the courts budget for rent, how GSA accounts for the rent, and what impact the courts' rent relief request of nearly $500m would have on the Federal Building Fund (FBF).

We are here this morning primarily to hear from the GAO regarding our request. However, in preparation for today's hearing I reviewed the June 2005 hearing record to refresh my memory on exactly what GSA and the Courts committed to doing to address this persistent rent problem.

However, before I proceed I would like to mention an action the courts did take four months ago. The Courts took an action that is very troubling to me personally and also should be troubling to other members of this committee, which has been so accommodating to the Courts. Mr Chairman, the Courts convinced the senate and house **judiciary** committees to introduce

legislation that would in effect cap what the courts would pay into the Federal Building Fund (FBF). They took this action long before our requested GAO report was finished, long before they had even finished what they committed to doing, long before GSA had finished its attempts to identify and renegotiate court leases, and certainly with no consultation with any member of this committee. In accordance with standard practice the parliamentarian referred the house bill to this committee. The Courts should know by now that you can't deal with issues like this by going around this committee!

This "rear guard" action seems to undercut the legitimacy of their efforts to solve their own problems. Rather than get at the root of the problem their "solution of choice" was to limit their exposure and thus, have other agencies in the federal building fund in effect subsidize the courts spending habits.

Mr. Chairman, let me move on. In recognition of its rent predicament, in March 2004 the courts imposed a one year moratorium on court construction. In March 2005, the Judicial Conference voted to extend the moratorium for one year. Also in 2005 the courts Security and Facilities Committee committed to reviewing the space standards in the Design Guide with an "emphasis on controlling costs" (pg 13 hearing record). You yourself, Mr. Chairman, noted that space for judges had increased 23 percent, with the average space for judge's chambers at 2800 square feet, as compared to 1200 square feet for members of Congress (pg 29 hearing record). Thus, this initiative was well worth pursuing and should produce some substantive savings.

Further, the same Committee began a long range evaluation of its planning process by "examining staff and judgeship growth as well as the space standard use for estimating square footage needs." (pg 13 hearing record).

Finally, in order to release unneeded or underutilized space the Committee, under Judge Roth's leadership, the Space Committee wrote to all judges requesting that they cancel pending space requests wherever possible. Judges were also requested to recommend closure of visiting facilities without a full time resident judge (pg.12 hearing record).They also were to re-examine criteria for non-resident visiting judges and the release of space in probation and pretrial services. (pg 13 hearing record).

Thus, Chairman Shuster, from these actions undertaken by the courts, the Committee can expect the following information:

- What changes were made to the Design Guide, which governs the size, shape and attributes of courthouses? What is the anticipated saving associated with each of those changes?
- How many facilities without a full time judge were recommended to be closed? What is the anticipated savings associated with this action item?
- What is the status of the moratorium? Has it been extended for another year?
- What space criteria have been developed for non-resident visiting judges?
- What did the review of release of probation and pre-trial services produce? What are the savings associated with the release of this type of space?

Chairman Shuster, in addition to these actions taken by the Courts, GSA has also been busy during the past year with its own actions to address the courts cash issues. During the June 2005 hearing the then Commissioner committed to doing the following: (1.) they hired a third party consultant to verify the accuracy of the 2700 rent bills. That analysis was supposed to be completed during the summer of 2005. (2.) they offered to work with the courts to dispose of underutilized courthouse, based on the list provided by the courts, (3) they offered to reduce the scope of new projects (4) they offered to reduce the level of finishes and (5 to offered to renegotiate existing leases in private sector buildings. I hope these actions produced the results the committee expected and I await GSA's testimony.

Before I close, Mr. Chairman, I would like to bring to your attention and the attention of other subcommittee members, a report prepared in 1996 by the Administrative Office of the Courts at the direction of and for the Judicial Conference. This report is entitled *Space Management Initiatives in the Federal Courts* and I would like to submit a copy for the record. What is remarkable about this report, Mr. Chairman, is not that the cost controlling recommendations were made a **decade** ago but that they have such a familiar ring today – 10 years later. I quote:

"re-examination of existing space inventory and active space requests to identify "marketable" square foot age amounts that can be released to GSA",

"Personnel levels will be restricted to 84 percent of staffing formulas" (the courts unfortunately moved in the opposite direction and insist on 100 percent),

"existing inventory and active space requests will be reviewed to determine that space is shared where ever possible" – Mr. Chairman I repeat – **space will be reviewed to determine sharing.** Types of space to be considered include training rooms, conference facilities, chambers collection, automation support areas, and reception areas".

Mr. Chairman the next recommendation is especially revealing and it deals with the committee direction on courtroom sharing:

Courtroom Sharing. *The Congress has asked the judiciary to consider sharing courtrooms and to determine the impact on a judge's ability to try cases if courtroom sharing were implemented. The Court Administration and Case Management Committee, working in conjunction with other appropriate committees.....should be tasked by the Conference to determine what policy on courtroom sharing for active and senior judges should be adopted, and whether the impact of any delays that would result for sharing courtroom will adversely affect case processing."*

So here we have, Mr. Chairman, recommendations from a **decade ago** from the Courts' own staff, and still the courts have not acted in such a way to institutionalize this concept in its planning. In the above recommendation the AOC does not say **"if"** courtroom sharing should take place, it assumes it will and recommends that a policy be determined. Further, Mr. Chairman the AOC suggests this policy cover **active** as well as senior judges, and finally they ask for impact analysis linking possible delay with courtroom sharing. Additionally, this report does address usage data and I quote: "The Administrative Office will be required to provide inventory and **usage** data on a per capita or other basis to judicial councils…"(p A4) As I understand it, Mr. Chairman, this is

precisely the type of data you have been trying to get for over a year, and here is was recommended to be collected over a decade ago.

Mr. Chairman, the **very first** paragraph of the 1996 report acknowledged the problem of having a centralized rent payment process driven by decentralized approval and use. The 2006 GAO report also identifies the centralized payment system as a source of problems with efficient space management. In 1996 the Administrative Office of the Courts recognized the link between maintaining appropriate staffing levels and having sufficient funds to pay its rent bill. Thus, it is quite dismaying to learn that a decade later instead of making space decisions with an eye to maintain an 84 percent staffing levels, the courts have moved in the opposite direction and insist on making space decisions based on 100 percent staffing, which of course makes its more difficult to pay rent bills.

Chairman Shuster, GSA is not to be held blameless in this rent fiasco. For some time now the agency has more of a "lap dog" for its clients instead of an "attack dog" for the taxpayers. Time and time again over the past decade the agency has allowed its clients to redesign, re-assign, and re-think space decisions with no thought of the financial consequences. The number of amended resolutions has steadily grown as has the cost of the court program. GSA has given the impression to it clients that they, the agencies, are the real estate experts not GSA. Where GSA should be leading, GSA is at best walking hand-in-hand with its clients.

For example, staff recently inquired of GSA why there was planned to be not one, not two, but **three** fitness centers in the San Diego Courthouse for

about a dozen and a half judges and the US Marshals. GSA replied that was what the client wanted. I understand since the staff made a fuss over the fitness centers the number has been reduced to two, because staff has been told the Marshall refuse to share with the judges. Where was GSA in all this???? Why were three planned in the first place???

Mr. Chairman I am not naïve enough to believe that necessary changes will happen over night or that they will happen willingly. But, I am recommending that we continue the practice put in place last year – that is to withhold authorizing any new additions to the courts inventory until Congress gets the utilization report being prepared by the Federal Judicial Center, and details on real savings and programs put in place by the courts and GSA to really control spending.

Chairman Shuster, this subcommittee has a long history of bi-partisan, actually non partisan, action. We are problem solvers of management issues that fly under the radar here on Capitol Hill but have significant financial consequences. Under your leadership we will get our hands wrapped around this problem once and for all and will provide an efficient framework for GSA and the courts to make asset management decisions. As I mentioned last year, legislation may be necessary. I am putting the finishing touches on draft legislation that I will instruct my staff to share with your staff. I think some remedial action may be necessary and I welcome your thoughts and suggestions not only on the substance but also on how to proceed.

Thank you Chairman Shuster and welcome to our witnesses this morning.

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 SPACE 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 FUTURE OF THE FEDERAL COURTHOUSE CONSTRUCTION PROGRAM: RESULTS OF A GAO STUDY ON THE JUDICIARY'S RENTAL OBLIGATIONS"

June 22, 2006

Good morning Mr. Chairman and members of the Subcommittee. I appreciate the opportunity to appear before the Subcommittee today to provide commentary on the GAO study of the judiciary's growing rental obligations. I want to note at the outset that the judiciary is grateful to the Transportation and Infrastructure Committee for supporting and furthering the administration of justice through the authorization of new courthouse construction projects and courthouse renovation projects over the past many years. The judiciary's workload, judges, and staffing have grown substantially over the past two decades. A modernization and expansion program has been critical to provide adequate facilities for the federal courts to serve their vital public purpose. We understand that there are many federal needs competing for scarce capital resources in government, and we deeply appreciate the Committee's past and continuing willingness to recognize the needs of the judiciary through authorizing courthouse projects.

I appear before you today at some disadvantage: I have been asked to testify about a GAO report, scheduled to be issued today, that I have not seen. I read a draft version of the report, which was seriously flawed. Key issues were surprisingly unaddressed. The preliminary assessment of the underlying reasons for the judiciary's increased rental charges was both insufficient and misleading. We provided extensive comments on the draft report which are appended to this statement. I can only hope that the factual inaccuracies in the draft will have been corrected, and that the final report presents a more thoughtful and objective analysis, but I fear that many of the draft's deficiencies will not have been addressed in so little time.

Rent Issues

There are three vital points that need to be considered in any review of the rent charged by GSA to the judiciary. The first is whether increasing rent charges reflect a corresponding increase in the amount of space rented. The second point is whether GSA rent charges are accurate. The third and most significant point is whether GSA prices courthouses appropriately.

Since 1985, the rent charges imposed by the General Services Administration, adjusted for inflation, have grown at twice the rate as the increase in square footage rented. Rent increased 333 percent, adjusted for inflation using the same CPI index used by GAO. During the same period, square footage increased 166 percent. Non-inflation-adjusted actual rent costs increased four times as much as square footage.

From my reading of the draft report, however, GAO's analysis of rent increases was too limited. While space inventory growth can be expected to increase rental charges, the idea that new space accounts for much of the increased rent simply does not hold true. GAO's draft report highlighted a six-year period with 27 percent rent growth, 19 percent growth in shell rent, and 19 percent growth in new space. This does not present an accurate picture for this Committee. The twenty-year analysis during which rent grew at double the rate of new space is a more meaningful statistic.

Moreover, the bulk of the judiciary's rent bill is not for new space, but to pay rent for old courthouses. Having to pay escalating rent charges for the existing inventory of facilities is the problem for which we requested rent relief.

As for the accuracy of rent calculations, improper charges by GSA have increased the judiciary's rental charges by millions of dollars. After reviewing documentation which GSA provided only reluctantly, the judiciary has uncovered $38 million in annual overcharges for only 15 courthouse facilities – with the potential for at least $6 million more in one of these same facilities. The judiciary occupies over 800 facilities. We are engaged in an extensive rent-validation effort and do not yet know the extent to which we have been overcharged by GSA for these other facilities.

At the core of the judiciary's request for rent relief is the fundamental question of whether GSA's "commercially equivalent" pricing practices, developed for office buildings, are appropriate for courthouses and how these practices impact rent costs over the long term. Absent a consideration of the courts' need for space and of the type of space necessary for a courthouse and without a validation of the underlying pricing policy, any discussion of the percentage increase during an arbitrarily chosen period is meaningless. Thus, unless more analysis has been completed for the final report, the year-long study has not produced a meaningful or accurate analysis to explain the rent bill base, what has caused increases in rental charges over the past two decades, or what increases can be expected in the future. Without this critical component, the GAO report contributes little to the matters at issue to assist Congress in responding to the judiciary's request for rent relief.

I would like to explain the key concerns about GSA's rent policies for courthouses. In brief, GSA establishes the judiciary's rent by assuming that the judiciary is a small user

of space, entering into a five-year lease, and as if each courthouse were a speculatively-built office building. Every five years, GSA re-sets the rent, assuming that the judiciary is again coming into the building as a brand new tenant, paying again for tenant improvements that are already present, and staying for only five years. This is a way — not the only way, but a way — to come up with a "commercially equivalent" rental rate for office space, but it is inappropriate for the judiciary, given the true circumstances of our occupancy and the type of space we need to carry out our mission. The judiciary is the tenant for whom the building is constructed; we do not just appear on the scene after the building is built to lease a floor, or a 10,000 square foot suite, for a handful of years. We are the primary occupant and we will be there for 30 or more years. The commercial market does indeed enter into similar arrangements, so there is a commercially comparable pricing practice and it looks very different from this. Typically, a build-to-suit commercial tenant enters into a long-term lease, and enjoys a low, long-term, level rent reflective of the cost to finance the building over 25 or more years.

These three factors – the fact that the rise in rent was double the rise in space rented, the inaccuracies in computing rent, and the appropriateness of GSA's pricing policies for courts – would appear to be germane to a study of the rent the judiciary pays to GSA. Yet, partway through its year-long study, GAO dropped its original number-one objective, which was to assess how GSA calculates the rent bills. Whether GSA is appropriately exercising its responsibility to charge "commercially equivalent rent" and whether GSA is adhering to its own policies in setting rents are necessary to evaluate the

rent that is paid by the courts to GSA. GAO did not examine whether GSA's rental charges are appropriate or excessive, or whether errors and improper adjustments to independent appraisals are common. In view of the serious errors already found, we believe a full audit of GSA's rent billing practices is needed.

One other very important issue lacking in the draft report is the fact that many of the topics in the draft are not simply facilities-related – they are mission-related. Increases in caseload, which have led to increases in the number of judges and staff, coupled with buildings that lack proper security and have trouble meeting the technological needs of a modern-day court, are all factors that contribute to the need for updated facilities. Over the past fifteen years, appeals filings have increased 66 percent; civil filings 29 percent; criminal filings 44 percent; bankruptcy filings 118 percent; and persons under supervision 40 percent. The total number of judges increased 25 percent and total court staff increased 45 percent. Clearly, additional space is needed to handle the work.

Challenges

Another objective identified for the GAO study was to identify "what challenges, if any, does the judiciary face in managing costs associated with its space needs?" This objective appears to be addressed in the GAO report, but GAO presented its own views about challenges without clear attribution. In fact, not a single judiciary official with policy-making responsibility was asked what they believed the challenges to be.

The judiciary faces numerous challenges in attempting to provide the special-purpose infrastructure necessary for the effective administration of justice in a secure working environment. By failing to ground its analysis in the mission-related drivers for judicial space, the GAO conclusions do not address the facilities planning challenges we face. I would like to discuss some of these challenges not already mentioned.

Courts' Growth and the Fixed Nature of Real Estate. Over time, as work and staffing increase, more space in which to expand is needed. Naturally, expansion space is not needed all at once; growth is gradual. While accommodating growth is a requirement common to many organizations, what is particularly challenging for the judiciary is planning for future court expansion given the special-purpose nature of judicial space. In attempting to accommodate the need for future courtrooms, we have built flexibility and expansion capabilities into many new courthouses. Rather than recognizing the facilities planning challenge inherent in designing a static structure into which must be fit a continuously growing program requirement, GAO instead faults the judiciary for "excess space in a lot of courthouses," and "inefficient space use." To support this criticism, the draft report contained written and pictorial snapshots that presumably demonstrated wasted space. These anecdotal presentations were fraught with errors and half-truths that misrepresented the full story, and I sincerely hope these sections were stripped from the final report. If not, I urge you to review our official comments on the draft report which document the worst cases.

Intractability of Space Costs. Another challenge facing the judiciary is the inherent intractability of rental costs once the initial decision has been made to build: once an occupancy is established, future costs are more a function of GSA pricing policies and real estate market dynamics than they are of judiciary program decisions. As noted earlier, over the past twenty years, courthouse rental costs have increased by twice the rate of growth in space, even after accounting for conventional price inflation.

Rental Charge Accuracy. The judiciary also faces a challenge in trying to corroborate the reasonableness and accuracy of GSA's charges for space. This is due both to the special-purpose nature of courthouses and the lack of direct market comparables for courthouse space, as well as to GSA's past reluctance to share information that would enable the judiciary to validate the charges.

Obsolete Facilities. Another challenge is the physical and functional obsolescence of many older courthouses. Physical obsolescence — the general deterioration of building systems and components — impedes the work of the courts when, for instance, roofs leak, air-conditioning underperforms, and mold and mildew grows. Functional obsolescence is chiefly driven by the changing nature of the federal courts' work and evolving security requirements. Functional obsolescence manifests itself in a variety of ways: courtrooms that are too small for modern-day trials; libraries that were sized for voluminous paper/book holdings but which now rely principally upon digital/electronic storage and retrieval; and outdated horizontal and vertical circulation patterns that mingle court personnel, persons in custody, and the general public.

Considerations Beyond Efficiency in Courthouse Location Determinations. Besides efficiency in space usage, there are other, sometimes countervailing, values and considerations in play in the decision as to where court space is needed, and these constitute an altogether different set of challenges for us in managing space costs. For instance, there are over 400 statutorily determined places of holding court. The judiciary maintains a presence in many of these locations in order to assure reasonable access to justice for the American populace. Further complicating the picture is what we might term the inertia principle, which is characterized by the opposition that rapidly mobilizes — frequently involving the local bar, the local chamber of commerce, and sometimes elected representatives of government at the local and even national level — when the judiciary begins to weigh the merits of closing an existing court facility.

Management / Cost Control Initiatives

Notwithstanding our serious concerns about the report, recommendations made by GAO are consistent with efforts we already have underway to control rent costs. Some of those efforts are dependent on GSA providing data in a way that will lead to meaningful analysis. We will continue to work with GSA to complete the measurement and categorization of space assignments by court component so that we can fully realize this level of analysis.

We also have a number of space management issues underway:

- We are imposing tighter budgetary control and rent caps on facilities decisions made by circuit judicial councils.

- We are making changes to the *US Courts Design Guide*. Phase I of the *Design Guide* review is complete, and based upon a re-estimate of a courthouse construction project recently completed, the *Design Guide* changes translate into a construction cost reduction of 8 percent, in comparison to a project as designed using the *Guide* without the new changes.
- We are re-tooling our long-range facilities planning process to introduce life cycle cost-benefit analysis into the evaluation of housing alternatives. Our expectation is that, by comparing various housing solutions in terms of benefits, weighted against their costs, we will find the optimum or "best value" housing solution. But regardless of the outcome in any particular location, we are bringing a critical economic/cost focus to our facilities planning process.
- At your request, the judiciary has undertaken a study on courtroom utilization.
- We are pressing forward with our rent-validation initiative with GSA, to ensure that the basis of the rent charges in terms of square footage calculations and space classifications are accurate, and that the rent has been properly computed from third-party appraisals.

We will continue to enhance our facilities planning and management processes to control costs. But, we still face the situation where mandatory rent payments to GSA have been increasing at a faster rate than the judiciary's appropriations increases. Our cost-containment initiatives cannot reduce in a substantial way the judiciary's total rent payments for hundreds of existing courthouse facilities across the country. Only a

reduction in rent charges can have any significant impact on the base of the judiciary's rent bill.

We know that we will continue to need courthouses to house an expanding judiciary, and we want to work cooperatively with this committee to ensure that courthouses continue to receive priority consideration by Congress. Over the past several decades, the space needs of the third branch of government have evolved and grown due to many factors including, among other things, the increasing federalization of crimes, a proliferation of multi-defendant trials, growth in immigration-related proceedings, and dramatic changes in security requirements. In the first half of the 20th century, the judiciary was typically co-located with executive branch agencies in a multi-tenanted federal office building, but given the evolution in the execution of American federal jurisprudence, the judiciary today is best housed in specialized buildings, built specifically to accommodate the courts. This Committee has clearly recognized that the judiciary's needs have changed and grown, and the Committee has responded by authorizing many new courthouses. Again, we are grateful for the Committee's support of the judiciary.

Mr. Chairman, thank you for this opportunity to testify. I am prepared to answer any questions you or members of the Subcommittee might have.

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

June 6, 2006

Mr. Mark Goldstein
Director, Physical Infrastructure
Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Goldstein:

I am writing to provide the federal judiciary's comments on the draft report by the Government Accountability Office (GAO) regarding the judiciary's request for rent relief from the General Services Administration (GSA). In short, the study design and methodology were seriously flawed, rendering its primary conclusions unfounded. The report is not accurately or objectively presented, and it is fraught with misrepresentation and innuendo. Unfortunately, the report contains little useful analysis to assist Congress in evaluating the merits of the judiciary's request for rent relief.

There are several factors, all of which GAO has been told, that are directly relevant to understanding and considering the judiciary's request for an adjustment to its rental charges:

- The judiciary has expressed concerns for many years about GSA's excessive rent charges, but these concerns about GSA's rent-charging practices became acute when budget constraints limited Congress' ability to provide sufficient annual funding increases to the judiciary. The portion of the courts' funds that must be used to pay rent to GSA now exceeds 20 percent.

- **The basic problem is quite simple: mandatory rent payments by the judiciary to GSA have been increasing at a faster rate than the judiciary's appropriations increases.** Since 2002, average annual appropriations for the

federal courts[1] have increased 4.7 percent while GSA's average annual rent charges have increased 6.2 percent. This development created a funding crisis that necessitated a large reduction in court staff and that endangers the effective operation of the United States federal court system.

- The judiciary's workload has grown substantially and the number of court staff has doubled since 1985. The judiciary's facilities needs were long-neglected. A modernization and expansion program has been critical to provide adequate facilities for the federal courts to serve their important public purpose, but the judiciary's rental payments have increased at a rate that is far in excess of its increase in space. **Since 1985, rent (adjusted for inflation) rose at twice the rate of the increase in square footage.**[2]

- The judiciary's long-range facilities planning process has been widely praised, and GAO's past recommendations on modifying the process were adopted. The judiciary has and will continue to enhance its facilities program planning and management practices to control costs. **It must be understood that cost-containment initiatives cannot reduce in any substantial way the judiciary's total rental payments for hundreds of existing courthouse facilities across the United States. Only a reduction in GSA's rent charges can have any significant impact on the base of the judiciary's rent bill.**

- By statute, GSA is authorized to charge government tenants rent that is "commercially equivalent." GSA is also allowed to grant exemptions, which it has done for many agencies. The judiciary is not a typical GSA tenant because courthouses are special-purpose facilities that are very different than office buildings. Other government organizations with special-purpose facilities, such as federal prisons and Federal Reserve banks, are not under GSA's control. **Because of the unique functions and needs of special-purpose facilities such as courthouses, identifying a "commercially equivalent" rent charge is impractical.**

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[1]Salaries and Expenses for Courts of Appeals, District Courts and Other Judicial Services.

[2]Rent adjusted for inflation increased 333 percent, while the judiciary's usable square footage increased 166 percent.

- **There is no incentive for GSA to control rental charges, and GSA's pricing practices often result in excessive rental charges.** As a monopoly, GSA can set rent rates at whatever levels it determines are "commercially equivalent," and it does not have to compete for tenants because its tenants are forced to have GSA as their landlord. For example, capital security costs are foisted on the judiciary by GSA regardless of whether the judiciary agrees.

- **GSA's lack of adherence to its own policies in calculating rent charges is a serious problem.** GSA appears to be operating with near impunity in the calculation of rental charges, closely guarding its documentary basis for these charges from its tenants. The results of a comprehensive audit of its rent calculations, which was spurred by the judiciary's discovery of significant billing errors, have not been shared by GSA with tenants. Over the past few months, in 15 locations, the judiciary has identified approximately $38 million of annual billing errors and unexplained alterations to underlying independent appraisals.

What do these points above have to do with GAO's draft report?—remarkably little; and that is a major deficiency of this report.

The report's recommendations mostly reflect areas we are already addressing, and they have little bearing on the main issue, which is the increasing rental charges the judiciary must pay to the General Services Administration. Most of the information presented appears to be tangential at best, if not irrelevant, to an assessment of these matters. Moreover, although GAO was asked to report on challenges the judiciary faces in managing its rent costs, the report presents only GAO's notions of our challenges and **none** of the primary issues and challenges identified by the judiciary.

The issues at stake here go far beyond facilities matters; they are vital to maintaining a strong and independent judicial branch of government. Chief Justice John G. Roberts, Jr. stated in his first year-end report issued January 1, 2005: "The judiciary cannot continue to serve as a profit center for GSA." He wrote: "The judiciary must still find a long-term solution to the problem of ever-increasing rent payments that drain resources needed for the courts to fulfill their vital mission." Certainly, $38 million in overcharges represent a significant "profit," as do the rent payments GSA gets for buildings that the Office of Management and Budget and GSA officials have told us are funded from direct appropriations into the Federal Buildings Fund and not from the Fund's own revenue.

Congressional interest in this issue cuts across committee lines. In May 2005, the chairman, ranking member and nine additional members of the Senate Judiciary Committee sent a letter that strongly urged GSA's Administrator to grant the judiciary's request for "an exemption from all rental payments except for those required to operate and maintain federal court buildings and related costs." The Senate Judiciary Committee, which is intimately aware of the judiciary's mission-related space needs, declared that this situation and future prospects constitute a "near crisis."

Major Conclusions Are Not Meaningful

As noted earlier, since 1985, the judiciary's rent payments (adjusted for inflation) have increased at twice the rate of the judiciary's square footage increase. **GAO has produced a flawed analysis and has leaped to conclusions about a causal connection between growth in space and increases in rent.** The study concludes that, because the judiciary's assigned space expanded by 19% from 2000 through 2005, and because shell rent, after adjusting for inflation, also increased by 19% over the same period, that the growth in space "accounted for" the growth in shell rent. Moreover, on the report's "Highlights" page is a pie chart depicting $139 million out of a total rent increase of $210 million "attributable to growth in square footage." While the data, and common sense, suggest a positive correlation between the increase in space and the increase in rent, it is an inferential leap to conclude that space growth *caused* $139 million of the rent increase.

A quick comparison of other time periods shows that the growth rates between space and rent are not identical. The following table, calculated in constant dollars, demonstrates this.

Judiciary Space Growth vs. Rent Growth*		
Period	Change in Sq Feet	Change in Rent $
2000-2006	19.61%	23.72%
2002-2006	13.47%	8.47%
1995-2006	115.11%	186.02%
1985-2006	166.53%	332.97%

* The square footage and rent figures represent the Courts of Appeals, District Courts and Other Judicial Services Salaries and Expenses account. The rent figures are total, or gross, rent numbers rather than merely "shell" rent, since shell rent did not exist as a discrete rent component until 2000. The dollars are adjusted for inflation.

It is inappropriate to attribute absolute causality to increases in inventory size for proportionate rent increases, primarily because real estate markets move both up and down, and since GSA sets rent on the basis of market appraisals, overall rents could increase –above CPI inflation–even if the inventory size were static. Similarly, overall rents could decrease even while the inventory were growing, if markets were declining.

The point, again, is that GAO has shown only a correspondence between space growth and rent increases, not a causal relationship. Unless other critical independent variables, such as real estate market movement and GSA repair and renovation activity, are accounted for, conclusions that rent increases are "attributable" to space growth are unwarranted. Indeed, as the table above demonstrates, over the past 20 years, square footage increases can "account for" no more than half of the total rent increase for the corresponding period, even after adjusting for inflation.

It is important to recognize that the report's primary focus on rent cost increases in recent years is only a fraction of the whole rent picture because rent for existing courthouses constitutes the majority of the judiciary's rental costs. Paying escalating rent on the existing inventory of space is a budget problem for the judiciary. The fact that adding new space in a district increases rent costs is not surprising, but there is no context provided to explain why the judiciary has needed more space and why it will continue to need new courthouses in the future. That is a primary challenge facing the judiciary in managing its rent costs, but it is not identified as such.

Another of the report's conclusions is that having better data to analyze would enable the judiciary to manage its rent increases. This is mystifying. While the judiciary is keenly interested in obtaining better data from GSA, the judiciary's rental problem will not be solved through tracking the kinds of rent component costs that GAO recommends. The implication that we have "larger than expected increases in rent" (as stated on page 19) is inaccurate and insulting. The judiciary does an excellent job of projecting, budgeting and accounting for its rent costs. Our problem is not that we are unaware of rent costs, it is that appropriations levels are insufficient to pay the rent and meet other critical needs.

GAO has identified as a major challenge a "lack of incentives" for efficient space management at the circuit and district levels because the rent bill is paid centrally. Notwithstanding GSA's current inability to break the rent bill into the appropriate court unit components that would allow for useful trend analysis and possible circuit-focused

rent budgeting, the assumption that public officials need a financial incentive to exercise responsible stewardship is debatable.

Stepping outside its primary focus on rent, the report pays inordinate attention to the current assignment of chambers and courtrooms in several locations, and **the report draws unfounded conclusions about courtroom and chambers use and needs.** The team's lack of knowledge and understanding about the operations of federal courts has severely affected the validity and utility of the resulting analysis and conclusions. To draw conclusions from a superficial assessment in a report on real estate costs about matters of such fundamental importance to the judicial process is almost reckless. It is surprising that GAO's internal review processes would allow recommendations to be made about appellate courtroom needs, for example, when the team neither spoke with a single appellate judge nor asked the judiciary about the appellate courts' courtroom usage practices or needs. More concerns about these problems are addressed later in these comments.

The Report Lacks Balance

In June 2005, you testified before the House Committee on Transportation and Infrastructure's Subcommittee on Economic Development, Public Buildings and Emergency Management Subcommittee that approval of the judiciary's request for rent relief would have grave consequences for the Federal Buildings Fund. From the start, GAO's *a priori* premise that rent relief was a bad idea appears to have influenced the design and conduct of the study.

GAO chose not to address fundamental issues regarding the appropriateness of GSA's rent policies for courthouses, whether these policies were implemented properly, the impact of rising rental costs on the judiciary's ability to fund other essential needs, or mission-based reasons why the judiciary has and will need additional facilities. GAO's unbiased analysis of these complex issues would have been welcome.

Throughout, the report presents the judiciary as wrong and GSA as right. For example, **while the report questions whether the judiciary has sufficient incentives in place to control space growth decisions made by the courts and circuit judicial councils, it does not explore at all whether GSA has incentives to control costs and rental charges.** The report does not assess GSA's policies or practices at all, and the report mentions none of GAO's prior studies critical of GSA's management of the Federal Buildings Fund. The deferential treatment of GSA's practices was illustrated

when a GAO official defended GSA's decision to charge $11,000 in annual rent to the judiciary for a parking lot that was transferred to the government for $1, arguing that it was within GSA's authority to do so. Typically, GAO evaluates the public value regarding how government entities exercise their authorities. Indeed, in this report GAO does not show the same hands-off respect for decisions made under the purview of the judiciary's authorities that it has afforded GSA.

The judiciary was fully prepared to assist GAO in carrying out a thorough and objective evaluation of the key issues related to rental costs, including the judiciary's facilities needs and funding challenges. These involve complex issues that have broad implications. GAO sought very little formal information from the judiciary and ignored pertinent facts provided by the judiciary's officials. Instead, GAO determined to use anecdotal material in such a way as to cast blame on the one who complained about GSA's aggressive pricing practices. The resulting product has been crafted to suggest that the judiciary's rent problems may be due to unnecessary growth in space and to inefficiency. GAO has ignored vital facts and failed to present the true picture.

Questionable Methodology

Questionable Use of Site Visit Anecdotes. The flawed analysis of national data was discussed earlier. Another major component of GAO's study involved site visits. GAO opted to focus its limited resources on a short time period (2000-2005) and on only a few judicial districts which saw a large increase in their rent charges during that period. Acknowledging that an analysis of only a few districts could not be generalized to reflect the entire system, GAO chose this methodology ostensibly to delve into the details regarding the five districts. Instead, these visits have been used to cobble together a series of misleading anecdotes with scant facts presented out of context, many of which are unrelated–and these are used to draw conclusions that are unfounded.

A clear example of methodological errors leading to inaccuracies can be seen in a section on visiting judges (pages 25-26 of the draft). Visiting judges are those judges who travel from their official duty station to handle caseloads in locations where, for example, either a new judgeship has yet to be created, a resident judge has become ill, or where there is a spike in case filings. The draft report characterizes the space associated with these judges as unused. This is clearly not the case. In Phoenix, for example, chambers and courtrooms are used by visiting judges, the 9th Circuit Bankruptcy Appellate Panel when its caseload brings the Panel to the district, and by executive branch administrative law judges through a Memorandum of Understanding.

While the language in the report was carefully parsed to avoid making false statements, this technique has not succeeded in producing an accurate result. First, it is important to point out that GAO never asked about the judiciary's use of visiting judges or its policies and practices with regard to planning courtrooms or chambers for them. In a survey, GAO asked courts to identify spaces currently used by visiting judges, but did not ask about usage. Therefore, to say "it is not possible" to determine how often visiting judges make use of courtrooms and chambers because the judiciary does not collect national statistics is unfounded, particularly with regard to the districts portrayed.

The GAO team visited six districts and focused on use of these spaces based on momentary observations. It is highly questionable to imply that these observations have any validity for drawing general conclusions. In an effort to highlight the idea that courtrooms and chambers are sitting idle, GAO published an array of six photographs purported to be of an "unused" visiting judge chamber in Phoenix. There are two major problems with this presentation: first, most of the photographs are wrong; and second, the chamber is used frequently. Of the six photographs, only two are from a sixth-floor chambers suite used by visiting judges in the Phoenix bankruptcy court. One photo is from another floor of that courthouse, and three others are from a different city altogether. This mistake can be attributed to simple error in record keeping, which demonstrates that GAO's fact-checking process is fallible. Even more disturbing than this error, however, is the characterization of the chambers suite as "unused," which is belied by facts. The bankruptcy clerk for the District of Arizona explained that judges in Tucson carry assigned caseloads in Phoenix and travel regularly to hear those cases. Had GAO asked about usage data, the court has a calendar system which shows that the 6th floor courtroom under question in Phoenix was used 103 days in the last twelve months–which is nearly half of all business days. The clerk of court also wrote that:

> Our GAO guests did not ask for such information or ask specifically whether we tracked utilization locally. My recollection is that I described our current usage in some detail, noting how our Tucson judges use the 6th floor chambers and courtroom on a regular basis on assigned caseload....

No Analysis of Reasons for Growth. It can be no surprise to anyone that total rent costs increased for districts which moved into newly constructed courthouses during the time period GAO selected. This information was known and could be reviewed without visiting the courts. The resources expended by GAO to visit courthouses across the country has produced very little relevant information about the selected districts. A reader will not have a clear picture at all about the situations in those districts because the

information presented for each district is sketchy and inconsistent. In particular, there is no information about why a district needed new facilities. **The report contains virtually no discussion of the mission-related purposes for facilities decisions that were made that would give meaning to the numerical data presented**. Instead, the assortment of facts selected for publication appear to be chosen for their potential value in supporting certain conclusions. Every court visited was asked to confirm the facts reported by GAO. All of them identified errors and nearly all courts reported that GAO had misconstrued the facts or told only part of the full story. The Honorable Benson Everett Legg, Chief Judge, U.S. District Court, District of Maryland, requested that the enclosed letter be included as part of the judiciary's official comments.

No Analysis of Space Measurement Accuracy. One useful outcome anticipated from the site visits was not achieved. The GAO team said it needed to go on site to inspect the space and compare it to GSA's plans and other documents, and to validate the rental charges for those buildings, but the draft reports nothing about this. Whether the square footage was correctly charged or not was deemed to be a salient part of the assessment by GAO itself. The district court in Rhode Island shared with GAO an assessment of incorrectly charged space, along with photos of space GSA incorrectly considered usable for offices. Originally, GAO wanted to ignore this data, and only recently has agreed to note this one example in the report, but plans to characterize it as an "informal" appeal of GSA's rental rates.

Inaccurate Assessments of Chambers and Courtrooms. The report has focused on judicial chambers and courtroom spaces, and how they are currently assigned in the courts. This topic has little real significance to the larger rent issue; moreover, courtroom use is a topic being studied separately. GAO's reported facts regarding the courthouses visited concentrate on instances of currently unassigned courtrooms and chambers. The shortsightedness of these findings is remarkable. Courthouses are built to be used for decades. The judiciary's space planning process has been endorsed as sound by independent entities. But, planning is not an exact science, particularly when critical factors are largely outside the control of the judiciary or unpredictable. To draw conclusions about whether chambers or courtroom facilities are used "efficiently" based on a snapshot in time is wrong without considering the complexity of driving factors. Importantly, new judgeships are created by Congress and the filling of judgeship vacancies is controlled by the President and Congress. Judges may become ill, pass away, or leave the bench. Judges may take senior status when eligible or they may not, and they may or may not carry a heavy workload in senior status for varying periods of time. Caseload volumes may shift between locations within a particular district requiring judges

to travel to non-resident locations. New judges may serve in a different duty station within a district or a circuit than the judges they replace. There are public benefits to establishing places of holding court where judges may only spend limited amounts of time, and it is Congress which establishes these locations.

In addressing the current assignment of chambers and courtrooms, these practical complexities are not described. There is nothing presented about pending new judgeships, replacements for judges taking senior status, or future judgeship needs in the districts visited. For example, there has been an explosion of workload in the District of Arizona. Five new district judgeships (and 4.5 magistrate judgeships) were added since 1999 and there are five new district judgeships in the judiciary's judgeship bill pending in Congress. But the report covers only a large increase in square footage and rental costs for this district. For GAO to limit its analysis to square footage figures is not only meaningless, but it suggests that the construction of courthouses is unrelated to definable needs.

Paraphrasing Anonymous Sources. GAO decided how to present the judiciary's views, and it has opted to make use of anonymous paraphrases attributed to judges and court officials which cannot be confirmed by the judiciary. **GAO refused a request to confirm these statements with their sources, stating that GAO has sufficient internal control measures to attest to the accuracy of these statements. GAO also refused a specific request from a chief district judge who wanted to know only if he was the purported source for a particular statement.** In light of the license GAO has taken with regard to presenting only selected bits of information gleaned in the site visits which some court officials believe have been misrepresented, judges and court officials are understandably concerned about these anonymous statements. Court officials have expressed concern that some casual statement or a reply to a question might have been misunderstood and taken out of context by GAO. If the goal is accuracy, confirming with sources any statements of theirs that will be paraphrased in a report would enhance GAO's products.

Why Did GAO Drop the Number-One Objective to Assess How GSA Calculates Rent?

The study does not address a primary issue—namely, whether the methods used for determining commercially equivalent rental charges are appropriate for special-purpose facilities such as courthouses. It does not analyze cost impacts related to five-year shell rent adjustments. And, it does not report on the accuracy of GSA's bills.

GAO's underlying concern about reducing revenue for the Federal Buildings Fund presumptively affected the methods by which the study was conducted, and it ultimately led to eliminating or covering only superficially key study objectives. Importantly, the study did not assess how rent charges are calculated by GSA. Indeed, GAO inexplicably dropped this original number-one objective entirely from its final study objectives and chose only to describe the policies for charging rent, which were already understood by the involved parties. This objective would have focused attention on whether these policies are appropriate for courthouses and on whether the policies are followed in actual calculation of the rent.

Judiciary officials informed the GAO team early in the study of significant errors discovered in GSA's rent bills amounting to tens of millions of dollars in annual overcharges. Judiciary officials raised questions about undocumented alterations made by GSA employees to independent appraisals which elevated rental charges, and judiciary officials also expressed concerns about the potential for certain conflicts of interest related to a special bonus program at GSA's Public Buildings Service which includes revenue enhancement as a factor that can result in large monetary bonuses to regions and individuals. GAO opted to ignore these serious matters, which you said would be "outside the scope" of this study. In light of your government accountability mission, it is incomprehensible how GAO could determine that assessing whether GSA has been misapplying its pricing policies and overcharging for rent is outside the scope of a study about the judiciary's rent costs. Indeed, inappropriate pricing practices and misapplication of current policies could be a key component of the rent increases.

Not only did the GAO team ignore and dismiss these serious issues, but in the first written product GAO produced, the only mention of rent bill errors was an incredible statement that we rarely find rent bill errors. This misrepresentation of the judiciary's concerns was later edited in the draft following our protest. Moreover, although GAO's team orally reported that key documents to substantiate rental charges were missing from GSA's records, these internal control deficiencies were not cited in the report. GAO has now committed to reflecting in the report the judiciary's concerns about the accuracy of rental charges, but this is a poor substitute for an independent assessment by GAO on this extremely critical matter.

AO officials informed the team about the difficulties the judiciary has faced in analyzing the accuracy of GSA's rental charges. In particular, we cited the unwillingness of GSA to produce backup documentation regarding the basis for individual buildings' rent charges, such as current space plans or appraisals. We told the GAO team that a

district court resorted to filing a Freedom of Information request to obtain such information from GSA. We discussed GSA's decision to hire an outside auditor to review the documentation for rental charges (and the team said the Booz-Allen findings were reviewed by GAO). We told the team that we had an extensive and labor-intensive rent-validation effort underway across the judiciary.

Importantly, none of these matters is addressed or identified in the draft nor are there any facts presented about how specific rental charges were actually calculated by GSA and whether they were accurate. GAO's objective and independent findings regarding the accuracy of the rent bills is needed.

Key Issues in Assessing the Appropriateness of GSA's Rental Charges

As noted above, instead of evaluating how GSA calculates rent charges, the draft describes only very basic and well-known components of the rental charges. The more difficult questions are missing. For example, the report does not examine the rental charges for government-owned facilities. How many judiciary facilities are government owned? What contributory effect have real estate market cycles had on GSA rental rates, and what effect are they likely to have? What cost trends can be expected for those facilities over the life of the buildings? To what extent do charges exceed the actual cost of operating those facilities?

The study does not examine whether GSA's appraisal-based pricing approach is inappropriate for build-to-suit, special purpose structures such as courthouses. This appraisal-based approach results in:

- higher rental rates reflective of speculative space rents, yet the judiciary is the guaranteed tenant and there is no speculative risk for GSA;

- higher rental rates reflective of a small (i.e., 10,000 square foot) occupancy, whereas the judiciary is the majority tenant and entitled to a volume discount for occupying full floors;

- rental rates that usually escalate every five years as GSA re-appraises the space, whereas typically private sector tenants in build-to-suit buildings enjoy long term (i.e., 20 to 25 year) fixed rent agreements; and

- premium (extra) rent charges for courtrooms as well as for secure judges' elevators and prisoner elevators, even though these features are part of the original building design and in typical build-to-suits, upcharges would never be assessed on such features. Rather, rents would be set to recover cost of capital. These premium rents recover far more than the amortization of initial capital costs.

Also, while it is described in the draft, the study does not assess the relative merits of GSA's secondary means of pricing space—return on investment (ROI) pricing. Should this be the primary pricing approach for courthouses and special purpose facilities? If so, should the rate of return be adjusted to reflect how risk is actually apportioned? To explore these questions, the following points should be addressed:

- GSA's pricing policy provides that, when an appraisal-based rental rate will not yield GSA an initial minimum return of 6% on the capital to be invested, it resorts to ROI pricing.

- The ROI approach is more in keeping with how the space would be priced commercially, but in GSA's application of ROI, 200 basis points (2%) are added to the commensurate term Treasury Bill rate to arrive at the amortization rate used in calculating the rent.

- GSA argues that it is entitled to a 200 basis point spread above commensurate term Treasury Bills as a "premium" for the risks it takes, but in the way GSA has formulated ROI pricing, the tenant--not GSA-- bears all risk: if the project is delayed, the judiciary and not GSA pays for any "holdover" rent in its current space as well as storage costs for furniture and equipment for supporting the new building. Also, if the project runs over budget, the judiciary pays the final cost, regardless of escalations and budget busts. In the private sector, when a building is not delivered on time, the tenant can withdraw from the project, but, because GSA is a monopoly service provider, the tenant agency has no choice but to incur the added costs.

- The appropriate amortization rate for GSA to use in ROI pricing is the interagency borrowing rate charged by the Federal Financing Bank: the Treasury Bill rate plus 12.5 basis points.

The Draft Report Lacks Essential Context

The product contains numerous items that reflect the team's lack of knowledge about the federal courts and that lack relevant programmatic detail and context. Many of the topics addressed in this report involve matters that are not simply facilities-related but are mission-related, and that require a basic understanding of the federal judicial system. Also, the lack of historical perspective and the emphasis on describing current facilities details is both shortsighted and of questionable significance for describing the longer-term funding issues and facilities needs of the judiciary.

A presentation of basic information about the judiciary's growth would provide essential background and contribute to a more complete analysis regarding the judiciary's facilities needs. Overall workload growth trends created a need for more judges and staff in the courts. Over the last fifteen years (1990-2005), the following changes occurred:

- Appeals filings increased 66%
- Civil filings (district) increased 29%
- Criminal filings (district) increased 44%
- Bankruptcy filings increased 118%
- Persons Under Supervision increased 40%
- Total judges increased 25%
- Total court support staff increased 45%

Moreover, the judiciary's workload is not under the control of the courts and workload cannot be reduced to meet budgetary and space constraints. Matters within the jurisdiction of the courts must be handled expeditiously by the courts; there is no alternative.

Another contextual issue missing from the report is that the judiciary is not the only involved party in determining courthouse facilities needs. Access to the federal courts is a core value in the American system of government. Congress has established a court system to achieve this end, which includes designating places of holding court across the United States and authorizing courthouse projects. Courthouses are historic and important symbols of the federal government in communities across the country that often play a significant role in urban redevelopment efforts. The interest in constructing new courthouses is often shared by the judiciary, Congress, the executive branch, and others.

The Report Ignores Challenges Facing the Federal Judiciary in Managing Rent Costs

Another major objective of the study was to identify the challenges the judiciary faces in managing its rent costs. Indeed, the report completely ignores information from the judiciary's designated officials about the judiciary's challenges. Instead, the report notes only GAO's limited views on challenges the judiciary faces. **There are many challenges facing the judiciary in managing rent costs which the GAO report neglects to discuss.**

Inelasticity of Buildings and the Need for Expansion Space. First in importance is the challenge of planning for new courthouse buildings that can accommodate future expansion of court functions, but which, at the point of project delivery, are more than the courts' current needs. This problem is common to law firms and many other organizations, including federal agencies, with projected expansion needs. A common private-sector practice to remedy this problem is to lease more space than is presently needed, and then sub-lease the expansion space until the organization expects it will need that space in the future. Another technique is to acquire lease options, such as a first right of refusal, on additional space in a leased building. The problem is compounded for the judiciary because courthouses are essentially built-to-suit buildings; they are not conventional office buildings with space that is readily interchangeable with other tenants.

Given the inelasticity of real estate, and the long lead times in courthouse project delivery, it would be highly imprudent to size these buildings merely to the judiciary's space requirements for the time of initial occupancy. This would mean the building might soon be filled to capacity, and expansion requirements would be pushed into another building. Accordingly, when GSA builds new courthouses, it constructs them to meet the judiciary's projected ten-year space requirements. While the judiciary has no control over outside forces which contribute to its space needs, such as the number of case filings, crime rates, and enhanced border enforcement activities, it projects its future needs using a methodology that has been refined over the years to incorporate recommendations made by GAO. The additional capacity is sometimes used by other tenants, such as the U.S. Attorney's office, or components of the courts that might later be pushed out, and sometimes used as storage.

It makes no sense to have a new courthouse full upon occupancy, but GAO leads the readers of its draft to believe that having expansion space in a courthouse is excessive. Instead of addressing this issue as a legitimate challenge for the judiciary in managing its

rent costs, GAO has turned this into a criticism by characterizing it as the judiciary's "inefficient space use."

According to GSA, it can take, at a minimum, 11 years to plan, design and construct a courthouse. Recently, it is taking even longer to gain the necessary approvals and to ultimately occupy the buildings. In the short-term, however, a new building should have space that might not be used for the purposes for which it is ultimately planned. For instance, instead of building completely finished courtrooms that will not be utilized in the immediate future, GSA builds capacity into the building that can be converted to courtroom or office space use in the future. Figure 7 in the draft report illustrates how a storage space in Seattle, Washington can be converted to make a district courtroom in the future at minimal expense. This use of space reduces the judiciary's costs for off-site leased storage units, while also allowing for the court to have space available for its expansion needs in the long term. Even though the judiciary must pay rent on the space in the meantime, the benefits of having the space available, especially if the workload increases quicker than expected, outweigh the increased short-term rental costs.

The draft also references the Alexandria, Virginia, courthouse, and claims that the building should be full. There are currently nine judges in Alexandria, plus one vacancy, two judgeships for the district in legislation pending before Congress, and one judge eligible to take senior status now and another judge eligible within three years, for a total of 14 potential judges. There are currently 14 courtrooms in Alexandria, so the courthouse will be full within the next few years. GAO has characterized the judiciary's space planning efforts in a way that would suggest that the building has too much space. Having the capacity to accommodate these additional judicial officers shows how good planning avoids the need to split the court into multiple locations and avoids the need to incur extra costs associated with, among other things, telecommunications, security, and moving files, staff, and jurors among multiple locations.

The draft report unfairly criticizes courts for increasing courtroom flexibility in exchange for building fewer courtrooms than were allotted. In the districts of Nebraska and Washington Western, courts chose to build courtrooms to district judge courtroom standards to avoid having to build more courtrooms in the future. The judiciary reduced the number of magistrate and/or bankruptcy judge courtrooms planned in the buildings. Yet the draft criticizes those courts because bankruptcy and magistrate judges would be using courtrooms that deviate from the space standards in the *Design Guide*. The report fails to recognize that flexibility in courtroom and courthouse planning can reduce the cost but might result in deviation from the space standards in the *Design Guide*.

Intractability of Space Costs. Another challenge facing the judiciary in terms of rent is the inherent intractability of space costs (i.e., rent) once the initial decision has been made to build. GSA, not the judiciary, is responsible for managing construction and controlling the overall building cost—the courts have only an allowance for tenant build-out to manage—and if the entire building cost becomes too great, GSA will resort to Return on Investment pricing, and is guaranteed to recover the entire capital investment, at a 6% or better rate of return, no matter what the cost. For buildings with appraisal-based pricing, once the occupancy is established, future costs are more a function of real estate market dynamics than they are of tenant agency program decisions. The judiciary, in particular, is limited in what space it can relinquish due to security or specialized build-out. The judiciary also has little control as to when space rents increase as a consequence of GSA-initiated capital improvements to buildings, through repair and renovation projects or capital improvements to enhance security.

Rental Charge Accuracy. As noted elsewhere, the judiciary also faces a challenge in trying to corroborate the reasonableness and accuracy of GSA's charges for space. This is due both to the special purpose nature of courthouses and the lack of direct market comparables for courthouse space, as well as to GSA's reluctance to share appraisals and other background information (such as full cost data for ROI-priced properties) that would enable the judiciary to validate the charges.

Technology. Challenges involving the space implications of technology are also important to understand. Many courthouses were built prior to the widespread use of electronic research for legal sources and, therefore, the sizes of libraries in courthouses were designed to accommodate significant numbers of hard copy materials. When planning the new courthouse in Seattle, Washington, the court reduced its library by half the size. Significant changes to the library space standards will be considered in September 2006 by the Judicial Conference.

Some courts have switched from court reporters to electronic recording after the building was occupied and there is now space for court reporters in judges' chambers. The draft report completely mischaracterizes what transpired in Seattle with regard to court reporter space. It is not possible to give this existing space back to GSA unless it can be rented out to other agencies.

The *Design Guide* will also be updated to reflect the impact of electronic case filing on filing storage requirements in clerks' office. As technological advances are

incorporated into the everyday functioning of the court, the judiciary is committed to changing its space standards accordingly.

Obsolete Facilities. Another challenge is that obsolete space poses functional and security risks. Some courtrooms simply cannot accommodate the changing nature of the federal courts' caseload. The GAO evaluation team found totally inadequate hearing-room space that could no longer be used for modern-day court proceedings before magistrate judges in Baltimore. The building in Baltimore was built prior to the first publication of the *Design Guide*, and the magistrate judge hearing-room size poses security concerns due to the lack of separation between individuals in custody, the victims, law enforcement officers, judges, and the lawyers. The court states that it has undertaken plans to combine the four rooms into two functional courtrooms; they are currently being used to store furniture due to a lack of storage space in the building. With the roles of magistrate judges growing to the point where magistrates handle almost all types of proceedings except for felony trials and sentencing, the court space assigned for magistrate judges to carry out these duties must adequately accommodate them. Additional information from the court about the total inadequacy of this space is provided in the enclosed letter from the court.

Other judiciary challenges are not addressed in the report. The judiciary has the following challenges in managing rent costs:

- The uncontrollable growth in workload, requiring additional judges and staff
- Addressing security needs and functional obsolescence in an aging inventory
- The inappropriateness of GSA's rent pricing practices for court space and inconsistent execution of current policies
- Obtaining timely rent estimates from GSA
- Inadequate communication from GSA regional offices to determine the cost implications of potential projects
- GSA keeping projects on schedule
- An inconsistent funding stream for courthouse construction projects

- The changing nature of the judiciary's work and the consequent changes wrought to the design and amount of space required

- Statutorily designated places of holding court

- Benefits to GSA and the Federal Buildings Fund in backfilling courthouses with other courts

Additional Accuracy Problems

We have many concerns about the accuracy of commentary and analysis in the report, many of which have been previously described. Although numerous corrections have been made in the past few weeks due to efforts on the part of judiciary staff who produced extensive materials, a large number of the stated facts are incorrect or only partially correct, and critical facts are simply missing. As noted earlier, various fact snippets are so devoid of context that they will be readily misinterpreted, and their use to support conjectures about "inefficient" space utilization on a particular day or point in time, or to raise questions about a judicial practice that the team does not fully understand is highly questionable. Unless the facts are clarified, any resulting inferences have highly questionable probative validity.

Some of the report's additional major inaccuracies are noted below:

- The draft report mischaracterizes space made available for use by a judge in Tacoma, Washington. The draft states that a bankruptcy judge with a full courtroom and chambers suite in Tacoma, also maintains an exclusive courtroom and chambers suite about 30 miles away in Seattle. This is not correct. The judge is stationed in Seattle and travels to Tacoma in order to assist the divisional office with its work. The next bankruptcy judge authorized by Congress for the district will be stationed in Tacoma. Having adequate space available is a key factor in handling the caseload expeditiously. Also, the courtrooms do not have holding cells, as currently stated in the draft.

- Unique functional requirements can also dictate space use that may involve increased costs. One example was noted in Alexandria, Virginia. There, in accordance with 28 U.S.C. § 462(c), a circuit judge was assigned to leased space in McLean, Virginia. While such leases add to the judiciary's total rent costs, the special nature of the work the courts conduct can sometimes dictate how the

judiciary uses its space. The report's highlights page incorrectly states that the judge had "designated" chambers space in Alexandria as well as in McLean. In this case, the appellate judge chambers planned in the Alexandria courthouse was subsequently converted to be used for other purposes by the district court because of a shuffling of space related to the court's need to create a Sensitive Compartmented Information Facility to accommodate the classified materials associated with several high-profile terrorist cases, including the Moussaoui case.

- The report contains several inappropriate statements about "finishes." When discussing tenant improvements, the report links "steep increases" in cost to the "types of finishes" and fails to discuss the components of the tenant improvement allowance. On page 3, in discussing the judiciary's tenant improvement costs, the draft report parenthetically notes as an example of tenant improvements, "finishes such as wood finishes," which could mislead a reader to think that the bulk of the judiciary's tenant improvement costs are due to the use of wood finishes. Indeed, tenant improvements include doors, floor covering and drywall as well—not just "finishes."

- The report notes that District of Rhode Island experienced a 927 percent increase in tenant improvement costs which was, according to GAO, attributed to "the cost of finishes." This comment needs additional context. In the 1990's, the court in Rhode Island had to choose either to renovate a badly deteriorating courthouse building (the Federal Building & U.S. Courthouse) with infrastructure that GSA had not overhauled in a century and which could not accommodate all of the court functions, or to build a new courthouse building. With GSA's support, the court chose to fully renovate the Courthouse Building and partially renovate the adjacent J.O. Pastore Federal Building. Consequently, both buildings underwent prospectus-level renovations between 1995 and 2002. Thus, the judiciary was responsible for restoring and preserving these historic buildings while incorporating significant security and functionality elements into the historic fabric of these buildings, and their useful lives were extended far into the future. The buildings were basically completely gutted and then restored.

- There are also inappropriate references to the term "architectural." This term implies that the elements are non-functional design elements; however, examples of "architectural elements" cited in the report, such as secure corridors and elevators, are truly "structural" or "functional" in nature. The draft report states that, "First, modern courthouses require **architectural** (emphasis added) elements

that make them among the most costly types of federal space to construct." The draft report should be revised to read, "First, modern courthouses require *structural* elements that, *according to GAO,* make them among the most costly types of federal space to construct."

- The draft contains misleading statements about security needs and secure circulation. The draft report notes that separate elevator systems are recommended for, among other things, "linking judicial officers to their restricted parking areas." This statement reflects the team's lack of expertise in this area. The separate, secure elevator system is for judicial officers to move between floors and to parking areas, so as to uphold the integrity of the judicial process. For security reasons, judicial officers as finders of fact and law in cases and controversies before the court, must have the ability to move within the courthouse without encountering prisoners and the public – which may include some defendants, family members of victims and defendants, or litigants, witnesses, and attorneys in a case.

  The report states that spaces, such as secure circulation, are "replicated for each district judge," and in support of that statement, provides a diagram of a courtroom and chambers with three different sets of elevators. The statement coupled with the diagram are extremely misleading because they imply that every courtroom has a set of elevators for the public, the prisoners, and judges and their staffs. Although the *Design Guide* contains a variety of diagrams depicting courtroom and chambers adjacencies, the GAO developed its own.

  Contrary to what is depicted, courthouses have only one elevator drop-off point for prisoners and one elevator drop off point for judges per floor (not per courtroom). Incidents in courts in Georgia, Kansas, and Chicago are indicative of the importance of secured circulation and secured elevators in courthouses.

  The integrity of the justice system is at stake if judicial officers or jurors encounter an interested party to a case outside of the courtroom. Indeed, there are serious constitutional ramifications to a juror observing a defendant in shackles, escorted by a United States Marshal.

- The diagram is also inaccurate in a number of other ways which increases significantly the total amount of space depicted for a courtroom, chambers, and

associated spaces. Comments were provided to GAO under separate cover about the diagram itself, which should be corrected.

Some concerns about the discussion of appeals judges and courtrooms were covered previously. In addition, the report seems to imply that although the one judge/one courtroom standard for district judges does not apply to appellate judges, the judiciary builds a courtroom for each appellate judge. The report states, "the *Design Guide* does not set **different** criteria for the number of chambers/courtrooms per appeals judge." As stated, the implication is that since the *Design Guide* does not set different criteria, the judiciary follows the same criteria as they do for district judges. This is not true. There are only 54 appellate courtrooms throughout all circuits for nearly 300 judges. The report then states that the lack of criteria for assigning courts of appeal courtrooms "appears" to increase the number of appellate courtrooms and "thereby potentially" increase the rent. This statement is nothing more than conjecture. Congress makes all determinations as to where court will be held by each circuit court of appeals. The judiciary must, therefore, provide space to hold court in the locale determined by Congress.

Specific Comments on Recommendations in the Draft Report

GAO Recommendation

1. *AOUSC should work with GSA to track rent and square footage trend data on an annual basis for the following factors:*
   a. *Rent component (shell rent, operations, tenant improvements, and other costs) and security paid to the Department of Homeland Security);*
   b. *Judicial function (district, appeals and bankruptcy);*
   c. *Rentable square footage; and*
   d. *Geographic location (circuit an district levels).*

This data will allow the judiciary to create a better national understanding of the effect local space management decisions have on rent and identify any mistake in GSA data.

Judiciary Comment. GAO recommends that the AOUSC work with GSA to track rent and square footage trend data, which we agree is necessary. The specific types of data recommended would not be particularly useful for program planning, management or

budgeting purposes; but, the judiciary is keenly interested in obtaining useful data from GSA. Indeed, the judiciary has exerted a significant amount of effort to obtain the necessary documentation and information from GSA to track space and rent trends and, as GAO states, "identify any mistakes in GSA data." This effort to obtain such information has been to almost no avail.

The GSA, in the past, has not been forthcoming with data that will help the judiciary to identify mistakes in rent bills. In fact, GSA policy precludes making back-up data to rent bills readily available to occupants of GSA-controlled space. As the judiciary has explained to the GAO evaluation team, courts in New York, in attempting to identify mistakes in GSA's rent, were forced to file Freedom of Information Act requests to obtain back-up data related to the rent bills in their courts. GSA has now reluctantly begun to supply the AOUSC with some information, much of which is a complete embarrassment to GSA. The independent market appraisals, which form the basis of GSA's square footage rent calculations, have numerous GSA staff-authored adjustments that raised judiciary rents by tens of millions of dollars. If everything the judiciary has identified thus far from these and other documents is true, approximately $38 million in overcharges resulting from unilateral modifications to documents or misapplication of GSA's own pricing policies will have been incurred by the judiciary in a single year.

In the judiciary's view, to achieve the stated goal of "creat[ing] a better national understanding of the effect local space management decisions have on rent and identify[ing] any mistakes in GSA data," the report must recommend that GSA provide all back-up information requested by the judiciary. Unfortunately, it is only since the judiciary embarked upon its rent relief efforts that GSA began to provide some data on the rent components described in draft Recommendation 1a. The GAO evaluation team has indicated that addressing this important issue is outside the scope of this study. However, the recommendation that the judiciary should track rent trends to better understand how space decisions affect rent is meaningless if the underlying rent pricing policies and calculations are fundamentally flawed.

As to the GAO's recommendation that the judiciary should track square footage trends, the GAO draft report needs to recognize that the judiciary, for well over five years, has been attempting to get information from GSA that will help us track the space inventory better and identify trends in space growth. Even though GSA has been working on supplying the judiciary with this information for over four-and-a-half years, the GSA effort is now only 60 percent complete. Important to note, however, is that the judiciary anticipated the need to get better data from GSA at least seven years ago and that the

effort is underway, albeit at a pace that is slower than the judiciary would prefer. Getting the data requires GSA to remeasure space and code the space in its database in a way that will enable assigning costs to the various components of the judicial branch, e.g., district court courtrooms and chambers, probation offices, clerk's office, libraries, etc.

One example of this effort could explain some of the GAO's confusion regarding the growth of court of appeals space. The growth in the court of appeals space described in the draft report could be attributed to the fact that library space might have previously been assigned to the district courts, when in fact all library space comes under the purview of the courts of appeals. This recoding of the assignment of space from the district courts to the courts of appeals might help to explain why GAO has concluded that there has been significant growth in the courts of appeals space. The percent increases by "function" cited in the draft could be attributable, therefore, to the transition from the old way GSA provided the judiciary with data to the new way initiated by the judiciary. If this is the case, GAO might have reached different conclusions about growth rates for the appeals courts.

It is also integral to an understanding of square footage growth that the GAO explain there are many factors outside the judiciary's control that drive the courts' space needs. Indeed, population trends, caseload growth, the changing nature of cases handled by the federal courts, and the age and condition of existing facilities all play a role in determining where new facilities and additional space are needed. Certainly the judiciary's long-range facilities planning process has been a useful tool in identifying space trends. It uses a methodology that has been refined over the years based on recommendations made by GAO. Actual needs, of course, might change depending upon the dynamics of the outside factors that could drive the courts' space needs, such as the timing of legislation that would create additional judgeships or stepped-up border enforcement activities.

Having inventory information based on court components at a micro-level will be of great assistance to the AOUSC and the Judicial Conference in the future. The judiciary has already undertaken steps to obtain such information. The AOUSC believes that the data should be parsed in way that enables analysis by various categories within the appeals, district, and bankruptcy courts. The judiciary is, in fact, moving well beyond what GAO has recommended in its draft report by seeking information from GSA that will help us focus on space utilization and cost by specific court unit components.

Unfortunately, getting the necessary data is not as easy as one might be led to believe. The GAO's recommendations in this section correctly put the onus on the judiciary and GSA to get better data. From the judiciary's perspective, it has provided GSA with what it believes will be helpful in identifying trends and tallying costs at the local level. The burden is now on GSA to complete the data gathering effort expeditiously and to ensure the accuracy of the data. On this latter point, categorizing the data requires an understanding of how the judiciary is organized. We are certainly committed to working with GSA to ensure the data is accurate, but it is ultimately up to GSA personnel at the local level to ensure data is input correctly. Without a quality assurance program, this entire effort will be rendered meaningless. Therefore, we strongly urge that GAO recommend that GSA develop a quality assurance program for the data it provides to the judicial branch related to rent, and that GSA expedite the space remeasurement/reclassification effort. Without such additional recommendations, the GAO draft report is incomplete in its identification of the steps necessary to achieve its general recommendation that rent and square footage data be tracked.

GAO Recommendation

2. *AOUSC should work with the Judicial Conference of the United States to improve the way it manages space and associated rent costs.*
   a. *Create incentives for districts/circuits to manage space more efficiently. These incentives could take several forms, such as a pilot project that charges rent to the circuits and/or districts to encourage more efficient space usage.*

Judiciary Comment. Underlying this particular recommendation is a false premise that space decisions are within the control of the local districts and circuits. While Congress has recognized the importance of local decision-making on space matters by providing circuit judicial councils – the entity that has first-hand knowledge of local caseload and other trends important to the courts space needs – with the statutory authority to determine the need for space accommodations, Congress also determines where court shall be held throughout the country. From a real-estate perspective, it might not be efficient to have statutorily designated places of holding court in cities that are in close proximity to each other, but that decision is not always made by the local circuit judicial council and should not be implicitly attributed to them if such a decision seems inefficient.

For instance, one could argue that there is no need for a courthouse in Tacoma, Washington, because there is a large facility in Seattle, Washington. Whether there needs to be a facility in Tacoma is not a decision ultimately made by the judiciary, but a congressional one. The judiciary must, however, work within this system in conducting its business and must provide space where Congress determines court shall be held. From an access-to-justice perspective (as opposed to a "bricks-and-mortar" perspective), the system is quite efficient, and the judiciary is a strong proponent of providing ready and easy access to the federal courts. Having courtrooms and chambers in different cities provides the judiciary with the ability to assign judges to caseloads at locations where the jury pool most accurately represents one's peers, and saves litigants and their counsel, as well as witnesses, jurors, and other involved parties, from traveling long distances. The judiciary should not, however, be blamed by GAO for having multiple facilities for the courts of appeals, district courts, and bankruptcy courts in a particular circuit or judicial district. The report must state clearly that it is up to Congress to determine where court is held. If GAO believes that Congress has created real estate inefficiencies by designating locations of holding court, it should discuss those concerns with the congressional committees with jurisdiction over such matters. To reflect the complete picture of space management and the associated rent costs accurately, the GAO report must state that in terms of rent costs, the number of places of holding court, as determined by Congress, poses a rent challenge to the judiciary because the judiciary has very little control over where court is held.

Similarly, the report should also recognize there are interests outside the judiciary that can influence space decisions. For example, when there is even a brief discussion about closing a court facility by a circuit judicial council, Congress, local governments, and members of the local bar raise serious concerns. In the opposite situation the same is true. Members of Congress also have the ability to ask GSA to study the feasibility of constructing a facility at a specific location. That facility might not comport with the priorities established by the judiciary. Regardless of why the facility was constructed, the judiciary must still pay the rent costs associated with that new building. These factors pose challenges for the judiciary in terms of additional rent and space decisions. While the creation of local incentives to use space efficiently may help the judiciary, the circuit judicial councils are not the only entities who make space decisions.

As to the idea that incentives should be created, the judiciary is working toward the same objective but is taking a slightly different tack aimed at attaining tighter budgetary controls on the circuits' facilities decisions. On March 14, 2006, the Judicial Conference approved in concept the establishment of an annual budget cap for space rental costs.

The Executive Committee of the Judicial Conference urged the Administrative Office in March 2006 to move expeditiously with development of rent budget caps and to consider issuing rent allocations within those caps to circuit judicial councils as soon as possible. This Judicial Conference action comports with the GAO recommendation 2a.

Implementation of the budget-cap initiative will ensure that local decision-makers balance competing space requests at the circuit level and help circuit judicial councils in space planning. The AOUSC recently convened meetings with the circuit executives and their assistants for space to develop a methodology to implement a rent allocation equitably among the circuit judicial councils by the beginning of FY 2007 on a pilot basis. Work on this initiative will continue throughout the summer of 2006 and all of 2007.

It is important to note, however, that there are serious challenges facing the judiciary in implementing this initiative. Much of its success will depend on GSA's ability to provide reliable rent information and to keep projects on schedule. A spreadsheet that displays GSA rent estimates for a randomly selected group of projects has been provided to the GAO evaluation team under separate cover. The spreadsheet shows that GSA's local staff do not always provide accurate rent estimates in a timely manner. In addition, local GSA officials meet with local courts, but do not fully disclose the financial implications of proposals made by GSA or suggested by courts. Expectations are subsequently raised in the courts that, in turn, can lead to disagreements about whether the improvements are needed and were requested, and how the rent for them will be paid. It should be described as a challenge facing the judiciary's efficient management of its space in the final GAO report.

Another administrative hurdle involves GSA's rent billing protocols and other policies. The GAO evaluation team has been advised that Treasury regulations require prompt payment of the monthly rent bill. GSA will only send the bill to an agency's headquarters. Because the judiciary is billed centrally by GSA, creating space incentives at the local level has proven to be a challenge. In the past, the judiciary established incentives for courts to reduce their space by crediting their local operating budgets with a portion of any rent savings. An incentive program such as this one will be discussed with the Judicial Conference's Space and Facilities and Budget Committees.

GAO Recommendation

2. *AOUSC should work with the Judicial Conference of the United States to improve the way it manages space and associated rent costs.*
   b. *Revise the Design Guide to:*
      - Establish criteria for the number of appeals courtrooms and chambers and the space allocated for senior judges.

Judiciary Comment. We note first that GAO has already committed to deleting the recommendation that the judiciary should establish a policy for senior judges' courtrooms because the judiciary has a planning policy for senior-judge courtrooms.

Courts of appeals' courtrooms are not a significant part of the judiciary's space inventory. According to our current records, there are 54 appellate courtrooms across the nation. Some circuits may have all or most of their courtrooms located in one building and others, especially larger circuits, may have appellate courtrooms in several locations. The mission and functions of the United States Courts of Appeals simply do not require daily courtroom usage. GAO did not collect any information on this subject and, in fact, the GAO evaluation team never interviewed a court of appeals judge to get an explanation of how the appellate courts hear and process cases. Without this information, it is difficult to understand how GAO can recommend the need for a formula; therefore, this recommendation should be eliminated.

As noted in the draft report, the courts of appeals will backfill space previously occupied by district courts in Seattle and Richmond. As such, some courtrooms previously dedicated to district court use are converted for use by the court of appeals. While this is portrayed as inefficient space management, it is extremely important to realize that when GSA studies the feasibility of constructing a new courthouse, it considers the revenue the Federal Buildings Fund (FBF) will lose if the existing courthouse is no longer occupied. GSA puts a lot of pressure on the courts to backfill existing district court buildings with either the court of appeals or the bankruptcy court so that the FBF does not lose revenue. Because of the special-purpose nature of courthouses, the only logical backfill occupant is another federal court because the courtrooms and, to some extent chambers, are not readily converted to standard-type office space. The courtrooms are already constructed in these buildings so at times, one or two extra courtrooms might be assigned to the judiciary. In other instances, there are no other federal tenants available to backfill the space.

Similarly, if the court of appeals is in leased space, as is the case in Seattle and as are some offices in Richmond, not as much revenue is accruing to the FBF. Many courts are quite happy in their leased space, but GSA has the authority to reassign space as it sees fit. Sometimes the rental rates in the leased space are lower than what GSA will charge when the court backfills an existing district court building. In many cases, the old courthouse buildings have been neglected for years or have historic qualities that render their use by any entity other than a federal court untenable. The judiciary then ends up paying higher rent as a result of a major renovation in an existing building.

The phenomenon of lost revenue to the FBF and its effect on backfill tenants poses a significant challenge to the judiciary and should be described as such by the GAO evaluation team in the final GAO report. This challenge can lead to what the GAO report has portrayed as inefficient space decisions made by the judiciary, especially with regard to the court of appeals recommendation, yet is not necessarily a factor over which the judiciary has complete control. In light of this GAO recommendation, however, the judiciary will not be as accommodating to GSA as it has been in the past.

GAO Recommendation

2. *AOUSC should work with the Judicial Conference of the United States to improve the way it manages space and associated rent costs.*
   b. *Revise the Design Guide to:*
      - Make additional improvements to space allocation standards related to technological advancements (e.g., libraries, court reporter spaces, staff efficiency due to technology, etc.) and decreases requirements where appropriate.

Judiciary Comment. The judiciary has already begun to implement this recommendation. At its March 2006 session, the Judicial Conference approved significant changes to the *Design Guide*. Also, changes to square footage and planning assumptions for libraries will be considered by the Judicial Conference in September 2006. The effect of electronic case filing (as opposed to paper filing) on file storage needs, as well as the impact of recent changes approved by the National Archives and Records Administration that will result in reduced paper files space, will also be considered in September 2006. Space standards for microfilm and microfiche reading and storage are also scheduled to be changed. The judiciary is committed to updating its space standards on a regular basis.

Conclusion

A fundamental problem with the draft report is that it does not contain key information necessary for an objective, fair or thoughtful assessment of issues relevant to the judiciary's request for rent relief. It is in the interest of good government and it is in the public's interest that the report GAO ultimately provides to the Committee reflects the accurate and unbiased research expected from GAO. It would be helpful to all involved parties if GAO could present information and an objective analysis to address these key questions:

- What are the primary reasons why the judiciary has needed more space and what are the prospects for future space needs?
- How have rental costs changed over time and what cost increases are expected in the future?
- Are the judiciary's budget concerns substantiated by recent history and reasonable expectations about future funding requirements and appropriations levels?
- Are rent policies and practices employed by GSA reasonable for special-purpose facilities such as courthouses?

Over the past few weeks, by necessity, we have rushed to provide vital information that GAO should have been collecting and analyzing during the year-long study effort. We urge you to produce a balanced report that will assist the Committee in considering a matter of vital importance.

Sincerely,

Leonidas Ralph Mecham
Director

Enclosure

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

BENSON EVERETT LEGG
Chief Judge

101 West Lombard Street
Baltimore, Maryland 21201
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June 2, 2006

Ms. Cathy McCarthy
Deputy Associate Director
Administrative Office of the U.S. Courts
Office of Management, Planning and Assessment
Washington, D.C. 20544

Via Facsimile: (202) 502-1155

Re: Comments Regarding GAO Courthouse Rent Study Draft Report

Dear Ms. McCarthy:

You asked me to review for accuracy an excerpt regarding the Baltimore courthouse that appears in the GAO's draft report on courthouse rent. Unfortunately, the excerpt is wrong both in terms of its factual basis and its slant. The GAO states:

> At the Edward A. Garmatz Federal Building and U.S. Courthouse, we found that four magistrate courtrooms are being used to store excess furniture. The district chose not to use them because they do not meet *Design Guide* standards for square footage. The judiciary then used the lack of magistrate courtrooms in the courthouse to increase its priority for having a new courthouse built in Baltimore. This appears to go against *Design Guide* instructions which indicate, "Differences between space in the existing facility and the criteria in the Design Guide are not justification for facility alteration and expansion."

The Baltimore courthouse was designed in the late 1960s and built in the mid-1970s. Although our institutional memory of this long-ago time is limited, we are confident that the bench did not choose to make the courtrooms small. We understand that the late Edward Northrop, who was then chief judge, unsuccessfully argued that the courtrooms, which are all undersized by today's standards, would prove inefficient. Because of the hyper-inflation of the 1970s, the project was strapped for cash and the building envelope was substantially reduced to cut costs. We believe that the small courtrooms were dictated by the strapped budget rather than a desire to have small, inefficient courtrooms.

Under today's *Design Guide*, magistrate judge courtrooms should be 1800 square feet. As built, the four magistrate judge courtrooms cited in the GAO report are 963, 995, 1154, and 1169 square feet with 9 foot ceilings. The cramped size of these courtrooms proved ill-suited to handle the drug and gun cases that characterize a big-city federal docket. In the small courtrooms, there was almost no separation between persons in custody, the victims who might be testifying or observing, law enforcement officers, lawyers and the like. Everyone was right on top of everyone else, creating security and logistical problems.

Before 1994, Baltimore was the sole federal courthouse in Maryland. In 1994, the Southern Division courthouse in Greenbelt opened, and eleven judicial officers, who would otherwise be housed in Baltimore, are quartered there. Because Greenbelt has absorbed the bulk of the Court's recent growth, there are three more district court courtrooms than there are district judges. The four Baltimore magistrate judges now share these three courtrooms. It would be silly to require the four judges to use the old, small courtrooms when better space is available.

One of the deficiencies in the Baltimore courthouse is the lack of storage space. We put file cabinets and not-currently-needed furniture wherever we can find an unused room. Because they were unoccupied, we stored furniture in the old magistrate judge courtrooms.

Time marches on and Greenbelt is now completely full. Although Baltimore is not yet full, space is fast running out, especially given the growth of the bankruptcy court. We will hit a crunch soon when a group of active judges will transition to senior status and their replacements arrive. To solve this looming problem, the district court turned over two of the old magistrate judge courtrooms (2B and 2C) to the bankruptcy court. They will be renovated and combined into one bankruptcy courtroom. We just received approval to renovate the other two courtrooms (2D and 2E) into one usable magistrate judge courtroom. So, these old spaces will be put to good use. It is worth mentioning that in demolishing the spaces we will not be sacrificing expensive finishes. The four courtrooms have drywall walls and metal slat ceilings, so we are not giving up anything worth saving.

I am not sure where the GAO got the idea that the judiciary is using the lack of courtrooms in the Baltimore courthouse "to increase its priority for having a new courthouse built in Baltimore." The Baltimore project was placed on the so-called 5-year list for a new courthouse in 1998. Our placement on the list was driven by security issues, structural problems, and the space needs of a growing, big-city court.

We here in Baltimore believe that the four tiny magistrate courtrooms should not be counted as "courtrooms" because they simply do not work as such in a court with a high volume of drug and gun cases. This issue is now moot as the four courtrooms will be reconfigured into two far more usable spaces.

As a final matter, we take exception to the slant of the GAO draft report that portrays the Court's space decisions as irrational and arbitrary. The GAO apparently made no effort to study the type of proceedings that magistrate judges handle. Had the GAO done so, it would have readily seen that the four tiny courtrooms simply do not work. There are good reasons why the Design Guide calls for magistrate judge courtrooms of 1800 square feet.

We have always been guided by common sense rather than whim. We invite anyone to come to Baltimore to take a look at the courthouse and how we use it. What they will find is a modest, 1970s-style cement office building with few frills and adornments that we use efficiently to serve the public.

Very truly yours,

Benson Everett Legg

cc: Felicia C. Cannon

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

CATHY A. McCARTHY
Deputy Associate Director

Office of Management,
Planning and Assessment

May 4, 2006

MEMORANDUM TO: MARK GOLDSTEIN
BILL JENKINS
DAVE SAUSVILLE
KEITH CUNNINGHAM

SUBJECT: U.S. Courts Rent Exemption Study

Attached are comments on the statement of facts. General concerns about the statement of facts are explained first, followed by specific comments on the product. These have been produced quickly and thus may not be as polished as we would prefer.

As we discussed on April 27, we are interested in working closely with the team to provide information and resolve issues. Also, as we discussed last week, the judiciary requested a 60 day extension of your deadline for completing this work, which we hope will be granted.

Without more work by GAO to correct errors and add more facts, we are extremely concerned that the draft report will not be accurate. Also, we are concerned that the study will provide few facts that will be useful for addressing the question of whether the judiciary should be granted a reduction in its rent.

After you have had a chance to review these comments, please let us know when you are ready to discuss them with us.

Cathy A. McCarthy
Deputy Associate Director

Attachments

Comments on GAO's Statement of Facts

General Concerns

1. *Scope*

Due to time constraints or other factors, the study has been limited to a very narrow scope that does not come close to meeting the stated objectives of the assignment. The requesters asked GAO to address how rent payments are calculated by GSA and how they are planned and accounted for by the judiciary, historical trends in the judiciary's need for space and its rent payments, and the challenges faced by the judiciary in managing its rental costs and its need for space to accomplish its mission.

These questions cannot be answered using the facts presented in the draft. Most of the facts presented appear to be tangential at best, if not irrelevant, to an assessment of these matters. Moreover, the product identifies and addresses **none** of the primary issues raised by the judiciary in regard to its rent costs, despite GAO's commitment to address these matters.

A fundamental problem with the statement of facts is that it does not contain key information necessary for an objective, fair or thoughtful assessment of issues relevant to the judiciary's request for rent relief. It would be helpful to all involved parties if GAO could present information and an objective analysis to address these key questions:

- What are the primary reasons why the judiciary has needed more space and what are the prospects for future space needs?
- How have rental costs changed over time and what cost increases are expected in the future?
- Are the judiciary's budget concerns substantiated by recent history and reasonable expectations about future funding requirements and appropriations levels?
- Are rent policies and practices employed by GSA reasonable for special-purpose facilities such as courthouses?

Last August, the team produced an outline of topics to be addressed in covering the study's objectives, but most of them are not covered, including: timeline of the budgeting process used to plan for and pay rent; O&M requests vs. appropriations; historical data (such as caseload, judges, age of courthouse stock, et al.); the judiciary's balance of payments regarding FBF; usable vs. unusable space; and opportunities for rent

reduction available to the judiciary. The product falls short in presenting this basic information and in addressing other pertinent issues that the team is highly capable of evaluating, while it focuses largely on topics that are neither germane to the study's primary purpose nor within the subject-matter expertise of the team assigned to carry out the task.

The study does not address a primary issue—namely, whether the methods used for determining commercially equivalent rental charges are appropriate for special-purpose facilities such as courthouses. It does not address cost impacts related to five-year shell rent adjustments. And it does not report on the accuracy of GSA's bills.

2. *Accuracy and Context*

Many of the topics addressed in this product involve matters that are not simply facilities-related but are mission-related, and that require a basic understanding of the federal judicial system. The product contains numerous items that reflect the team's lack of knowledge about the federal courts and that lack relevant programmatic detail and context. The assessment of rent costs looks back only a short time, and does not address long-term trends or the future. The lack of historical perspective and the emphasis on describing current facilities details is both short sighted and of questionable significance for describing the longer-term funding issues and facilities needs of the judiciary.

A presentation of basic information about the judiciary's growth would provide essential background and contribute to a more complete analysis regarding the judiciary's facilities needs. Overall workload growth trends created a need for more judges and staff in the courts. Over the last fifteen years (1990-2005), the following changes occurred:

- Appeals filings increased 66%
- Civil filings (district) increased 29%
- Criminal filings (district) increased 44%
- Bankruptcy filings increased 118%
- Persons Under Supervision increased 40%
- Total judges increased 25%
- Total court support staff increased 45%

Moreover, the judiciary's workload is not under the control of the courts and workload cannot be reduced to meet budgetary and space constraints. Matters within the jurisdiction of the courts must be handled expeditiously by the courts; there is no alternative.

A large number of the stated facts are incorrect or only partially correct, and critical facts are simply missing. The various fact snippets are so devoid of context that

they will be readily misinterpreted, and their inclusion in this product suggests they are leading to conclusions about "inefficient" space utilization on a particular day or point in time, or to raise questions about a judicial practice that the team does not fully understand. Unless the facts are clarified, any resulting inferences will have highly questionable probative validity.

With regard to the objective to describe how GSA calculates rent charges, the draft describes only very basic and well-known components of the rental charges. The more difficult questions are missing. For example, the study does not examine the rental charges for government-owned facilities. How many judiciary facilities are government owned? What contributory effect have real estate market cycles had on GSA rental rates, and what effect are they likely to have? What cost trends can be expected for those facilities over the life of the buildings? To what extent do charges exceed the actual cost of operating those facilities?

The study does not examine whether GSA's appraisal-based pricing approach is inappropriate for build-to-suit, special purpose structures such as courthouses. As the AO discussed with the team, this appraisal-based approach results in:

- higher rental rates reflective of speculative space rents, yet the judiciary is the guaranteed tenant and there is no speculative risk for GSA.
- higher rental rates reflective of a small (i.e., 10,000 square foot) occupancy, whereas the judiciary is the majority tenant and entitled to a volume discount for occupying full floors.
- rental rates that invariably escalate every 5 years as GSA re-appraises the space, whereas typically private sector tenants in build-to-suit buildings enjoy long term (i.e., 20 to 25 year) fixed rent agreements.
- premium (extra) rent charges for courtrooms with high ceilings as well as for secure judges' elevators and prisoner elevators, even though these features are part of the original building design and in typical build-to-suits, rents would never be assessed on such features. Rather, rents would be set to recover cost of capital. These premium rents recover far more than the amortization of initial capital costs.

Also, while it is described, the study does not appear to be assessing the relative merits of GSA's secondary means of pricing space—return on investment, (ROI) pricing. Should this be the primary pricing approach for courthouses and special purpose facilities? If so, should the rate of return be adjusted to reflect how risk is actually

apportioned? As discussed with the team, in discussing this methodology, the following issues should be addressed:

- GSA's pricing policy provides that, when an appraisal-based rental rate will not yield GSA an initial minimum return of 6% on the capital to be invested, it resorts to Return on Investment (ROI) pricing.

- The ROI approach is more in keeping with how the space would be priced commercially, but in GSA's application of ROI, 200 basis points (2%) are added to the commensurate term Treasury Bill rate to arrive at the amortization rate used in calculating the rent.

- GSA argues that it is entitled to a 200 basis point spread above commensurate term Treasury Bills as a "premium" for the risks it takes, but in the way GSA has formulated ROI pricing, the tenant--not GSA-- bears all risk: if the project is delayed, the tenant pays for rent in the interim, and if the project runs over budget, the tenant pays the final cost, regardless of escalations and budget busts.

- The appropriate amortization rate for GSA to use in ROI pricing is the interagency borrowing rate charged by the Federal Financing Bank: the Treasury Bill rate plus 12.5 basis points.

3. *Bias*

Another fundamental problem with the product is its apparent bias. The product contains not a single fact that indicates that GAO's report will criticize or raise questions about GSA's policies or practices. The judiciary's rationale and concerns about GSA's pricing policies are on the record. For example, the judiciary has argued that the pricing policies are not appropriate for special-purpose facilities like courthouses. This key issue and others are not addressed. Moreover, during the course of the study, AO officials identified potential problems that GAO officials made oral commitments to address, but these issues are not covered in the product. The deferential treatment of GSA's practices was illustrated at the exit conference when a GAO official dismissively defended GSA's decision to charge $11,000 in rent to the judiciary for a parking lot that was transferred to the government for $1, arguing that it was within GSA's authority to do so. Since when does GAO's obligation to assess government practices stop there? Typically, GAO evaluates the public value regarding how government entities exercise their authorities. It is clear that GAO does not intend to show the same hands-off respect for decisions made under the purview of the judiciary's authorities that it has afforded GSA.

GAO's team spent very little time with AO officials and requested only one document (which was a detailed rent bill for one district generated from a GSA system).

GAO requested no information about the planning and budget process, projections for rent, or the budget implications for meeting other judiciary needs. The judiciary does a good job of projecting its rental costs, but GAO determined to drop this key topic from the study after learning that the budget problem was not that the judiciary has trouble forecasting or accounting for rent costs, but that Congress was not providing sufficient funds for the judiciary to pay the rent and meet other critical needs. As you know, two years ago, the judiciary had to reduce its workforce by 1,800 because of insufficient funding for staff after paying rent and other mandatory costs. We are projecting that this budget problem will continue into the future without rent relief, and that the judiciary could suffer serious shortfalls in funding to operate the federal courts. GAO has reported publicly about the federal government's financial situation and it seems unlikely that GAO believes appropriations will increase substantially over the next decade. Some simple facts in this regard are needed in the report. Here are key basic facts for the past four years (FY 2003-2006):

- Average annual appropriations (Salaries & Expenses) increases: 4.7 %
- Average annual rent increases: 6.2 %

Fiscal Year	% Increase in Rent Obligations from Prior Year	% Increase in S&E Appropriation from Prior Year
2003	6.4%	5.1%
2004	6.0%	4.4%
2005	4.3%	4.3%
2006	8.1%	4.9%

Also with regard to the judiciary's ability to plan and budget for rent costs, in response to questions posed by the GAO team, the AO explained that GSA does not always provide the occupancy agreements in a timely fashion and gave several examples, but the report says only that "according to GSA, the occupancy agreement provides the tenant with a preview of total rent charges prior to construction of a facility...." GAO has demonstrated no interest in pursuing an objective truth on this question and has accepted what GSA said as "fact."

AO officials informed the team about the difficulties the judiciary has faced in analyzing the accuracy of GSA's rental charges. In particular, we cited the unwillingness of GSA to produce backup documentation regarding the basis for individual buildings' rent charges, such as current space plans or appraisals. We told the GAO team that a district court resorted to filing a FOIA request to obtain such information from GSA. We also informed the team of large and costly errors identified by court staff in a couple of

districts that resulted in refunds of over $11 million from GSA. We told GAO about unexplained modifications that had been made to raise appraisals. We discussed GSA's decision to hire an outside auditor to review the documentation for rental charges (and the team said the Booz Allen findings were reviewed by GAO). We told the team that we had an extensive and labor-intensive rent-validation effort underway across the judiciary. One of the districts GAO visited shared with the team errors in how space had been categorized by GSA, resulting in higher charges. We expressed strong concerns about an incentive program in GSA's Public Buildings Service which includes revenue enhancement as a key objective that can result in large monetary rewards to regions and individuals.

Importantly, none of these matters is addressed or identified in the draft nor are there any facts presented about how specific rental charges were actually calculated by GSA and whether they were accurate. GAO's objective and independent findings regarding the accuracy of the rent bills is needed. GAO examined GSA's files for the purpose of validating whether the rent bills were correctly calculated. (Note: This assessment was based only on the supporting documents. The team told us they were not going to hire appraisers, but would look at the appraisals themselves.) Were the rent calculations correct and well documented or not? Surprisingly, the report does not mention the results of this review. Instead, the report contains no independent GAO assessment whatsoever of the accuracy of GSA's charges. Further, it dismisses this key aspect of the study with this misleading statement: "according to judiciary and GSA officials, the judiciary rarely identifies errors in GSA bills." This statement is not at all an accurate reflection of the judiciary's stated concerns, as described in more detail later.

4. *Questionable Use of Anecdotes*

The judiciary was fully prepared to assist GAO in carrying out a thorough and objective evaluation of the key issues related to rental costs, including the judiciary's facilities needs and funding challenges. These involve complex issues that have broad implications. Instead of focusing on the key issues and long-term and future judiciary-wide trends, GAO opted to focus its limited resources on a short time period (2000-2005) and on only a few judicial districts which saw a large increase in their rent charges during that period. Acknowledging that an analysis of only a few districts could not be generalized to reflect the entire system, GAO chose this methodology ostensibly to delve into the details regarding the five districts.

It can be no surprise to anyone that total rent costs increased for districts which moved into newly constructed courthouses during the time period GAO selected. This information was known and could be reviewed without visiting the courts. The resources expended by GAO to visit courthouses across the country has produced very little relevant information about the selected districts. A reader will not have a clear

picture at all about the situations in those districts because the information presented for each district is sketchy and inconsistent. In particular, there is no information about why a district needed new facilities. The report contains virtually no discussion of the mission-related purposes for facilities decisions that were made that would give meaning to the numerical data presented. Instead, the assortment of facts selected for publication appear to be chosen for their potential value in supporting certain conclusions. Every court visited was asked to confirm the facts reported by GAO. All of them identified errors and nearly all courts reported that GAO had misconstrued the facts or told only part of the full story.

One useful outcome anticipated from the site visits was not achieved. The GAO team said it needed to go on site to inspect the space and compare it to GSA's plans and other documents, and to validate the rental charges for those buildings, but the draft reports nothing about this. Instead, the team appears to have focused on judicial chambers and courtroom spaces, and how they are currently assigned in the courts. This topic is of interest to some, but it has little real significance to the larger rent issue and it is a topic being studied separately.

GAO's reported facts regarding the courthouses visited concentrate on a few isolated instances of currently unassigned courtrooms and chambers. The shortsightedness of these findings is remarkable and reflects an analytical bias. Courthouses are built to be used for decades. The judiciary's space planning process has been endorsed as sound by independent entities. But, planning is not an exact science, particularly when critical factors are totally outside the control of the judiciary or unpredictable. To draw conclusions about whether chambers or courtroom facilities are used "efficiently" based on a snapshot in time is wrong without considering the complexity of driving factors. Importantly, new judgeships are created by Congress and the filling of judgeship vacancies is controlled by the President and Congress. Judges may become ill, pass away, or leave the bench. Judges may take senior status when eligible or they may not, and they may or may not carry a heavy workload in senior status for varying periods of time. Caseload volumes may shift between locations within a particular district requiring judges to travel to non-resident locations. New judges may serve in a different duty station within a district or a circuit than the judges they replace. There are public benefits to establishing places of holding court where judges may only spend limited amounts of time, and it is Congress which establishes these locations.

In addressing the current assignment of chambers and courtrooms, these practical complexities are not described. There is nothing presented about pending new judgeships, replacements for judges taking senior status, or future judgeship needs in the districts visited. For example, there has been an explosion of workload in the District of Arizona. Five new district judgeships (and 4.5 magistrate judgeships) were added since 1999 and there are five new district judgeships in the judiciary's judgeship bill pending

in Congress. But the report covers only a large increase in square footage and rental costs for this district. What is the point of reporting such limited information? For GAO to limit its analysis to square footage figures is not only meaningless, but it suggests that the construction of courthouses is unrelated to definable needs.

The report does not provide any meaningful context for these anecdotes and uses them to make points that are invalid. In the past, GAO has noted that the Seattle courthouse was an example of cost-effective planning involving future courtroom sharing. In this report, however, the fact that its courtrooms were built to be shared by all judges is portrayed as excessive and contrary to the *U.S. Courts Design Guide* standards. Also notable is that whatever the team learned during these visits about costly design decisions not controlled by the judiciary but by GSA is not presented in the report.

These key omissions, combined with the choice of words such as "overbuilt" and "excessive," and the curious focus on describing one district's decisions regarding how to meet security needs in an old and historic building, appear intended to imply that the judiciary may not have needed new facilities and that expensive security measures may not be needed. Because GAO has no factual basis for reaching any such conclusions, the report relies on carefully selected "facts" to present a distorted picture.

While the report does not include statements made by AO officials, it contains several purportedly made by court officials during GAO's visits. Mr. Goldstein insisted that AO officials could not accompany the team on these visits, and the statements attributed to judges and court official cannot be confirmed. Court officials have expressed concern that some casual statement or a reply to a question might have been misunderstood and that these comments should not be taken out of context by GAO. Court officials have also expressed concern about how facts about their facilities have been misconstrued or slanted.

In summary, we are deeply concerned about deficiencies in this product, and we are prepared to work with GAO to produce a useful and objective analysis of the issues. The following pages respond to the individual items in the statement of facts.

JUDICIARY
COMMENTS ON
GOVERNMENT ACCOUNTABILITY OFFICE'S
"STATEMENT OF FACTS"
JUDICIARY'S REQUEST FOR RENT RELIEF STUDY

Page 1 Lines 10 - 14

GAO STATEMENT

To deal with its budget and space related concerns, the judiciary placed a two-year moratorium on all new capital courthouse projects that will be lifted at the end of fiscal year 2006. The judiciary has not taken any actions since initiating the moratorium to substantially lower rent costs and no courthouse construction projects were canceled or reduced.

JUDICIARY COMMENTS

- The judiciary continues to pursue and implement rent cost-containment initiatives aggressively and has employed a number of strategies aimed at substantially lowering rent since the implementation of the space moratorium approved by its policy-making body, the Judicial Conference of the United States, over two years ago.

- A recent review and investigation of rent bills of individual court facilities has identified the potential for the courts to be overcharged for the space they occupy. The judiciary has embarked on a comprehensive rent cost validation effort involving the review of rent charged the judiciary at all federally owned locations where the courts occupy space. An aggressive schedule is in place that calls for completing this national effort, which is currently underway, within one year. This effort involves a two-pronged approach: 1) validation of the square footage billed by the General Services Administration (GSA) through on-site visits with contract appraisers and judicial staff; and 2) thorough examination of the appraisals used by GSA to determine the rental rates to ensure they comport with GSA rental rate development policies. (See Attachment A.) It should be noted that GSA was initially reluctant to provide back-up information it used to develop rental rates. A court in New York had to file a Freedom of Information Act request to obtain the information. After discussion with GSA's Washington office, GSA agreed to release the back-up information. It should also be noted that a nationwide audit of over 2,500 judiciary-related billing records conducted by Booz Allen Hamilton for GSA has not been provided to the judiciary.

- The judiciary has undertaken a complete review of the *U.S. Courts Design Guide (Design Guide)*. Applying the Conference-approved changes in design standards to a recently constructed courthouse indicates that, had the new standards been in effect, the construction cost and rent would have been lower by 8 percent. Other changes in this on-going review may lead to further cost reductions.

- Also underway is a total re-vamping of the long-range facilities planning process, that will now examine both the costs (rent and one-time costs such as moves and furniture, on

a present value basis) and benefits (in terms of improved functionality) of alternative housing strategies, including renovation as well as new construction. This approach will help to identify the most cost effective solution, looking at both life-cycle costs and mission-related benefits for each particular court facility or city. In the past, the judiciary had depended on GSA, through its feasibility study project development process, to determine which housing strategy (leasing, renovation, or new construction) should be pursued at a given location. This new process, called Asset Management Planning, is expected to identify more lower cost, building renovation projects in lieu of new courthouse construction projects to meet expected expansion needs where feasible. Consequently, the new planning process will help reduce future rent costs. The judiciary had asked GSA officials to work with us on this process over two years ago. Due to staff turnover at GSA, decisions on pursuing this new planning approach were delayed. On April 6, 2006, the judiciary and GSA jointly agreed that this approach should be pursued.

- A total of 57 projects appeared on the most current version of the Judiciary's Five-Year Courthouse Project Plan (FY 2005-2009). The Conference determined that 35 of those projects will be subject to the new Asset Management Planning methodology. Decisions to seek funding for these projects will be deferred pending the results of the new Asset Management Planning methodology.

- The Conference directed that eight projects of the 57 projects in the midst of design be re-evaluated to determine whether the square footage included in the projects at the time of the Conference's action could be reduced. The floor plates and adjacencies had already been established for some of the projects, making it difficult to reduce their size without significant re-design fees. Notwithstanding these challenges, a total of 78,836 net square feet, however, has been deleted from the projects.

- Seven of the 57 projects had either site and/or design funding already appropriated, but the design had not yet started. The projects were put on hold so that new *Design Guide* changes could be incorporated into the projects.

- Three of the 57 projects were so far along in the design process that it was not feasible to reduce the size of the projects.

- With the imposition of a moratorium on non-prospectus projects[1] by the Conference, all chief judges were asked to cancel pending non-prospectus space requests whenever possible. Space requests that were estimated to cost an additional $6 million in annual rent were canceled or deferred. (See Attachment B.)

- In September 2004, the judiciary instituted a centralized budget check process to ensure that all space requests reflect consideration of alternative space, future rent implications, and affordability by the judiciary. The budget check process, which is administered by the Administrative Office (AO), will remain in effect until *budget caps* are established for the judiciary's space and facilities program. (A recommendation to establish budget caps was approved at the March 2006 Judicial Conference session.) Budget caps, in effect,

[1] Projects costing less than approximately $2.5 million that do not require congressional approval.

will produce a rental cost avoidance by limiting the annual amount of space rental funding expended per circuit.

- At the March 2006 session of the Conference, the judiciary also reaffirmed its commitment to the budget check process and defined a strategy for ensuring that the budget and rent implications of space projects are thoroughly considered by relevant Judicial Conference Committees before moving forward. This action has resulted in an even more robust budget check process for space projects that have any potential to affect rent.

Page 1 Lines 17 - 20

GAO STATEMENT

Based on request by the House Transportation and Infrastructure's Subcommittee on Economic Development, Public Buildings and Emergency Management, the judiciary has recently initiated a detailed study of courtroom use. The judiciary has agreed to discuss the design of this initiative with GAO.

JUDICIARY COMMENTS

- The Federal Judicial Center (FJC), the independent research arm of the federal judiciary, will conduct this study. FJC officials met with GAO staff on April 18, 2006, to review the study outline. GAO staff did not recommend changes to the FJC's proposed methodology.

Page 1 Lines 21 - 24

GAO STATEMENT

Based on a rent pricing policy introduced in the late 1990s, the rent GSA charges is composed principally of a shell rent, operational expenses, tenant improvements, and security charges. These charges account for over 96 percent of the judiciary's rent bill payments in fiscal year 2005.

JUDICIARY COMMENTS

- We cannot confirm this. It would be helpful to see the data used to determine how the 96 percent was calculated.

- There is no mention of the inclusion of "rent on the residual value of tenant improvements," nor mention of GSA's leasing fee.

Page 1 Lines 25 - 27

GAO STATEMENT

The shell rent represents the cost of using the structure, base building systems, concrete floor, and basic wall and ceiling finishes and is the largest rent component representing 60 percent of the judiciary's annual rent bill in 2005.

JUDICIARY COMMENTS

- We cannot confirm this. It would be helpful to see the data used to determine how the 60 percent was calculated.

Page 1 Lines 28 -30
Page 2 Lines 1 - 5

GAO STATEMENT

In both owned and leased space, tenant improvements reflect customizing space for that tenant and can include floor covering, doors, and wood or marble finishes. Unlike the other rent components, tenant improvement costs are removed from the rent bill once the tenant has completely paid for them. The tenant is responsible for deciding how to finish the space beyond some basic minimum standards and thus has control over much of the cost. GSA officials have said that the judiciary has the highest costs for tenant improvements in its inventory because of the level of finishes used in the federal courthouse.

JUDICIARY COMMENTS

- Nowhere in the *Design Guide* is there a reference to marble as an allowable tenant improvement. Marble is used generally in the base building or in spaces dedicated to public use, not as part of private tenant work. In terms of the selection of durable, low maintenance finishes for both public and tenant spaces, see GSA's Facilities Standards of the Public Buildings Service. In fact the *Design Guide* was revised in 1997 to provide specific direction to architects with regard to finish levels in court space. (See Attachment C.)

- Tenant improvement costs are not removed from the rent bill once the tenant has completely paid for them. While the specific line for tenant improvements may go to zero once tenant improvements have been fully amortized, a charge remains, buried in the shell rent. GSA terms this rent for the "TI residual value." This follows from GSA's reasoning that the landlord (GSA) "owns" the tenant improvements (not the tenant), even though the tenant paid for them, and therefore any *new* tenant would need to rent them from the landlord. The problem with this approach is that it completely ignores the fact that the judiciary is a continuing long-term tenant in courthouses, not a new tenant that is staying for merely 5 years.

  Since most landlords wish to retain their tenants, the common (i.e., "market") practice is to provide an incentive for the tenant to sign a succeeding lease. This is typically done by discounting the rent by the value of the tenant improvements which the landlord does not need to provide anew. In other words, in most competitive commercial markets, the tenant in a succeeding lease does not pay again for the existing tenant improvements. GSA's approach of treating *every* assignment as a new occupancy (as opposed to a succeeding lease) when it comes time to reset the shell rent every five years results in a systematic overcharging of the judiciary. The statement of facts should be revised to reflect this practice, which runs contrary to the use of market-based rate practices when setting rates in federally owned space.

Case in point about charging rent to TI residual: GSA review appraiser (GSA employee) overturned the contract appraisal for the Byron White Courthouse in Denver, Colorado, to attribute $1.00 in rent to the "as is" condition of tenant improvements. (See Attachment D. Changes to Fair Annual Rent Appraisal dated 10/31/01 and also note additional pen-and-ink changes to the appraisal which raised the rent.)

- The statement that "the judiciary has the highest cost for tenant improvements in its inventory" underscores the special purpose nature of courthouses; they are not office buildings with standard office build-out. But, the second clause in this sentence – "because of the level of finishes" – is misleading because the bulk of these costs are related to meeting basic functional needs, not primarily related to "finish" choices. The "statement of facts" should recognize the special purpose nature of federal courthouses and that GSA's pricing system is not easily adapted to special purpose buildings like courthouses with their complex circulation systems and significant amounts of space for use by the public (e.g., jury assembly and jury deliberation rooms, attorney/witness conference rooms, public transaction counters and public records review areas, interview rooms for persons on probation, holding cells, cellblocks, security surveillance command centers, courtrooms, urinalysis and drug testing rooms). The unique, physically complex nature of the federal courthouse is the reason that the judiciary has the highest tenant improvement costs.

Page 2 Lines 6 - 11

GAO STATEMENT

Rental rates for operational costs, which cover cleaning, general maintenance, and heating, air conditioning, and other utilities, are set as part of the market appraisal for the shell rent. But unlike the shell rate, operational costs are adjusted annually for inflation in between appraisals. In leased spaces and some owned locations, GSA passes the actual operational costs directly to the tenant to recoup the expenses incurred.

JUDICIARY COMMENTS

- In the case of leases, GSA passes through the underlying lease contract costs - which contain an operating expense component. What the lessor's "actual" operating costs are may be higher or lower than the amount in the lease. GSA also assesses fees on these pass-through costs. The fees recover more than GSA's actual costs.

Page 2 Lines 12 - 22

GAO STATEMENT

The U.S. Marshals Service (Marshals Service) provides security services inside the courthouse and the Federal Protective Service (FPS) generally protects the exterior of courthouses. Until fiscal year 2005, the judiciary paid security costs to GSA as part of its rent payment. GSA in turn, distributed the money to the Marshals Service and FPS. Starting in fiscal year 2005, however, the judiciary began paying security charges directly to the Department of Homeland Security (DHS) after FPS's transfer to that department. Under the Homeland Security Act of 2002, FPS was transferred to the Department of Homeland Security. However, since the security

charge still exists, and it was an important part of rent for all of the other years we analyzed, we included the charges as if they are still part of the rent bill for fiscal year 2005.

JUDICIARY COMMENTS

- GSA **does not** transfer money to the Marshals Service.
- *Technical Correction.* Starting in fiscal year 2005, however, the judiciary began paying **FPS** security charges directly to the Department of Homeland Security.
- *Technical Correction.* However, since the **FPS** security charge still exists, and it is an important part of rent for all of the other years we analyzed, we included the **FPS** charges as if they were still part of the rent bill for fiscal year 2005.

Page 2 Lines 23 - 25

GAO STATEMENT

GSA rent is also composed of several other components including parking and antenna fees. These other components comprise about 4 percent of judiciary entire rent bill in fiscal year 2005.

JUDICIARY COMMENTS

- All of the other components should be listed.
- We cannot confirm the four percent calculation.

Page 2 Lines 26 - 27
Page 3 Lines 1 - 6

GAO STATEMENT

Every space assignment in the GSA inventory requires a signed occupancy agreement between GSA and the tenant agency that explains the financial terms and conditions of the occupancy, as well as the years of occupancy. According to GSA, the occupancy agreement provides the tenant with a preview of total rent charges prior to construction of a facility, including courthouses, and can act as a rent planning mechanism. GSA tenants, including the judiciary, can appeal a rent charge for a bill where they think that GSA may have made a mistake or misapplies its rent policy.

JUDICIARY COMMENTS

- While GSA's pricing policy requires that occupancy agreements be provided at various stages of a project, GSA has not always provided them to the judiciary in a timely manner and in some instances, occupancy agreements have not been provided until the judiciary has occupied a building. Moreover, the rental rates projected in the preliminary occupancy agreements for new courthouse construction and major repair and alteration projects often turn out to understate the actual rental impact when the project is

completed. Consequently, the utility of these occupancy agreements as a rent projection tool is limited.

- The AO has assembled documentation that supports the above statement for review by the GAO evaluation team. (See Attachment E.)

Page 3 Lines 10 - 12

GAO STATEMENT

AOUSC, the judiciary's administrative arm, works with the district, bankruptcy, and appeals courts to identify and prioritize the judiciary's capital needs and also pays the judiciary's rent bills.

JUDICIARY COMMENTS

- Narrative noting that the circuit judicial councils, which by statute (28 U.S.C. § 462) have authority to determine the need for all space accommodations within their respective circuits, should be added here. The circuit councils play a key role.

Page 3 Lines 13 - 16

GAO STATEMENT

The judiciary's rental obligations for federally owned and leased space have steadily risen 27 percent from fiscal year 2000 to 2005. During this time, the judiciary had a net increase in the amount of space it occupies nationwide by 6.2 million rentable square feet, or by 18.6 percent.

JUDICIARY COMMENTS

- The judiciary's figures for those five years of growth differ substantially. Rent obligations have grown 44 percent over this period, not 27 percent. The amount of space has increased by 4.212 million rentable sq. ft., or by 12.4 percent.

Page 3 Lines 17 - 18

GAO STATEMENT

Shell rent grew proportionately with the percentage of net space added – 19 percent.

JUDICIARY COMMENTS

- Shell rent increased by 33 percent, not 19 percent, from 2000-2005.

Page 3 Lines 19 - 23

GAO STATEMENT

The construction of new courthouses accounts for much of the new space added by the judiciary since 2000. New courthouses represent about 5.9 million rentable square feet of new space that the judiciary has added during that period, which represents 95 percent of the net increase in space that the judiciary has experienced.

JUDICIARY COMMENTS

- We cannot confirm this.

Page 3 Lines 24 - 28
Page 4 Lines 1 - 3

GAO STATEMENT

In Phoenix and Tucson, Arizona, the bankruptcy court took over the old district courthouses after the district court moved into the new courthouse. In Richmond, Virginia, and Seattle, Washington, the appeals courts plan to take over the old district court after the district court moves to the new courthouse. In Omaha, Nebraska, federal judiciary permanently vacated the old location of the federal court, when it moved to the newly constructed Hruska Courthouse. In that instance, the judiciary more than doubled its overall square footage when it moved out of a multiple agency federal building into the new courthouse.

JUDICIARY COMMENTS

- The GAO evaluation team should insert narrative from correspondence found at Attachment F that was submitted by the Honorable Joseph F. Battallion, Chief Judge of the District of Nebraska. Without this important information, the readers of the report will be significantly misled.

Page 4 Lines 4 - 7

GAO STATEMENT

Before it imposed its 2005 moratorium postponing new courthouse construction projects for two years, the judiciary had 32 additional courthouse construction projects planned for fiscal years 2005 through 2009 totaling almost $3 billion including site acquisition and design costs.

JUDICIARY COMMENTS

- We cannot confirm the cost estimate.
- There are 35 (not 32) projects on the FY 2005 - 2009 Plan that have not yet received a site and/or design appropriation.

Page 4 Lines 8 - 10

GAO STATEMENT

Each circuit increased its square footage from fiscal year 2000 through 2005. However, the 8th and 9th Circuits added proportionally more square footage than the others, growing by 36 percent and 27 percent respectively.

JUDICIARY COMMENTS

- We cannot confirm the percentage calculations.
- It is necessary to have a better context for this statement. Out of context, the statement is misleading because it does not explain what drove the increases. Was it enhanced security? Was it the fact that the conditions in the old buildings that were occupied prior to the new space being occupied were seriously impeding court operations? Was it the need to accommodate additional judges and staff?

Page 4 Lines 17 - 22

GAO STATEMENT

In the 9th Circuit, the District of Arizona has experienced a 128 percent increase in its space during this time period. From fiscal years 2000 through 2005, the district opened two new district courthouses – the Sandra Day O'Connor Courthouse in Phoenix and the Evo A. DeConcini Courthouse in Tucson. The increased space led to a rent bill increase in the District of Arizona in excess of $15 million each year from fiscal years 2000 through 2005.

JUDICIARY COMMENTS

- Again, without the proper context, i.e., the growth of these courts and the conditions in the previously occupied buildings, the reader is left to believe that there is no justification for the increases. (See Attachment G. Correspondence from the Honorable Stephen M. McNamee, Chief Judge, District of Arizona.)

Page 4 Lines 23 - 25

GAO STATEMENT

The amount of increase and the ratio between shell rent and square footage varied by circuit. GSA officials said much of this variation is the result of differing real estate trends nationwide.

JUDICIARY COMMENTS

- Without the context for this statement it is difficult for the judiciary to comment at this time. Based on the wording, it appears GAO did not review data to confirm this statement either. A more thorough review by GAO of rental costs would be helpful.

Page 4 Lines 26 - 27
Page 5 Lines 1 - 2

GAO STATEMENT

The district, bankruptcy, and appeals courts have increased their square footage and rent obligations to GSA from fiscal years 2000 through 2005. The appeals court's space and rent have grown at a faster rate than the district and bankruptcy courts.

JUDICIARY COMMENTS

- We cannot confirm the percentage and dollar calculations.

Page 5 Lines 3 - 8

GAO STATEMENT

Operating and security costs grew disproportionately more than net space added. Operating costs grew 45 percent during this period and security costs grew 134 percent. The primary reasons for this growth are, in the case of operating costs, significant spikes in recent years in energy costs, and, in the case of security, the increased emphasis on security needs in the aftermath of the September 11 terrorist attacks.

JUDICIARY COMMENTS

- We cannot confirm the percentage calculations.

- Did GAO independently identify the reasons cited for cost increases? They are not attributed to GSA. With regard to operating costs, for rent-charging purposes, GSA is only allowed to escalate operating costs by the OMB inflation factor, which has not exceeded 3.5% per year over the last 5 years. Did the GAO evaluation team analyze what portion of the growth is attributable to escalations of operating expenses during the terms of 5-year level shell rents, and how much was attributable to jumps in operating expense bases when they were re-set to "market" by new appraisals? In general, it would be helpful to know the context of statements about operational costs so that more helpful comments can be provided to the GAO team.

- With regard to security, the evaluation team should distinguish among the various types of security charges assessed by GSA and FPS. There is a mandatory basic charge that is assessed on every square foot of space occupied by any organization in GSA-controlled space. This basic charge has increased significantly with OMB's approval. It is used for FPS operations. There is a building-specific capital charge that pays for amortized capital (physical security improvements), such as bollards and exterior cameras. These costs are not a significant portion of the rent bill. There are also building specific charges associated with contract guards under FPS control. Subsequent to the September 11, 2001 attacks, FPS placed millions of dollars worth of contract guards in federal buildings and picked up the costs through a supplemental appropriation. Once the supplemental funding ran out, FPS began charging tenants for these guards and did not remove the

guards. The judiciary is trying very hard to control these costs. In fact, about $15 million in contract guard costs were eliminated between FY 2005 and FY 2006.

Page 5 Lines 9 - 13

GAO STATEMENT

From fiscal years 2000 through 2005, the judiciary's operational costs have increased 45 percent primarily due to rising energy costs, outpacing growth in square footage. In 2005, operational costs comprise about 22 percent of judiciary's rent bill and have represented a growing proportion of the rent bill in recent years.

JUDICIARY COMMENTS

- These are GSA's operating costs. The judiciary pays a rent that includes an operating expense component, but the costs are incurred directly by GSA, not by the judiciary or any other GSA tenant. Further, because GSA's rent charges for federally owned space are appraisal-based (and then escalated by the OMB inflation factor in subsequent years), there is no direct relationship between GSA's costs and the rent it collects for operating expenses. Only in the case of ROI-priced courthouse buildings (a total of 26) does GSA pass along its actual operating costs, plus a hefty administrative fee which is concealed as part of the operating expenses. In fact, GSA has indicated that, on average, its **actual** operating costs are as much as 14 percent **below** market.

- We cannot confirm the percentage calculations.

Page 5 Lines 14 - 21

GAO STATEMENT

Operational cost growth occurred in all U.S. Circuits and according to GSA, can be attributed to significant cost increases for utilities such as heating fuels. For example, the 1st Circuit Court's operational costs have increased by 86 percent since fiscal year 2000. GSA officials said that this increase in operational costs in the 1st Circuit can be attributed primarily to the Moakley Courthouse in Boston, Massachusetts where operational costs increased at that courthouse by more than $2 million in fiscal year 2004 because of energy cost increases throughout the region.

JUDICIARY COMMENTS

- We cannot confirm the percentage calculations and the Moakley Courthouse costs.

- The Moakley Courthouse is priced on the basis of an appraisal. From GSA's "Rent on the Web," the judiciary has been able to confirm that the operating expense component of the market rental rate rose $8.71 a square foot in FY 2003 to $13.91 a square foot in FY 2004. The operating expense rate jump appears to track to an appraisal prepared as of 12/13/99 which arrived at an operating cost base of $12.84 per rsf to be effective commencing 10/1/02. It is important to note that this operating cost figure was a

market-based estimate from an appraisal; it does not reflect GSA's actual costs, which may have been higher or lower than the rate assessed to the judiciary.

Page 5 Lines 22 - 26
Page 6 Lines 1 - 5

GAO STATEMENT

The security cost component of the judiciary's rent bill payments increased 134 percent from fiscal years 2000 through 2005. This increase greatly outpaced the 19 percent growth in square footage. The security component represents about six percent of the entire rent bill and increased considerably in all U.S. Circuit Courts during this time period. A basic security charge is assessed for all GSA properties where the FPS provides security services. Many new courthouse construction projects have additional security enhancements that have led to increased rent bills nationwide. Starting in fiscal year 2005, the judiciary began paying security costs directly to the Department of Homeland Security instead of including its rent payment to GSA.

JUDICIARY COMMENTS

- Since there are several elements to "security costs," including building-specific amortized capital security costs, building-specific operating security costs (including FPS contract guards), and the basic security charge, it would be helpful to have further analysis of the component parts of the security charges, to see which elements contributed what towards this overall escalation so that the AO can confirm the data. As stated above, most increases in security costs result from additional FPS contract guards placed by FPS in federal buildings after the September 11, 2001 attacks. They are not related to a significant investment by GSA in security-related capital improvements. The total amortized costs of GSA-installed capital improvements in FY 2005 were about $1.4 million out of a total charge of $67 million.

Page 6 Lines 12 - 21

GAO STATEMENT

In the 2nd, 3rd, and 7th Circuits, while other rent cost components grew, the tenant improvement of the rent decreased since 2000 because some buildings reached the end of their tenant improvement cycle. For example, the judiciary's tenant improvements payments for the Connecticut Financial Center, which houses part of the 2nd Circuit's Federal Bankruptcy Court, expired in 2004 and the tenant improvement rental cost went from $44,500 annually to zero in 2005. In addition the Martin Luther King, Jr. Courthouse in Newark, New Jersey, which houses the 3rd Circuit district court in that city, paid off much of its tenant improvement costs from 2002 to 2005, reducing its tenant improvement charges for that facility by more than $1.5 million annually.

JUDICIARY COMMENTS

- The report fails to note that the GSA review appraiser (a GSA employee) unilaterally revised the contract appraiser's Fair Annual Rent determination for this building, from $25.00 to $34.40 per square foot – without inspecting any of the comparable appraisals –

and in the process increased the judiciary's rent by $1.975 million per year. (See Attachment H. Appraisal dated 3/1/03 and GSA review appraiser's comments dated 3/4/03.)

Page 6 Lines 22 - 27
Page 7 Lines 1 - 8

GAO STATEMENT

Some circuits experienced steep increases in tenant improvement costs because of new courthouses constructed in recent years and the types of finishes judiciary has chosen. For example, leading all states, the District of Rhode Island experienced a 927 percent increase in its tenant improvement costs, which GSA attributed to the cost of finishes for major renovations of the district's two primary courthouses – the Federal Building U.S. Courthouse and the adjacent J.O. Pastore federal building. The renovation of the Federal Building U.S. Courthouse upgraded the heating, ventilation and air conditioning system, improved the security of the building, and restored or replaced the windows. District Court officials told us that practically every part of the building had tenant improvement needs. GSA officials said that both of these major renovation projects, chosen in lieu of new construction, led to increases in the overall quality of the space the District occupies and, consequently, very large increases in tenant improvement charges.

JUDICIARY COMMENTS

- The phrase "cost of finishes" is misleading and unsubstantiated. HVAC is not a "finish."

- In the 1990s, the Court had to choose either to renovate a badly deteriorating courthouse building (the Federal Building & U.S. Courthouse) with infrastructure that had not been **overhauled in a century** and which could not accommodate all of the court functions, or to build a new courthouse building. With GSA's support, the court chose to fully renovate the Courthouse Building and partially renovate the adjacent J.O. Pastore Federal Building. Consequently, both buildings underwent prospectus-level renovations between 1995 and 2002. Thus, the judiciary was responsible for restoring and preserving these historic buildings while incorporating significant security and functionality elements into the historic fabric of these buildings, and their useful lives were extended far into the future. Space was built out within *Design Guide* standards and within tenant improvement allowance limits established by GSA.

- GSA had neglected the buildings for decades. One would expect, therefore, that tenant improvement costs would increase significantly. It is not known if the tenant improvement costs have been calculated correctly. In fact, the court advised the GAO evaluation team that it had serious concerns about the rent calculations, but there is no mention of this concern in GAO's statement of facts document. The judiciary strongly recommends that the GAO evaluation team examine GSA's source documents to determine whether the 927 percent increase cited by GAO has been calculated properly by GSA and whether it includes elements other than just finishes.

- The court also discussed with the GAO evaluation team the fact that the buildings were vacated during renovation. No rent was paid on the vacant buildings. Did the fact that

the buildings were vacant have any effect on the percentage increases cited in the statement of facts?

Page 7 Lines 9 - 12

GAO STATEMENT

GSA has provided the judiciary with options for reducing its rent obligations, including renegotiating leases in locations where commercial market rents have declined and closing underutilized courthouses, but it has not communicated information on nationwide trends related to changes in rent.

JUDICIARY COMMENTS

- The referenced options were largely unhelpful to the judiciary. In one case, GSA proposed to extend the amortization terms for tenant improvements, thereby creating greater budget problems in out-years. This is hardly helpful when the judiciary's rent problem is not merely a short-term issue. In fact, this option would have garnered additional revenue for the FBF in the long term.

- GSA, in a July 1, 2005 letter, among others, indicated that if it renegotiated rental rates on leases, the judiciary could achieve immediate cost saving, estimating that the judiciary could lower its annual rent by several million dollars. The judiciary welcomed GSA's offer, responding in August 2005, to Mr. Stephen Perry with a request that GSA engage in moving this effort forward as soon as possible. In fact, though, if GSA were good stewards, they would on their own initiative be routinely taking the actions necessary to renegotiate rental rates in markets where the rates have dropped for all their clients, including the judiciary. Even though we asked GSA to move forward quickly on this effort nearly one year ago, we are not aware of any leases having been renegotiated on our behalf and no savings have been realized. Instead, it has taken GSA 10 months to provide the judiciary with a list of 14 leases (out of approximately 300 leases GSA has entered into on the judiciary's behalf) they anticipate trying to renegotiate. The promise by GSA of "immediate savings of several million dollars" has not materialized on any level. It should be noted that Internal Revenue Service officials tried to work with GSA on a similar approach and that it was unsuccessful.

- As a monopoly service provider, GSA has no incentive to reduce its revenue stream.

Page 7 Lines 13 - 16

GAO STATEMENT

Judiciary officials said resource and data limitations have inhibited the judiciary's ability to create these trend data. For example, the judiciary receives the rent information at the building level, making it difficult to compile into nationwide trends.

JUDICIARY COMMENTS

- The context of this statement is unclear. The types of trend data the GAO evaluation team discussed with us would not be useful for program planning, management, or budgeting purposes. GAO's trend analysis is highly simplified, focusing on simple growth figures that are unrelated to inventory profiles of building age, capacity, condition, the real estate market situation, etc. Likewise, the practical implications of monitoring rent cost components by court type are not clear.

Page 7 Lines 17 - 22

GAO STATEMENT

To help ensure consistency, the *Design Guide* lays out a framework for a complex construction project due to three different circulation patterns for judicial officers, federal prisoners, and the public that lead to courtrooms. The *Design Guide* indicates, "Differences between space in the existing facility and the criteria in the *Design Guide* are not justification for facility alteration and expansion."

JUDICIARY COMMENTS

- The underlined portions of the sentence need to be edited. The sentence does not make sense as currently written.

Page 7 Lines 23 - 27

GAO STATEMENT

The *Design Guide* provides for separate elevator systems (1) linking judicial officers to their restricted parking areas, (2) linking prisoners with the secured cell block and parking location, and (3) linking the public with the public entrance. As a result, each courthouse has four elevator systems, when including the need for a freight elevator also.

JUDICIARY COMMENTS

- The wording of this statement is somewhat misleading. Most buildings have at least two elevator systems – one for the public and one for freight. The way the sentence is worded could misled the reader into thinking secure elevators for judges and prisoners are not needed or are wasteful.

- Courthouses are special purpose buildings. The judicial process requires separation of prisoners from the public, witnesses, judges, and jurors. In order to avoid any appearance of partiality, the parties in a case should not come into direct contact with each other. For security reasons, detainees in shackles should not be transported through public hallways. Separate circulation avoids the potential for intimidating or unduly influencing jurors or other parties who might be participating in the trial.

Page 7 Lines 28 - 29
Page 8 Lines 1 - 5

GAO STATEMENT

In our site visits, we found that independent circulation patterns do not always exist in the older courthouses like the J.O. Pastore Building in Providence, Rhode Island. In these courthouses, the three groups access courtrooms through the same hallways which is considered a security deficiency by the judiciary and the U.S. Marshals Service. In addition, judges park outside the building and walk to the courthouse. Moving into a courthouse that meets *Design Guide* criteria would improve security and increase the amount of space each courtroom requires.

JUDICIARY COMMENTS

- The wrong building is cited here. The correct citation should be the "Federal Building U.S. Courthouse" rather than the J.O. Pastore Building, since the security conditions described do not fully apply to the Pastore Building. While the circulation and parking conditions at the Courthouse Building are not ideal by new construction standards, technology has been incorporated into the historic fabric of this building to improve security significantly within and without the building. When the Courthouse Building underwent prospectus-level renovations from 1999 through 2002, the judiciary and the Marshals Service worked closely together to address all security concerns. To state that judges walk to the courthouse is misleading, as discussed during the exit conference. The judiciary should be recognized for its decision to renovate and significantly extend the useful life of an historic building and for using technology to work around the security and space limitations, rather than abandoning the building and requiring the construction of a new courthouse.

- Without the context for this sentence, it is difficult to comment fully. It should be noted that a courtroom's actual size will not increase due to separate circulation systems.

Page 8 Lines 6 - 9

GAO STATEMENT

Other security standards outlined in the *Design Guide* also contribute to higher costs of modern courthouses. Examples include exit controls at the building perimeter, security door hardware, bullet and break resistant glazing and physical barriers, and standard, emergency, and back-up power sources.

JUDICIARY COMMENTS

- Security standards contributing to higher courthouse costs are also part of the Inter-agency Security Committee Design Criteria and the Design Standards for the Public Buildings Service. The key drivers of increased security costs are these government-wide standards, not the judiciary's own standards. The GAO evaluation team should recognize the existence of these government-wide building standards.

Page 8 Lines 19 - 30

GAO STATEMENT

When the rent GSA charges for most properties is based on commercial market appraisals, some properties are too expensive to garner an adequate return based on the prevailing rates for high quality office space. For these facilities, GSA applies ROI pricing that is based on the cost of construction. Increasingly, GSA is using ROI pricing for its federal courthouse properties. Currently, 72 percent or 29 of 40 ROI properties in GSA's inventory are federal courthouses (excluding border related facilities). This includes several newly built courthouses in urban markets, such as Seattle, Washington; Denver, Colorado; Phoenix, Arizona; and, possibly, Los Angeles, California. GSA officials said that the complexity and physical requirements, mostly related to security, drove the costs of these facilities above the price that the commercial market would bear even for the highest quality office space in these markets.

JUDICIARY COMMENTS

- Rather than write that, "Some properties are too expensive...", it would be more appropriate to say that "some assets – particularly special purpose facilities such as courthouses – are more costly to construct than class A commercial office buildings." Whether due to complexity or security or other factors, the point remains that courthouses are different than office buildings and warrant special case pricing.

Page 9 Lines 1 - 5

GAO STATEMENT

AOUSC pays the monthly rent bill on a national level without providing access to billing information to circuit and district officials. One AOUSC official processes the thousands of rent bills monthly, and this official said that circuit and district officials who are responsible for space use decisions do not validate rent billing information.

JUDICIARY COMMENTS

- In January 2005, the AO initiated an on-going, judiciary-wide rent billing validation effort. (See Attachment I.) The AO provided executives in the district, bankruptcy, and appeals courts copies of their organization's rent bills and requested that they review the bills and report back to the AO any significant errors they found. This effort is currently underway.

- As written, the statements are both misleading and void of context. The following comments are offered in order for the reader to gain a better appreciation of the internal control procedures established for the process and validation of the judiciary's space rental billing.

- GSA encourages the use of the automated Intra-Government Payment and Collection (IPAC) system for payment of its space rental billing. The IPAC system automatically transfers funds between the government agencies and GSA accounts at the Treasury Department. According to GSA, the IPAC system is based on regulations established by

the Department of Treasury. GSA encourages the use of automated billing systems because they provide a faster method of resolving billing questions and allow for rapid transfer of funds. According to a GSA manual published in 1993, "Collection of Rent charges is an important function of the Federal Buildings Fund. The prompt billing and payment of Rent charges is an integral part of maintaining the integrity and viability of the Federal Buildings Fund." It is quite clear, therefore, that GSA expects payment, and that disputes about the bill can be addressed with GSA after the bill is paid.

- Prior to releasing payment to the Treasury Department, however, the AO runs a report that identifies new space assignments in the GSA-generated rent bill from the previous month. This "kick-out" report is then reconciled to ensure any changes are valid. A sample of this information was provided to the GAO evaluation team.

- The AO does provide access to GSA's database, "Rent on the Web," to key local personnel responsible for staffing the circuit judicial councils. The councils have the statutory authority to determine the need for space in their respective circuit. Circuit executives' offices often play a key role in facilities planning management. The 9th Circuit Executive, for example, reports that his office validates rent billing information on non-prospectus projects. He reports that while he cannot control the rates that GSA charges, the occupancy agreements are reviewed, questioned, and incorrect information is asked to be corrected prior to approval. The rates for utilities, rent, operational costs, and parking are all questioned and in many cases, reduced as a result of the review process. Within the AO, space program managers, facilities support specialists, and other staff in the Space and Facilities Division use their access to GSA's "Rent on the Web" website in order to verify new assignments and/or release of space for the court units they are assigned to assist and oversee.

- Each GSA billing record has a GSA point of contact (POC) listed on the bill. Working with the POC avoids the filing of formal written appeals. AO staff follow-up with the POCs in the GSA regional offices to resolve discrepancies, in accordance with procedures outlined in the Federal Management Regulations.

- It should be noted that the only way to truly "validate" the GSA rent bill is to match assignment drawings to the bills and to obtain the actual appraisals from the GSA regional offices. As noted previously in this document, GSA has reluctantly provided copies of assignment drawings and some appraisals for AO and court review. In fact, Freedom of Information Act requests were filed in certain instances in order to obtain information from GSA. Now, the judiciary has to employ contract personnel to assist the courts with reviewing space assignment drawings on-site. Professional appraisal services will also be funded by the judiciary so that we can comply with the rent appeal procedures outlined in the Federal Management Regulations. This onerous process is causing us to divert resources from other high priority work.

Page 9 Lines 6 -7

GAO STATEMENT

According to judiciary and GSA officials, the judiciary rarely identifies errors in GSA bills.

JUDICIARY COMMENTS

- See the previous general comments.
- The 9th Circuit Executive's Office reports that errors are identified all of the time on the rent bills.
- Now that GSA has agreed to provide appraisal information without the judiciary filing Freedom of Information Act requests and to provide space assignment drawings in accordance with protocols established between GSA and the AO, it is entirely possible that significant billing errors will be identified. A preliminary review of appraisals in 16 buildings indicates that as much as $27 million in annualized overcharges have occurred this year alone. Billing errors that are purely data input mistakes are usually resolved at the local level.

Page 9 Lines 8 - 13

GAO STATEMENT

While the rent bills are paid at a national level, space use decisions are made locally by circuit and district officials. Some circuit and district officials that we visited said the benefits of lower rent do not directly benefit circuits or districts that reduce their space requirements and, conversely, neither the circuits nor the districts are responsible for paying the higher costs associated with inefficient space planning and use.

JUDICIARY COMMENTS

- It seems unlikely that court officials would claim to be making inefficient space use decisions. Please clarify whether circuit and district officials advised the GAO evaluation team that "conversely, neither the circuits nor the districts are responsible for paying the higher cost associated with inefficient space planning and use." The 9th Circuit Space and Security Committee has the oversight function and this Committee takes its roles and responsibilities seriously. Space requests are not approved unless justified and proven to be within the judiciary's guidelines and policies.
- Please provide a definition of "inefficient space planning and use" and specific examples so that the judiciary can develop an appropriate response to this statement.
- AO officials cannot verify that circuit and district officials made these statements because they were prohibited by GAO from attending the site visits with the GAO evaluation team. Please provide the names of individuals who made these remarks so that the statement and the context of the remarks can be verified.

Page 9 Lines 14 - 17

GAO STATEMENT

We did not find a centralized oversight function for judicial space use at the local or courthouse level. Consequently, the different court functions, such as the district, bankruptcy, and appeals courts, are responsible for managing their own space, thus limiting opportunities for efficient space management overall.

JUDICIARY COMMENTS

- Title 28 U.S.C. § 332(e)(5) states that among the duties delegated by the circuit judicial council to the circuit executive is "undertaking a space management program."

- This statement illustrates a fundamental misunderstanding of how the judicial branch of government operates.

- Space in the judiciary must be configured to meet the needs of a specific court. It is not readily interchangeable. The courtrooms in the courts of appeal are configured to accommodate three judges sitting at the bench on a panel. District courtrooms have only one judge presiding and are configured to handle prisoners and a jury. There is no jury in the courts of appeal. Therefore, there is no need for a jury box or jury deliberation rooms, as there is in district court. In bankruptcy courts, the courtroom must be configured to accommodate large numbers of creditors in the well, but secured prisoner circulation is not needed, as is the case for district courtrooms. Furthermore, as to chambers space, the number of staff vary by the type of judge, so chambers are configured and sized accordingly. Court of appeals staff will not fit into a bankruptcy judge's chambers, for example. Where absolutely necessary, however, courts have found ways to share spaces. (See description of the current housing situation in Tacoma and Omaha below.)

Page 9 Lines 18 - 21

GSA STATEMENT

In order to avoid having to obtain new space again soon after a new project is completed, the judiciary plans for 10 years of excess space upon occupancy of new buildings being full upon occupancy.

JUDICIARY COMMENTS

- It would be more appropriate to characterize this as, "The judiciary plans for 10 years of additional capacity beyond the date of initial occupancy."

- Given that it generally takes GSA 10 years to plan, secure funding for, design and construct a new courthouse, it is not reasonable to plan for the building to be full at occupancy, because, given growth patterns for the judiciary, this would mean the building would soon be unable to accommodate all tenants.

Page 9 Lines 22 - 25

GSA STATEMENT

The Union Station Courthouse, Tacoma, Washington, and the Alexandria Courthouse, Virginia, are reaching the 10-year point where they should be completely full, but we found that there are empty chambers, courtrooms reserved for visiting judges, and no courtroom sharing.

JUDICIARY COMMENTS

- First, it is not that they "should be completely full" but rather that they were expected to be full by the 10th year of occupancy. The observation about finding "no courtroom sharing" seems gratuitous when both buildings were designed to accommodate 10 and 30 year needs, respectively.

- Tacoma, Washington. For the Union Station Courthouse, when the building was first occupied, the District Court had six courtrooms and six chambers built out for a total of six judges, four district judges and two magistrate judges. Currently, the courthouse accommodates two active district judge positions, two senior district judges, and two magistrate judges, for a total of six courtrooms and six judges. The district court facilities will be completely occupied by the end of this summer, because one of the district judge positions is currently vacant, but a nomination is imminent. Of the four bankruptcy judge courtrooms and chambers, one is used by the resident bankruptcy judge. A second courtroom and chambers is used by a bankruptcy judge from Seattle who travels to Tacoma to help alleviate the caseload. A third bankruptcy courtroom is used by Seattle magistrate judges who routinely work in Tacoma to assist the two Tacoma magistrate judges with their caseloads. The fourth courtroom is used by the U.S. Trustee for meetings with creditors.

- Alexandria, Virginia. The Alexandria Courthouse has reached its 10-year capacity in the administrative office areas of the courthouse. Currently, there is a space shortage in the District Court Clerk's Office and the Probation Office with no room for expansion. On a regular basis, the Alexandria Courthouse does have visiting judges from the other divisions in the district to help handle its caseload. There are currently 14 courtrooms and one shelled-out courtroom in Alexandria and 11 judges that need to be accommodated (including one vacant position). The shelled-out courtroom is used for jury assembly and the magistrate judge courtroom next to it are both very small spaces (less than 1,500 sq. ft.) and thus would be the last to be assigned because they are so small. One additional judge is eligible to take senior status within five years and two new positions have been proposed to Congress for this district, for a total of 14 judges and 14 courtrooms. The judiciary certainly has no control over when legislation creating the two additional judgeships will be enacted. It is always less expensive to build courtrooms when a courthouse is under construction, than it is to build out after occupancy. All courtrooms will be occupied when legislation creating additional judgeships is enacted and the judges are designated to go to Alexandria, and the judge who is eligible to take senior status does so.

- It should be noted that the Alexandria Courthouse has two courtrooms that were retrofitted to accommodate high profile terrorist trials and provide overflow space during

such trials. The two courtrooms that were retrofitted are used on an as-needed basis by all the judges in the Alexandria division and were used for the Moussaoui case. If these courtrooms had not been available, family members of victims of the September 11, 2001 attacks would not have been able to witness this trial in the courthouse.

Page 9 Lines 26 - 28

GAO STATEMENT

Two districts we visited (Nebraska and Western Washington) chose to overbuild bankruptcy and magistrate courtrooms with features not required for their use, such as by making them larger or adding jury boxes and holding cells.

JUDICIARY COMMENTS

- Western Washington. The magistrate courtrooms in Tacoma were built to the standards set forth in the *Design Guide*. The bankruptcy judge courtrooms in Tacoma were built according to the size guidelines (1,800 sq. ft.) for bankruptcy judge courtrooms, but they can accommodate either a bankruptcy or magistrate judge because they have additional features, such as jury boxes. For the new courthouse in Seattle, the court requested and received approval from the circuit council to reduce the number of courtrooms to be constructed (13 instead of 16) but allow all those built to be one size (2,400 sq. ft.). These changes permitted a much more flexible environment while reducing the total square footage requirements and the costs. It is unfortunate that the GAO evaluation team has chosen to mischaracterize the court's and judicial council's intent.

- Omaha, Nebraska. The courthouse was originally planned (in the early 1990s) to meet the court's 30-year needs for courtrooms, but due to concerns about increasing rent costs, the original number of courtrooms was reduced to meet ten-year space needs. In order to accommodate the potential for more flexible use of courtrooms in the future, the court obtained the requisite judicial councils approvals. In fact, the GSA Public Buildings Service Commissioner at that time encouraged court representatives to build bankruptcy and magistrate judge courtrooms at the same size and with the same features as the district courtrooms to allow maximum flexibility.

- It should be noted that in 1994, the bankruptcy court was statutorily authorized to conduct jury trials and needed a jury box in its courtrooms. Similarly, magistrate judges in Omaha routinely conduct consent civil jury trials and needed a jury box to accommodate twelve jurors and alternates.

Page 10 Lines 3 -10

GAO STATEMENT

It is common judicial practice for judges to move outside their resident districts for limited periods of time, and during those times, they need chambers and courtrooms in order to perform their work responsibilities. According to district court officials, reserving courtrooms and chambers exclusively for visiting judges means that they are not used when there is not a visiting judge. Since the judiciary does not currently track courtroom usage statistics, it is not possible to

determine how often visiting judges make use of the courtrooms and chambers but on each of our visits, the visiting chambers were not being used.

JUDICIARY COMMENTS

- The GAO team never asked the AO for information about the judiciary's use of visiting judges, and the statement about not collecting courtroom usage statistics is irrelevant to this point. The GAO review team visited six districts over several days, and yet from their short visits and limited observations, they have made a statement that implies that "visiting judge" chambers are not being used. In fact, none of the districts that GAO visited have chambers or courtrooms built for visiting judges. All of the chambers and courtrooms constructed in these courthouses will over time be filled with a resident judge. But until then, the courts use them to accommodate non-resident judges.

- The AO reports annually on the activities of judges who handle cases as visiting judges outside their regular district or appellate courts. These visiting judge assignments are statutorily based (28 U.S.C. Part 1, Ch. 13, §§ 291-297) and provide a cost-effective means of handling judicial workload. The services of visiting judges are very important to the judiciary. With the absence of new judgeships and the rise in caseload in certain areas of the country, visiting judges are one of the most successful and immediate ways to handle the workload. Visiting judge assignments have been especially helpful to the border courts where their criminal caseload has exploded or where a court may be inundated with a temporary spike in caseloads, and in courts where there is a lag in filling a judicial vacancy or a judge has been on extended leave due to illness. In FY 2005, judges accepted 324 assignments to other courts of appeals and participated in 4,893 appeals. At the district level in FY 2005, judges accepted 221 out-of-district assignments handling 1,239 civil cases and 1,250 criminal defendants.

- There is confusion about the term "visiting judge." The term "visiting judge" may be loosely used to refer to a judge who travels from one courthouse location to another courthouse within the same judicial district (or circuit for an appellate judge) to carry out judicial duties. This is a very common type of travel. However, because judges are working in their own district or circuit on their court's caseload, we do not report these activities as visiting judge statistics.

- In the planning process for determining space needs in new courthouses, the court assesses its operational and workload needs to determine if chambers are needed for a judge traveling within the district or a visiting judge. In either case, we do not plan for courtrooms for these judges, only chambers, and the *Design Guide* standards provide for such to be smaller. In the "statement of facts," GAO stated that courts are reserving chambers and *"courtrooms"* for visiting judges to use *"exclusively."* To reiterate our point, courtrooms are not built for visiting judges. Apparently there is a planned or current judicial vacancy, which has freed up a judge's chambers and courtroom for a non-resident judge to use. In describing the space to GAO, the courts may have said it was space for a visiting judge, but they should have clarified, if they did not, that this space is used by non-resident judges until the judicial vacancy is filled, or a new judgeship position is created.

- The following are some additional technical corrections to the same paragraph on visiting judges. First, replace the word "*move*" to "*travel.* " It is a better word choice, since the

word "move" connotes that judges are relocating to a permanent residence. Secondly, when referring to "*common judicial practice*" for judges to travel to outside their "*resident district*," it is unclear which type of "visiting judge" travel GAO is referring to. It appears that GAO is confusing within district travel, where a judge is traveling from one courthouse to another courthouse in the same district, with out-of-district travel. That sentence should be rewritten.

Page 10 Lines 11 - 15

GAO STATEMENT

In our visits, we found centralized libraries were either closed or unused. In most cases, this is because judicial officers are increasingly turning to electronic sources and research, and keeping the limited number of books they need in their chambers. However, the *Design Guide* provides space for law libraries, and the district we visited all had them.

JUDICIARY COMMENTS

- Unless the doors were locked, it is unclear what this means. It is an old-fashioned view of a library to expect its users to be sitting at tables when much of the library's function is electronic research, and when its books can be sent to chambers where judges' law clerks can use them more conveniently.

- Space currently dedicated to libraries cannot readily be returned to GSA because such space has to be in a location within the building that GSA can rent out to another agency (so-called "marketable" space).

- Significant changes to library space standards will be considered by the judicial Conference at its September 2006 session.

- In March 2006, the Judicial Conference approved reductions in the number of bookshelves to be constructed in judges' chambers.

Page 10 Lines 16 - 23

GAO STATEMENT

When planning the new courthouse in Seattle, Washington, the judiciary decided to reduce the size of the law library by half, but instead of reducing the district's space requirements by that amount, the district used the extra space to create a large conference center. We also found that after the court switched from court reporters to electronic recording; the extra space that was allocated for court reporters was allocated to the bankruptcy judge chamber suites. Seattle District officials said that this was not considered a departure from the *Design Guide* because it did not increase the overall square footage of the building.

JUDICIARY COMMENTS

- This is not accurate. The space relinquished by the courts for the library was taken out of the courts' program. The large conference center referred to in the draft is a joint use space that is used by all tenants.

- As to the court reporters' space, it should be noted that it was not until well after the design process, and nearly nine months after occupancy, that the court, after a pilot study and in response to a national initiative, decided to implement digital court recording. Thus, the bankruptcy court reporters no longer occupy that space.

Page 10 Lines 24 - 26
Page 11 Lines 1 -5

GAO STATEMENT

The *Design Guide* provides for a special proceedings courtroom in district courthouses that is larger than the other district courtrooms, and we found that the special proceedings courtrooms tended to also have architectural elements or finishes that made them more aesthetically pleasing than the other courtrooms in a courthouse. Instead of assigning these courtrooms to an individual judge, several of the districts we visited said that they prefer to only use these courtrooms for special events and trials such as multi defendant trials or highly visible trials.

JUDICIARY COMMENTS

- GSA's Art-in-Architecture Program encourages the commissioning of public art in all federal buildings, including courthouses. Because the special proceedings courtroom are used for public events, such as naturalization ceremonies, it is not unusual to find "architectural elements or finishes that made them ore aesthetically pleasing than the other courtrooms in a courthouse."

- Even though the special proceedings courtroom might not currently be assigned to a specific judge at this time, it must ultimately be assigned to a judge planned for the future.

Page 11 Lines 6 - 9

GAO STATEMENT

The *Design Guide* encourages flexible use of the special proceedings courtroom but does not rule out assigning it to a specific judge. In practice, the District of Rhode Island is the only district we visited that has assigned the special proceeding courtroom to a judge in the Federal Building U. S. Courthouse.

JUDICIARY COMMENTS

- The judiciary's policy is that the special proceeding courtroom must be assigned to a judge.

- The special proceedings courtroom is assigned in Alexandria, as well. Fewer courtrooms than judges were planned in Seattle, so it would not make sense to assign the special proceedings courtroom to a judge there. The special proceedings courtroom in Phoenix will ultimately be assigned to a judge.

Page 11 Lines 10 - 16

GAO STATEMENT

At the Baltimore courthouse, we found that four magistrate courtrooms are being used to store excess furniture. Baltimore District officials said that previous chief district judge chose to make the courtrooms small during the design phase but the current chief judge chose not to use them because they do not meet *Design Guide* standards for square footage. The judiciary then used the lack of magistrate courtrooms in the courthouse to increase its priority for having a new courthouse built in Baltimore.

JUDICIARY COMMENTS

- The Garmatz building was designed in the late 1960s and built in the mid-1970s. The local Court understands that the chief judge at that time, Judge Edward Northrop, argued against, not for, the small courtrooms, which were downsized to meet a strapped construction budget. In recent years, these four courtrooms have not been used as courtrooms because the cramped size proved ill-suited to handle the drug and gun cases that characterize a big-city federal docket. In these small "courtrooms," there was little separation between persons in custody, the victims who might be testifying or observing, law enforcement officers, and lawyers. Furthermore, building support columns obstruct the views of the judge and participants in the rooms. Because of these deficiencies, the court has taken a proactive approach to combine the four small courtrooms to create two functional courtrooms.

- Regarding the lack of magistrate judge courtrooms, the duties of magistrate judges have changed significantly over the last thirty years. These four small courtrooms cannot accommodate the work magistrate judges now perform, which is one example of why the space standards for this type of courtroom were changed in 1991. Magistrate judges generally handle all felony preliminary proceedings, misdemeanors, and petty offense cases in district court. They preside over civil trials, both jury and non-jury, with the consent of the parties. They also handle a large volume of non-dispositive civil and criminal motions, evidentiary hearings, settlement conferences, voir dire, and accept felony guilty pleas with the consent of the parties. With the exception of presiding over felony trials and felony sentencings, magistrate judges can be assigned to the same duties as district judges and thus require adequate space to handle these proceedings.

- The existence of these dysfunctional courtrooms did not affect the priority score for the Baltimore courthouse on the judiciary's Five-Year Courthouse Project Plan. Instead, the court's worsening security situation had a more significant impact on the project's score.

Page 11 Lines 17 - 21

GAO STATEMENT

A bankruptcy judge with a full courtroom and chamber suite in the Union Station Courthouse in Tacoma, Washington, also maintains an exclusive courtroom and chamber suite about 30 miles away in Seattle, Washington. As a result, the judge occupies about 8,000 square feet of space not including the jury rooms, holding cells, and separate circulation patterns provided in both courthouses.

JUDICIARY COMMENTS

- This statement is misleading.

- See the previous comments on visiting judges, which are discussed at length in the judiciary's comments to the statement of facts on page 10, lines 3-10.

- In order to make the most effective use of bankruptcy judges in this district, a judge travels to Tacoma to assist that divisional office with its work. The next bankruptcy judge authorized by Congress for the district will be stationed at Tacoma. Having adequate space available is the key factor in handling the caseload expeditiously.

Page 11 Lines 22 - 23

GAO STATEMENT

An appeals judge that had been assigned space in the new Alexandria, Virginia Courthouse chose to stay in leased space 15 miles away in McLean, Virginia.

JUDICIARY COMMENTS

In accordance with 28 U.S.C. § 462(c), the judge was assigned chambers in leased space in McLean, Virginia. The space once occupied by the appeals judge has been converted into a judges' conference room and is also used as a meeting area for the local bar. The previous judges' conference room was converted into a SCIF (Sensitive Compartmented Information Facility) to accommodate the classified materials filed in several high profile cases, including the Moussaoui case.

Page 11 Lines 24 - 27
Page 12 Lines 1 - 2

GAO STATEMENT

Circuit and district officials said that they would make different choices if they had incentives to better utilize space, but determining what those differences would be or how they would ultimately affect the judiciary's rent bill is difficult to determine. Judiciary officials said, for example, that the judiciary could charge rent to the circuits that make space decisions.

JUDICIARY COMMENTS

- AO staff have been unable to confirm that these statements were made by court officials. Because AO staff were prohibited by GAO from attending on-site visits made by the GAO evaluation team, it is difficult to understand the context for these statements.

Page 12 Lines 3 - 5

GAO STATEMENT

The *Design Guide* suggests one courtroom be provided per district judge because district hearings have one presiding judge. Since appeals judges sit in panels of three or more, the one judge per courtroom criteria does not seem to apply.

JUDICIARY COMMENTS

- The *Design Guide* does not state the rationale as presented. The *Design Guide* reflects Judicial Conference policy to provide a courtroom for every active district judge.

- It is important to understand there are substantial differences between appellate and district court operations. Unless the study is going to explain appellate courtroom needs, it would be simpler to take this point out. Due to the nature of appellate work, appellate judges may work much of the time in any location in the circuit. Thus, different numbers of appellate judges will and will not conduct the majority of their work in the locations where appellate panel sessions are held. Appellate courts require appropriate courtrooms in places where they are designated by Congress to hold regular court sessions.

Page 12 Line 10

GAO STATEMENT

Appeals courts are a good fit for the orientation of the older courthouses.

JUDICIARY COMMENTS

- The meaning of this statement is unclear.

Page 12 Lines 11 - 13

GAO STATEMENT

Since appeals judges sit in panels and do the bulk of their work outside of hearings, they hold hearings much less frequently than district or bankruptcy judges.

JUDICIARY COMMENTS

- *Technical Correction.* Substitute "oral arguments" for "hearings."

- This statement demonstrates a fundamental misunderstanding of how the courts of appeals do their work. The GAO evaluation team may talk with Judge Jane R. Roth, Third Circuit Court of Appeals, so that she can explain how cases are scheduled and how opinions are written.

Page 12 Lines 14 - 17

GAO STATEMENT

When the new district courthouse in Richmond, Virginia, that is currently under construction opens, the 4th Circuit Court of Appeals will take over exclusive use of the courthouse that currently houses the entire district, bankruptcy, and appeals court in that city.

JUDICIARY COMMENTS

- The current facility in Richmond does not house the entire district and appeals court. The district court leases 8,639 square feet of space for Probation and Pretrial Services, while the circuit court leases 19,004 square feet of space for the Office of Staff Counsel and 2,300 square feet of space for the Clerk of Court. It is anticipated that the completion of the new district courthouse and the consolidation of the Court of Appeals in the existing courthouse and annex will allow termination of these leases, as well as accommodate additional court growth.

Page 12 Lines 18 - 19

GAO STATEMENT

According to judiciary officials, the 4th Circuit holds court in Richmond 9 weeks a year.

JUDICIARY COMMENTS

The Circuit Executive in the Fourth Circuit provided the following:

Richmond is the headquarters for the Fourth Circuit. The nine weeks that Court sessions are held is based on caseload (5,362 filings in 2005), types of cases, court efficiencies and improvements and the balance between chambers and courtroom activities. In addition to Fourth Circuit usage, the courtrooms and chambers are used by the U.S. Tax Court, administrative law judges, the Virginia State Bar (as a public service) to conduct hearings for suspension/revocation of licenses to practice law, and by the University of Richmond for moot court competition. Furthermore, the courthouse has been designed as one of the alternative locations for the Supreme Court to continue its operations, should its Washington facility become unavailable.

Having an appropriate number of chambers and courtrooms at its headquarters in Richmond has enabled the Court of Appeals to dispose of appeals faster than any other federal circuit, averaging approximately 70% faster than national average without increasing the number of authorized judgeships since 1990.

Page 12 Lines 20 - 27

GAO STATEMENT

When the new courthouse in Seattle, Washington, opened in 2004, the district court and appeals courts moved out of the old building, the Nakamura Courthouse. After a $50 million renovation

of the Nakamura Courthouse, the 9th Circuit Court of Appeals plans to reoccupy most of the building despite already having 9th Circuit Appeals Courthouses in Portland, Oregon, San

Francisco, California, and Sacramento, California. In addition, court records show that the 9th Circuit has only used one courtroom for 1 month a year in Seattle over the last 3 years.

JUDICIARY COMMENTS

- *Technical Correction.* There is not a court of appeals courthouse in Sacramento.

- Congress determines where regular sessions of the courts of appeals shall be held. Title 28 U.S.C. § 48(a) lists those places in the Ninth Circuit as San Francisco, Los Angeles, Portland, and Seattle.

- The intent of designating places of holding court by statute is to ensure citizens have easy access to the federal courts. Congress has chosen not to place the burden of gaining access on those needing to avail themselves of the services provided by federal courts. In other words, litigants living in Seattle should not have to incur the expense of traveling to San Francisco.

- Attached are the court calendars for all sittings in the Ninth Circuit for the past three years. Clearly court is held in Seattle for one week per month and several cases are heard per week. Further information is available upon request. (See Attachment J.)

Page 13 Lines 8 - 10

GAO STATEMENT

The judiciary has suggested that circuits and districts consider courtroom sharing for senior judges, but it has not established criteria for when or how that sharing should occur.

JUDICIARY COMMENTS

- *Technical Correction.* The technical corrections suggested by the judiciary are in italic font: "The judiciary has suggested that circuit *councils* and district *courts* consider courtroom sharing for senior *district* judges, but it has not established criteria for when or how that sharing should occur."

  This is untrue. As GAO has reported previously in its assessment of courtroom sharing by senior judges, the judiciary has policies to guide the consideration of courtroom needs for senior district judges.

Page 13 Lines 11 - 12

GAO STATEMENT

In the districts we visited, we found that senior judges usually retain exclusive use of a courtroom and chamber suites.

JUDICIARY COMMENTS

- *Technical Correction.* Insert the term "district" between the terms "senior" and "judges."

- This is an overly simplistic statement based on current courtroom availability compared to judges on board.

- GAO has reported in the past about the sharing of courtrooms by senior district judges.

- Typically, courtrooms are planned for senior district judges to use for ten years. If senior district judges in the districts visited had been in senior status more than ten years, did GAO ask if the senior district judge or judges would be relinquishing the courtroom once a vacancy was filled or a new judgeship position was approved by Congress?

- This statement of fact incorrectly implies that senior district judges should not have exclusive use of a chambers suite.

- AO staff is happy to provide background materials and a briefing on the role of senior district judges.

Page 13 Line 13

GAO STATEMENT

We found that inactive senior judges share courtrooms in some districts.

JUDICIARY COMMENTS

- *Technical Correction.* Insert the term "district" between the terms "senior" and "judges."

- There is no designation as an "inactive" senior district judge. There is, however, a distinction made between active and senior district judges. AO staff will explain the difference to the GAO evaluation team.

Page 13 Lines 14 -17

GAO STATEMENT

A circuit official and a chief district judge said that national criteria, such as caseload requirement for maintaining an exclusive courtroom or any courtroom at all, could provide leverage with district judges and court staff in reducing the space requirements for senior judges.

JUDICIARY COMMENTS

- *Technical Correction.* Insert the term "district" between the terms "senior" and "judges."

- The AO has been unable to confirm this statement was made by court officials.

Page 13 Lines 26 - 27
Page 14 Lines 1 - 7

GAO STATEMENT

For our purposes, we used rentable quare footage because that is the metric GSA uses to bill tenant agencies, including the judiciary. GSA calculates rentable square feet by measuring building space, including courthouses, in terms of usable and common spaces, based on the Building Owner's Management Association's (BOMA) market-based definitions of those terms. For example, an atrium and a building-wide day care center is considered shared space. GSA converts usable into rentable square feet by multiplying the usable space by the building's rentable/usable factor, which distributes common space proportionally among tenants in a given building.

JUDICIARY COMMENTS

An atrium is classified as building common (not shared) space and a daycare center serving all building tenants would be classified by GSA as "joint use." Joint use space is not included in common space, but rather usable space. All tenants pay for joint use space in proportion to the percentage of the building they occupancy.

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

May 10, 2006

Mr. David Bibb
Acting Administrator
General Services Administration
1800 F Street, NW
Washington, DC 20405-0002

Dear Mr. Bibb:

Thank you for your recent letter recounting, among other things, details on General Service Administration (GSA) plans to renegotiate leases on behalf of the judiciary to reduce our rental costs. We are certainly interested in exploring all avenues which have potential to effect a material reduction in our space costs, so we appreciate this overture, and we will continue to track GSA's progress on this initiative with interest.

In this same vein of reducing our space costs, we have recently completed a preliminary review of appraisals for 16 buildings, which we had requested from the Public Buildings Service (PBS). This review indicates that, for half of these buildings, GSA employees, acting in their "review appraiser" capacity, materially altered (or in one case ignored) the value determinations reached by the independent third party appraiser. In all eight cases, the rental values were increased, and the estimated total *annual* rental impact for the courts is $22.5 million.

In arriving at the figure of eight cases in which the rates were altered, we did not count cases in which GSA corrected contract appraisals for obvious math errors (one instance), nor cases in which the sole GSA change was an adjustment for an above-market Rentable-to-Usable (R/U) ratio, which is a relatively straightforward mathematical calculation. These kinds of adjustments are certainly countenanced by your pricing policy:

> PBS policy is to use the fair annual Rent determined by contract appraisal. PBS's reliance upon contract appraisals represents a clear and forthright means to establish a fair and reasonable Rent by a disinterested third party. Thus, it is PBS policy to use the appraiser's value without alteration in the OA. Appraisal generated fair annual Rent values for continuing occupancies are neither raised by PBS in the pursuit of greater Funds from Operations (FFO), nor lowered in negotiations with a customer agency. In rare cases, due to particular facts concerning a specific occupancy of which the appraiser was unaware, the appraisal can be adjusted. (*PBS Pricing Desk Guide* 3rd Edition, page 4.4)

While it is clear that the use of disinterested third-party appraisals "without alteration" is the principal PBS policy vehicle for attempting to ensure that rental rates are "fair and reasonable," in actual practice, it appears that GSA employees frequently take considerable license to alter these rates, and, disturbingly, these alterations invariably increase the rental rates. In the case of the Martin Luther King, Jr. Courthouse in Newark, New Jersey, a GSA employee took the contract appraisal rate of $25.00 and raised it to $34.40, without even examining the comparables. Similarly, the contract appraisal rate of $37.00 for the Moynihan Courthouse in Manhattan was raised to $53.87. These are dramatic shifts in value, and clear evidence of an interventionist approach with little regard for the integrity of rate-setting by an independent third party. Moreover, in neither case did the review appraiser secure the concurrence of the regional PBS Portfolio Director, as required by PBS policy.

Nor is this interventionist approach confined to one GSA region. The appraisal for the Dirksen Courthouse in Chicago was altered, not only by adjusting comparables but also by doubling the "trend factor" which escalates the rent from the date of valuation to the commencement of the term for the new five-year shell rate. In Kansas City, a contract appraisal for the Whitaker Courthouse was put aside so that higher rates used under "old" pricing could continue, even though, under direction from OMB, GSA had agreed to migrate all owned buildings to New Pricing in fiscal year 2000. For the Byron White Courthouse in Denver, the GSA review appraiser overrode the contract appraiser's opinion of a fair annual rent, increasing the rate from $26.92 to $29.17. A summary of the eight buildings in which the contract appraised rate was not used appears below, with the estimated annual rent impact. This rent impact is conservative, because it does not address joint-use space charges, parking, nor the compounding effect of annual inflation escalations applied to a higher base amount for operating expenses.

Mr. David Bibb
Page 3

Court Buildings with Altered Appraisals

Courthouse	City/State	Appraised Rate	Revised Rate	Change	Judiciary Sq Ft	Est Annual Impact of GSA Change
Dirksen	Chicago,IL	$26.52	$29.40	$2.88	789,451	$2,273,619
Whitaker	KC, MO	$21.50	various		356,491	$2,618,420
Byron White	Denver, CO	$26.52	$29.17	$2.65	233,362	$618,409
LI Courthouse	Central Islip,NY	$35.45	$43.20	$7.75	400,771	$3,105,975
MLK Jr.	Newark, NJ	$25.00	$34.40	$9.40	210,070	$1,974,658
Moynihan	NY, NY	$37.00	$53.86	$16.86	663,937	$11,193,978
E. Celler FB	Brooklyn, NY	$25.26	$27.94	$2.68	279,249	$748,387
San Jose FOB	San Jose, CA	$31.50	$32.93	$1.43	404,449	unknown
Total						$22,533,447

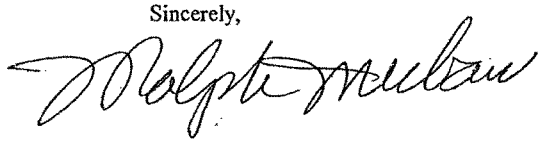
Adjusting appraised rates to account for non-market Rentable/Usable (R/U) rates in federal buildings certainly meets the GSA policy standard, since contract appraisers are clearly not always aware of what the R/U factor is for the federal building which is the subject of the appraisal. GSA frequently adjusts for the difference in R/Us (if the contract appraiser does not), and the judiciary agrees that these adjustments are appropriate, and in keeping with PBS policy. Two of the 16 buildings which were the subject of our preliminary review, met both of the following conditions: 1) the contract appraiser was unaware of the inefficiency of the courthouse relative to the market; and 2) GSA did not adjust the rate to account for the R/U differential. Accordingly, adjustments to the appraised rate in these two cases were in order, but were not made. The table below summarizes the judiciary's calculation, and rent impact, of the appropriate mathematical adjustment to the fair annual rent rate to account for the inefficiency of the courthouse relative to a market standard R/U.

	Court Buildings without Rentable/Usable Adjustments					
		Appraised	Corrected		Judiciary	Est Annual
Courthouse	City/State	Rate	for R/U	Difference	Sq Ft	Impact
Moakley	Boston, MA	$50.75	$42.00	-$8.75	485,751	-$4,250,321
Hoffman	Norfolk, VA	$20.45	$17.40	-$3.05	165,263	-$504,052
Total						-$4,754,373

In summary, from this preliminary review of the appraisals used in determining rent to the judiciary for 16 courthouses, we find that GSA has unilaterally raised contract appraised rates in half of the buildings, and neglected to make appropriate adjustments for inefficiencies in two other cases, for an estimated potential annual overcharge to the judiciary of $27 million. Most serious is the frequency and degree to which PBS employees are revising third-party contract appraisal rates based upon their own subjective value conclusions. Although 16 buildings is a limited sample, it appears that rate revisions are common and unsupervised. This is an unregulated process and, up until now, a process closed to the scrutiny of end-user organizations responsible for paying rent bills.

While this is not a formal appeal, and is not accompanied with new appraisals to contest the rates, I hope you will agree that the rate adjustments unilaterally made by GSA employees for these eight buildings—all of which benefitted PBS—were unwarranted intrusions upon the integrity of the independent third party appraisal process, and should be overturned. I also hope that you will institute new management controls to protect against tampering with contract appraisals, and adopt a policy of open sharing of appraisals with your tenant organizations. We plan to initiate a formal charge back action within the next few days.

Sincerely,



Leonidas Ralph Mecham
Director

cc: Honorable Thomas F. Hogan
Honorable Jane R. Roth
Mr. David Winstead

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

May 24, 2006

Honorable Don Young
Chairman, Committee on Transportation
and Infrastructure
United States House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

Honorable James L. Oberstar
Ranking Member, Committee on
Transportation and Infrastructure
United States House of Representatives
2163 Rayburn House Office Building
Washington, DC 20515

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

Honorable Eleanor Holmes Norton
Ranking Member, Subcommittee on
Economic Development, Public Buildings
and Emergency Management
Committee on Transportation
and Infrastructure
United States House of Representatives
585 Ford House Office Building
Washington, DC 20515

Dear Chairmen Young and Shuster and Representatives Oberstar and Norton:

I am writing to express our concern that your Committee has not acted favorably on the judiciary's May 3, 2006 request that you extend the deadline for the Government Accountability Office (GAO) to complete its final report regarding the judiciary's request for rent relief. As we feared, a draft report that GAO subsequently issued on May 16, 2006 is seriously flawed, biased, and missing vital facts.

Among other problems, the study has not addressed key questions about how rent charges are calculated by the General Services Administration (GSA). Verifying the accuracy of GSA's charges was ostensibly a primary reason why GAO opted to visit selected courthouse locations. The draft report, however, gives no indication that this analysis was performed. Indeed, GAO dropped this original number-one objective entirely from its stated study objectives. You may find of interest the enclosed letter I recently sent to Acting GSA Administrator David Bibb detailing unexplained alterations made by GSA employees to eight independent appraisals, and errors in two other instances, which have resulted in overcharges by GSA of $27 million annually for ten courthouses. These overcharges are in addition to similar mistakes identified by the judiciary in two district courthouses amounting to $10 million per year in overcharges.

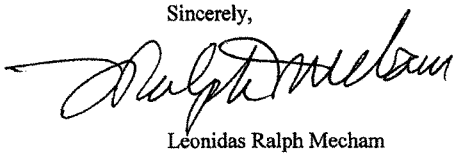
Amazingly, GAO staff expressed no interest in this information and declared that pursuing these concerns about GSA's misapplication of its pricing policies would be "outside the scope" of their study. How can an examination of erroneous rental charges be outside the scope of a study about the judiciary's rent costs? In light of the serious problems already discovered, I am sure you will agree that an independent audit of GSA's rental charges by GAO is imperative.

As Judge Jane R. Roth told you in her May 3 letter, it was and still is our strong belief that the objectives you identified for this study will not be achieved without considerably more effort by GAO. Moreover, it is important to clarify your expectations that GAO's report should not be deliberately constructed to support a particular point of view, but that it should be completely objective and unbiased. Issues and facts presented to the GAO team by Administrative Office (AO) officials are simply missing from the report, while GSA's views are expressed throughout. The report states a major objective was to identify "challenges the judiciary faces in managing its rent costs." Although AO officials spent several hours discussing our challenges with GAO, inexplicably, GAO chose to ignore our views even on this subject as it did on virtually every other topic.

In response to GAO's "Statement of Facts," we sent 40 pages of comments noting fundamental concerns about the accuracy of the product and identifying substantial errors. A copy is enclosed for your information. GAO declined to discuss these concerns with us before the draft was published, and almost none of our issues were addressed in the draft. My staff is prepared to provide additional data to help GAO resolve these deficiencies, but it is clear that your Committee's support will be needed.

It is in the public's interest that the report GAO ultimately provides to the Committee reflects the accurate and unbiased research expected from GAO, not a report which distorts facts to support a predetermined point of view and which simply ignores facts that do not support that message. We therefore urge you again not only to grant additional time to GAO, but to communicate your interest in receiving a balanced report that will assist the Committee in considering a matter of vital importance.

Sincerely,



Leonidas Ralph Mecham
Director

Enclosures

cc: Honorable Jane R. Roth

STATEMENT OF

DAVID L. WINSTEAD

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 22, 2006

Good morning, Chairman Shuster, Ranking Member Norton, and other distinguished Members of the Subcommittee. My name is David Winstead, and I am the Commissioner of the Public Buildings Service at the U.S. General Services Administration (GSA). First, I want to thank the Subcommittee for its ongoing support of the Public Buildings Service and its programs that serve all branches of Government. We appreciate your annual review and approval of our capital projects, and, most recently, our FY 2007 program. Finally, I would like to thank the Subcommittee for its continued support in maintaining the integrity of the Federal Buildings Fund.

It was one year ago that my predecessor, Commissioner Moravec, testified before this Subcommittee to address the Judiciary's ability to pay for current and future space needs. At that time, GSA expressed its opposition to the Federal Judiciary's request for a permanent annual rental exemption, an exemption that would excuse $483 million in rent in the first year alone. We also presented facts regarding the Judiciary's space occupancy and its growth over the last decade, outlined the Federal Buildings Fund and our approach to rent pricing, as well as presented a number of options the Judiciary could explore to reduce space costs.

I am pleased to be here today to share GSA's response to GAO's latest report on Federal Courthouses. I look forward to informing you of our actions that address the findings and recommendations in the report, as well as our planning efforts with the Judiciary to meet their future space needs.

GAO presented three findings in its report to explain the Judiciary's higher rents: increased space, stricter security needs, and rising energy costs. We agree that the primary factor underlying the Judiciary's aggregate rent increases has been, and continues to be, the total increases in space the Judiciary uses. Measured in terms of square feet of space provided, the Judiciary is our second largest customer. As of May 2006, it occupied over 41 million rentable square feet – 13 percent of GSA's total space holdings. It has experienced, by far, the fastest growth in square footage of any customer we serve. The Judiciary has more than tripled the amount of space it occupies over the last 30 years – averaging a net increase of a million square feet a year. Over the last ten years alone, the Judiciary's space usage has almost doubled. In fact, between 1995 and 2005, GSA delivered 46 new courthouses or annexes (17 million square feet) at a cost of $3.4 billion from the Federal Buildings Fund. With this Subcommittee's oversight and approval, GSA has supplied more resources for new construction to the Judiciary than to any other customer.

As far back as 1996, the Judicial Conference's Committee on Security, Space and Facilities issued a report with the following recommendations: (1) reduce the projected increase in space, including release of underutilized space (particularly court facilities without resident full-time judges and libraries); (2) cancel proposed low-usage space; (3) share space; and (4) encourage the circuit judicial councils to consider the long-term costs of their space decisions. Although few of these recommendations were implemented, they are still relevant today, and GSA believes they provide the greatest opportunity to address the Judiciary's funding issues.

Space

It is our understanding that there are currently 71 facilities occupied by the Judiciary with no full-time resident judges. Many of these facilities are in depressed market areas and the appraisal-based rents that GSA charges do not cover their operating and capital improvement needs.

The Judicial Conference has long recognized the need to return facilities that are not used by full-time resident judges; however, it has only released 15 courthouses in the last decade. More can be done. Releasing all 71 of these facilities would save the courts approximately $13 million per year.

Another opportunity to reduce cost is to enhance space utilization by taking a serious look at courtroom sharing. The Judiciary maintains a general practice of assigning a trial courtroom to each active District judge. Additionally, the Judiciary often extends this policy on an *ad hoc* basis to Magistrate judges, Senior Judges for more than ten years, and Bankruptcy judges.

For over a decade, courtroom use and sharing has been studied and recommendations made to share space wherever possible; however, progress has been limited.

As far back as 1985, GAO studies found that courtrooms were in use for less than 50 percent of the available workdays in seven cities. A 2001 analysis by the Congressional Budget Office suggested that courtroom sharing could increase use to more than 60 percent, and the President's FY 2001 budget request for courthouse construction projects included a statement that the request "assumes courtroom sharing" and the budget for each of the projects assumed there would be two courtrooms for every three judges. GSA believes that great opportunity remains to reduce cost by more sharing of space, specifically courtroom sharing.

Security

The second key finding in the GAO report is the rising costs of security, and how it has become a disproportionate cost of rent. Security costs are rising for all of our customers, and we have been actively working to reduce costs whenever possible. Security enhancements, such as progressive collapse and window protection, are important features in new and existing buildings and can increase building costs by up to six percent. For courthouses with their additional security enhancements, building costs can increase by eight percent. We will be publishing a new Perimeter Security Guidebook this Fall, which will improve the efficiency of security design while continuing to maintain open and accessible public buildings.

We are finding a great deal of success when we integrate security requirements early in the design process. We can also save money by reducing the distinctions between an architectural element and a security element. For example, at the Seattle Courthouse, Art and Architecture projects are used to provide external vehicle standoff. Another example is the pre-Katrina security enhancements at the U.S. Courthouse in Gulfport, Mississippi, which served a dual purpose during last year's hurricane season. The window protection installed at the building addressed both hurricane and security needs. Additionally, bollards installed in front of the building offered physical security,

both intentional and unintentional (for example, it protected the building from floating debris). This minimized damage and provided cost savings during the hurricane recovery.

Energy

The last key finding is the disproportionate rise of energy costs. With today's rising energy prices, GSA has been aggressively working to explore the use of new technology and to reduce our use of fossil fuels. Over the past decade, GSA has achieved a 30 percent reduction in energy consumption (BTU/GSF), and our energy costs are consistently lower than those in the private sector. We are currently rewriting our Facility Standards for the Public Buildings Service to incorporate Energy Performance Act (EPACT) of 2005 requirements.

In our continuing pursuit of new technologies, we apply sustainable design principles to incorporate energy efficiency into our new construction and major modernization projects. Some of our key initiatives to reduce energy consumption and overall energy costs include implementing energy efficient HVAC and lighting, systems, and instituting more effective operating procedures.

We are making progress in the development of specific projects. For example, the new Los Angeles Courthouse has been redesigned to replace its 20 story atrium with a two-story entry/lobby space. The design's iconic profile remains, but the building envelope is leaner and tighter, and its energy use is

measurably improved. At the new Salt Lake City Courthouse, we are taking a cutting edge approach to energy modeling. The design is being drawn using a "building information modeling" 3-D system that, in turn, will allow us to test and develop the most sustainable, energy efficient structure possible. Of course, we continue to review these projects for additional efficiencies as well.

Today, GSA has an award-winning energy program that uses energy reduction measures and leverages GSA's buying power to achieve significant energy savings for its federal customers. The resulting savings go straight into the Federal Buildings Fund, where they are appropriated by Congress for reinvestment and new construction for our customers.

GAO Recommendations

GAO also made two recommendations in its report. The first is that GSA and the Administrative Office of the United States Courts (AOUSC) work together to track rent and square footage data in a way that enables the courts to track the effects of their space management decisions. The second recommendation is that the AOUSC work with the Judicial Conference of the United States to create incentives for districts or circuits to manage space and space consumption more efficiently and to refine space allocation criteria for senior judges and types of space, such as libraries, that may no longer be necessary due to technological advancements.

With regard to the first recommendation, over a decade ago, the Judicial Conference recognized that the space occupied by the Judiciary was increasing far faster than its ability to pay for it. In its 1996 Conference's report of the Committee on Security, Space, and Facilities, they estimated that rent would reach $731 million by FY 2000 given space acquisition plans, reflecting an increase of 59 percent over the FY1995 level. Rent rose to nearly the level predicted by the courts' committee – $672 million by FY 2000 and exceeded the prediction by FY 2001 with rent at $740 million. The judiciary's use of space continues to increase – by 5 percent from April 2005 to April 2006. Of note, the Judiciary's rent for existing space is projected to *decrease* by one percent, or over $9 million, in fiscal year 2008 over the previous fiscal year.

We believe that we have the programs and systems in place to assist the AOUSC to track rent and square footage trends on an annual basis as well as assist with revising the Court Design Guide.

Per GSA's rent pricing policy, GSA informs its customers of rent implications as early as possible on two levels: one, at the project level, and two, at the aggregate level for their total rent bill. At the project level, such as when a new courthouse is being built, project changes with rent implications are documented in Occupancy Agreements, which require the customer's approval and signature. At the portfolio level, which includes all of the Judiciary's

occupancy in courthouses, GSA provides a detailed projection of rent costs two years in advance, known as the Rent Estimate. GSA can also analyze specific rent trends and provide this information to customers.

With regard to GAO's second recommendation that the AOUSC work with the Judicial Conference of the United States to create incentives for Federal judicial districts or circuits to manage space more efficiently, we think that is essential. GSA supports and endorses the original purpose behind the 1972 Act which established the Federal Buildings Fund as a revolving fund and the rent/user charge system. Congress intended GSA's rent/user charge system to be an incentive for Federal agencies to hold down the costs of the space they request and to promote accountability for the amount and quality of space they use. In fact, one could argue that the controversy between the Judiciary and GSA is largely based on the effectiveness of the Federal Buildings Fund system. It is effective and working as intended.

At the project level, judges and local court personnel may make decisions about project scope without full regard to the long-term impact on rent. However, the central budget arm of the Judiciary – the AOUSC – pays the rent bill. We will support any efforts by the AOUSC to connect local space decisions with the accountability for paying for these decisions. I think all of us understand that anyone who has the ability to make purchase decisions without the responsibility to pay the bill might not feel the same incentive to curb costs as someone who has responsibility to pay the bills.

I'd now like to share with you what steps we've taken in the last year. We have made progress in three areas: partnering, billing accuracy and lease re-negotiation.

Partnering with the Judiciary

GSA has partnered with the Judiciary on three levels. At the Executive level, with new leadership at GSA as well as the Judicial Conference and the AOUSC, there is an opportunity to re-establish the effective partnership we have experienced and benefited from in the past. I have met Judge Thomas Hogan, who now leads the Executive Committee of the Judicial Conference, and spoken with Chief Justice Roberts on this matter. I have met with Judge Jane Roth, Chair of the Committee on Security, Space, and Facilities, as well as attended portions of the last two Judicial Conference sessions. Mrs. Lurita Doan, our new Administrator, and I will meet with Mr. James Duff, once he joins the AOUSC as its new Director upon Mr. Mecham's impending retirement. The Administrator and I intend to reach out to the highest levels, and we are both committed to achieving a workable solution for all involved.

At the national program level, we have re-established partnering sessions between GSA and the Judiciary to discuss recent projects as well as variety of program issues, such as courtroom accessibility and design management. We have committed to working together on space analysis and planning methodology, offering comments on the Design Guide, discussing GSA's risk assessment tool for physical security, and enhancing the Architect/Engineer Selection Process.

At the project level, every new courthouse has a formal partnering meeting that includes the GSA project team, the Courts project team, the design Architects and Engineers and eventually the General Contractor. We are committed at every level to improving our partnering to assist in planning the future space needs of the Judiciary as well as to improve program and project delivery.

Rent Bill Accuracy

Another area of progress is in the accuracy of our rent bills. We are a large, complex operation with over 20,000 space assignments in our 8,900 buildings. Due to the volume, the human element involved and the complexity of our pricing/billing system, we do have errors. Through its own internal controls, GSA finds errors, and our customers bring errors to our attention. When errors are found, we move quickly to correct them.

Last year, GSA reviewed all of the Judiciary space assignments (over 2,500) for rent accuracy. The review resulted in a net decrease of $13.1 million, which is approximately 1.4 percent decrease of the total rent bill for the Judiciary. A particular policy misapplication in one region accounted for $12.2 million or 93 percent of the decrease.

The Judiciary has recently asked us to review forty appraisals used by GSA to calculate rents in owned space for accuracy. They have raised issues with ten appraisals, thus far questioning alterations to appraisal reports. We are

investigating each case thoroughly. Where errors of practice were made, we will make the necessary correction or have new third party appraisals done to confirm the appropriate rent rate. GSA is expediting ongoing efforts to strengthen and implement reforms to improve our appraisal and rent rate setting practices.

Finally, to make our billing process more accurate and efficient, GSA recently developed an improved standardized billing process and hired a vendor for implementation. Before implementing this process, however, GSA is conducting a complete rent review of all of our customers' space assignments to verify that rent bills are accurate.

Renegotiating leases where market rates have dropped significantly

As part of GSA's routine stewardship of its leased inventory, we look for opportunities to take advantage of market conditions. Where market conditions are favorable and a lessor is willing, GSA will attempt to renegotiate a lease to take advantage of the market conditions. We have developed a performance measure to promote this practice.

Renegotiation of leases is GSA's third area of progress. While most of the Judiciary's space needs are met in Government-owned courthouses, a significant portion of the Court's expansion space needs are in leased locations. GSA has worked with the AOUSC to develop a methodology for determining which leases should be considered for renegotiation. The AOUSC designated 60 leases for this cost saving initiative. GSA reviewed these to identify leases with a

termination option or leases that would soon expire, leases located in a market where rates have fallen, and leases with special circumstances that might result in a more favorable lease for the Judiciary, *i.e.*, a landlord getting ready to sell his building, a landlord who recently lost a large tenant, etc. Fourteen leases were selected for the first phase of this project. They are predominantly located in markets west of the Mississippi River. GSA is in various stages of negotiations regarding the 14 leases and will continue to apprise the Judiciary of any developments in the renegotiation process.

Mr. Chairman, Ranking Member Norton, thank you for holding this important hearing. GSA is committed to advancing the recommendations mentioned by GAO and in working with the Judiciary, and with all of its customers, to improve space use and to reduce costs whenever possible. That concludes my prepared statement; I will be pleased to answer any questions that any Members of the Subcommittee may have. Thank you again for this opportunity to testify and to share GSA's views.

Submitted for Record

Agenda F-20 (Appendix A)
Security, Space
and Facilities
March 1996

SPACE MANAGEMENT INITIATIVES IN THE FEDERAL COURTS

March 1996

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INTRODUCTION

At its September 1995 session, the Judicial Conference asked the Security, Space and Facilities Committee and the Budget Committee, working with the Administrative Office, to devise a plan, for approval by the Judicial Conference at its March 1996 session, to reduce the future growth of overall space rental costs, including prospectus and non-prospectus projects. The Conference further requested that circuit judicial councils and court units be given an opportunity to provide input into development of the plan.

This report responds to the Conference's directive. It reflects efforts of the Space and Facilities Advisory Group that met in Washington on November 14-15, 1995. The Advisory Group provides advice to the Director of the Administrative Office and others on space and facilities issues affecting the judiciary. The group, comprised of court unit executives from throughout the country, considered the suggestions and comments received previously from judicial officers, court unit executives, the Court Administration Advisory Council (which provides advice from clerks of court), and program areas of the Administrative Office. The Economy Subcommittee of the Budget Committee also made recommendations included in this report.

The Conference's request results from concerns that rent is consuming ever larger portions of judiciary funding in an environment where Congress is severely limiting the overall rate of growth in judiciary spending. For example, in FY 1985 rent represented about 16% ($128 million) of the Salaries and Expenses (S&E) budget. By FY 1995, the rent portion of Salaries and Expenses had grown to about 19% ($460 million). The problem is serious and could cause critical staffing shortages for the courts if not addressed at this time.[1]

Tables 1, 2, and 3 show projected increases in space rental and staffing and the impact increased space rental costs will have on the judiciary's ability to fund staffing and other expenses. Under courts' current space acquisition plans, rent would reach an estimated $731 million by FY 2000, an increase of 59% over the FY 1995 level.[2] This would result from the estimated addition of 7.1 million square feet of space from FYs 1996 through 2000, plus normal inflationary increases in the rental rates charged by GSA. Of the square footage growth, 4.9 million square feet is from currently planned

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[1]Federal defenders are not funded out of the Salaries and Expenses account, and therefore, federal defender organization space is not encompassed by this study.

[2]Of course, factors outside the judiciary's control, such as construction strikes, material manufacturing problems, or contract disputes, can influence actual delivery dates of projects and reduce these rent projections. The estimates are under continuous review and are adjusted periodically.

prospectus projects.[3] The remaining 2.2 million is based on actual and estimated court requests for new non-prospectus space.

The impact on judiciary funding of a $731 million rent bill depends on the overall rate of growth of the S&E budget. It is likely that S&E spending will grow no more than 5% annually over the estimated FY 1996 level. If spending growth were at 5%, rent would represent 23% of S&E spending by FY 2000, up from 19% and 16% in FYs 1995 and 1985, respectively.

This situation would impact the judiciary's ability to fund other programs, principally staffing. For example, based on July 1995 estimates of projected workload, expected increases in the number of judicial officers and staff, and an assumption that the non-rent, non-personnel share of the budget would increase at the rate of inflation, staffing levels could decline to about 70% of workload measurement formulas over the next five years absent reductions in current rent projections or unexpected increases in overall S&E spending levels.[4] Conversely, maintaining 84 percent staffing could require decreasing the judiciary's space inventory below current levels. This would require significant reductions in the existing space inventory to accommodate any new growth and/or cancellation/downsizing of current building projects.

Unless the budgetary environment is somehow changed -- e.g., Congress provides more funding than expected in future years, GSA lowers our rent obligations or workload levels decline to the point where no net growth is required in the levels of judicial officers and court personnel -- the judiciary will have to make serious tradeoffs between people and space. It is clear that maintenance of the current space program will result in unacceptably low staffing levels; maintenance of, or increases to, current workload measurement formulas will result in severe cuts to the space program. The judiciary must strike a balance between these two critical programs.

The following pages include a series of actions under way and proposed for reducing rent costs. At this time, it is not possible to determine the extent to which these actions would lower projected rent costs and generate sufficient savings to maintain 84% staffing and pay for space now planned to be occupied in the future. Therefore, it must be recognized that there is a strong possibility that buildings currently under design, and perhaps currently under construction, would not be occupied by the judiciary upon completion or would have to be redesigned to allow non-judiciary tenants to occupy some of the space now intended for the judiciary.

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[3]Prospectus projects are those major alteration and new building projects that exceed $1.7 million in cost. These projects require line item appropriations and authorization from the House and Senate.

[4]Assumes about 600 positions would be added annually to maintain 84 percent staffing and accommodates expected increases in the number of judicial officers and staff.

SPACE MANAGEMENT INITIATIVES

Action 1. Examination and Reduction of the Current and Projected Space Inventory

In these times of budgetary constraint, it makes good business sense for the judiciary to review carefully and expeditiously all of its space holdings and to make reductions so that funding not used to pay rent can be directed to other judicial programs. Because the circuit judicial councils have the statutory authority to determine the need for court accommodations (See 28 U.S.C. 462 (b)) and space rental is funded centrally, the ongoing rental costs for those accommodations have not been a principal consideration in the approval process.

There is a delicate balance between building courtrooms and chambers needed shortly after occupancy of a new building (and paying rent on these facilities for a year or two), as opposed to having to renovate space in new courthouses shortly after occupancy to accommodate additional judges and staff. Because it takes seven years to plan, design, and construct a courthouse, new courthouses will be outgrown the day they open without careful planning. All elements of the judiciary have worked diligently over the past several years to ensure that buildings are sized appropriately for current and projected requirements. When considering present and future space actions, serving the needs of judicial officers and staff while maintaining a conservative, cost-conscious approach to space acquisition and planning must always be a fundamental goal.

- *Re-examination of existing space inventory and active space requests.* Judicial councils, in conjunction with court units and the Administrative Office, are in the process of examining existing space and all future space planned through FY 2000 to identify "marketable" square footage amounts that can be released to GSA. The review will assume that in light of the current budgetary climate, personnel levels will be restricted to 84 percent of staffing formulas. Projections of future judgeships will be based on current surveys of judgeship needs for the purpose of this examination. The review under way includes projects being planned, designed or under construction, including new courthouses and major alteration projects. (See Appendix A for a listing of these projects.) The review should be completed no later than June 1996.

The following guidelines, among others, will be used as the existing inventory is reviewed and pending space requests are evaluated:

- Courtrooms, chambers, and other types of space with low usage should be considered for release (if existing) or cancellation (if planned) unless firm justification exists for maintaining the space. Judicial councils and courts will be asked to reaffirm the need for these facilities. (See below for a discussion of criteria that should be developed to evaluate low usage facilities.)

- The existing inventory and active space requests will be reviewed to determine that space is shared wherever possible. Types of space appropriate for sharing

could include training rooms, conference facilities, chambers collections, automation support areas, reception areas, and other common spaces. (See also courtroom sharing below.)

- Existing inefficient space layouts will be reviewed to determine if space can be reconfigured to effect space rental savings and accommodate any projected new staff.

- Space assignments will be reviewed to ensure that they do not exceed current Design Guide standards.

• *Visiting Facilities, Divisional Offices and Other Spaces.* The Court Administration and Case Management Committee of the Judicial Conference in coordination with other appropriate committees as noted below should provide input into development of criteria for acquiring and releasing the types of space which follow, for approval at the Conference's March 1997 session, except that the Committee on Automation and Technology should independently address library space needs.

- Court facilities without a resident full-time judicial officer and visiting courtrooms and chambers in facilities with resident full-time judicial officers; (Committee on Administration of the Bankruptcy System; Committee on Administration of the Magistrate Judges System);

- Libraries (Committee on Automation and Technology to take sole responsibility);

- Divisional and branch offices (Committee on Criminal Law (for probation/and pretrial services offices));

• *Development of Space Reduction Reports.* Circuit judicial councils, based on the results of their examination of existing inventories, space planned to be added in the future, and requests now pending at GSA, should submit circuit-wide space reduction reports to the Judicial Conference through the Security, Space and Facilities Committee no later than June 1996. The Security, Space and Facilities Committee, working with the judicial councils, will review the results of the circuits' space reduction efforts and plans and identify any additional opportunities to release space, if further reductions are needed.

These reports will help the judiciary determine the extent to which trade-offs between staffing and space must be made, and the extent to which the judiciary can afford new space in currently planned buildings. Councils might consider reviewing existing space assignments with a view toward eliminating common spaces, e.g., conference rooms, and releasing space used on an intermittent basis. Policies might also be adopted to reduce other support spaces, such as libraries and training facilities. The scope, content, and format of the reports will be developed in cooperation with judicial councils and courts no later than April 1996. The Administrative Office will be required to provide inventory and usage data on a per capita or other basis to judicial councils

and districts to assist with this review, as well as staff support throughout the report development process. These data will help to identify districts with above "average" or below "average" space assignments.

SPACE STANDARDS

Action 2. Review the United States Courts Design Guide and space allocation standards, including the impact of technology on space standards.

It has been five years since the Judicial Conference approved the current version of the United States Courts Design Guide. It was always the intent of the Committee on Security, Space and Facilities to ensure that the guidelines be interpreted to favor the needs of the user of the space being constructed. The judiciary has focused on the need to provide its employees with safe, modern, functional space in order to contribute to the judiciary's productivity into the 21st century. The controls in place for the space and facilities program, consequently, ensured that needs were identified, they were reasonable and valid, that space was designed to standards of functionality, and that the space was available when needed to house judicial officers and staff.

Comments received from various court advisory groups and some judicial councils indicate that currently the Design Guide might provide too much discretion to courts and court units when planning for their space needs, and that the judicial councils need additional leverage when they seek reductions in requests submitted for approval. Comments received also indicate that application of the standards provided might be too liberal in some specific housing situations. The Security, Space and Facilities Committee will be seeking guidance from the circuit councils to determine appropriate control mechanisms, including advice on appropriate education and training in use of the guidelines, and how a system for downward departures from the space standards might be developed.

- *Review of the United States Courts Design Guide.* The Security, Space and Facilities Committee has under way an initiative to conduct an overall review of the current space standards and is scheduled to complete the review by March 1997. Participants in the review will be judges, court unit executives, the Congress, the General Services Administration, and the private sector.

In conducting its review, the Security, Space and Facilities Committee, in consultation with courts, judicial councils and the private sector, will, among other things, address more specific space standards for public and common spaces, including jury assembly rooms, intake areas in clerk's offices, conference rooms, storage rooms, and other support spaces. It is anticipated that the Committee will also consider recommendations on the appropriate number of common and shared spaces based on the overall size of a building and define in more specific terms those staff to be provided with individual offices.

• *Courtroom Sharing.* The Congress has asked the judiciary to consider sharing courtrooms and to determine the impact on a judge's ability to try cases if courtroom sharing were implemented. The Court Administration and Case Management Committee, working in conjunction with other appropriate committees of the Conference, including the Committee on the Judicial Branch, the Committee on Administration of the Bankruptcy System and the Committee on Administration of the Magistrate Judges System, should be tasked by the Conference to determine what policy on courtroom sharing for active and senior judges should be adopted, and whether the impact of any delays that would result from sharing courtrooms will adversely affect case processing. Each judicial council should be strongly encouraged to submit a position on courtroom sharing. Judicial councils also should be asked by the Committee to provide recommendations about how existing governance structures can be used to ensure that any policies promulgated are implemented, because councils are likely to play a primary role in ensuring that any policies adopted are enforced. A proposed policy should be submitted for consideration of the Conference at its March 1997 session.

• *Impact of Technology.* The Committee on Automation and Technology should take the lead, working in conjunction with the Rules Committee, the Security, Space and Facilities Committee and other appropriate Conference Committees, to initiate study of and incorporate into long-range space planning the potential effect of technology on future space needs (e.g., telecommuting; document filing from distant locations, etc.).

SPACE ALLOTMENTS AND BENCHMARKS

Action 3. Change Rent Funding Policies and Establish Ceilings on Space Rental Growth

In order to contain space rental costs and implement enhanced space management practices, circuit judicial councils should be provided with authority to manage an allotment of square footage on an annual basis, and courts and councils should be provided with financial incentives to reduce their existing space inventories. The allotment of square footage, along with the rental cost of the allotment of square footage, will be a ceiling which cannot not be exceeded. The combination of actions taken by councils in their space reduction reports, the ceilings on square footage in any one fiscal year, and incentives provided to reduce the space inventory, will all curb space growth.

• *Space Inventory and Benchmarks.* Courts, judicial councils and the Committee on Security, Space and Facilities have determined that an initiative currently under way to establish a detailed space inventory by court unit is essential for current and future analysis of the judiciary's space costs. Once established, this inventory can be used to develop and disseminate space utilization estimates (benchmarks) so that courts of like size and with similar building characteristics can compare the amount of space they occupy. Professional space and facilities staff at the Administrative Office, court staffs trained in space utilization, General Services Administration real estate staffs, or private architectural/engineering firms will assist with establishing the inventory and space

utilization estimates. It is anticipated that the inventory and benchmarking process will be completed, at the latest, by September 1996. Every effort will be made to accelerate development of these space utilization levels because they form the basis for future space reduction decisions.

- ***Rent Ceilings.*** In order to contain future rent costs, multi-year ceilings on rent growth will be established. For FY 1997 and FY 1998, based on current projections of appropriations, and space rental costs, annual rent growth should be limited to a maximum of 5%. Growth ceilings for FY 1999 and beyond will be set after judicial council space reduction plans (see Action 1) are analyzed by the Security, Space and Facilities Committee.[5]

- ***Growth Projections.*** To meet the desired rent ceilings, growth projections will be revised based on the results of the councils' space reduction efforts and most recent rent data available. It might be necessary to work with judicial councils to identify additional reductions or defer projects if the space reduction efforts do not generate enough savings. The Security, Space and Facilities Committee will develop, in conjunction with the Budget Committee, multi-year growth targets for FY 1999, and revisions to FY 1998 estimates, if necessary, based on the results of the space reduction reports.

- ***Conference Approval of Rental Ceilings and Use of Five-Year Construction Plan to Limit Rental Payments.*** At its March 1995 session, the Conference approved the submission to the Conference of a five-year plan of courthouse projects on an annual basis. Further, in response to Congressional direction, the Conference agreed to prioritize those projects in numerical order. Once space reduction plans are analyzed, benchmarks established, and rental growth targets set, the five-year plan will be modified to include the impact of projected rental funds to be available in ensuing years. The Conference approved five-year plan, therefore, would address which projects should be constructed and the rental implications of those projects. It is anticipated that a ceiling on non-prospectus space would be included in the five-year plan as well.

- ***Square Footage/Dollar Allotments.*** A square footage budget allotment should be provided to each judicial council so that the councils could then allocate those increases to courts or court units based on requests received. The allotments will be based on analysis and results of the council's space reduction report, benchmarks established for a circuit (whether the circuit as a whole exceeds national utilization targets), and funding availability.

The square footage allotment also will be converted to a dollar amount which cannot be exceeded. The dollar ceiling will ensure that space already assigned to the

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[5] Current projected rent growth for FYs 1997 and 1998 are 5% and 10%, respectively. Limiting FY 1998 growth to 5% would require reducing rent projections from $609 million to $581 million (-$28 million) and could result in staffing levels dropping to 80% of formula.

judiciary that undergoes alteration or reconfiguration that results in a higher cost per square foot charge, e.g., office space converted to courtrooms or chambers, will be controlled.

• *Incentives for Saving Space Rental Funds.* Funds should be provided to courts that make specific management decisions to reduce their rent liability. Individual court and court unit operating budgets should be credited with some portion of the savings that accrue to the judiciary for releasing space. The Security, Space and Facilities Committee and the Budget Committee will develop a system for providing the incentives, with assistance from court unit executives and advisory groups, for consideration by the Conference in September 1996.

REVISIONS TO GSA RENTAL POLICIES AND REGULATIONS

Action 4. Develop Alternatives to GSA Rent Rates and Rules

Over the next several months the Security, Space and Facilities Committee will be pursuing aggressively reductions in rental rates to GSA:

• *Evaluation of Rent Rates.* By June 1996, independent rent appraisals of selected properties will be initiated to determine if the judiciary is being overcharged for space, with a view toward getting GSA to lower rates that are excessive.

• *Rental Charge Policies.* Alternatives to, and the desirability and feasibility of getting Congress to change, the current policy of reimbursing the federal buildings fund for construction costs will be developed by Administrative Office staff no later than September 1996. The objective will be to arrange for the judiciary to pay only direct operating costs and a contribution toward building maintenance and repairs, as opposed to current arrangements, which by statute provide GSA with authority to charge market-based rental rates. GSA now receives a sizable profit over direct operating expenses, perhaps as much as 45 percent in total, in buildings occupied by the courts. Such a change would reduce significantly the judiciary's rent liability and would eliminate this current crisis. It must be recognized, however, that it is unlikely that the Congress and GSA will favor this policy change.

See Space & Fac App. A-8

TABLE 1

Historical and Projected Space Rental Growth for the Judiciary

Fiscal Year	Salaries and Expenses /1	% Increase Over Prior Year	GSA Space Rental Bill/2	% Increase Over Prior Year	Space as a % of S&E	Square Feet	% Increase Over Prior Year	Personnel Compensation Costs /3	% Increase Over Prior Year	Personnel Compensation Costs as a % of S&E	Staffing FTE	% Increase Over Prior Year
Actuals												
1985	$804,709,000	n/a	$128,067,000	n/a	15.91%	12,108,205	n/a	$535,423,000	n/a	66.54%	16,093	n/a
1986	$848,346,000	5.42%	$133,448,000	4.20%	15.73%	12,596,000	4.03%	$574,915,000	7.38%	67.77%	16,579	3.02%
1987	$972,082,000	14.58%	$170,000,000	27.39%	17.49%	13,106,330	4.05%	$634,365,000	10.34%	65.26%	17,670	6.58%
1988	$1,132,218,000	16.48%	$209,533,000	23.25%	18.51%	13,425,000	2.43%	$710,166,000	11.95%	62.72%	18,864	6.76%
1989	$1,228,582,000	8.51%	$224,540,000	7.16%	18.28%	14,469,042	7.78%	$779,875,000	9.82%	63.48%	19,208	1.82%
1990	$1,416,091,000	15.26%	$229,468,000	2.19%	16.20%	15,002,977	3.69%	$860,331,000	10.32%	60.75%	19,749	2.82%
1991	$1,695,444,000	19.73%	$257,463,000	12.20%	15.19%	15,835,000	5.55%	$1,028,633,000	19.56%	60.67%	21,980	11.30%
1992	$1,949,733,000	15.00%	$306,222,000	18.94%	15.71%	17,078,395	7.85%	$1,212,287,000	17.85%	62.18%	24,004	9.21%
1993	$2,024,167,000	3.82%	$366,233,000	19.60%	18.09%	17,668,002	3.45%	$1,335,162,000	10.14%	65.96%	24,652	2.70%
1994	$2,177,851,000	7.55%	$399,231,000	9.01%	18.34%	20,149,584	14.05%	$1,427,209,000	6.89%	65.56%	24,456	-0.80%
Estimates												
1995	$2,403,621,000	10.50%	$459,999,458	15.22%	19.12%	22,610,498	12.21%	$1,515,055,000	6.16%	62.98%	24,704	1.01%
1996	$2,618,312,595	8.84%	$526,990,595	14.56%	20.13%	24,244,121	7.23%	$1,663,333,000	9.79%	63.53%	26,631	7.80%
1997	$2,749,228,225	5.00%	$554,584,274	5.24%	20.17%	24,934,073	2.85%	$1,781,617,000	7.11%	64.80%	27,228	2.24%
1998	$2,886,689,636	5.00%	$609,209,150	9.85%	21.10%	27,398,979	9.89%	$1,906,903,952	7.03%	66.06%	27,825	2.19%
1999	$3,031,024,118	5.00%	$682,959,229	12.11%	22.53%	29,074,011	6.11%	$2,039,578,053	6.96%	67.29%	28,422	2.15%
2000	$3,182,575,324	5.00%	$730,665,249	6.99%	22.96%	29,676,084	2.07%	$2,180,043,055	6.89%	68.50%	29,019	2.10%
Annual Average		9.71%		12.53%	18.47%		5.83%		9.88%	64.63%		3.81%
Cumulative Increase, 1985-2000		295.49%		470.53%			145.09%		307.16%			80.32%

1/ Projected Salaries and Expenses levels assume that overall spending will increase 5% annually over the FY 1996 Estimated level for FYs 1997 - 2000

2/ Rent projections assume that 4.9 million square feet of additional (i.e. net increase) prospectus space will be delivered in FYs 1996 - 2000. Regarding non-prospectus space, projections assume the following: 1) 742,425 additional square feet will be added in FY 1996 ; 2) no net increases in non-prospectus rent costs will occur in FY 1997; and 3) 478,835 additional square feet will be added in each of years FY 1998 - 2000. This represents the level of new space requested for FY 1997 and is considered to be the best estimate at this time of non-prospectus, outyear requirements.

3/ Personnel spending projections represent the levels needed to fund staffing at 84% of workload measurement formulas and to fund expected increases in judicial officers and staff (i.e. annual increases of 421 FTE to maintain 84% staffing; 38 FTE for judicial officers; and, 138 FTE for judicial officers staff).

Table 2

Effect of Future Rent Growth on Judiciary Personnel

If S&E spending increases 5% annually beyond FY 1996 and there is no change in current planned space growth, staffing levels could decline to about 70% of workload measurement formulas, assuming non-rent/non-personnel spending increases at the inflation rate, as shown below.

	A	B	C	D	E	F
Fiscal Year	Total S&E	Rent	Personnel Funds needed to maintain 84%	Other Programs	Personnel Shortage	Staffing Formula
1996	$ 2,618,312,595	$ 526,990,595	$ 1,663,333,000	$ 427,989,000	–	84%
1997	$ 2,749,228,225	$ 554,584,274	$ 1,781,617,000	$ 441,256,659	$ (28,229,708)	82%
1998	$ 2,886,689,636	$ 609,206,150	$ 1,906,903,952	$ 454,935,615	$ (84,356,081)	77%
1999	$ 3,031,024,118	$ 682,959,229	$ 2,039,578,053	$ 469,038,620	$ (160,551,784)	72%
2000	$ 3,182,575,324	$ 730,655,249	$ 2,180,043,055	$ 483,578,817	$ (211,701,797)	69%

Column by Column Explanation:

Column

A Represents projected S&E spending increases of 5% annually

B Represents projected rent increases

C Represents projected personnel spending to maintain 84% staffing

D Represents non-rent/non-personnel spending and assumes annual increases at the inflation rate (3.1%)

E Displays funding shortfall in personnel spending if projected rent costs and other programs fully funded. (Col A - Col B - Col C - Col D = Shortfall)

F Represents resulting staffing formula the Judiciary could afford based on shortage estimated in Col E.

Table 3

Effect of Future Personnel Growth on Judiciary Rent

If S&E spending increases 5% annually beyond FY 1996, estimated personnel costs to maintain 84% staffing are fully funded, and non-rent/non-personnel spending grows at the inflation rate, spending on rent would have to be reduced significantly as shown below.

	A	B	C	D	E	F
Fiscal Year	Total S&E	Rent	Personnel Funds needed to maintain 84%	Other Programs	Rent Shortage	% Below Rent Need
1996	$ 2,618,312,595	$ 526,990,595	$ 1,663,333,000	$ 427,989,000	$ -	-
1997	$ 2,749,228,225	$ 554,584,274	$ 1,781,617,000	$ 441,256,659	$ (28,229,708)	-5.09%
1998	$ 2,886,689,636	$ 609,206,150	$ 1,906,903,952	$ 454,935,615	$ (84,356,081)	-13.85%
1999	$ 3,031,024,118	$ 682,959,229	$ 2,039,578,053	$ 469,038,620	$ (160,551,784)	-23.51%
2000	$ 3,182,575,324	$ 730,665,249	$ 2,180,043,055	$ 483,578,817	$ (211,711,797)	-28.98%

Column by Column Explanation:

Column

- **A** Represents projected S&E spending increases of 5% annually
- **B** Represents projected rent spending
- **C** Represents projected personnel spending to maintain 84% staffing
- **D** Represents non-rent/non-personnel spending, assuming annual increases at the inflation rate (3.1%)
- **E** Displays funding shortfall in rent categories if projected personnel costs and other programs are fully funded. (Col A - Col B - Col C - Col D = Shortfall)
- **F** Represents percent below rent needs the Judiciary could fund based on shortage estimated in column E.

PROSPECTUS PROJECTS PROJECTED - ANTICIPATED DELIVERY FYS 1996 - 2000

Circuit	Project	City, State	Delivery Date	Net Increase Square Footage	Total Annual Additional Budget Impact
Fiscal Year 1996					
1	New Courthouse	Worcester, MA	10/01/95	51,392	$ 1,344,100
1	New Courthouse	Portland, ME	12/01/95	26,030	$ 616,900
3	Repair & Alteration	Harrisburg, PA	07/01/96	39,200	$ 1,002,800
4	New Courthouse	Alexandria, VA	12/01/95	190,374	$ 4,096,600
5	Repair & Alteration	Baton Rouge, LA	01/01/96	13,505	$ 276,200
6	New Courthouse	Knoxville, TN	10/01/95	26,830	$ 499,600
6	Repair & Alteration	Columbus, OH	03/01/96	145,036	$ 3,049,700
7	Repair & Alteration	Indianapolis, IN	12/01/95	16,987	$ 341,900
8	Repair & Alteration	St Paul, MN	10/01/95	99,056	$ 2,069,000
8	Repair & Alteration	Milwaukee, WI	10/01/95	8,127	$ 350,400
8	Repair & Alteration	Milwaukee, WI	10/01/95	857	$ 19,200
9	Repair & Alteration	San Diego, CA	10/01/95	26,055	$ 848,700
9	Repair & Alteration	San Fran, CA	04/01/96	13,201	$ 2,069,500
9	New Courthouse	Reno, NV	09/01/96	43,128	$ 711,800
10	Repair & Alteration	Tulsa, OK	10/01/95	27,974	$ 517,100
10	Repair & Alteration	Oklahoma City, OK	10/01/95	102,901	$ 599,900
			Subtotal	829,796	$ 18,394,200
Fiscal Year 1997					
1	New Courthouse	Concord, NH	01/01/97	92,000	$ 2,197,400
1	Repair & Alteration	Providence, RI	01/01/97	20,100	$ 628,200
3	Repair & Alteration	Philadelphia, PA	10/01/96	125,460	$ 3,376,400
4	Repair & Alteration	Baltimore, MD	10/01/96	14,379	$ 483,800
4	Repair & Alteration	Asheville, NC	01/01/97	1,170.	$ 19,400
4	Repair & Alteration	Richmond, VA	06/01/97	17,490	$ 408,200
6	Repair & Alteration	Detroit, MI	12/01/96	40,144	$ 1,065,400
6	New Courthouse	Knoxville, TN	06/01/97	12,900	$ 285,400
8	Repair & Alteration	Little Rock, AR	03/01/97	44,879	$ 476,200
8	New Courthouse	Minneapolis, MN	01/01/97	68,421	$ 2,082,100
9	New Courthouse	Portland, OR	02/01/97	114,379	$ 3,693,300
11	New Courthouse	Tampa, FL	11/01/96	232,203	$ 7,027,100
11	Repair & Alteration	Augusta, GA	12/01/96	12,708	$ 350,000
			Subtotal	796,233	$ 22,092,900
Fiscal Year 1998					
1	New Courthouse	Boston, Massachusetts	04/25/98	256,050	$ 7,020,891
1	Repair & Alteration	Old San Juan, Puerto Rico	05/01/98	38,000	$ 1,041,960
3	New Courthouse Annex	Scranton, Pennsylvania	05/10/98	54,795	$ 1,502,479
4	New Feb. Bldg/courthouse	Charleston, West Virginia	10/01/97	83,500	$ 2,289,570
5	New Courthouse	Lafayette, Louisiana	07/12/98	51,319	$ 1,407,167
5	New Federal Bldg/Courthouse	Brownsville, Texas	08/30/98	72,198	$ 1,979,669
7	New Federal Bldg/Courthouse	Fargo, North Dakota	10/06/97	110,000	$ 3,016,200
7	New Courthouse	Hammond, Indiana	06/12/98	129,174	$ 3,541,951
8	New Courthouse	Kansas City, Missouri	03/14/98	296,966	$ 8,142,808
8	New Courthouse	St. Louis, Missouri	04/01/98	394,431	$ 10,815,298
9	New Feb. Bldg/courthouse	Sacramento, California	10/01/97	96,550	$ 2,647,401
9	New Court house	Santa Ana, California	10/01/97	139,000	$ 3,811,380
10	New Federal Bldg/Courthouse	Albuquerque, New Mexico (2)	07/07/98	58,418	$ 1,601,822
11	New Courthouse Annex	Montgomery, Alabama	12/03/97	145,355	$ 3,985,634
11	New Courthouse Annex	Tallahassee, Florida	08/01/98	60,315	$ 1,653,837
			Subtotal	1,986,071	$ 54,458,067

PROSPECTUS PROJECTS PROJECTED - ANTICIPATED DELIVERY FYS 1996 - 2000

Circuit	Project	City, State	Delivery Date	Net Increase Square Footage	Total Annual Additional Budget Impact
Fiscal year 1999					
2	New Federal Bldg/Courthouse	Islip, New York	01/01/99	321,461	$ 9,087,702
4	New Courthouse	Beckley, West Virginia	12/30/98	5,000	$ 141,350
5	New Federal Bldg/Courthouse	Corpus Christi, Texas	12/01/98	33,260	$ 940,260
5	New Federal Bldg/Courthouse	Laredo, Texas	07/01/99	110,125	$ 3,113,234
8	New Courthouse	Omaha, Nebraska	01/09/99	104,222	$ 2,946,356
9	New Federal Bldg/Courthouse	Phoenix, Arizona	01/03/99	241,074	$ 6,815,162
9	New Courthouse	Las Vegas, Nevada	05/14/99	116,898	$ 3,304,706
9	New Courthouse	Tucson, Arizona	05/14/99	201,863	$ 5,706,667
10	Repair and Alteration	Wichita, Kansas	12/31/98	9,380	$ 265,173
11	New Courthouse	Albany, Georgia	10/01/98	14,335	$ 405,250
11	New Courthouse	Jacksonville, Florida	01/27/99	38,579	$ 1,090,628
			Subtotal	1,196,197	$ 33,816,488
Fiscal Year 2000					
4	New Courthouse Annex	Columbia, South Carolina	06/01/00	8,551	$ 249,262
6	New Courthouse	Covington, Kentucky	06/01/00	23,151	$ 674,852
6	New Courthouse	London, Kentucky	06/01/00	13,622	$ 397,081
6	New Courthouse	Greeneville, Tennessee	06/01/00	36,396	$ 1,060,943
11	New Courthouse Annex	Savannah, Georgia	06/01/00	41,518	$ 1,210,250
	TOTAL		Subtotal	123,238	$ 3,592,388
			Grand Total FYs 1996 - 2000	4,931,535	$ 132,354,043

NOTE: This listing is a tentative list of prospectus projects. For many of the projects shown, the Congress has not yet appropriated construction funding although Congress has appropriated funds for site and design. With regard to cost per square foot, FY 1998 was calculated using an average of the average cost per square foot for FYs 1995-1997 and inflating it by a factor of 3.1%. This inflation factor was also used in calculating FYs 1999 and 2000.