

June 2006

FEDERAL COURTHOUSES

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



G A O

Accountability * Integrity * Reliability



Highlights of [GAO-06-613](#), a report to congressional requesters

Why GAO Did This Study

The judiciary pays over \$900 million in rent annually to GSA for court-related space, and this amount represents 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 identified (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

GAO recommends 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 the 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-06-613.

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.

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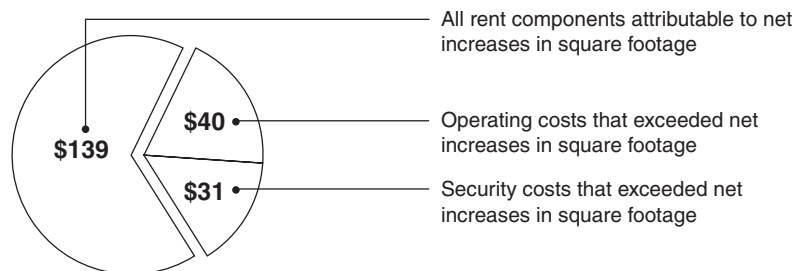
Rent Increases Due to New Space and Growing Energy and Security Costs Require Better Tracking and Management

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 and the number of court staff has doubled since 1985. Shell rent (the building with basic infrastructure) increased proportionately with net 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 Net Growth in 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 requirements, such as three separate circulation patterns for judges, prisoners, and the public and other structural and architectural elements make courthouses among the most expensive federal facilities to construct, 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 that we found 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.

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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 judiciary¹ 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

¹The 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 testified² 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

²GAO, *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

³Interagency 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

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

⁵The Department of Justice is the other largest contributor.

⁶According 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.

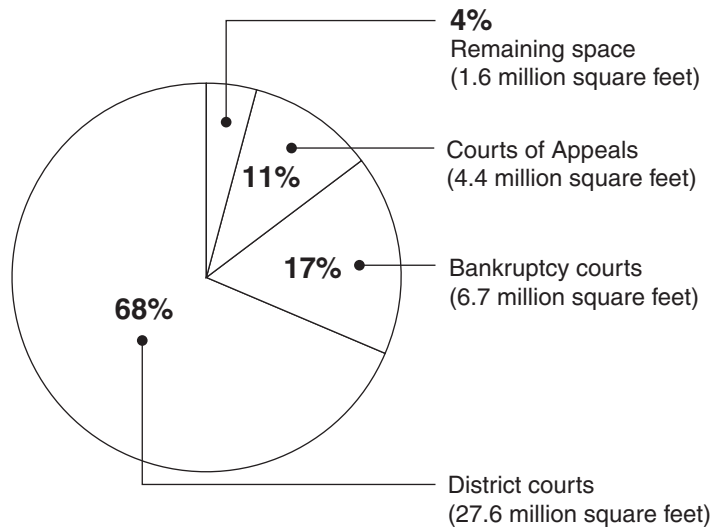
The Marshals Service provides security services to judges, courts staff, and the public inside courthouses, and the Federal Protective Service (FPS) generally protects the exterior of courthouses. Until fiscal year 2005, the judiciary paid security costs to GSA as part of its rent payment. Starting in 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.

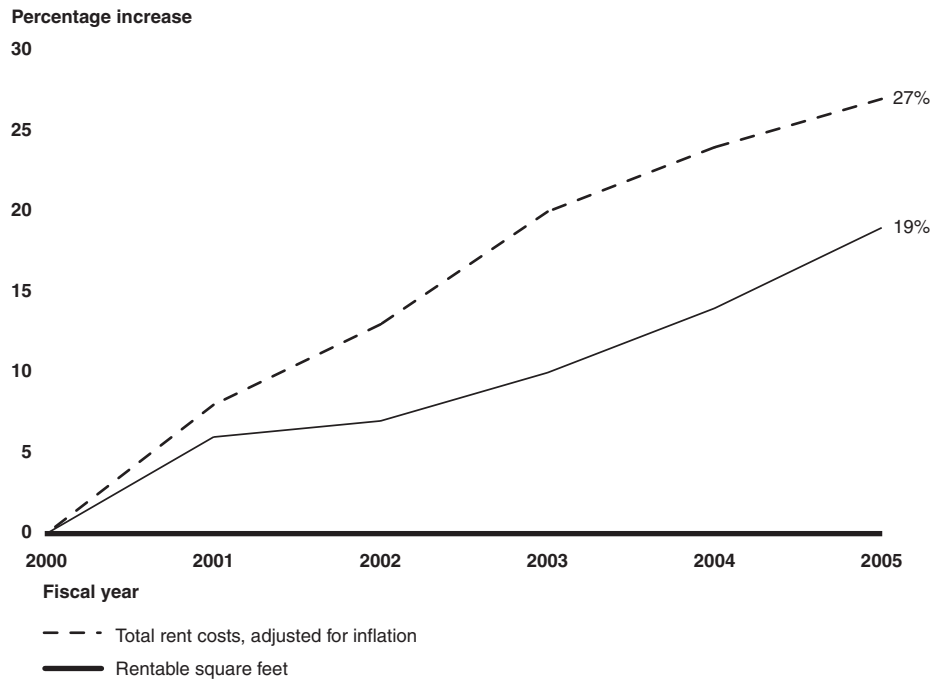
The judiciary and GSA are responsible for managing the multibillion-dollar federal courthouse construction program, which is designed to address the judiciary's long-term facility needs. AOUSC works with the nation's 94 judicial districts to identify and prioritize needs for new and expanded courthouses. 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.

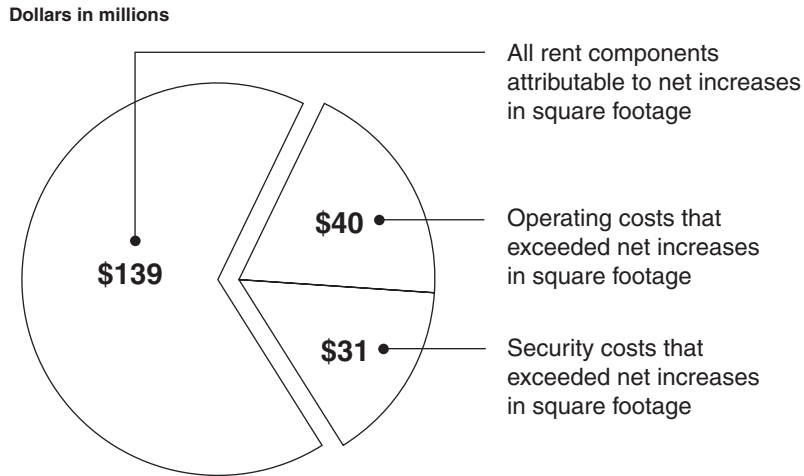
In analyzing the increases in rent, it is useful, for purposes of comparison, to consider that percentage increases in rent would occur proportionally with percentage increases in net space added. In other words, holding all factors constant, a net increase in space of 19 percent would logically be accompanied 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

⁷We 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

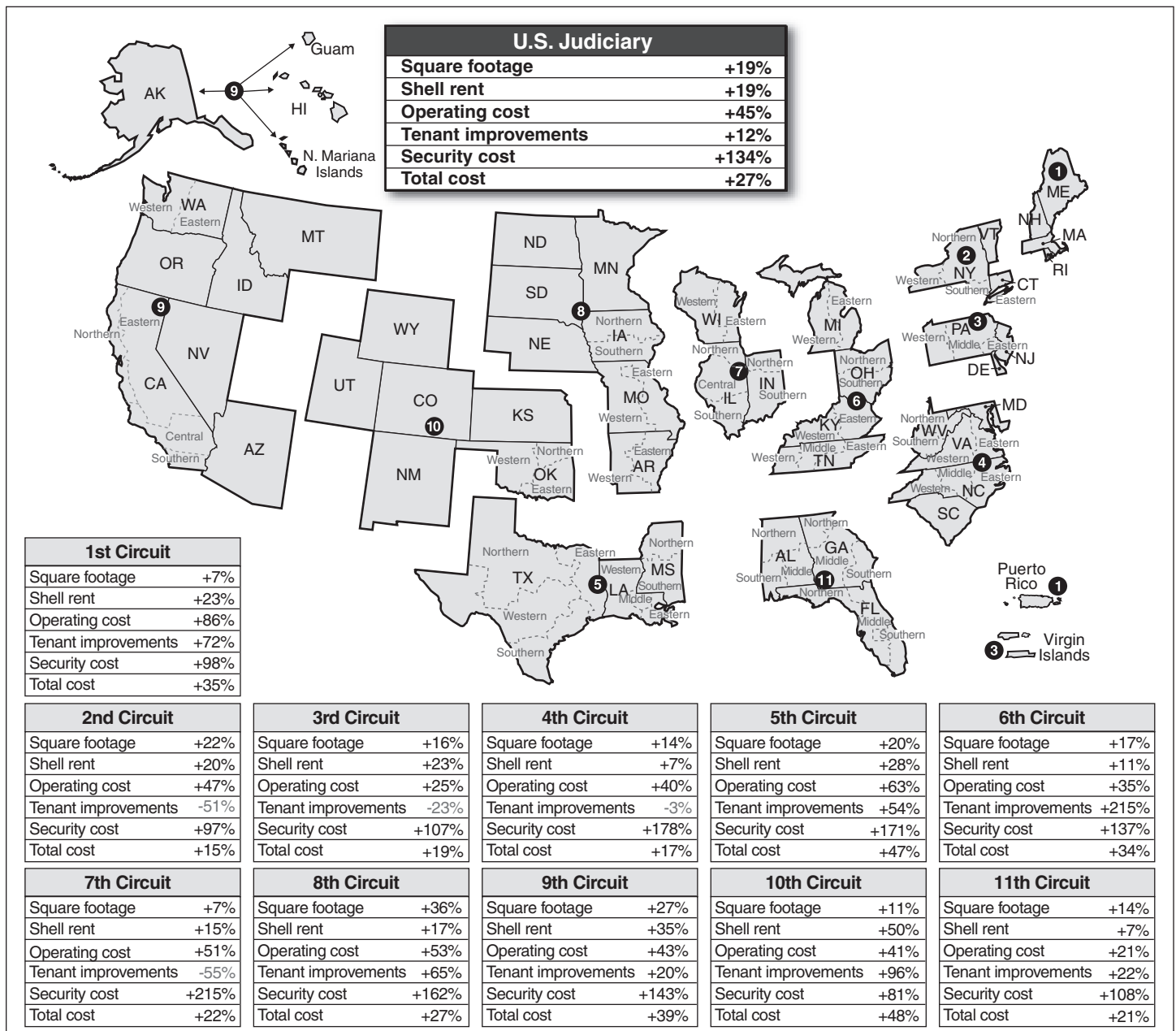
Each circuit increased its square footage from fiscal years 2000 through 2005. However, the 8th and 9th Circuits added proportionally more square footage than the others, growing by 36 percent and 27 percent, respectively. Within the 8th Circuit, Missouri and Nebraska have nearly doubled their square 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.

⁸In 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



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 FPS⁹ 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.

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

¹⁰GSA 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.

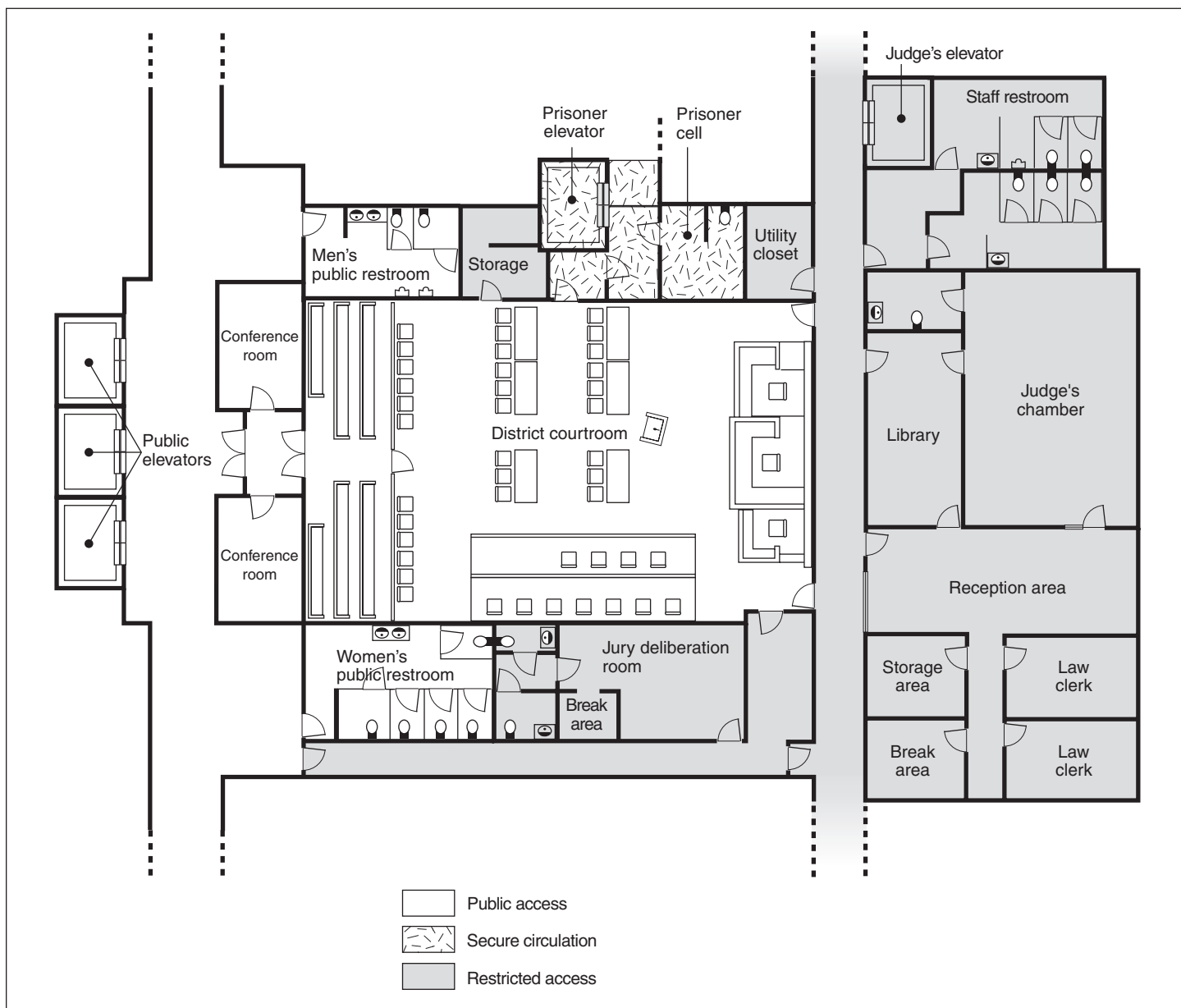
Structural and Architectural Elements of Modern Courthouses Have Increased Construction Costs beyond the Commercial Market

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.

¹²According 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.¹³ Districts often assign courtrooms and chambers for visiting

¹³The 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 vacancy, 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.

¹⁴We 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.

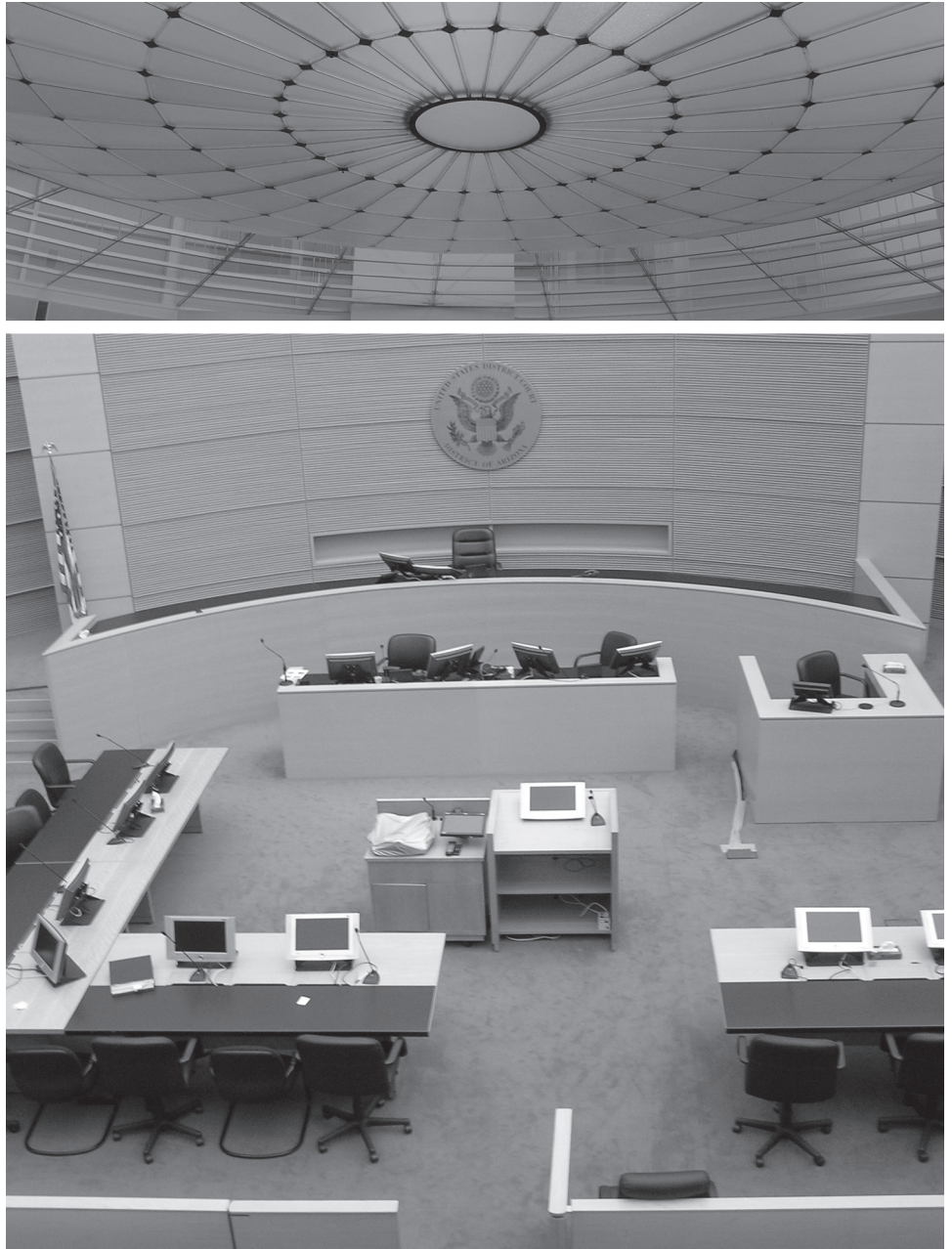
- A number of space saving opportunities were not fully realized. During our visits, centralized libraries were either closed or unused. In most cases, this was because judicial officers are increasingly turning to electronic sources and research and keeping the limited number of books they need in their 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'Connor U.S. Courthouse in Phoenix, Arizona, which is not assigned to an individual judge.

¹⁵GSA 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'Connor U.S. Courthouse in Phoenix, Arizona



Source: GAO.

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- 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

¹⁶The 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

¹⁷GAO, *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

¹⁸For 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 statute 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 testified¹⁹ 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 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

²⁰We 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

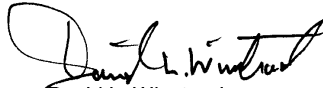
U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

-2-

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,

A handwritten signature in black ink, appearing to read "David L. Winstead", with a stylized flourish at the end.

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

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

CLARENCE A. LEE, JR.
Associate Director

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

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

See comment 1.

See comment 2.

Mr. Mark Goldstein

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federal courts¹ 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.**

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

²Rent 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.

Mr. Mark Goldstein
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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

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.

See comment 4.

See comment 5.

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Page 5

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.

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 8.

See comment 9.

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 10.

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

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

See comment 12.

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.

See comment 13.

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.

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

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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.

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

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.

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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.**

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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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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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.

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

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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

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

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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.

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- 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.”

- 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

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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.

- 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.

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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 and 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.

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

See comment 61.

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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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See comment 64.

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.*

See comment 65.

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.

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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.*

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.

See comment 68.

See comment 69.

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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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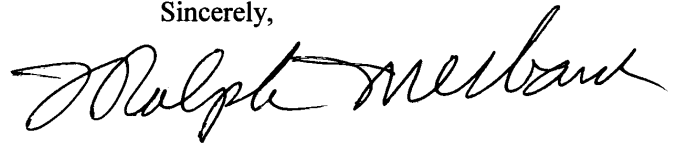
Conclusion

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

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

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.

See comment 75.

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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

²GAO, *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

⁴GAO-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

Mark Goldstein (202) 512-2834

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.

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