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Testimony

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

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FEDERAL COURTHOUSES

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

Statement of Mark L. Goldstein, Director
Physical Infrastructure Issues





Highlights

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

Why GAO Did This Study

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

What GAO Recommends

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

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

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

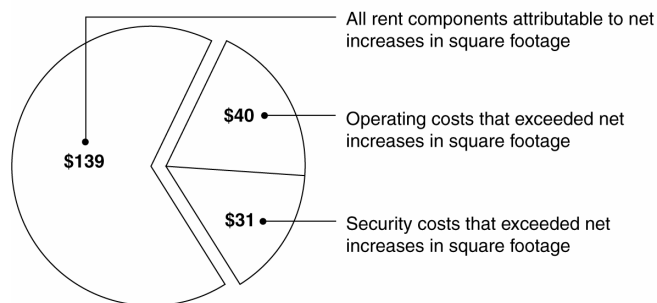
FEDERAL COURTHOUSES

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

What GAO Found

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

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



Total: \$210 million increase, adjusted for inflation

Source: GAO analysis of GSA data.

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

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

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

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

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

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

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

- About two-thirds of the judiciary's \$210 million rent increase from fiscal years 2000 through 2005 is attributable to a 19 percent increase in net square footage. The remaining increase is attributable to disproportionately high increases in security and operating costs. We also found that neither the judiciary nor GSA had routinely and comprehensively analyzed the factors influencing the rent increases. In the report released with this testimony, we recommended that the judiciary begin tracking and analyzing rent trends in order to improve its understanding and ability to manage its rent costs. The judiciary agreed that tracking trends is necessary, but said that the specific types of data we recommended would not be particularly useful for program planning, management, or budgeting purposes.
- The judiciary faces several challenges to managing its rent costs including costly architectural and structural requirements for modern courthouses, a lack of incentives for efficient space use, and a lack of space allocation criteria for appeals and senior district judges. AOUSC also identified several challenges in addition to the ones we identified, including statutorily designated places of holding court, the benefits to GSA and the Federal Buildings Fund of backfilling courthouses with other courts, and inconsistencies in the funding stream for courthouse construction projects. In our report released with this testimony, we recommended that the judiciary establish incentives to encourage local decision makers to use space efficiently and improve its space allocation criteria in a number of ways. The judiciary disagreed that additional space allocation criteria are needed for appeals courts and senior judges, and said that it has already started updating its space allocation criteria related to technological advancements and plans to consider other changes in the future.

Background

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

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

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

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

- The shell rent represents the cost of using the structure, base building systems, concrete floor, and basic wall and ceiling finishes and is the largest rent component, representing 60 percent of the judiciary's annual rent bill payments in fiscal year 2005.⁶ For most government-owned properties, shell rent does not represent the actual costs, but is based instead on comparable private sector commercial rents in the local commercial market.
- Tenant improvements reflect customizing space for that tenant and can include private offices, special type spaces, floor covering, doors, and wood finishes. The tenant is responsible for deciding how to finish the space beyond some basic minimum standards and thus has control over much of the cost. GSA officials have said that the judiciary has the highest costs for tenant improvements in its inventory because of the level of finishes needed in federal courthouses. Unlike the other rent components, tenant improvement costs are removed from the rent bill once the tenant has completely paid for them.
- Operating costs—which cover cleaning; general maintenance; and heating, air conditioning, and other utilities—are set as part of the market appraisal

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

⁵The other is the Department of Justice.

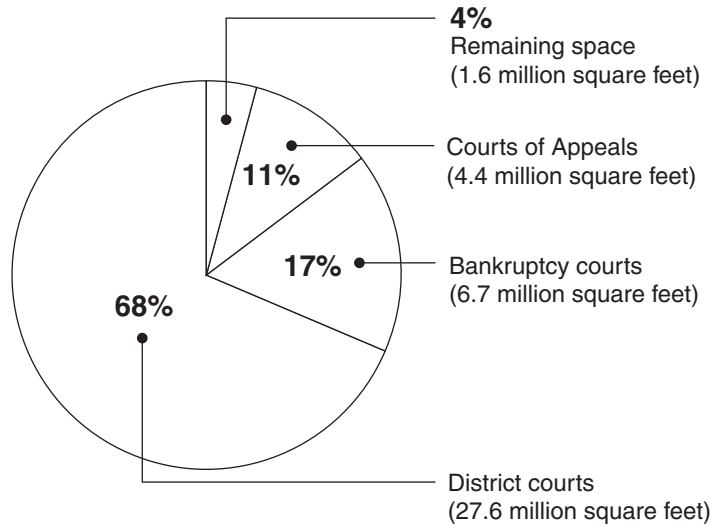
⁶According to GSA, it uses shell rent proceeds to finance the cost of acquiring, repairing, altering, and operating buildings under the custody and control of GSA.

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

- Until fiscal year 2005, the judiciary paid Federal Protective Service (FPS) security costs to GSA as part of its rent payment. Starting in fiscal year 2005, however, the judiciary began paying these security costs directly to the Department of Homeland Security (DHS) after FPS was transferred to that department. However, since FPS security costs still exist, and they were an important part of rent for all of the other years we analyzed, we included these costs as if they were still part of annual rent bill payments for fiscal year 2005.
- Rent is also composed of several other components, including fees for parking, building joint use, antennas, and GSA's Public Buildings Service. These other components comprised about 4 percent of the judiciary's entire rent bill in fiscal year 2005.

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

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



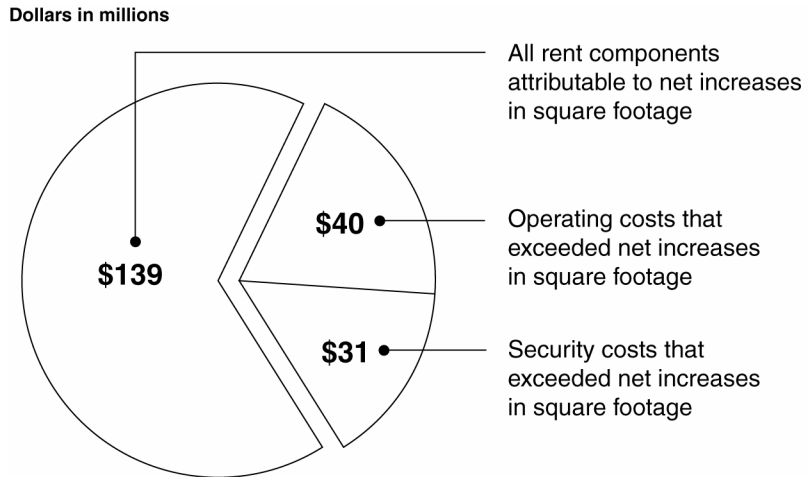
Source: GAO analysis of GSA data.

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

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

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

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



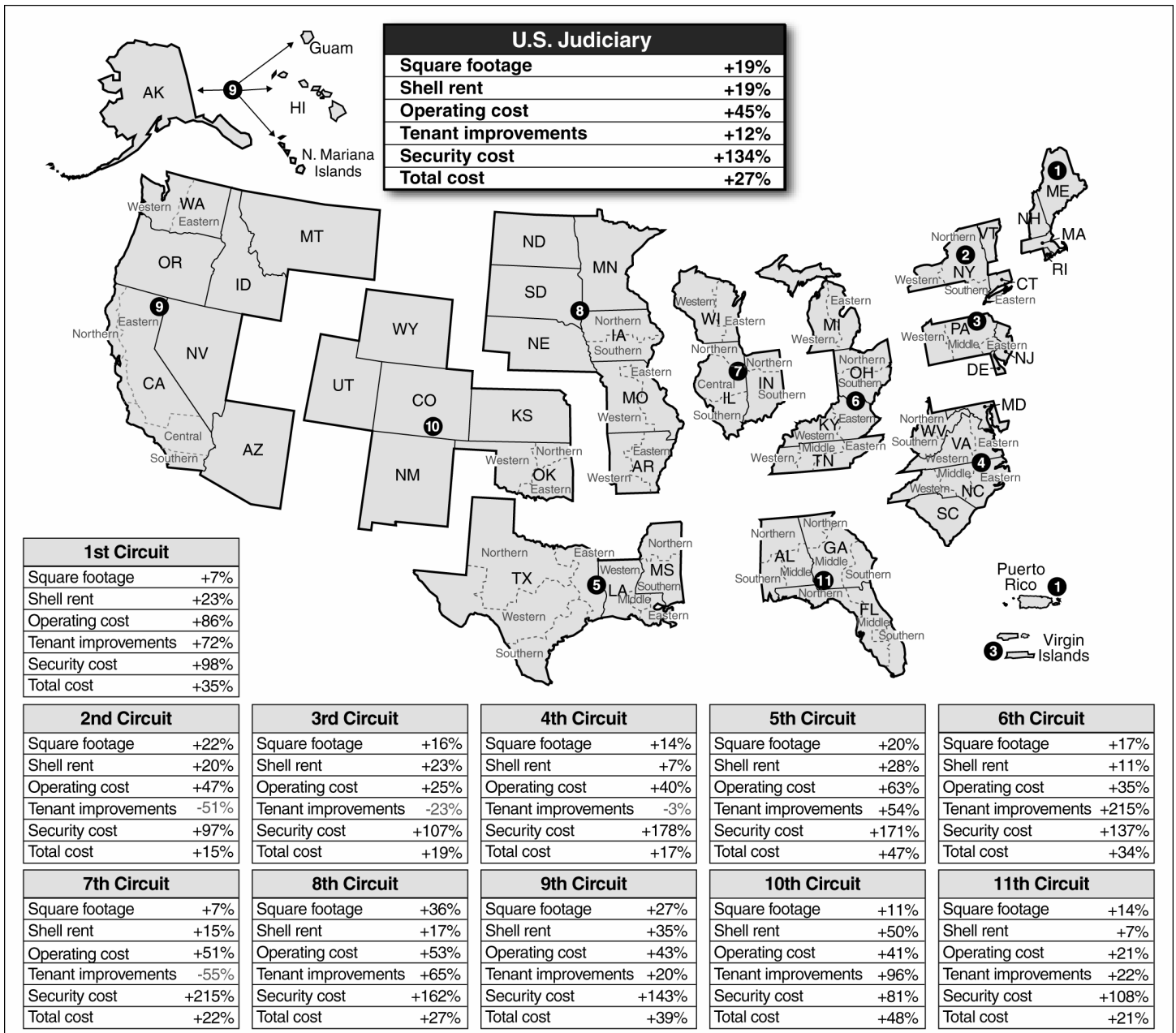
Total: \$210 million increase, adjusted for inflation

Source: GAO analysis of GSA data.

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

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

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



Sources: GAO analysis of GSA data and MapArt.

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

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

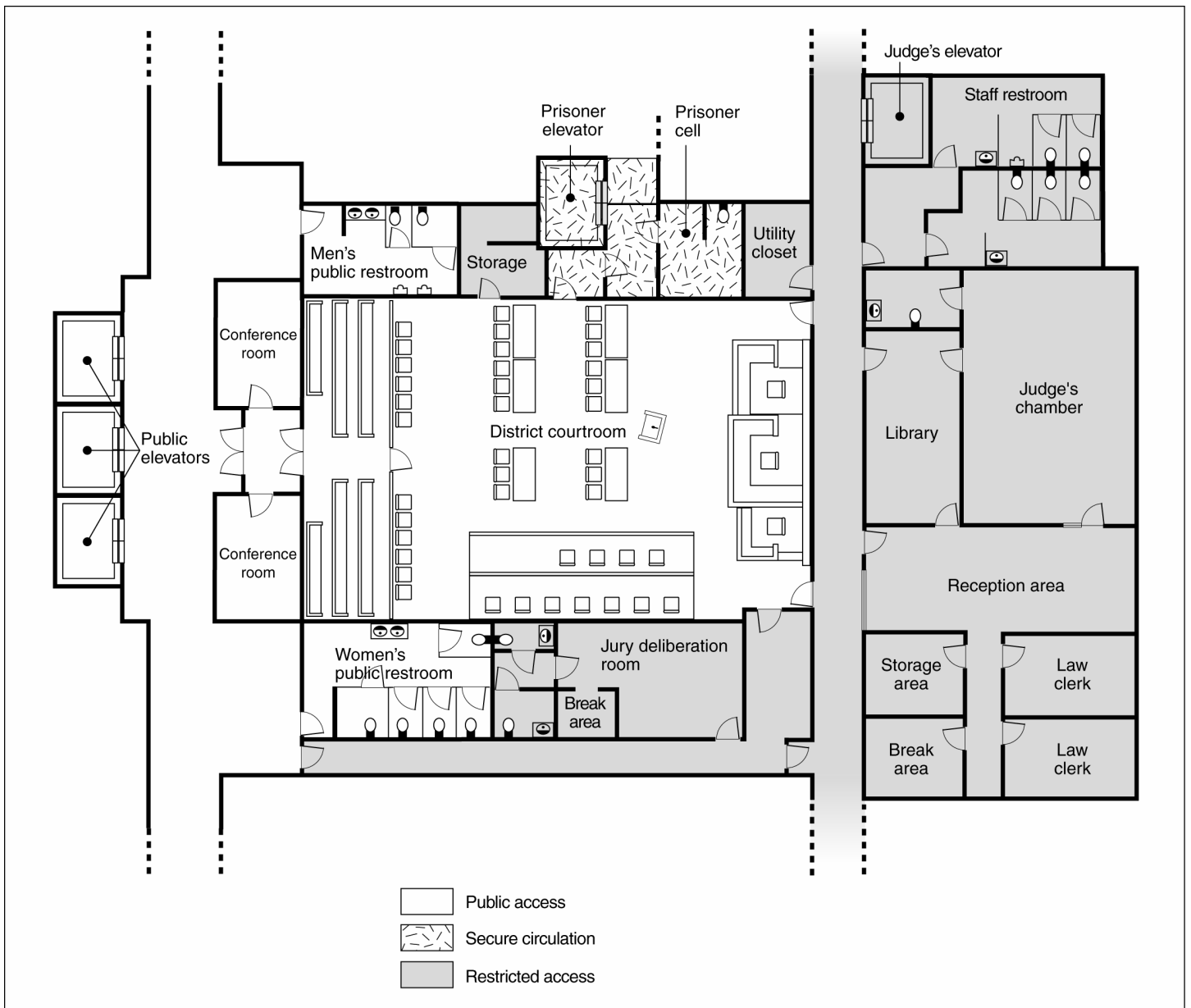
We found that neither the judiciary nor GSA had routinely and comprehensively analyzed the factors influencing the rent increases. This information could help the judiciary better understand the reasons behind its rent increases, make more informed space allocation decisions in the future, and identify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

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

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

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

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



Source: GAO analysis of judiciary data.

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

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

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

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



Source: GAO.

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

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

Recommendations

We made the following five recommendations to the judiciary in our report associated with this testimony⁸ in order to help the federal judiciary better understand and manage rent costs:

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

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

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

⁸[GAO-06-613](#).

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

Agency Comments

We provided a draft of the report that is being released today⁹ to GSA and AOUSC for official review and comment and received written comments from both. GSA agreed with the thrust of the report and concurred with our recommendations, but expressed one concern. GSA felt it was more aware of the reasons for rent increases than our draft portrayed. In commenting on the report associated with this testimony, AOUSC said that it does not believe tracking the data recommended by GAO would be useful—we disagree with this assessment. AOUSC also said it is already implementing incentives and updating its criteria, however the actions it identified do not fully address our recommendations. For a more thorough discussion of the agency comments, see the report associated with this testimony.¹⁰

Scope and Methodology

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

⁹[GAO-06-613](#).

¹⁰[GAO-06-613](#).

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

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

GAO Contacts and Staff Acknowledgements

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

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