

GAO

Report to the Chairman, Committee on
Government Operations, House of
Representatives

May 1989

THE JUDICIARY

Problems in Finding
Office Space for
Circuit Judge
Danny J. Boggs



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The Honorable John Conyers, Jr.
Chairman, Committee on Government
Operations
House of Representatives

Dear Mr. Chairman:

On May 26, 1988, former Committee Chairman Jack Brooks requested that we examine certain matters relating to Judge Danny J. Boggs of the United States Court of Appeals for the Sixth Circuit.¹ The Chairman wanted to know whether there was justification for the judge occupying temporary chambers in Washington, D.C., outside the geographic boundaries of the Sixth Circuit. He also wanted to know whether Judge Boggs had been improperly involved with cases concerning the Department of Energy (DOE), where he had served as Deputy Secretary before being named to the Sixth Circuit.

As agreed with the Committee, we focused our review on determining: (1) why Judge Boggs had temporary office space outside the geographic boundaries of the Sixth Circuit; (2) the cost incurred by the judiciary for office space for Judge Boggs in both Washington, D.C., and Cincinnati, Ohio, where the Sixth Circuit holds court; (3) the travel cost incurred for Judge Boggs and his staff because he was located in Washington, D.C.; (4) whether other new circuit (appellate court) and district (trial) judges appointed under the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353, July 10, 1984) were required to relocate within the geographic boundaries of the district or circuit where they had jurisdiction upon assuming their new positions, and the time it took them to relocate; (5) the length of time it has taken the General Services Administration (GSA) to provide permanent chambers for judges appointed under Public Law 98-353; and (6) whether Judge Boggs has heard appeals on cases involving DOE matters.

Results in Brief

Judge Boggs was a legal resident of Kentucky when appointed to the Sixth Circuit in March 1986, but continued to live in Arlington, Virginia, and have chambers in Washington, D.C., for 28 months after his appointment. He planned to relocate to the Sixth Circuit after his

¹The United States is divided into 13 judicial circuits: 12 regional circuits, each containing a court of appeals, and 1 circuit with national jurisdiction (Court of Appeals for the Federal Circuit). The Sixth Circuit, headquartered in Cincinnati, hears appeals from U.S. District Courts in four states—Kentucky, Michigan, Ohio, and Tennessee.

appointment, but a series of events (over which he had no control) involving the renovation of the courthouse in Louisville, Kentucky (the city where the judge chose to locate his chambers), and a freeze by GSA on obtaining additional leased space, prevented his relocation.

Having chambers outside the district or circuit where appointed is unusual. Judge Boggs was the only one of six judges appointed under Public Law 98-353 unable to move to the district or circuit of their jurisdiction within a month of appointment. In addition, in April 1988, he was the only active circuit or district judge who had chambers outside of the territorial boundaries of his or her jurisdiction. Nevertheless, we believe it was justified for the judge to remain outside the Sixth Circuit because office space was not available for him.

We estimate that extra travel costs ranging from \$6,384 to \$8,974 (depending on the availability of government discount airfares) were incurred because the judge and his staff had to fly from Washington, D.C., to Cincinnati, where the Circuit holds court, rather than from Louisville to Cincinnati. In addition, the Administrative Office of the United States Courts (hereafter referred to as the Administrative Office) agreed that the judiciary would reimburse DOE \$39,907 for the chambers of Judge Boggs in Washington, D.C. However, no additional costs were incurred for leasing space for the judge in Cincinnati.

Judge Boggs heard appeals on 1,100 cases between March 1986 and July 1988. DOE was not named as a party in any of these cases. In December 1986, Judge Boggs recused himself from an assigned case because DOE was a party in the litigation.

Objectives, Scope, and Methodology

The primary objective of our review was to determine whether there was justification for Judge Boggs occupying office space in Washington, D.C., after being appointed to the Sixth Circuit rather than relocating to the circuit. To determine why Judge Boggs did not reside within the Sixth Circuit until 28 months after being appointed, and the office space costs for his staff and him during this period, we examined information on space and facilities maintained by the Sixth Circuit, the Administrative Office (responsible for providing administrative support to the courts), and GSA. GSA is responsible for providing space to the judiciary

upon request by the Administrative Office. We also talked with the Circuit Executive for the Sixth Circuit,² the former Chief Judge of the Sixth Circuit, Judge Boggs, officials from the Administrative Office, and GSA.

To determine the cost of travel between Washington, D.C., and Cincinnati for Judge Boggs and his staff, we examined the travel vouchers of the judge and his staff between the time of his appointment in March 1986 and July 1988, when he moved to Louisville. We also obtained airfare rates for airline travel between Louisville and Cincinnati from Delta Airlines (the federal government's contract carrier). Using these rates, we developed a low and a high estimate for travel between the two cities during this period. The low estimate was based on exclusive use of government contract rates; the high estimate was based on the maximum costs if government rates were unavailable. We then calculated the range of difference between our estimated airfare costs and the actual costs claimed by the judge and his staff. In addition, we discussed the travel issue with Judge Boggs and officials from the Administrative Office.

The Personnel Division and the Financial Management Division within the Administrative Office maintain information on all judicial appointments, including those under Public Law 98-353. We examined this information to determine whether other new circuit and district court judges appointed under this act relocated within the geographic boundaries where they had jurisdiction, and the time it took them to move. We also talked with officials within these two divisions and the circuit executives for all 12 regional circuits.

To determine the length of time it has taken GSA to provide permanent chambers for judges appointed under Public Law 98-353, we obtained information as of November 1988 on the housing of judges in each of the circuits from the circuit executives. We also used information contained in an August 1987 report prepared for the federal judiciary by the National Academy of Public Administration entitled Improving Facilities Management for the U.S. Courts.

To determine whether Judge Boggs heard appeals on any cases involving DOE matters while on the Sixth Circuit, we examined docket sheets (a chronology of activities for each case) maintained by the Clerk of Court for all 1,100 cases in which appeals were heard by Judge Boggs between

²Under 28 U.S.C. 332, circuit executives provide administrative support to the circuit and do other nonjudicial duties.

March 27, 1986, and July 29, 1988 (the most complete data when we did our field work). We also reviewed a DOE Inspector General report about Judge Boggs and talked with the Clerk of Court, the Circuit Executive, the former Chief Judge of the Sixth Circuit, and Judge Boggs.

We did our work from July 1988 to February 1989 and in accordance with generally accepted government auditing standards.

Office Space Was Not Available in Louisville

Judge Boggs was required to be a resident of the Sixth Circuit upon his appointment under provisions of 28 U.S.C. 44 (c) and was entitled to select his official duty station within the geographic boundaries of the circuit under 28 U.S.C. 456(e) at any location where a circuit or district court holds regular sessions. Although Judge Boggs was living in Virginia at the time of his appointment, Kentucky was his legal residence. About 3 months after being appointed to the Sixth Circuit, Judge Boggs notified the circuit that he had designated Louisville as his official duty station.

On August 4, 1986, the Administrative Office requested GSA to provide the judge with either permanent or temporary office space in Louisville. (The Space and Facilities Division within the Administrative Office provides technical assistance to the circuits through architects and space planners who assist judges with layouts of their space. It also coordinates these needs with the appropriate GSA regional office.) The Administrative Office stressed to GSA the need for the judge to relocate to Louisville by September 15, 1986. Shortly thereafter, GSA advised the Administrative Office that the request for office space could not be satisfied because no space was available. Our review of GSA records confirmed that there was no vacant space in either the courthouse or the Louisville federal building at that time.

The option of leasing temporary space for Judge Boggs in Louisville was also discussed between the Administrative Office and GSA, but was not given serious consideration due to a GSA freeze on increasing the inventory of leased space. This freeze was caused by the Balanced Budget and Emergency Deficit Control Act (commonly referred to as the Gramm-Rudman-Hollings Act). In this regard, a letter from the Commissioner of GSA's Public Building Service, dated June 17, 1986, notified all GSA regional administrators that in view of the projected funding shortfall and the GSA Administrator's goal of significantly reducing the amount of leased space, an immediate freeze on all lease awards or expansion of leased space was established.

According to Judge Boggs, he had arranged school placement in Louisville for his three children and was prepared to buy a house there. However, when he was informed by the Administrative Office that there was no suitable space for him in federal facilities in Louisville and commercial lease arrangements were no longer being made because of the Gramm-Rudman-Hollings Act, he remained in temporary space in Washington, D.C.

The Administrative Office determined that permanent chambers would be provided for Judge Boggs in the Louisville courthouse (which was being renovated). GSA, the Administrative Office, and the Sixth Circuit developed plans during the fall of 1986 and the spring of 1987 for Judge Boggs' chambers. Because the judge's permanent chambers could not be ready until after July 1, 1987, the Sixth Circuit Executive requested that GSA provide temporary space for him until his permanent space was ready. In May 1987, GSA notified the Sixth Circuit that temporary space would be available in the courthouse by July 1, 1987, but said there could be some inconvenience for the judge because construction work might interfere with operation of the heating and air conditioning system.

According to Judge Boggs, he was notified in June 1987 by the Sixth Circuit Executive that the temporary space being offered by GSA (1) might or might not have air conditioning during the summer, (2) would not have heat for the winter, and (3) would be in an area scheduled for removal of asbestos. On the basis of this information, the Sixth Circuit Executive, the Administrative Office, and Judge Boggs all agreed that use of the proposed temporary space would not be feasible and so advised GSA in June 1987.

We talked with officials from the Real Estate Division and the Design and Construction Division of GSA's Atlanta Regional Office about the temporary space offered Judge Boggs. (The Atlanta Regional Office is responsible for the acquisition and management of space in Louisville.) After considering all the facts surrounding the suitability of the space, these GSA officials agreed that the temporary space that had been offered Judge Boggs for occupancy in July 1987 was not acceptable.

Renovation work continued over the next year at the Louisville courthouse. The judge moved into his permanent chambers in July 1988.

Cost of Space for Judge Boggs

During the first 6 months in Washington, D.C., Judge Boggs was furnished space, as a courtesy, by the U.S. Court of Appeals for the District of Columbia. No additional charge was made for Judge Boggs' use of the space. After Judge Boggs was notified that the space was needed for new and/or visiting judges on the District of Columbia Circuit, he moved his office to the National Courts Building on October 1, 1986.

Judge Boggs remained at the National Courts Building until early July 1987, at which time he had to vacate the space, which was to be used by the Court of Claims and the Court of Appeals for the Federal Circuit. During his stay at the National Courts Building, no additional charge was made for the judge's space.

In July 1987, Judge Boggs moved to office space in the Forrestal Building (which is the headquarters for DOE). The arrangement for temporary space for Judge Boggs was formalized in an agreement between DOE and the Administrative Office. The agreement called for the judiciary to reimburse DOE \$39,907 for the cost of space and telephone service for about 1 year.

During the time Judge Boggs was required to do judicial business at the headquarters of the Sixth Circuit in Cincinnati, he used existing office space. No additional cost was incurred to lease space for Judge Boggs in Cincinnati.

We discussed the cost of space for Judge Boggs with officials from the Administrative Office. They pointed out that had Judge Boggs immediately moved into the Louisville courthouse, the judiciary would have incurred additional costs of about \$44,000 for space during the 28 months the judge remained in Washington, D.C.

Travel Expenses for Judge Boggs and His Staff to Cincinnati

While Judge Boggs remained in temporary chambers in Washington, D.C., he and his staff (generally a law clerk and a secretary) made a total of 73 round trips to Cincinnati on judicial business. The total cost of the travel to Cincinnati between March 25, 1986, and July 15, 1988, was \$53,908. Table 1 provides a further breakdown of the travel expenses of Judge Boggs and his staff.

Table 1: Travel Expenses to Cincinnati

Category	Judge Boggs	Staff	Total
Subsistence	\$12,655	\$19,563	\$32,218
Airfare	6,931	10,292	17,223
Other	1,587	2,880	4,467
Total	\$21,173	\$32,735	\$53,908

If Judge Boggs' permanent chambers had been immediately available in Louisville, he and his staff would have incurred travel expenses from that location to Cincinnati to do judicial business, and there would have been no difference in the subsistence and minimal differences in the other expense categories. However, on the basis of airfare rates furnished to us by Delta Airlines (the federal government's contract carrier between Cincinnati and Louisville), we estimate that airline travel for Judge Boggs and his staff would have been between \$6,384 and \$8,974 cheaper than flying from Washington, D.C., depending on the availability of government discount airfares.

Judges Appointed Pursuant to Public Law 98-353 Did Not Encounter Relocation Problems

Public Law 98-353 provided for 24 additional circuit court judgeships and 61 additional district court judgeships. As of January 1989, 84 of the 85 additional judgeships had been filled.

Of the 84 judges appointed under Public Law 98-353, only six, including Judge Boggs, were required to relocate to the district or circuit upon assuming their new positions. No major problems were encountered in finding space for five of the judges, who were able to relocate in the same month of assuming their new positions. As discussed above, it took about 28 months to get Judge Boggs relocated.

Furthermore, the Director of the Administrative Office reported to the Chairman, House Judiciary Committee, in April 1988 that no other active circuit or district judges (except Judge Boggs) were using office space outside of the territorial boundaries of their jurisdiction.

New Judges Can Expect Lengthy Stays in Temporary Space

A report prepared by the National Academy of Public Administration entitled Improving Facilities Management for the U.S. Courts, dated August 1987, said that a new judge could expect to be housed in temporary quarters for at least 2 years. The report culminated a study requested by the Budget Committee of the Judicial Conference, which was undertaken because the judiciary was experiencing inordinate

delays in acquiring and altering the space it needed for courtrooms, chambers, and court auxiliary functions. According to the report, three reasons account for the length of time in temporary quarters: (1) the time required to move other tenants out of the space, (2) the time required for competitive bidding on architect-engineering services and construction, and (3) the courts' usual practice of waiting until appointment or confirmation of a judge to launch the relocation process. The study also pointed out that a construction project costing \$500,000 or more must be approved by the House and Senate Public Works Committees, which adds at least another 2 years to the process.³

With regard to judges appointed under Public Law 98-353, the National Academy of Public Administration noted that as of August 1987, 38 of the 84 judges appointed were still in temporary accommodations. More recent information supplied to us by the circuit executives showed that 45 of the 84 judges appointed under the act had spent some time in temporary chambers. As of November 1988, the time in temporary quarters ranged from 1 month to 43 months. Time spent in temporary chambers by 11 judges, who are awaiting completion of their permanent chambers, could range up to 52 months, assuming construction is completed on schedule.

Judge Boggs Has Not Heard Cases in Which DOE Was a Party

We examined docket sheets maintained by the Clerk of Court for the Sixth Circuit for all 1,100 cases heard by Judge Boggs between March 27, 1986, and July 29, 1988, and found that DOE was not named as a party in any of the cases. In December 1986, Judge Boggs was assigned a case in which DOE was a party to the litigation, but he recused himself from the case.

DOE's Inspector General also inquired (as a part of a larger study) into whether Judge Boggs had engaged in DOE or other executive branch activities of any kind while a member of the judiciary. The inquiry was undertaken at the request of the Chairman, House Subcommittee on Oversight and Investigations, Committee on Energy. The Inspector General's report, dated January 11, 1988, said:

"According to Judge Boggs, he has not performed any work for the DOE or Executive Branch since becoming a member of the Judiciary. Judge Boggs stated that, in

³Public Law 100-678, dated Nov. 17, 1988, increased the amount requiring approval by the House and Senate Public Works Committees to \$1.5 million.

the conduct of his duties as a Sixth Circuit Court Judge, he has heard cases in which the DOE and other Executive Branch Agencies may have been involved as a party."

On January 27, 1988, the former Chief Judge for the Sixth Circuit wrote to the Chairman of the Subcommittee on Oversight and Investigations, saying that Judge Boggs never had been involved in any case in which DOE had an interest. On February 4, 1988, Judge Boggs wrote to the Chairman about the inaccuracy in the report, saying that he had not heard any cases in which DOE was a party. He also said that (1) he had recused himself from the DOE matter that had come to his attention, and (2) he would probably be recusing himself in all such matters for some time to come.


Because of the discrepancy between the Inspector General's report and the judges' letters, we talked with an official in the Office of the Inspector General, who said they had only reported what the judge told them during their review. He also said that a focus of their review was on whether Judge Boggs performed DOE and other executive branch activities rather than on the types of cases the judge was hearing. Our analysis of the 1,100 cases on which Judge Boggs heard appeals from March 1986 to July 1988 supports the statements made by the former Chief Judge and Judge Boggs regarding the DOE cases.

We discussed this report's contents with officials from the Administrative Office, the Sixth Circuit Executive, personnel in GSA's Atlanta Regional Office, and Judge Boggs, who generally agreed with the facts presented. However, as directed by the Committee, we did not seek written comments.

We are sending a copy of this report to Jack Brooks, Chairman, Committee on the Judiciary. As arranged with the Committee, unless you publicly announce its contents earlier, we plan no further distribution until 30 days from the date of the report. At that time, we will send copies to the Administrative Office; the Administrator, GSA; the Sixth Circuit; and other interested parties.

Major contributors to this report are listed in the appendix. If there are any questions on the contents of this report, please call me at (202) 275-8389.

Sincerely,



Arnold P. Jones
Director, Administration
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