

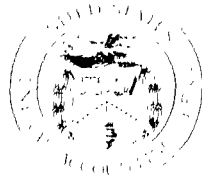
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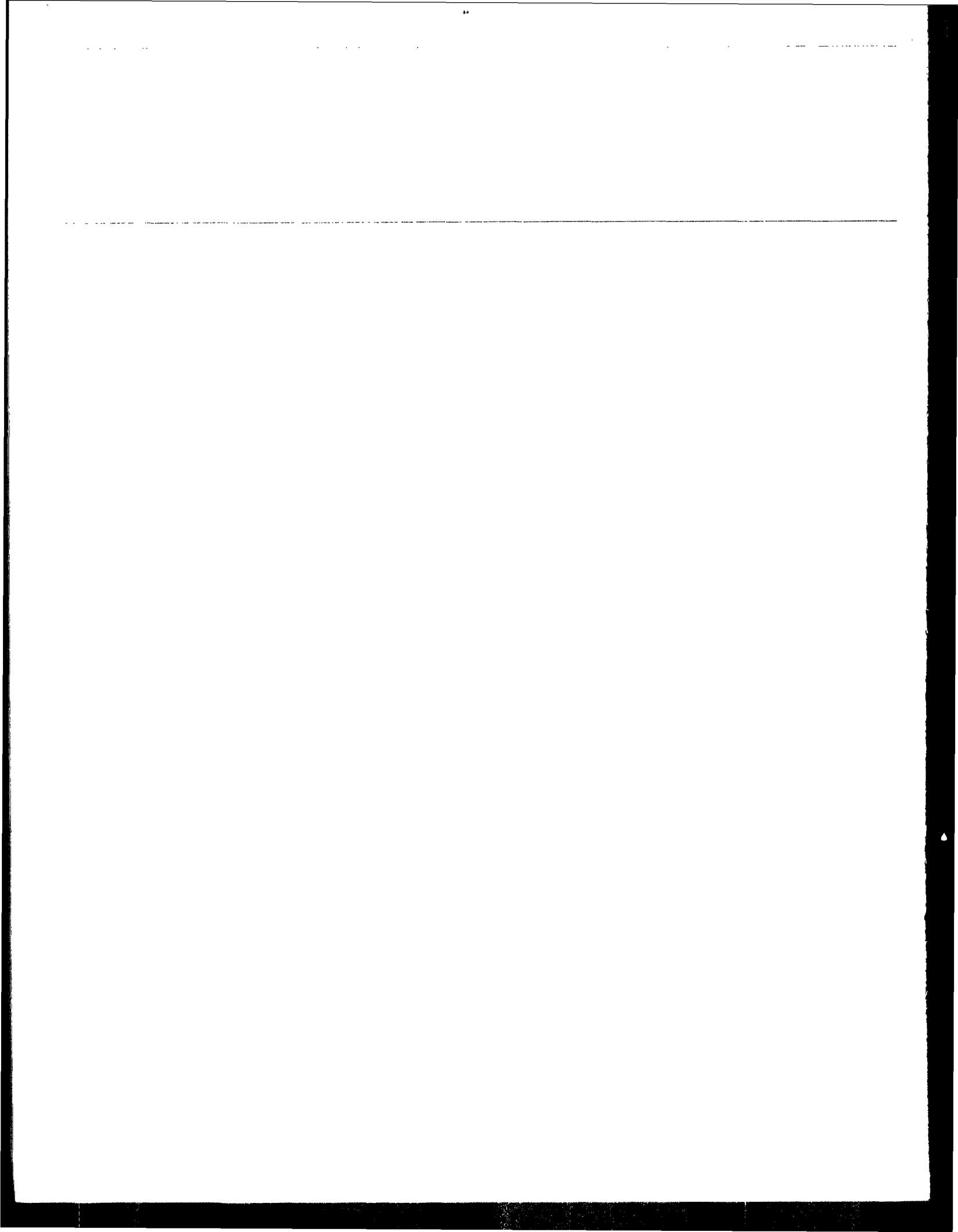
Briefing Report to the Chairman,
Subcommittee on Water Resources,
Transportation and Infrastructure,
Committee on Environment and Public
Works, U.S. Senate

December 1991

U.S. COURTS

Estimated User Fee to Pay For New Facilities







General Government Division

B-246886

December 10, 1991

The Honorable Daniel P. Moynihan
Chairman, Subcommittee on Water Resources,
Transportation and Infrastructure
Committee on Environment and Public Works
United States Senate

Dear Mr. Chairman:

This briefing report responds to your request that we estimate what a user fee would be if the Judiciary were required to recover facilities capital needs by imposing a fee on all cases filed with the U.S. Courts. We are also providing related information on the amount of General Services Administration (GSA) space, revenues, and costs that are attributable to the Courts and information on the Courts' obligations, number of judgeships, revenues, and case filings (see app. II and III). We used this information to estimate the amount of a user fee.

On December 3, 1991, we briefed the Subcommittee on the results of our analysis. This briefing report summarizes the information we provided.

BACKGROUND

GSA, the landlord for the U.S. Courts, has been challenged financially to provide courtrooms and related space to accommodate the growing number of new judges. Although it is a separate branch of government, the Judiciary is dependent on the executive branch to acquire and operate its space and facilities. As of June 1991, GSA operated about 14.5 million square feet of court space--about 6 percent of total GSA-controlled space of 244.5 million square feet.

The Administrative Office of the U.S. Courts (AOC), under the supervision and direction of the Judicial Conference of the United States, has requested that the Courts be given independent authority to acquire its own space and facilities. According to AOC officials, such authority would provide greater control and flexibility and would allow the Courts to be more responsive to the facilities needs of newly created judgeships. AOC officials also said

that the Judiciary should not have to compete with other agencies for building funds or be subject to executive branch control.

As we understand the suggested user fee concept, the Courts would collect a fee from all litigants to offset costs of capital projects, such as the construction of new courthouses and annexes to existing courthouses, or the alteration of other government-owned buildings to house the Courts. AOC officials said that the Judiciary favors receiving direct appropriations for its construction and alteration requirements. They expressed concern, however, about imposing a user fee to cover facilities costs. AOC officials said that such a user fee would increase the cost to file a case--potentially preventing those who feel they have a legitimate complaint from using the judicial system.

APPROACH

The amount of a user fee would be determined by the total capital costs to be recovered and the number of court cases to which the fee would be applied. We used three sets of data elements to estimate the amount of a possible user fee: (1) the historical average annual capital funding and case filings for fiscal years 1981 through 1990, (2) the estimated average annual capital funding and case filings for fiscal years 1988 to 1992, and (3) the estimated annual capital funds needed for the next 10 years as projected by GSA and AOC officials and the average number of cases filed for that period that we projected. For fiscal years 1991 through 2000, we projected case filings by escalating the cases filed in 1990 by the average annual percentage increase in filings during fiscal years 1981 through 1990--which was 6.4 percent per year--and used the resulting average for the 10-year period. Appendix I provides our detailed objective, scope, and methodology.

RESULTS IN BRIEF

Using the three estimates of capital costs and the three levels of federal court cases filed, we estimated a user fee would range from \$79 to \$536 per case (see table 1).

Table 1: Proration of Courts' Capital Costs per Case Filed

<u>Fiscal years</u>	<u>Annual capital costs (in millions)</u>	<u>Average number of case filings (in millions)</u>	<u>Average cost per case</u>
1981-1990 historical	\$ 63	0.8	\$ 79
1988-1992 budget	260 ^a	1.0 ^b	260
AOC/GSA estimate for 1991-2000	750	1.4 ^c	536

^aAmounts for fiscal years 1988, 1989, and 1990 are actuals; 1991 and 1992 amounts are estimates.

^bNumbers for years 1988, 1989, 1990, and 1991 are actuals; 1992 number is projected as described in note c below.

^cGAO-projected number of average annual cases filed in this period using 6.4 percent increase per year with 1990 being the base year.

Source: GSA and AOC data.

DETERMINING CAPITAL COSTS OF THE COURTS

GSA's costs of acquiring and maintaining space for the Courts include (1) capital projects to satisfy the Courts' expansion requirements and (2) operation and maintenance of existing court space. The Judiciary makes two types of payments to GSA for its facilities: (1) rent payments for normal real property operations and (2) reimbursable payments for above-standard alterations to court facilities. To determine the total costs for Judiciary space, we added GSA's capital investment and operating costs for court space to the Courts' reimbursable payments for space alterations.

As shown in table 2, between fiscal years 1988 and 1992, GSA budgeted about \$1.3 billion to meet the capital investment needs of the Courts and about \$707 million for operation and maintenance of existing court space. According to estimates provided by AOC officials, the Courts' reimbursable payments for above-standard alterations during the same 5-year period totaled about \$232 million. Using the yearly average of GSA's capital and operating costs and the Courts' reimbursable payments, the government's total court

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facilities costs averaged about \$447 million per year during the 5-year budget period.

Table 2: Estimated Annual Facilities Costs for the Courts
(Dollars in Millions)

	<u>Total</u> <u>1988-1992 costs</u>	<u>Yearly</u> <u>average</u>
GSA's costs		
Capital investment	\$1,300	\$260
Operations and maintenance	707	141
Courts' estimated reimbursable payments	232	<u>46</u>
Total		<u>\$447</u>

Source: GSA Capital and Operating Budget (fiscal years 1988-1992) and AOC data.

Under the proposal to recover the costs of the Courts' expansion requirements, only capital costs would be included in the basis for the fee. Although GSA's estimated annual capital needs for the Courts averaged \$260 million for fiscal years 1988 to 1992 (and averaged \$63 million annually for the past 10 years), AOC and GSA officials said that these funding levels would not be adequate for the next 10 years because of expected growth in courthouse and related space requirements. They said it would not be unreasonable to assume that at least \$750 million a year would be needed for the Courts' capital needs over the next 10 years and added that this estimate was preliminary. GSA said that it will not know what the Courts will need until the AOC completes its surveys of judicial districts. AOC officials said they did not know when all the surveys would be completed.

Appendix II presents more detailed information on the amount of GSA-controlled space occupied by the Courts, GSA's rent income and operating costs for the Courts, and GSA's obligational authority for capital funding of court space and other GSA tenants.

DETERMINING THE NUMBER OF COURT CASES TO BE ASSESSED

During the year ended June 30, 1991, the Courts recorded about 1.1 million civil, criminal, and bankruptcy filings. If a fee were to be assessed for each of these three types of cases, some issues would have to be considered. For example, AOC officials said that because all criminal cases

and some civil cases are brought by the government, they questioned whether the government should be required to pay such a fee. AOC officials also pointed out that if the fee were to be assessed on bankruptcy cases filed, the individuals or businesses filing may not have the resources to pay the fee. Most cases filed in the U.S. Courts are for bankruptcy. According to the AOC, the Courts currently assess a filing fee of \$120 for civil and bankruptcy cases and no filing fee for criminal cases.

During fiscal year 1990, the Courts collected \$278.1 million in court costs, fees, and fines, including filing fees. While none of the revenues collected by the Courts are currently used to pay directly for court facilities costs, the AOC was able to retain \$47.2 million to offset Judiciary operating costs.

Appendix III provides detailed information on Judiciary obligations, number of judgeships, revenues, and case filings.

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As agreed with your office, we are sending copies of this briefing report to the Administrator of GSA, the Director of the AOC, the Director of the Office of Management and Budget, and other interested parties. Copies will also be made available to others upon request.

Major contributors to this briefing report are listed in appendix IV. Should you or your staff have any questions, please call me at (202) 275-8676.

Sincerely yours,



L. Nye Stevens
Director, Government Business
Operations Issues

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ABBREVIATIONS

AOC Administrative Office of the U.S. Courts
GSA General Services Administration

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to estimate what a user fee would be if the Courts were required to recover total capital needs for facilities by imposing a fee on cases filed with the U.S. Courts. We obtained information from GSA and the AOC on the capital costs of the Courts and the number and types of federal cases to which the fee might be applied.

At GSA, we interviewed budget and accounting officials to obtain data on GSA's estimated capital and operating costs for court space for fiscal years 1988 through 1992. We also obtained data on GSA's historical obligational authority for capital costs, both for all GSA-controlled buildings and for court space, for fiscal years 1981 through 1990. We interviewed a GSA space and facilities manager to obtain estimates of GSA's projected capital funding. In addition, we reviewed GSA reports outlining its efforts to deliver space to the Courts.

At the AOC, we interviewed budget and accounting officials to obtain information on the Courts' rental payments to GSA and on revenues the Judiciary collected in fines, fees, and court costs. We also interviewed AOC space and facilities managers to obtain information on the Courts' historical direct costs for space alterations and estimated capital costs for the next 10 years. We reviewed background documents on AOC's proposed legislation to provide the Courts with real property management authority. In addition, we obtained data from AOC statistics officials on the number of judgeship positions and case filings in the federal system.

We developed the information in this briefing report between September and October 1991. We did not verify the GSA or AOC information we collected and used to prepare this report.

As agreed with the Subcommittee, we did not obtain written comments on this briefing report from GSA or the AOC. However, we discussed the contents of this report with GSA and AOC officials on November 12, 1991. They agreed with the facts presented and suggested other changes that we incorporated into this report.

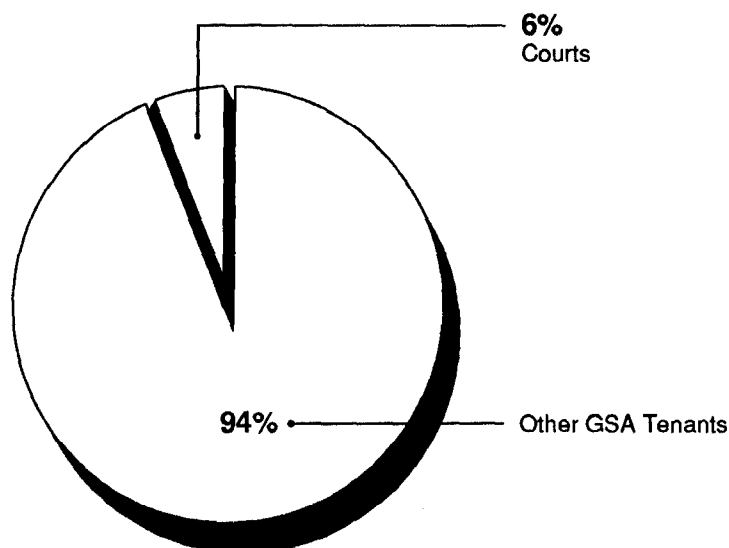
GSA AND THE COURTS

This appendix contains the detailed information requested on the amount of GSA space, revenues, and costs that are attributable to the Courts.

GSA-CONTROLLED SPACE FOR THE COURTS

The Courts occupied about 14.5 million square feet of GSA-controlled buildings in June 1991, or about 6 percent of GSA's total space of 244.5 million square feet (see fig. II.1). The Courts occupied space in 663 buildings nationwide--occupying 90 percent or more of the space in 154 of those buildings.

Figure II.1: Percentage of GSA Space Occupied by the Courts in Square Feet (As of June 1991)



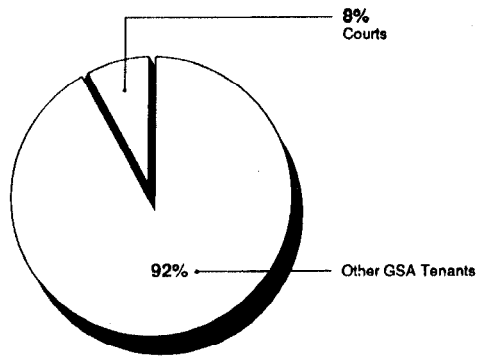
Source: GSA.

GSA'S RENT AND OPERATING COSTS FOR THE COURTS

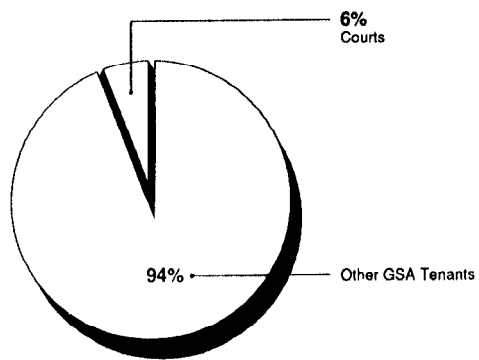
GSA charges the Courts and other customer agencies rent that is used to fund capital investment and operating costs of GSA-controlled buildings. GSA's rent from the Courts was about \$251 million in fiscal year 1990, or about 8 percent of GSA's total \$3.3 billion in rent from all customer agencies. While GSA receives about 8 percent of its total rent from the Courts, GSA's operating costs of \$141 million for the operation and maintenance of existing court space was about 6 percent of the total \$2.3 billion spent for all agencies. The balance of funds that remain

when operating expenses are subtracted from rent represents funds that are available to GSA for capital investment. Rent collected from the Courts in excess of basic operating costs was about \$110 million, or about 11 percent of \$963 million in total GSA revenues available for capital investment. The Courts' proportion of total GSA rent, operating costs, and the operating surplus is shown in figure II.2.

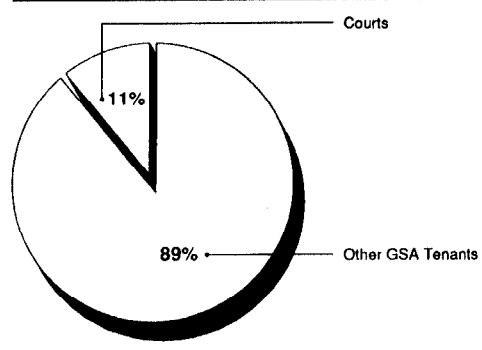
Figure II.2: Percentage of GSA Rent, Operating Costs, and Surplus for the Courts (Fiscal Year 1990)



Rent



Operating Costs



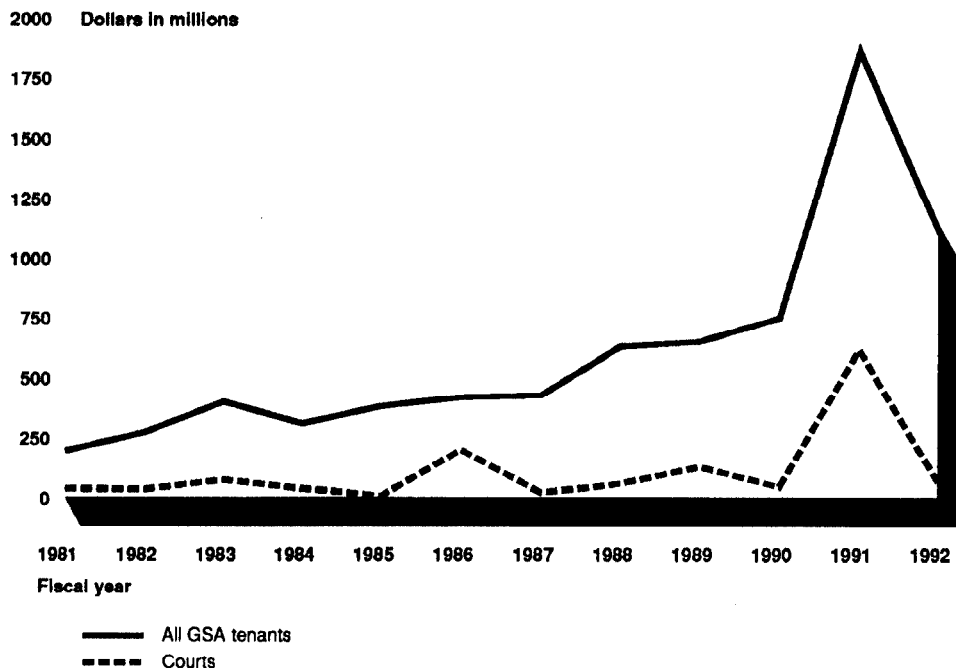
Surplus

Source: GSA.

GSA OBLIGATIONAL AUTHORITY FOR CAPITAL FUNDING

As shown in figure II.3, obligational authority for capital funding of all GSA-controlled space increased from \$193.4 million in 1981 to \$1.1 billion in 1992. GSA's capital funding for the Courts varied during 1981 to 1990 and averaged about \$63 million per year. With GSA's capital funding for all agencies averaging about \$442 million per year, GSA used about 14 percent of its capital funds for the Courts during the 10-year period (see fig. II.4).

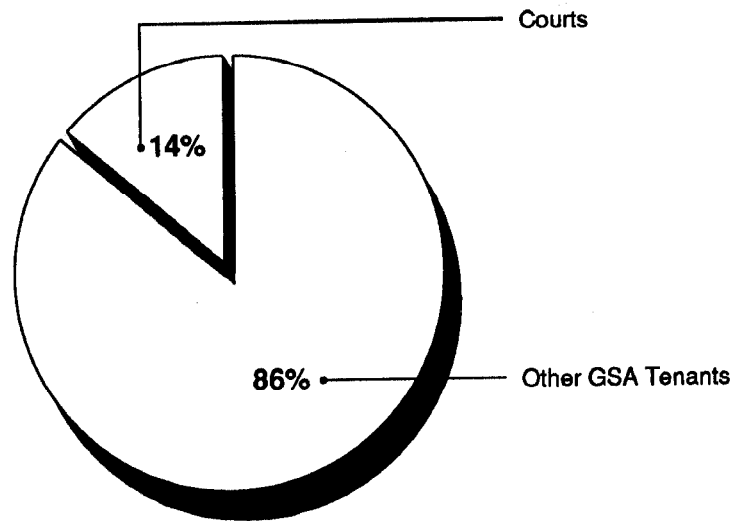
Figure II.3: Obligational Authority for Capital Funding of the Courts Compared to All Agencies (Fiscal Years 1981 through 1992)



Note: Amounts for fiscal years 1981 through 1990 are actuals; fiscal years 1991 and 1992 amounts are estimates.

Source: GSA.

Figure II.4: Average Annual Percentage of GSA Capital Funds for the Courts and Other Tenants (Fiscal Years 1981 through 1990)



Source: GSA.

JUDICIARY DATA

This appendix contains the detailed information requested on the Courts' obligations, number of judgeships, revenues, and case filings.

JUDICIARY OBLIGATIONS FOR FISCAL YEAR 1990

Table III.1 shows Judiciary obligations by selected object classes for fiscal year 1990. The Courts' rent payments to GSA of \$244.7 million represented about 14 percent of the total \$1.7 billion in Judiciary obligations.

Table III.1: Judiciary Obligations (Fiscal Year 1990)

<u>Object class</u>	<u>Amount (in millions)</u>
Personnel compensation	\$ 819.9
Rent to GSA	244.7 ^a
Services	315.9
Other	<u>358.1</u>
Total	\$ <u>1,738.6</u>

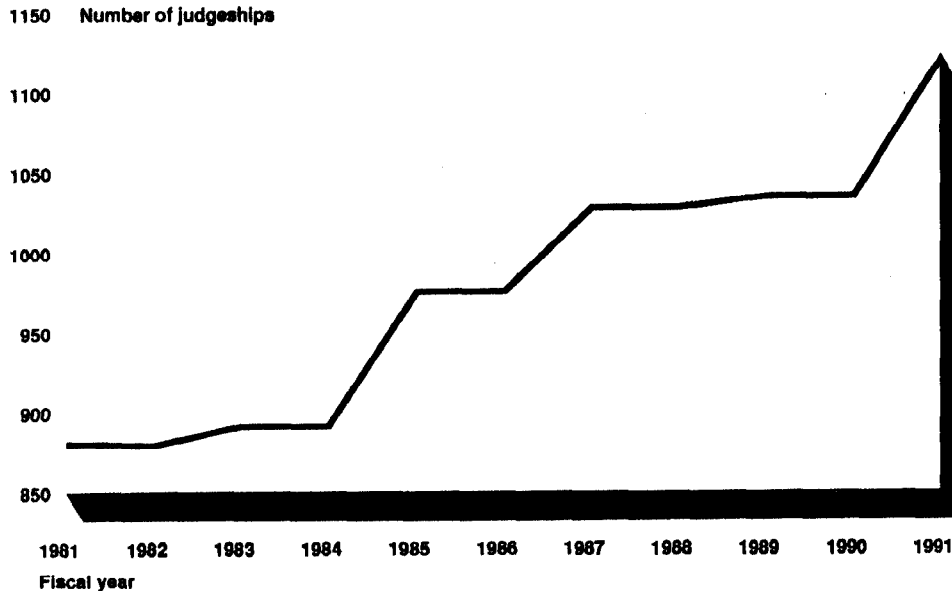
^aThe AOC could not explain why its records showing \$244.7 million in rental payments to GSA differed from GSA's records showing \$251 million in rental receipts from the AOC.

Source: AOC.

INCREASE IN FEDERAL JUDGESHIP POSITIONS

GSA said it has been financially challenged to provide courtrooms and related space to accommodate new judgeship positions while at the same time meeting the needs of existing judges. As shown in figure III.1, the number of federal judgeships increased from 880 in 1981 to 1,119 in 1991, an increase of 27 percent. According to AOC officials, surveys are carried out every 2 years to determine workload and make recommendations for additional judgeships. AOC officials said they expect the number of judges to increase in the next 5 years at a rate similar to the past 5 years.

Figure III.1: Judgeship Positions in U.S. Courts of Appeals, U.S. District Courts, and U.S. Bankruptcy Courts (As of June 30, 1981 through 1991)



Source: AOC.

JUDICIARY REVENUES FOR FISCAL YEAR 1990

As shown in table III.2, the Courts collected \$278.1 million in court costs, fees, and fines in fiscal year 1990. None of the amounts received by the Courts are directly used to pay for court facility construction and alterations; most of the amounts collected are deposited in the General Fund of the Treasury that supports the U.S. Government as a whole. Some of the amounts go to special funds that were established by statutes and delineate exactly how the funds will be spent. According to an AOC official, of the total \$278.1 million in revenues collected in fiscal year 1990, the AOC was able to retain \$47.2 million to offset Judiciary costs.

Table III.2: Judiciary Revenues (Fiscal Year 1990)

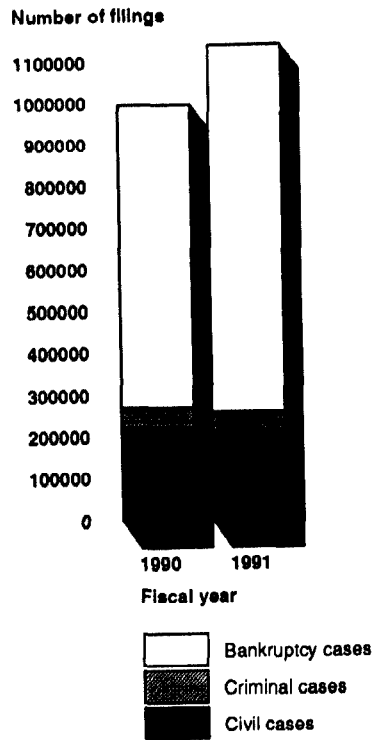
<u>Type</u>	<u>Amount collected (in millions)</u>
General fund--filing fees	\$ 41.6
General fund--recovery of court costs	1.0
General fund--other	15.6
Civil filing fees and new bankruptcy fees	33.4
Crime victims fund fines	137.4
All other revenues	<u>49.1</u>
Total	<u>\$278.1</u>

Source: AOC.

CIVIL, CRIMINAL, AND BANKRUPTCY FILINGS

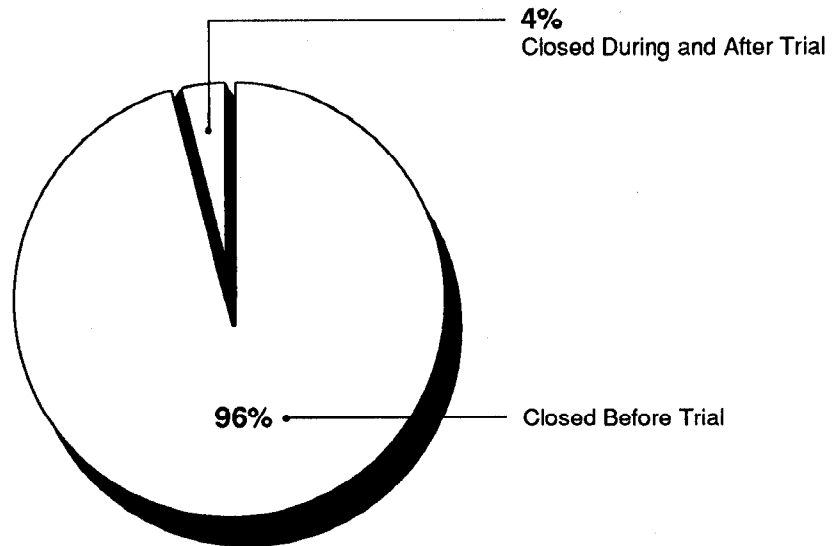
Figure III.2 shows that during the year ended June 30, 1991, the number of civil, criminal, and bankruptcy cases filed was about 1.1 million, an increase of about 14 percent from the previous year. Of the 1.1 million cases filed in 1991, 880,399 were bankruptcy filings, a significant majority of cases handled by the Courts. Many cases, however, do not go to trial after being filed. During the year ended June 30, 1991, 8,427 of the total 211,040 civil cases closed, or about 4 percent, actually reached the trial stage (see fig. III.3). In criminal cases during the same period, 6,988 of the total 55,337 defendants, or about 13 percent, were brought to trial (see fig. III.4). The AOC was unable to provide data on the number of bankruptcy cases closed during this period.

Figure III.2: Civil, Criminal, and Bankruptcy Filings (Years Ended June 30, 1990 and 1991)



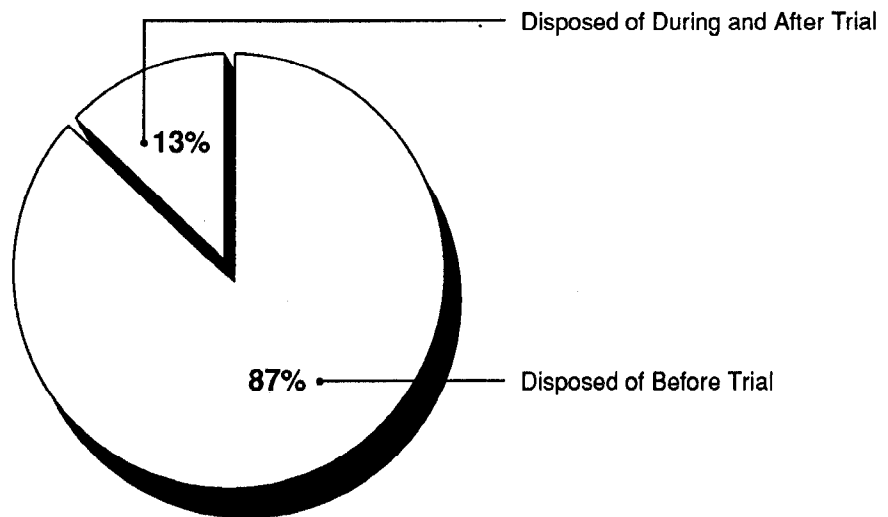
Source: AOC.

Figure III.3: Disposition of Civil Cases (Year Ended June 30, 1991)



Source: AOC.

Figure III.4: Disposition of Criminal Defendants (Year Ended June 30, 1991)



Source: AOC.

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